STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1426

By: Johnson (Mike) and Myers of the Senate

and

Miller and Martin (Scott) of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to The Oklahoma Center for the Advancement of Science and Technology; amending Section 2, Chapter 484, O.S.L. 2002, as amended by Section 1, Chapter 63, O.S.L. 2004 (74 O.S. Supp. 2009, Section 5060.1a) and 74 O.S. 2001, Sections 5060.2, as amended by Section 3, Chapter 484, O.S.L. 2002, 5060.3, as amended by Section 4, Chapter 484, O.S.L. 2002, 5060.4, as last amended by Section 1, Chapter 79, O.S.L. 2007, 5060.20a, 5060.20b, and 5060.21 (74 O.S. Supp. 2009, Sections 5060.2, 5060.3, and 5060.4), which relate to The Oklahoma Center for the Advancement of Science and Technology Act; expanding certain goals; expanding purposes of certain institutions; expanding the mission and purpose of the Oklahoma Institute of Technology; adding and modifying definitions; modifying purposes, requirements, and procedures of a technology business financing program; prohibiting use of technology business financing program funds for certain purpose; clarifying references; modifying authorized use of monies in the Seed-Capital Revolving Fund; authorizing contract for management of the Seed-Capital Revolving Fund; modifying authorized investments for monies in the Fund; clarifying approval process of investments under certain circumstances; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 484, O.S.L. 2002, as amended by Section 1, Chapter 63, O.S.L. 2004 (74 O.S. Supp. 2009, Section 5060.1a), is amended to read as follows:

Section 5060.1a. A. Recognizing the vast, underutilized human and capital resources, both urban and rural, in the State of Oklahoma and the opportunity for economic development through technological advancement, the Legislature and the Governor hereby adopt the following goals:

1. Establishing Oklahoma as a premier information technology and biotechnology center for the twenty-first century;

2. Enhancing the lives of, and expanding opportunities for, all Oklahomans through growth of information technology, biotechnology, nanotechnology and sensors industries and infrastructure throughout the urban and rural areas of the state; ~~and~~

3. Expanding and diversifying Oklahoma's economy and providing new and higher quality jobs for Oklahomans; and

4. Creating public-private partnerships to provide opportunities for development, expansion, and retention of, funding and financing for, and investment in, technology-oriented enterprises in Oklahoma.

B. To further the goals set forth in ~~this act~~ the Oklahoma Science and Technology Research and Development Act, there is hereby created the Oklahoma Science and Technology Research and Development

Board. The Board shall be responsible for the administration and governance of the Oklahoma Center for the Advancement of Science and Technology and the Oklahoma Institute of Technology.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 5060.2, as amended by Section 3, Chapter 484, O.S.L. 2002 (74 O.S. Supp. 2009, Section 5060.2), is amended to read as follows:

Section 5060.2. A. In order to attain the goals as set forth in ~~this act~~ the Oklahoma Science and Technology Research and Development Act, Oklahoma enterprises need institutions that combine the resources of the public and private sectors to encourage the development of new products, new processes and whole new industries in Oklahoma. The institutions are needed to:

1. Support the development of new or expanded technologies;

2. Provide basic and applied research capital to move innovation to commercial application;

3. Encourage the transfer of technology to firms and farms throughout the geographic regions of the state;

4. Stimulate seed-capital investment in firms ~~which~~ that will use innovation ~~from applied research~~, new technologies, or technological advances in profitable commercial applications; ~~and~~

5. Foster competitiveness, productivity and modernization in Oklahoma firms and farms; and

6. Establish public-private partnerships to provide opportunities for development, expansion, and retention of, funding

and financing for, and investment in, technology-oriented enterprises in Oklahoma.

B. There is hereby created the Oklahoma Center for the Advancement of Science and Technology. The Oklahoma Center for the Advancement of Science and Technology is hereby constituted an instrumentality of the state and the exercise of the authority and powers conferred by law shall be deemed and held to be the performance of an essential governmental function.

