

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1239

By: Bergstrom

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6 AS INTRODUCED

7 An Act relating to the Oklahoma Center for the
8 Advancement of Science and Technology; amending 74
9 O.S. 2011, Section 5060.21, as amended by Section
10 1037, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2019,
11 Section 5060.21), which relates to the Seed-Capital
12 Revolving Fund; requiring fund management to include
13 production of annual report and specifying certain
14 contents; updating statutory language; and providing
15 an effective date.

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

17 SECTION 1. AMENDATORY 74 O.S. 2011, Section 5060.21, as
18 amended by Section 1037, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
19 2019, Section 5060.21), is amended to read as follows:

20 Section 5060.21. A. There is hereby created in the State
21 Treasury a revolving fund for the Oklahoma Center for the
22 Advancement of Science and Technology to be designated the "Seed-
23 Capital Revolving Fund". The fund shall be a continuing fund, not
24 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

1 entities authorized to provide funding for the purposes authorized
2 for use of the fund and with payments on loans made from the fund,
3 rents, dividends paid on shares of stock purchased with monies from
4 the fund, royalty proceeds, or any other form of return on
5 authorized investments made by the Center. All monies accruing to
6 the credit of ~~said~~ the fund are hereby appropriated and may be
7 budgeted and expended by the Oklahoma Center for the Advancement of
8 Science and Technology for use as seed-capital for enterprises and
9 for the purposes set forth in this section, and shall not be used
10 for administrative, management, or operating expenses of the Center.
11 Expenditures from ~~said~~ the fund shall be made upon warrants issued
12 by the State Treasurer against claims filed as prescribed by law
13 with the Director of the Office of Management and Enterprise
14 Services for approval and payment.

15 B. The Seed-Capital Revolving Fund shall be managed consistent
16 with the long-term goal that revenues earned from investment of the
17 fund be used to cover administrative costs of the fund. The Center
18 may contract with the Commercialization Center or another entity to
19 manage the Seed-Capital Revolving Fund and to carry out the
20 activities set forth in this section. Management of the fund shall
21 include the production of an annual report which ties the business
22 performance of individual firms to the initial investment made by
23 the fund including, but not limited to, data on job creation by
24 sector and by stage in the investment lifecycle, growth in sales and

1 measures of profitability; provided, that the information in the
2 report shall preserve the anonymity of individual companies to the
3 extent possible.

4 C. The Center may use the Seed-Capital Revolving Fund to
5 provide seed-capital to enterprises and to carry out the purposes of
6 the Oklahoma Science and Technology Research and Development Act
7 through authorized investments, including:

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

9 2. Leaseholds;

10 3. Management or consultant service agreements;

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

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

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

22 7. Participation as a general or limited partner in other seed-
23 capital funds or participation as a limited partner in individual
24 cases as authorized by the board of directors;

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

3 9. All other seed-capital investments and qualified securities
4 as defined in the Oklahoma Science and Technology Research and
5 Development Act.

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

10 E. The Center may use the Seed-Capital Revolving Fund to make
11 loans for business incubator facilities in exchange for interests in
12 the enterprises.

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

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

- 18 a. a business plan including a description of the
- 19 enterprise and its management, product and market,
- 20 b. a statement of the amount, timing and projected use of
- 21 the capital required,
- 22 c. a statement of the potential economic impact of the
- 23 enterprise, including the number, location and types
- 24 of jobs expected to be created, and

1 d. such other information as the Center board of
2 directors shall request; and

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

- 10 a. the proceeds of the investment or financial assistance
11 will be used only to cover the seed-capital needs of
12 the enterprise except as authorized by this section,
13 b. the enterprise has a reasonable chance of success,
14 c. the Center's participation is instrumental to the
15 success of the enterprise and will assist in its
16 retention within the state,
17 d. the Center's investment is leveraged by at least one
18 additional equity or near-equity investor,
19 e. the enterprise has the reasonable potential to enhance
20 employment opportunities within the state,
21 f. the entrepreneur and other founders of the enterprise
22 have already made or are contractually committed to
23 make an appropriate financial and time commitment to
24 the enterprise,

- 1 g. any securities to be purchased are qualified
2 securities,
3 h. there is a reasonable possibility that the Center will
4 recoup at least its initial investment or financial
5 commitment, and
6 i. binding commitments have been made to the Center by
7 the enterprise for adequate reporting of financial
8 data to the Center, which shall include a requirement
9 for an annual report, or if required by the board, an
10 annual audit of the financial and operational records
11 of the enterprise, and for such control on the part of
12 the Center as the board of directors shall consider
13 prudent over the management of the enterprise, so as
14 to protect the investment or financial commitment of
15 the Center, including in the discretion of the board
16 and without limitation, right of access to financial
17 and other records of the enterprise, and membership or
18 representation on the board of directors of the
19 enterprise.

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

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

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

8 H. The Center shall not make investments in qualified
9 securities issued by enterprises in excess of the amount necessary
10 to own more than forty-nine percent (49%) of qualified securities in
11 any one enterprise at the time such securities are purchased by the
12 Center, after giving effect to the conversion of all outstanding
13 convertible qualified securities of the enterprise; however, in the
14 event of severe financial difficulty of the enterprise, threatening,
15 in the judgment of the board of directors, the investment of the
16 Center therein, a greater percentage of such securities may be owned
17 by the Center.

18 SECTION 2. This act shall become effective November 1, 2020.

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