

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 209

By: Bergstrom

AS INTRODUCED

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; 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 fund are hereby appropriated and may be budgeted
5 and expended by the Oklahoma Center for the Advancement of Science
6 and Technology for use as seed-capital for enterprises and for the
7 purposes set forth in this section, and shall not be used for
8 administrative, management, or operating expenses of the Center.
9 Expenditures from said fund shall be made upon warrants issued by
10 the State Treasurer against claims filed as prescribed by law with
11 the Director of the Office of Management and Enterprise Services for
12 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:

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

19 G. The board of directors shall create an investment committee
20 to assist in evaluating potential investments in qualified
21 securities and provision of other forms of authorized financial
22 assistance. The membership of this investment committee shall serve
23 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, 2023.

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