

Stricken language would be deleted from and underlined language would be added to present law.
Act 1095 of the Regular Session

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/21/13
A Bill

SENATE BILL 929

By: Senator Teague
By: Representative Mayberry

For An Act To Be Entitled

AN ACT TO IMPLEMENT RECOMMENDATIONS TO EXPAND OPPORTUNITIES TO CREATE HIGH-TECHNOLOGY, KNOWLEDGE-BASED JOBS; TO RESTRUCTURE CERTAIN PROGRAMS AND PROGRAM REQUIREMENTS TO FOSTER ECONOMIC DEVELOPMENT; TO EXPAND THE DUTIES OF THE ARKANSAS RESEARCH ALLIANCE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO EXPAND OPPORTUNITIES TO CREATE HIGH-TECHNOLOGY, KNOWLEDGE-BASED JOBS; TO RESTRUCTURE CERTAIN PROGRAMS AND PROGRAM REQUIREMENTS TO FOSTER ECONOMIC DEVELOPMENT; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 15-3-503 is amended to read as follows:

15-3-503. ~~Arkansas Acceleration Fund Committee~~ Advisory capacity of Arkansas Research Alliance.

(a) The Arkansas ~~Science and Technology Authority~~ Research Alliance shall ~~create the Arkansas Acceleration Fund Committee,~~ serve in an advisory capacity to the Governor, the General Assembly, the Arkansas Science and Technology Authority, and other agencies responsible for programs enumerated in subsection (b) of this section.

(b)(1) The ~~committee~~ Arkansas Research Alliance shall make



recommendations regarding support and assistance for the accelerated growth of knowledge-based and high-technology jobs in the State of Arkansas through focused funding of the state's initiatives and programs.

(2) For funds in the Arkansas Acceleration Fund, § 19-5-1243, the ~~committee~~ Arkansas Research Alliance shall make recommendations to the authority regarding the allocation or reallocation of funds and moneys for programs and initiatives authorized by the:

- (A) Arkansas Research Alliance Act, § 15-3-301 et seq.;
- (B) Innovate Arkansas Fund, § 19-5-1237;
- (C) Arkansas Risk Capital Matching Fund Act of 2007, § 15-5-1601 et seq.;
- (D) Supplemental science, technology, engineering, and math fund grants under § 6-17-2701 et seq.;
- (E) Existing programs of the authority authorized under § 15-3-101 et seq., § 15-3-201 et seq., § 15-3-301 et seq., and § 15-3-401 et seq.; ~~and~~
- (F) Arkansas Technical Careers Student Loan Forgiveness Program, § 6-50-201; and
- (G) Any other programs or activities aimed at the creation of knowledge-based and high-technology jobs.

(3) In consultation with members of the Arkansas Research Alliance, the Executive Director may solicit input, advice, or counsel from any group or individual concerning a policy or funding decision of the Arkansas Research Alliance, including without limitation Accelerate Arkansas, Innovate Arkansas, and Connect Arkansas.

SECTION 2. Arkansas Code § 15-3-504 is repealed.

~~15-3-504. Members of the committee.~~

~~(a) The Arkansas Acceleration Fund Committee is composed of the following members:~~

- ~~(1) Seven (7) of the members shall be individuals from the private sector;~~
- ~~(2) One (1) member is to be the President of the Arkansas Science and Technology Authority or the president's designee;~~
- ~~(3) One (1) member is to be the Director of the Arkansas Economic Development Commission or the director's designee; and~~

~~(4) One (1) member to be the President of the Arkansas Development Finance Authority or the president's designee.~~

~~(b) Each private sector member of the committee shall:~~

~~(1) Be knowledgeable through personal experience or training of the process of growth and development of knowledge-based or technology-based jobs;~~

~~(2) Have obtained at least an undergraduate degree from a four-year institution of higher learning; and~~

~~(3) Have:~~

~~(A) A science or engineering degree from a four-year institution of higher learning;~~

~~(B) Experience managing a private sector knowledge-based or high technology company; or~~

