

FIRST REGULAR SESSION

HOUSE BILL NO. 189

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FLOOK (Sponsor), BRANDOM, KRAUS, GRISAMORE, COX, JONES (89), DAY, NANCE, BRUNS, STORCH, DUSENBERG, KOMO, CORCORAN, ZERR, FAITH, NIEVES, BROWN (50), DIEHL AND BRANDOM (Co-sponsors).

0789L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 348, RSMo, by adding thereto four new sections relating to business development.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 348, RSMo, is amended by adding thereto four new sections, to be known as sections 348.267, 348.268, 348.273, and 348.274, to read as follows:

348.267. 1. This section shall be known and may be cited as the "Seed Capital Technology Business Finance Program Act".

2. There is hereby created within the Missouri technology investment fund established under section 348.264 an account to be known as the "Seed Capital Technology Business Finance Program Account". The account shall consist of all moneys which may be appropriated to it by the general assembly, and also any gifts, contributions, grants or bequests received from federal, private, or other sources. The account shall also consist of payments on loans made from the account dividends paid on shares of stock purchased with moneys from the account, royalty proceeds, or any other form of return on authorized investments made by the Missouri technology corporation under the seed capital technology business finance program with moneys from the account. Moneys for the seed capital technology business finance program established under this section shall be available from appropriations made by the general assembly from the seed capital technology business finance program account of the Missouri technology investment fund. Any moneys remaining in the seed capital technology business finance program account

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 at the end of any fiscal year shall not lapse to the general revenue fund, as provided in
17 section 33.080, RSMo, but shall remain in the seed capital technology business finance
18 program account.

19 3. (1) The Missouri technology corporation may use moneys in the seed capital
20 technology business finance program account, as appropriated, to make investments in an
21 advanced technology company that is at the early development stage of commercializing
22 advanced technology.

23 (2) Investments shall be loans convertible to equity, equity, or loans with stock
24 subscription or similar warrants that are beneficially owned by the Missouri technology
25 corporation.

26 (3) Eligible advanced technology industries shall include animal health,
27 biotechnology, information technology, communications technology, aerospace, electronics,
28 robotics, medical devices and instruments, telecommunications, plant sciences, and energy.
29 Ineligible industries include banking and lending, development, management, and
30 investment companies, finance, insurance, mining, oil and gas exploration, real estate,
31 wholesale, and retail.

32 (4) An eligible company shall have fifty percent or more of its employees and assets
33 in Missouri.

34 (5) An eligible company shall be at the seed or start-up stage.

35 (6) An eligible company shall have innovative products and services.

36 4. The Missouri technology corporation shall contract with professional equity fund
37 managers for professional review of applications, performance of due diligence, and other
38 related advisory services prior to any investments being made under this section. Such
39 contracts shall be paid for out of appropriations from the seed capital technology business
40 finance program account.

41 5. The Missouri technology corporation may make authorized investments in
42 eligible advanced technology companies engaged in new product or process innovations
43 only after:

44 (1) Receipt of an application from the company that contains:

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

47 (b) A statement of the amount, timing, and projected use of the capital required;

48 (c) A statement of the potential economic impact of the enterprise, including the
49 number, location, and types of jobs expected to be created; and

50 (d) Such other information as the Missouri technology corporation shall request;

51 (2) Approval of the investment by the Missouri technology corporation, which may
52 only be made based upon a recommendation for investment by the professional equity fund
53 managers contracted with by the Missouri technology corporation and a finding by the
54 board of directors that:

55 (a) The proceeds of the investment will be used only to cover the seed capital needs
56 of the company;

57 (b) The company has a reasonable chance of success;

58 (c) The Missouri technology corporation's participation is instrumental to the
59 success of the company and will assist in its retention within the state;

60 (d) The Missouri technology corporation's investment is leveraged by at least one
61 additional equity investment in the company in an amount equal to or greater than the
62 Missouri technology corporation's investment;

63 (e) The company has the reasonable potential to enhance employment opportunities
64 within the state;

65 (f) The entrepreneur and other founders of the company have already made or are
66 contractually committed to make an appropriate financial and time commitment to the
67 enterprise;

68 (g) Any securities to be purchased are registered if required by law;

