

74-8109. Seed-capital fund, creation, sources, uses; investment committee; limitation on certain investments. (a) There is hereby created the technology enterprise seed-capital fund to which shall be credited any state funds specifically so designated. The secretary may credit the fund with unrestricted appropriations, gifts, donations or grants received from any source and with payments on loans made from the fund.

(b) The secretary may use the Kansas technology enterprise seed-capital fund as follows:

(1) To carry out the purposes of K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto, through investments in qualified securities and through the forms of financial assistance authorized by K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto, including:

(A) Loans, loans convertible to equity, and equity;

(B) leaseholds;

(C) management or consultant service agreements;

(D) loans with warrants attached that are beneficially owned by the department;

(E) loans with warrants attached that are beneficially owned by a party other than the department; and

(F) any other contractual arrangement in which the department is providing scientific and technological services to any federal, state, county or municipal agency, or to any individual, corporation, enterprise, association or any other entity involving science and technology. The secretary, in connection with the provision of any form of financial assistance, may enter into royalty agreements with an enterprise.

(2) To pay all or a portion of the department's operating expenses from revenues generated by seed-capital fund investments, which shall be an amount sufficient to allow the department to undertake and efficiently manage its responsibilities.

(3) To invest in such other investments as are lawful for Kansas fiduciaries.

(c) The secretary may use the Kansas technology enterprise seed-capital fund to purchase qualified securities issued by enterprises as a part of a resource and technology project for the purpose of raising the initial capital for such projects subject to the conditions set forth in this section.

(d) The secretary may use the fund to make low-interest or zero-interest loans to business incubator facilities in exchange for royalties from future gross sales generated by enterprises created in the incubator.

(e) The secretary shall purchase qualified securities issued by an enterprise as a part of a resource and technology project only after:

(1) Receipt of an application from the enterprise which contains:

(A) A business plan including a description of the enterprise and its management, product and market;

(B) a statement of the amount, timing and projected use of the capital required;

(C) a statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created; and

(D) such other information as the secretary shall request.

(2) Approval of the investment by the department may be made after the secretary finds, based upon the application submitted by the enterprise and such additional investigation as the staff of the department shall make that:

(A) The proceeds of the investment 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 department's participation is instrumental to the success of the enterprise and its retention within the state because funding otherwise available for the enterprise is not available on commercially reasonable terms;

(D) the enterprise has the reasonable potential to create a substantial amount of employment within the state;

(E) the entrepreneur and other founders of the enterprise have already made or are contractually committed to make a substantial financial and time commitment to the enterprise;

(F) the securities to be purchased are qualified securities;

(G) there is a reasonable possibility that the department will recoup at least its initial investment; and

(H) binding commitments have been made to the department by the enterprise for adequate reporting of financial data to the department, which shall include a requirement for an annual report, or if required by the board, an annual audit of the financial and operational records of the enterprise, and for such control on the part of the department shall consider prudent over the management of the enterprise, so as to protect the investment of the department, including in the discretion of the secretary and without limitation, right of access to financial and other records of the enterprise.

(f) The secretary shall create an investment committee to assist in evaluating potential investments in qualified securities. The membership of this investment committee may include both directors and staff members of the department, and other persons drawn from sources other than the department who are recognized by their peers for outstanding knowledge and leadership in their fields, all of whom shall serve at the pleasure of the secretary.

(g) The secretary shall not make investments in qualified securities issued by enterprises in excess of the amount necessary to own more than 49% of qualified securities in any one enterprise at the time of the purchase by the department, after giving effect to the conversion of all outstanding convertible qualified securities of the enterprise except that in the event of severe financial difficulty of the enterprise, threatening, in the judgment of the secretary, the investment of the department therein, a greater percentage of such securities may be owned by the department.

History: L. 1986, ch. 284, § 9; L. 2011, ch. 104, § 23; July 1.