C. There is hereby created the Oklahoma Institute of Technology as an institute within the Oklahoma Center for the Advancement of Science and Technology. The Oklahoma Science and Technology Research and Development Board and the Oklahoma Center for the Advancement of Science and Technology are hereby directed to support the Oklahoma Institute of Technology and to include the Institute in the Center's budget work program submitted each fiscal year to the Office of State Finance.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 5060.3, as amended by Section 4, Chapter 484, O.S.L. 2002 (74 O.S. Supp. 2009, Section 5060.3), is amended to read as follows:

Section 5060.3. A. The mission of the Oklahoma Center for the Advancement of Science and Technology shall be to foster innovation in existing and developing businesses by supporting basic and applied research, by facilitating technology transfer between research laboratories and firms and farms, and by providing

seed-capital for ~~new~~ innovative and technology-oriented firms and their products. The Oklahoma Center for the Advancement of Science and Technology also shall have the authority to foster enhanced competitiveness in the national and international markets by small and medium-sized manufacturing firms located in Oklahoma by stimulating productivity and modernization of such firms.

B. The mission and purposes of the Oklahoma Institute of Technology shall include:

1. Attracting, retaining, and stimulating the development of information technology, biotechnology, genetics, and emerging technologies;

2. Providing leadership development programs to prepare rural residents for leadership in a technologically enhanced economy;

3. Upgrading and enhancing rural technology to grow or attract high technology companies;

4. Facilitating joint public-private technology research and development projects using resources and facilities of public higher education institutions or private entities; ~~and~~

5. Providing engineering or management assistance to new or existing businesses in bringing improved or innovative products or services to market; and

6. Establishing public-private partnerships to provide opportunities for development, expansion, and retention of, funding

and financing for, and investment in, technology-oriented enterprises in Oklahoma.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 5060.4, as last amended by Section 1, Chapter 79, O.S.L. 2007 (74 O.S. Supp. 2009, Section 5060.4), is amended to read as follows:

Section 5060.4. As used in the Oklahoma Science and Technology Research and Development Act:

1. “COEAT” means Center of Excellence for Aerospace Technology, an initiative within the Oklahoma Aerospace Institute that undertakes applied research, development and technology transfer that has long-term potential for commercial development;

2. “CASQ” means Center of Aerospace Supplier Quality, an initiative within the Oklahoma Aerospace Institute that serves as a conduit between Oklahoma’s military installations and the aerospace industry;

3. "Applied research" means those research activities occurring at institutions of higher education, nonprofit research foundations, and in private enterprises which have potential commercial application;

4. "Basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, but having potential long-range value to commercial interests;

5. "Board" means the Oklahoma Science and Technology Research and Development Board;

6. "Center" or "OCAST" means the Oklahoma Center for the Advancement of Science and Technology;

7. "Commercialization Center" means a private, nonprofit corporation contracting with and funded in part by OCAST to:

a. attract to, and retain in, Oklahoma technology and technology-based enterprises,

b. promote and assist with the development and expansion of scientific and technology-based industry in the state,

c. facilitate the development of incubators for technology-oriented enterprises,

d. assist technology-based enterprises in developing and expanding their businesses, obtaining financing and funding, attracting capital, including seed capital and venture capital, and attracting and retaining key management personnel, scientists, and skilled labor, and

e. develop, operate, and manage programs to facilitate entrepreneurial activity with respect to technology, scientific-based, biomedical, biomedical-technical, and technology-oriented enterprises in this state;

8. "Enterprise" means a firm with its principal place of business in Oklahoma;

~~8.~~ 9. "Health research project" means a specific examination, experimentation or investigation, or initiative to provide research resources oriented principally toward basic, applied, and developmental scientific inquiry related to the causes, diagnosis, prevention, and treatment of human diseases and disabilities and mental health and emotional disorders, and the rehabilitation of persons afflicted with such diseases, disabilities, and disorders; new knowledge, better understanding, and innovative methods to improve the processes by which health care services are made available and how they may be provided more efficiently, more effectively and at a lower cost, for all the citizens of this state; and the development of new products and services which shall form the basis of new high-technology health research and care industry for this state;