69 (h) There is a reasonable possibility that the Missouri technology corporation will
70 recoup at least its initial investment or financial commitment; and

71 (i) Binding commitments have been made to the Missouri technology corporation
72 by the company for adequate reporting of financial data to the Missouri technology
73 corporation, which shall include a requirement for an annual report, or if required by the
74 board, an annual audit of the financial and operational records of the company, and for
75 such control on the part of the Missouri technology corporation as the board of directors
76 shall consider prudent over the management of the company, so as to protect the
77 investment or financial commitment of the Missouri technology corporation, including in
78 the discretion of the board and without limitation, right of access to financial and other
79 records of the company, and membership or representation on the board of directors of
80 the company.

81 6. The Missouri technology corporation shall not make investments in amounts
82 greater than the lesser of seven hundred fifty thousand dollars or an amount that gives the
83 Missouri technology corporation forty-nine percent ownership interest in any one
84 advanced technology company at the time of investment.

85 7. Use of the investment in the eligible advanced technology company includes
86 intellectual property development, business prototypes, market studies, and business
87 operations.

88 8. The Missouri technology corporation may adopt such rules, statements of policy,
89 procedures, forms, and guidelines as may be necessary to carry out the provisions of this
90 section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
91 that is created under the authority delegated in this section shall become effective only if
92 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
93 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
94 and if any of the powers vested with the general assembly under chapter 536, RSMo, to
95 review, to delay the effective date, or to disapprove and annul a rule are subsequently held
96 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
97 after August 28, 2009, shall be invalid and void.

 348.268. 1. This section shall be known and may be cited as the "Proof of Concept
2 Technology Business Finance Program Act".

3 2. There is hereby created within the Missouri technology investment fund
4 established under section 348.264 an account to be known as the "Proof of Concept
5 Technology Business Finance Program Account". The account shall consist of all moneys
6 which may be appropriated to it by the general assembly, and also any gifts, contributions,
7 grants, or bequests received from federal, private or other sources. The account shall also
8 consist of payments on loans made from the account by the Missouri technology
9 corporation under the proof of concept technology business finance program. Moneys for
10 the proof of concept technology business finance program established under this section
11 shall be available from appropriations made by the general assembly from the proof of
12 concept technology business finance program account of the Missouri technology
13 investment fund. Any moneys remaining in the proof of concept technology business
14 finance program account at the end of any fiscal year shall not lapse to the general revenue
15 fund, as provided in section 33.080, RSMo, but shall remain in the proof of concept
16 technology business finance program account.

17 3. (1) The Missouri technology corporation may use moneys in the proof of concept
18 technology business finance program account, as appropriated, to make one-time loans to
19 a company that is at the early development stage of commercializing advanced technology.

20 (2) The loan amount to any single advanced technology company shall not exceed
21 seventy-five thousand dollars.

22 (3) Loans shall be repaid to the Missouri technology corporation in an amount
23 equal to two times the amount loaned. Repayment shall take place no later than five years

24 from the date of the loan. Early repayment will result in prorating of the repayment
25 amount.

26 (4) The Missouri technology corporation's loan shall be leveraged dollar-for-dollar
27 by at least one additional equity investment in the company.

28 (5) Eligible advanced technology industries shall include animal health,
29 biotechnology, information technology, communications technology, aerospace, electronics,
30 robotics, medical devices and instruments, telecommunications, plant sciences, and energy.
31 Ineligible company industries include banking and lending, development, management and
32 investment companies, finance, insurance, mining, oil and gas exploration, real estate,
33 wholesale, and retail.

34 (6) Eligible companies shall be technology-based, sufficiently innovative to provide
35 a competitive advantage in the marketplace, and have the potential for significant, high
36 performance growth.

37 (7) An eligible company shall have fifty percent or more of its employees and assets
38 in Missouri.

39 (8) An eligible company shall have average wage levels at least thirty-five percent
40 higher than the average county wage level as determined by the department of economic
41 development for the most recently completed full calendar year.

42 (9) An eligible company shall be at the early development stage of commercializing
43 an advanced technology.

