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February 13, 2023

COMMITTEE SUBSTITUTE  
FOR

SENATE BILL NO. 209

By: Bergstrom

An Act relating to capital investments of the Oklahoma Center for the Advancement of Science and Technology; amending 74 O.S. 2021, Section 5060.21, which relates to the Seed-Capital Revolving Fund; requiring certain data reporting to be included in certain binding commitments; providing certain exception; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2021, 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,

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

13 B. The Seed-Capital Revolving Fund shall be managed consistent  
14 with the long-term goal that revenues earned from investment of the  
15 fund be used to cover administrative costs of the fund. The Center  
16 may contract with the Commercialization Center or another entity to  
17 manage the Seed-Capital Revolving Fund and to carry out the  
18 activities set forth in this section.

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

- 23 1. Loans, loans convertible to equity, and equity;
- 24 2. Leaseholds;

1        3. Management or consultant service agreements;

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

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

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

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

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

18       9. All other seed-capital investments and qualified securities  
19 as defined in the Oklahoma Science and Technology Research and  
20 Development Act.

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

1 E. The Center may use the Seed-Capital Revolving Fund to make  
2 loans for business incubator facilities in exchange for interests in  
3 the enterprises.

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

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

- 9 a. a business plan including a description of the  
10 enterprise and its management, product, and market,
- 11 b. a statement of the amount, timing, and projected use  
12 of the capital required,
- 13 c. a statement of the potential economic impact of the  
14 enterprise, including the number, location, and types  
15 of jobs expected to be created, and
- 16 d. such other information as the Center board of  
17 directors shall request; and

18 2. Approval of the investment by the Center. Such approval may  
19 be made after the board of directors finds, based upon the  
20 application submitted by the enterprise and such additional  
21 investigation as the staff of the Center shall make and incorporate  
22 in its minutes, or based on the recommendation of the fund manager,  
23 if the Center contracts with the Commercialization Center or another  
24 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

1 annual audit of the financial and operational records  
2 of the enterprise, and for such control on the part of  
3 the Center as the board of directors shall consider  
4 prudent over the management of the enterprise, so as  
5 to protect the investment or financial commitment of  
6 the Center, including in the discretion of the board  
7 and without limitation, right of access to financial  
8 and other records of the enterprise, and membership or  
9 representation on the board of directors of the  
10 enterprise. The binding commitments made pursuant to  
11 this subparagraph for adequate reporting of financial  
12 data shall include data that exhibit the growth rate  
13 of employment, wages, revenues, and a provided measure  
14 of profitability reported consistently among the  
15 enterprises. The growth rates shall be reported both  
16 on an annual basis and to reflect the growth that has  
17 occurred since investments were made pursuant to this  
18 section. The Oklahoma Tax Commission shall  
19 collaborate with the Center for the reporting of  
20 financial data. The Center may provide an exception  
21 to the commitment required pursuant to this  
22 subparagraph for certain circumstances that make the  
23 providing of data unfeasible, including but not  
24 limited to the death of owners or management,

1                   dissolution of the enterprise, or abandonment of  
2                   projects.

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

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

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

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

1       SECTION 2.   This act shall become effective November 1, 2023.

2   COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE  
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