~~(C) Experience working in areas related to development of private sector knowledge-based or high technology jobs.~~

~~(c)(1) The President of the Arkansas Science and Technology Authority shall seek recommendations from the Arkansas Science and Technology Authority's board of directors and the Governor of the State of Arkansas for the initial list of private sector committee members.~~

~~(2) After obtaining the recommendations, the President of the Arkansas Science and Technology Authority shall nominate the initial private sector members of the committee for appointment to the committee by the Arkansas Science and Technology Authority's board of directors.~~

~~(d)(1) Each private sector committee member shall serve a four-year term, with a maximum of two (2) consecutive four-year terms.~~

~~(2) The initial terms of the private sector committee members shall be as follows:~~

~~(A) One (1) member shall serve a one-year term;~~

~~(B) Two (2) members shall serve a two-year term;~~

~~(C) Two (2) members shall serve a three-year term; and~~

~~(D) Two (2) members shall serve a four-year term.~~

~~(3) The President of the Arkansas Science and Technology Authority shall determine the terms of the initial private members of the committee.~~

~~(4) Each member may be reappointed from time to time thereafter to serve not more than a maximum of eight (8) consecutive years, including~~

~~his or her initial term.~~

~~(e) Successors to the initial private sector committee members shall be nominated by the President of the Arkansas Science and Technology Authority upon recommendation by the committee and shall be appointed by the Board of Directors of the Arkansas Science and Technology Authority.~~

~~(f) Members of the committee shall serve without compensation.~~

SECTION 3. Arkansas Code § 15-3-505 is amended to read as follows:

15-3-505. Recommendations.

(a) Upon receiving funding for knowledge-based and high-technology job advancement, the Arkansas ~~Acceleration Fund Committee~~ Science and Technology Authority shall insure that the Arkansas Research Alliance meet meets at least annually to recommend the allocation and priorities of funding, funding ratios, and the maximum amounts to be made available among the particular programs to be supported under this chapter and that will accelerate the development of knowledge-based and high-technology jobs in Arkansas.

(b) The ~~committee~~ alliance may base its recommendations for investment and reinvestment on an analysis of the growth in the state's knowledge-based and high-technology jobs and associated wages and estimated individual state income tax revenue.

(c) The ~~committee's~~ alliance's recommendations may be used to guide the preparation of budget requests by the Arkansas Science and Technology Authority or budget requests by state agencies for the programs stated in § 15-3-503(b).

(d)(1) The Board of Directors of the Arkansas Science and Technology Authority may act on the ~~committee's~~ alliance's recommendations.

(2) The governing body of each agency listed under § 15-3-503(b) may act on the ~~committee's~~ alliance's recommendations for the programs listed in ~~their areas~~ its area.

(3) The board shall report its actions to the Governor by June 30 of each year and shall forward copies of the report to the agencies included in the report's recommendations.

SECTION 4. Arkansas Code § 15-5-1603 is amended to read as follows:

15-5-1603. Definitions.

As used in this subchapter:

~~(1) "Angel investor" means a high net worth individual or a network of high net worth individuals who invest in early stage technology based enterprises~~ "Accredited investor" means an accredited investor as defined in 17 C.F.R. § 230.215, as it existed on January 1, 2013;

(2) "Enterprise Development Account" means a separate account bearing that name and to be maintained within the Arkansas Risk Capital Matching Fund, the moneys in which account shall be used for the purposes and in the manner prescribed by this subchapter;

(3) "Equity capital" means capital invested in common stock or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other equity, securities, or rights that evidence ownership or investment in private enterprises;

(4) "Near-equity capital" means capital invested in unsecured, undersecured, subordinated, or convertible loans or debt securities;

~~(5) "Private sector advisory committee" means a committee composed of individual representatives from the private sector in Arkansas, established to offer assistance and advice to the trustees of the fund in:~~

~~(A) Developing rules; and~~

~~(B) Reviewing:~~

~~(i) Investments under consideration by the review committee; and~~

~~(ii) Annual reports from the trustees of the Venture Capital Investment Trust;~~