44 (10) An eligible company, at the time a proof of concept loan is made to that
45 company, shall be a small business concern that meets the requirements of the United
46 States Small Business Administration's qualification size standards for its business loan
47 program, as defined in 13 CFR 121.301(a) of the Small Business Investment Act of 1958,
48 as amended.

49 4. Eligible use of the proceeds of a proof of concept program loan include
50 intellectual property development, building prototypes, market studies, identifying and
51 securing a management team, and business operations.

52 5. The Missouri technology corporation may make proof of concept loans to eligible
53 advanced technology companies only after:

54 (1) Receipt of an application from the company that contains:

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

57 (b) A statement of the amount, timing, and projected use of the capital required;

58 (c) A statement of the potential economic impact of the advanced technology
59 company, including the number, location, and types of jobs expected to be created; and

60 (d) Such other information as the Missouri technology corporation board of
61 directors shall request;

62 (2) Approval of the loan by the Missouri technology corporation, which may be
63 made after the board of directors finds, based upon the application submitted by the
64 company and such additional investigation as the staff of the Missouri technology
65 corporation shall make that:

66 (a) The proceeds of the loan will be used only to cover the proof of concept capital
67 needs of the company;

68 (b) The company has a reasonable chance of success;

69 (c) The Missouri technology corporation's participation is instrumental to the
70 success of the company and will assist in its retention within the state;

71 (d) The Missouri technology corporation's loan is leveraged by at least one
72 additional equity investment in the company;

73 (e) The company has the reasonable potential to enhance employment opportunities
74 within the state;

75 (f) The entrepreneur and other founders of the company have already made or are
76 contractually committed to make an appropriate financial and time commitment to the
77 enterprise;

78 (g) There is a reasonable possibility that the Missouri technology corporation will
79 be repaid the loan as provided for in this section; and

80 (h) Binding commitments have been made to the Missouri technology corporation
81 by the company for adequate reporting of financial data to the Missouri technology
82 corporation, which shall include a requirement for an annual report, or if required by the
83 board, an annual audit of the financial and operational records of the company.

84 6. The Missouri technology corporation may adopt such rules, statements of policy,
85 procedures, forms, and guidelines as may be necessary to carry out the provisions of this
86 section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
87 that is created under the authority delegated in this section shall become effective only if
88 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
89 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
90 and if any of the powers vested with the general assembly under chapter 536, RSMo, to
91 review, to delay the effective date, or to disapprove and annul a rule are subsequently held
92 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
93 after August 28, 2009, shall be invalid and void.

348.273. As used in sections 348.273 and 348.274, the following terms shall mean:

2 (1) "Department", the Missouri department of economic development;

- 3 (2) **"Distressed community"**, as defined in section 135.530, RSMo;
- 4 (3) **"Equity investment"**, money or money equivalent in consideration for qualified
5 securities. An equity investment shall be deemed to have been made on the date of
6 acquisition of the qualified security, as such date is determined in accordance with the
7 provisions of the Internal Revenue Code;
- 8 (4) **"Investor"**:
- 9 (a) An individual who is an accredited investor, as defined in 17 CFR 230.501(a)
10 as in effect on August 28, 2009; or
- 11 (b) Any partnership, corporation, trust, limited liability company, or not-for-profit
12 entity that was established and is operated for the purpose of making preseed and seed
13 stage investments in start-up companies, and is approved by the department;
- 14 (5) **"Qualified Missouri business"**, an independently owned and operated business
15 which is headquartered and located in this state and which is in need of venture capital.
16 Such business shall have no more than two hundred employees, eighty percent of which are
17 employed in this state. Such business shall be involved in commerce for the purpose of
18 manufacturing, processing, or assembling products, conducting research and development,
19 or providing services in interstate commerce but excluding retail, real estate, real estate
20 development, insurance, and professional services provided by accountants, lawyers, or
21 physicians. At the time approval is sought, such business shall be a small business concern
22 that meets the requirements of the United States Small Business Administration's
23 qualification size standards for its venture capital program, as defined in the Small
24 Business Investment Act of 1958, as amended, and rules promulgated in 13 CFR
25 121.301(c), as amended;
- 26 (6) **"Qualified securities"**, securities that are not redeemable or repayable within
27 seven years of issuance and that have been approved in form and substance by the
28 department. Forms of such equity securities include:
- 29 (a) A general or limited partnership interest;
- 30 (b) Common stock;
- 31 (c) Preferred stock, with or without voting rights, without regard to seniority
32 position, and whether or not convertible into common stock; or
- 33 (d) Convertible debt;
- 34 (7) **"Rural area"**, any city, town, or village with fewer than fifteen thousand
35 inhabitants and located in any county that is not part of a standard metropolitan statistical
36 area as defined by the United States Department of Commerce or its successor agency.
37 However, any such city, town, or village located in any county so defined as a standard