~~9.~~ 10. "Industrial Extension System" means a coordinated network of public and private manufacturing modernization resources, the purpose of which is to stimulate the competitiveness of Oklahoma small and medium-sized manufacturing firms;

~~10.~~ 11. "Institute" means the Oklahoma Institute of Technology;

~~11.~~ 12. "Institutional Review Board" means a committee composed of investigators, lay representatives, and legal counsel, which is established at each institution of higher learning and each

nonprofit research institution receiving funds from a health research project, for the express purpose of determining the appropriateness of any research involving human subjects;

~~12.~~ 13. "Institutions of higher education" means public and private colleges and universities in the state;

~~13.~~ 14. "Investigator" means a person who proposes research projects and is primarily responsible for the execution of the proposed projects and is employed by or affiliated with an institution of higher education, a nonprofit research institution in this state, or a private enterprise;

~~14.~~ 15. “Nanotechnology” means technology development at the molecular range (1nm to 100nm) to create and use structures, devices, and systems that have novel properties because of their small size;

~~15.~~ 16. "New technology" means methods, products, processes and procedures developed through science or research;

~~16.~~ 17. "Nonprofit research institution" means any not-for-profit public or private facility in this state which has the capabilities for research projects and which is not a subsidiary of any corporation, partnership, or association organized for profit, nor is its stock or assets owned or controlled by a corporation, partnership, or association organized for profit;

~~17.~~ 18. “OAI” means Oklahoma Aerospace Institute, a strategic partnership that will focus available resources to promote

cooperation and collaboration among Oklahoma businesses, manufacturers, military installations, commercial aviation, higher education institutions, nonprofit research institutions, and state government;

~~18.~~ 19. "OAME" means the Oklahoma Alliance for Manufacturing Excellence, Inc., a corporation to be formed pursuant to the provisions of Title 18 of the Oklahoma Statutes and Section 5060.26 of this title;

~~19.~~ 20. "ONAP" means the Oklahoma Nanotechnology Applications Project;

~~20.~~ 21. "OSTRaD" means the Oklahoma Science and Technology Research and Development Act;

~~21.~~ 22. "Person" means any individual, partnership, corporation or joint venture carrying on business or proposing to carry on business within the state;

~~22.~~ 23. "Plant science research" means those research activities occurring at institutions of higher education, nonprofit research institutions, and in private enterprises, which have potential commercial application and concern plant productivity, renewable biomass, plant-based environmental applications and chemical platforms, plant-based solutions to improve nutrition, human and/or animal health or performance, process applications, and seed management and the development of new products and services

that shall form the basis of new, high-technology plant science/agriculture industry for this state;

~~23.~~ 24. "Product" means any outcome, device, technique or process, which is or may be developed or marketed commercially and which has advanced beyond the theoretical stage and is in a prototype or practice stage;

~~24.~~ 25. "Professional service contract" means a written agreement providing funds for the performance of a research project; for salaries and fringe benefits of personnel associated with research programs; for research equipment; for operating expenses associated with a research program; or for services provided in connection with the evaluation of applications submitted to the Center;

~~25.~~ 26. "Qualified security" means any public or private financial arrangement, involving any note, security, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, transferable security, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or application therefor, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, guarantee of, or option, warrant or

right to subscribe to or purchase any of the foregoing to the extent allowed by law;

~~26.~~ 27. "Seed-capital" means funding, capital, and financing that is provided and made available for the creation, development, validation, refinement, protection, manufacturing, marketing, and commercialization of a product, process, concept, invention, or innovation, whether for the startup of a new ~~firm~~ enterprise or for the expansion, growth, or ~~the~~ restructuring of ~~a small firm~~ an existing enterprise; and

~~27.~~ 28. "Technology transfer" means a two-way process by which ideas or inventions for processes or products (developed in research programs usually on a laboratory or pilot-plant scale) are converted to commercial use.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 5060.20a, is amended to read as follows:

