

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 209

6 By: Bergstrom

7 COMMITTEE SUBSTITUTE

8 An Act relating to capital investments of the
9 Oklahoma Center for the Advancement of Science and
10 Technology; amending 74 O.S. 2021, Section 5060.21,
11 which relates to the Seed-Capital Revolving Fund;
12 requiring certain data reporting to be included in
13 certain binding commitments; providing certain
14 exception; 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. 2021, Section 5060.21, is
18 amended to read as follows:

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

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

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

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

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

- 1 2. Leaseholds;
- 2 3. Management or consultant service agreements;
- 3 4. Loans with stock subscription or similar warrants that are
- 4 beneficially owned by the Center;
- 5 5. Loans with stock subscription or similar warrants that are
- 6 beneficially owned by a party other than the Center;
- 7 6. Any other contractual arrangement in which the Center is
- 8 providing scientific and technological services to any federal,
- 9 state, county, or municipal agency, or to any individual,
- 10 corporation, enterprise, association, or any other entity involving
- 11 science and technology. The Center, in connection with the
- 12 provision of any form of financial assistance, may enter into
- 13 royalty agreements with an enterprise;
- 14 7. Participation as a general or limited partner in other seed-
- 15 capital funds or participation as a limited partner in individual
- 16 cases as authorized by the board of directors;
- 17 8. Royalty or other interests in patents, licenses, trade
- 18 secrets, or other technology; and
- 19 9. All other seed-capital investments and qualified securities
- 20 as defined in the Oklahoma Science and Technology Research and
- 21 Development Act.

22 D. The Center may use the Seed-Capital Revolving Fund to

23 purchase qualified securities issued by enterprises engaged in new

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1 product or process innovations subject to the conditions set forth
2 in this section.

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

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

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

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

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

1 if the Center contracts with the Commercialization Center or another
2 entity to manage the Seed-Capital Revolving Fund, that:

- 3 a. the proceeds of the investment or financial assistance
4 will be used only to cover the seed-capital needs of
5 the enterprise except as authorized by this section,
- 6 b. the enterprise has a reasonable chance of success,
- 7 c. the Center's participation is instrumental to the
8 success of the enterprise and will assist in its
9 retention within the state,
- 10 d. the Center's investment is leveraged by at least one
11 additional equity or near-equity investor,
- 12 e. the enterprise has the reasonable potential to enhance
13 employment opportunities within the state,
- 14 f. the entrepreneur and other founders of the enterprise
15 have already made or are contractually committed to
16 make an appropriate financial and time commitment to
17 the enterprise,
- 18 g. any securities to be purchased are qualified
19 securities,
- 20 h. there is a reasonable possibility that the Center will
21 recoup at least its initial investment or financial
22 commitment, and
- 23 i. binding commitments have been made to the Center by
24 the enterprise for adequate reporting of financial

1 data to the Center, which shall include a requirement
2 for an annual report, or if required by the board, an
3 annual audit of the financial and operational records
4 of the enterprise, and for such control on the part of
5 the Center as the board of directors shall consider
6 prudent over the management of the enterprise, so as
7 to protect the investment or financial commitment of
8 the Center, including in the discretion of the board
9 and without limitation, right of access to financial
10 and other records of the enterprise, and membership or
11 representation on the board of directors of the
12 enterprise. The binding commitments made pursuant to
13 this subparagraph for adequate reporting of financial
14 data shall include data that exhibit the growth rate
15 of employment, wages, revenues, and a provided measure
16 of profitability reported consistently among the
17 enterprises. The growth rates shall be reported both
18 on an annual basis and to reflect the growth that has
19 occurred since investments were made pursuant to this
20 section. The Oklahoma Tax Commission shall
21 collaborate with the Center for the reporting of
22 financial data. The Center may provide an exception
23 to the commitment required pursuant to this
24 subparagraph for certain circumstances that make the

1 providing of data unfeasible, including but not
2 limited to the death of owners or management,
3 dissolution of the enterprise, or abandonment of
4 projects.

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

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

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

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

1 Center therein, a greater percentage of such securities may be owned
2 by the Center.

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