38 metropolitan statistical area may be designated a rural area by the office of rural
39 development if:

40 (a) A substantial number of persons in such county derive their income from
41 agriculture;

42 (b) The county has only one city within the county having a population of more
43 than fifteen thousand and is classified as a standard metropolitan statistical area; and

44 (c) All other cities, towns, and villages in that county have a population of less than
45 fifteen thousand.

348.274. 1. The department may authorize tax credits to encourage equity
2 investment into technology-based early stage Missouri companies.

3 2. If a qualified Missouri business is approved by the department, the investors who
4 contribute the first five hundred thousand dollars in equity investment in the qualified
5 Missouri business may be issued a tax credit in the year the equity investment is made.
6 The tax credit shall be in a total amount equal to thirty percent of such investors' equity
7 investment in any qualified Missouri business, subject to the limitations set forth in
8 subsection 5 of this section. However, if the qualified Missouri business invested in is
9 located in a rural area or a distressed community, the investors may be issued a tax credit
10 for forty percent of such investment, subject to the limitations set forth in subsection 5 of
11 this section.

12 3. (1) Before an investor may be entitled to receive tax credits, as authorized by this
13 section, such investor shall have made an equity investment in a qualified security of a
14 qualified Missouri business. This business shall have been approved by the department
15 as a qualified Missouri business prior to the date on which the cash investment was made.
16 To be designated as a qualified Missouri business, a business shall make application to the
17 department in accordance with the provisions of this section. Such application shall be in
18 form and substance as required by the department but shall include at least the following:

19 (a) The name of the business and certified copies of the organizational documents
20 of the business;

21 (b) A business plan, including a description of the business and the management,
22 product, market, and financial plan of the business;

23 (c) A statement of the business innovative and proprietary technology, product, or
24 service;

25 (d) A statement of the potential economic impact of the enterprise including the
26 number, location, and types of jobs expected to be created;

27 (e) A description of the qualified securities to be issued, the consideration to be paid
28 for the qualified securities, the amount of any tax credits requested, and the earliest year
29 in which the tax credits may be redeemed;

30 (f) A statement of the amount, timing, and projected use of the proceeds to be
31 raised from the proposed sale of qualified securities; and

32 (g) Other information as the department may request, such as the names,
33 addresses, and taxpayer identification numbers of all investors who may qualify for the tax
34 credit. Such list of investors who may qualify for the tax credits shall be amended as new
35 qualified securities are sold or as any information on the list changes.

36 (2) No business shall be designated as a qualified Missouri business unless such
37 business meets all of the following criteria:

38 (a) The business shall not have had annual gross revenues of more than three
39 million dollars in the most recent tax year of the business;

40 (b) The business shall not have ownership interests including, but not limited to,
41 common or preferred shares of stock that can be traded by the public via a stock exchange,
42 electronic exchange, bulletin board, or other public market place on or before the date that
43 a qualifying investment is made;

44 (c) The business shall not be engaged primarily in any one or more of the following
45 enterprises:

46 a. The business of banking, savings and loan or lending institutions, credit or
47 finance, or financial brokerage or investments;

48 b. Professional services, such as legal, accounting or engineering services;

49 c. Governmental, charitable, religious or trade organizations;

50 d. The ownership, development, brokerage, sales, or leasing of real estate;

51 e. Insurance;

52 f. Construction or construction management or contracting;

53 g. Business consulting or brokerage;

54 h. Any business engaged primarily as a passive business, having irregular or
55 noncontinuous operations, or deriving substantially all of the income of the business from
56 passive investments that generate interest, dividends, royalties, or capital gains, or any
57 business arrangements the effect of which is to immunize an investor from risk of loss;

58 i. Any Missouri certified capital formation company;

59 j. Any activity that is in violation of the law; and

60 k. Any business raising money primarily to purchase real estate, land, or fixtures;

61 (d) The business shall satisfy all other requirements of this section.