Section 5060.20a. The Oklahoma Center for the Advancement of Science and Technology (OCAST), in conjunction with the Commercialization Center, may develop and implement a technology business financing program to provide funding and financing for and to assist qualified Oklahoma ~~companies~~ enterprises to commercialize new products, services, technology, innovations, and processes. ~~Such financing shall require a non state appropriated match and may require the payment of~~ In order to obtain funding or financing from the technology business financing program, a recipient shall be

required to obtain separate private investment or funding, and may also be required to pay royalties, fees, interest, profits, or other ~~revenues which result from the financing~~ payments generated or arising from the sale, lease, licensing, distribution, manufacture, marketing, or development of products, services, technology, innovations, and processes, whether alone or in conjunction with others, or generated or arising from a sale, acquisition, merger, or other transfer or takeover of the enterprise. ~~The Oklahoma Center for the Advancement of Science and Technology~~ Any such royalties, fees, interest, profits, or other payments or return of funding and financing shall be retained for use in the program. OCAST, in conjunction with the Commercialization Center, shall establish program specifications~~, which shall be approved by the board of directors~~. ~~The Oklahoma Center for the Advancement of Science and Technology~~ OCAST may contract with the ~~Oklahoma Center for the Advancement of Science and Technology technology commercialization center~~ Commercialization Center or other qualified entity to operate ~~this~~ and manage the program. Program funds shall not be used to pay administrative, management, or operating expenses of OCAST.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 5060.20b, is amended to read as follows:

Section 5060.20b. It is the intent of the Legislature that the ~~technology commercialization center~~ Commercialization Center funded through the Oklahoma Center for the Advancement of Science and

Technology (OCAST) and the technology transfer offices within The Oklahoma State System of Higher Education (OSSHE) complement each other's capabilities and work closely to optimize each other's effectiveness. The OSSHE technology transfer offices shall create an entrepreneurial climate on the campuses to maximize opportunities for commercialization of technology resulting from university research. The ~~Oklahoma Technology~~ Commercialization Center shall assist technology-based businesses to start up and grow in Oklahoma.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 5060.21, is amended to read as follows:

Section 5060.21. A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Center for the Advancement of Science and Technology to be designated the "Seed-Capital Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. The fund shall consist of all monies authorized by law for deposit in the fund including but not limited to gifts, grants, private donations and funds by government entities authorized to provide funding for the purposes authorized for use of the fund and with payments on loans made from the fund, rents, dividends paid on shares of stock purchased with monies from the fund, royalty proceeds, or any other form of return on authorized investments made by the Center. ~~Monies deposited or apportioned to the credit of the fund in excess of that required for implementation of the program or programs for which expenditures~~

~~from the fund are authorized may be transferred to any other fund under the control of the Center.~~ All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Center for the Advancement of Science and Technology for use as seed-capital for enterprises and for the purposes ~~authorized by law~~ set forth in this section, and shall not be used for administrative, management, or operating expenses of the Center. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. The Seed-Capital Revolving Fund shall be managed consistent with the long-term goal that revenues earned from investment of the fund be used to cover administrative costs of the fund~~; however, the revenues from the Seed Capital Revolving Fund shall not be used for the fund's administrative expenses of the fund until the principal of the fund would not be endangered by such use of fund revenues~~. The Center may contract with the Commercialization Center or another entity to manage the Seed-Capital Revolving Fund and to carry out the activities set forth in this section.

C. The Center may use the Seed-Capital Revolving Fund ~~as follows:~~

~~1. To~~ to provide seed-capital to enterprises and to carry out the purposes of ~~this act~~ the Oklahoma Science and Technology

Research and Development Act through authorized investments, including:

~~a. loans~~

1. Loans, loans convertible to equity, and equity~~,~~;

~~b. leaseholds,~~

2. Leaseholds;

~~c. management~~

3. Management or consultant service agreements~~,~~;

~~d. loans~~

4. Loans with stock subscription or similar warrants that are beneficially owned by the Center~~,~~;

~~e. loans~~

5. Loans with stock subscription or similar warrants that are beneficially owned by a party other than the Center~~,~~;

~~f. any~~

6. Any other contractual arrangement in which the Center is providing scientific and technological services to any federal, state, county or municipal agency, or to any individual, corporation, enterprise, association or any other entity involving science and technology. The Center, in connection with the provision of any form of financial assistance, may enter into royalty agreements with an enterprise~~,~~;