~~(6)~~ (5) "Review committee" means a committee ~~composed~~ composed of the President of the Arkansas Development Finance Authority, the President of the Arkansas Science and Technology Authority, and the Director of the Arkansas Economic Development Commission;

~~(7)~~ (6) "Technology-based enterprises" means a group of growing businesses in one (1) or more of the following business sectors:

(A) Advanced materials and manufacturing systems;

(B) Agriculture, food, and environmental sciences;

(C) Biotechnology, bioengineering, medical technology, and life sciences;

(D) Information technology;

(E) Transportation logistics; and

(F) Biobased products;

~~(8)~~ (7) "Technology Validation Account" means the separate account bearing that name and to be maintained as a separate account within the Arkansas Risk Capital Matching Fund, the moneys in which account shall be used for the purposes and in the manner prescribed by this subchapter; and

~~(9)~~ (8) "Venture Capital Investment Trust" means the public trust formed July 21, 2003, under § 28-72-201 et seq., the trustees of which are the President of the Arkansas Development Finance Authority, the President of the Arkansas Science and Technology Authority, and the Director of the Department of Finance and Administration, and that has as a principal purpose increasing the availability of equity capital and near-equity capital for emerging and expanding enterprises in the State of Arkansas.

SECTION 5. Arkansas Code § 15-5-1605(g)(1)(H), concerning the use of the Technology Validation Account within the Arkansas Risk Capital Matching Fund, is amended to read as follows:

(H) Achieving other similar milestones required for the advancement of very early stage technology-based enterprises as approved by the ~~private sector advisory committee and the~~ review committee.

SECTION 6. Arkansas Code § 15-5-1605(g)(2), concerning the use of the Technology Validation Account within the Arkansas Risk Capital Matching Fund, is amended to read as follows:

(2) Financial assistance provided from the Technology Validation Account may be made in the form of equity capital or near-equity capital, as ~~recommended by the private sector advisory committee and~~ approved by the review committee.

SECTION 7. Arkansas Code § 15-5-1605(g)(5) and (6), concerning the use of the Technology Validation Account within the Arkansas Risk Capital Matching Fund, are amended to read as follows:

(5) Any technology-based enterprise receiving financial assistance to be disbursed from the Technology Validation Account shall have a business valuation as represented by the technology-based enterprise and approved by the review committee of not more than two million dollars (\$2,000,000) determined prior to the making of the investment from the Technology Validation Account and as the maximum valuation may be adjusted

from year to year by the review committee ~~on recommendation of the private sector advisory committee~~ to take into account the effects of inflation.

(6) The maximum investment that may be made to any one (1) technology-based enterprise from the Technology Validation Account shall be one hundred thousand dollars (\$100,000), as may be adjusted from year to year by the review committee ~~on recommendation of the private sector advisory committee~~ to take into account the effects of inflation.

SECTION 8. Arkansas Code § 15-5-1605(h), concerning the use of the Enterprise Development Account within the Arkansas Risk Capital Matching Fund, is amended to read as follows:

(h)(1) Moneys and funds within the Enterprise Development Account shall be used within the parameters expressed in this subsection for the purpose of assisting early stage technology-based enterprises in augmenting the investments made or proposed to be made in ~~such~~ early stage technology-based enterprises from ~~angel~~ accredited investors or owners of the applicant technology-based enterprise, or both, and other individual or institutional investors where when established milestones for further development of ~~such~~ early stage technology-based enterprises are set forth in a business plan to be approved by ~~the fund manager and~~ the review committee.

(2) Financial assistance provided from the Enterprise Development Account may be made in the form of equity capital or near-equity capital, as ~~recommended by the private sector advisory committee and~~ approved by the review committee, and shall be on substantially the same terms and conditions as other investments proposed to be made by ~~angel~~ accredited investors or other investors owners of the applicant technology-based enterprise, or both. contemporaneously with the assistance to be provided from the fund.