62 (3) The portions of documents and other materials submitted to the department
63 that contain trade secrets shall be kept confidential and shall be maintained in a secured
64 environment by the director of the department. For the purposes of this section, such
65 portions of documents and other materials shall mean any customer list, any formula,
66 compound, production data, or compilation of information certain individuals within a
67 commercial concern using such portions of documents and other material means to
68 fabricate, produce, or compound an article of trade, or, any service having commercial
69 value, which gives the user an opportunity to obtain a business advantage over competitors
70 who do not know or use such service.

71 (4) A qualified Missouri business shall have the burden of proof to demonstrate to
72 the department the qualifications of the business under this section and shall have the
73 obligation to notify the department in a timely manner of any changes in the qualifications
74 of the business or in the eligibility of investors to claim a tax credit for cash investment in
75 a qualified security.

76 4. The designation of a business as a qualified Missouri business shall be made by
77 the department, and such designation shall be renewed annually. A business shall be so
78 designated if the department determines, based upon the application submitted by the
79 business and any additional investigation the staff of the department shall make, that the
80 following criteria have been or shall be satisfied:

81 (1) The business has a reasonable chance of success;

82 (2) The ability of investors in the business to receive tax credits for cash investments
83 in qualified securities of the business is necessary because funding otherwise available for
84 the business is not available on commercially reasonable terms;

85 (3) The business has the reasonable potential to create measurable employment
86 within the state;

87 (4) The business has an innovative and proprietary technology, product, and
88 service;

89 (5) The existing owners of the business and other founders have made or are
90 committed to make a substantial financial and time commitment to the business;

91 (6) The securities to be issued and purchased are qualified securities; and

92 (7) Binding commitments have been made by the business to the department for
93 adequate reporting of financial data, including a requirement for an annual report, or, if
94 required by the department, an annual audit of the financial and operational records of
95 the business, the right of access to the financial records of the business, and the right of the
96 department to record and publish normal and customary data and information related to
97 the issuance of tax credits that are not otherwise determined to be trade or business secrets.

5. The department shall not issue tax credits of more than fifty thousand dollars to an investor per investment into a single, qualified Missouri company, or for tax credits totaling more than one hundred thousand dollars in a single year per investor. The total amount of tax credits that may be allowed under this section shall not exceed five million dollars per tax year.

6. This tax credit may be used in its entirety in the taxable year in which the equity investment is made or the credit may be carried forward for use in any of the next three consecutive tax years until the total amount of the credit is used. The tax credits may be sold, assigned, exchanged, or otherwise transferred.

7. Tax credits may be used against the tax otherwise due under chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo.

8. A qualified Missouri business for which credits have been issued that, within seven years of receiving tax credits under this section relocates its headquarters out of Missouri, ceases to employ eighty percent of its employees in Missouri, alters the principal nature of its operations, or divests itself of key assets shall upon demand by the department pay the state of Missouri an amount equal to the amount of credits issued to its contributors.

9. The reasonable costs of the administration of this section, the review of applications for certification as qualified Missouri businesses, and the issuance of tax credits authorized by this section shall be reimbursed through fees paid by the qualified Missouri businesses and the investors or the transferees of investors, according to a reasonable fee schedule adopted by the department.

10. In addition to reports by the businesses to the department, the department shall also provide in its annual report information on the marketing and use of the investor tax credits. This report shall include the following:

(1) The amount of tax credits used in the previous fiscal year including what percentage was claimed by individuals and what percentage was claimed by firms and other entities;

(2) The types of businesses that benefited from the tax credits; and

(3) Any aggregate job creation or capital investment in Missouri that resulted from the use of the tax credits for a period of five years beginning from the date on which the tax credits were awarded.

In addition, the annual report shall provide information regarding what businesses deriving a benefit from the tax credits remained in Missouri, what businesses ceased doing

133 **business, what businesses were purchased, and what businesses may have moved out-of-**
134 **state and the reason for such move.**

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