~~g. participation~~

7. Participation as a general or limited partner in other seed-capital funds or participation as a limited partner in individual cases as authorized by the board of directors, and h. royalty or other interests in patents, licenses, trade secrets or other technology~~, and~~;

~~i. all~~

8. Royalty or other interests in patents, licenses, trade secrets or other technology; and

9. All other seed-capital investments and qualified securities as defined in ~~this act; and~~

~~2. To pay all or a portion of the Center's administrative costs, including salary, fringe benefits and other operating expenses. Amounts to be used for the payment of administrative costs shall be transferred to the Administration and Data Processing Revolving Fund before being encumbered or expended~~ the Oklahoma Science and Technology Research and Development Act.

D. The Center may use the Seed-Capital Revolving Fund to purchase qualified securities issued by enterprises engaged in new product or process innovations subject to the conditions set forth in this section.

E. The Center may use the Seed-Capital Revolving Fund to make loans ~~to~~ for business incubator facilities in exchange for interests in the enterprises ~~of the type described in subparagraphs a through i in subsection C of this section~~.

F. The Center shall make authorized seed-capital investments in enterprises engaged in new product or process innovations only after:

1. Receipt of an application from the enterprise which contains:

a. a business plan including a description of the enterprise and its management, product and market,

b. a statement of the amount, timing and projected use of the capital required,

c. a statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created, and

d. such other information as the Center board of directors shall request.

2. Approval of the investment by the Center. Such approval may be made after the board of directors finds, based upon the application submitted by the enterprise and such additional investigation as the staff of the Center shall make and incorporate in its minutes, or based on the recommendation of the fund manager, if the Center contracts with the Commercialization Center or another entity to manage the Seed-Capital Revolving Fund, that:

a. the proceeds of the investment or financial assistance will be used only to cover the seed-capital needs of the enterprise except as authorized by this section,

b. the enterprise has a reasonable chance of success,

c. the Center's participation is instrumental to the success of the enterprise and will assist in its retention within the state,

d. the Center's investment is leveraged by at least one additional equity or near-equity investor,

e. the enterprise has the reasonable potential to enhance employment opportunities within the state,

f. the entrepreneur and other founders of the enterprise have already made or are contractually committed to make an appropriate financial and time commitment to the enterprise,

g. any securities to be purchased are qualified securities,

h. there is a reasonable possibility that the Center will recoup at least its initial investment or financial commitment, and

i. binding commitments have been made to the Center by the enterprise for adequate reporting of financial data to the Center, which shall include a requirement for an annual report, or if required by the board, an annual audit of the financial and operational records of the enterprise, and for such control on the part of the Center as the board of directors shall consider

prudent over the management of the enterprise, so as to protect the investment or financial commitment of the Center, including in the discretion of the board and without limitation, right of access to financial and other records of the enterprise, and membership or representation on the board of directors of the enterprise.

G. The board of directors shall create an investment committee to assist in evaluating potential investments in qualified securities and provision of other forms of authorized financial assistance. The membership of this investment committee shall serve at the pleasure of the board and shall consist of:

1. no more than two members of the board of directors, neither of whom serves on any advisory committee to the Center; and

2. persons drawn from sources other than the Center who meet standards similar to those applying to the board of directors and who are recognized by their peers for outstanding knowledge and leadership in their fields, all of whom shall serve at the pleasure of the board.

H. The Center shall not make investments in qualified securities issued by enterprises in excess of the amount necessary to own more than forty-nine percent (49%) of qualified securities in any one enterprise at the time such securities are purchased by the Center, after giving effect to the conversion of all outstanding

convertible qualified securities of the enterprise; however, in the event of severe financial difficulty of the enterprise, threatening, in the judgment of the board of directors, the investment of the Center therein, a greater percentage of such securities may be owned by the Center.

SECTION 8. This act shall become effective July 1, 2010.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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