(3) Financial assistance made from the Enterprise Development Account shall be required to be matched by investments from ~~angel~~ accredited investors, or other investors owners of the applicant technology-based enterprise, or both accredited investors and owners of the applicant technology-based enterprise in ~~some~~ the proportion, ~~as~~ determined by the review committee on a case-by-case basis or as a matter of rule, but on not less than a four-to-one (4:1) basis with not less than four dollars (\$4.00) from the applicant technology-based ~~business~~ enterprise for every one dollar (\$1.00) from the ~~account~~ Enterprise Development Account.

(4) Any technology-based enterprise receiving financial assistance to be disbursed from the Enterprise Development Account shall have a business valuation as represented by the technology-based enterprise and approved by the review committee of not more than twenty-five million dollars (\$25,000,000), determined prior to the making of the investment from the Enterprise Development Account and as the maximum valuation may be adjusted from year to year by the review committee ~~on recommendation of the private sector advisory committee~~ to take into account the effects of inflation.

(5) The maximum investment that may be made to any one (1) technology-based enterprise from the Enterprise Development Account fund shall be seven hundred fifty thousand dollars (\$750,000), as may be adjusted from year to year by the review committee ~~on recommendation of the private sector advisory committee~~ to take into account the effects of inflation.

SECTION 9. Arkansas Code § 15-5-1606 is repealed.

~~15-5-1606. Private sector advisory committee.~~

~~(a) The trustees of the Venture Capital Investment Trust shall appoint a private sector advisory committee, to consist of not less than five (5) nor more than nine (9) individuals from the private sector in Arkansas who have demonstrated personal or professional experience in assisting one (1) or more of the financing, growth, and development of very early stage and early stage technology-based businesses.~~

~~(b)(1) The private sector advisory committee shall serve for terms as determined by the trustees of the trust.~~

~~(2) Members of the private sector advisory committee may serve successive terms.~~

~~(3) Members of the private sector advisory committee may be reimbursed for actual expenses incurred in the performance of their duties as determined by the trustees of the trust.~~

~~(c) The trustees of the trust in their discretion shall have the right to remove and replace the members of the private sector advisory committee.~~

~~(d) The trustees of the trust, in consultation with the private sector advisory committee and the review committee, shall develop guidelines for investments of Arkansas Risk Capital Matching Fund assets in technology-based enterprises consistent with the provisions of this subchapter.~~

~~(e) It shall not be a prohibited conflict of interest for a member of~~

~~the private sector advisory committee to have a direct or indirect pecuniary interest in any technology based enterprise applying for assistance from the Arkansas Risk Capital Matching Fund so long as the member;~~

- ~~(1) Makes full disclosure of his or her interest before the consideration of the application by the private sector advisory committee;~~
- ~~(2) Does not vote on the application; and~~
- ~~(3) Excuses himself or herself from any deliberations of the private sector advisory committee regarding the application.~~

SECTION 10. Arkansas Code § 15-5-1607 is amended to read as follows:
15-5-1607. Review committee.

The review committee shall:

- ~~(1) Recommend~~ recommend to the trustees the payment of fees and expenses out of the Arkansas Risk Capital Matching Fund for the operation of the fund; ~~and~~
- ~~(2) Review and give final approval to the recommendations made by the private sector advisory committee with regard to fund investments.~~

SECTION 11. Arkansas Code § 15-5-1608(1), concerning the annual report of the Venture Capital Investment Trust, is amended to read as follows:

- (1) Include an annual audit of the Arkansas Risk ~~Capital~~ Capital Matching Fund's activities conducted by the trustees with the assistance of ~~the review committee and the private sector advisory committee;~~

SECTION 12. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the continuous operation of the Arkansas Risk Capital Matching Fund is essential to maintaining the state's entrepreneurial infrastructure that is available to Arkansas citizens seeking to create employment opportunities in the state; that this act is necessary to meet immediate demands for funding under the program; and that this act is immediately necessary to provide for continuity of services to Arkansas entrepreneurs and immediate employment opportunities. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

- (1) The date of its approval by the Governor;*

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Teague

APPROVED: 04/11/2013