

FIRST REGULAR SESSION

# HOUSE BILL NO. 189

95TH GENERAL ASSEMBLY

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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.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

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

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

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

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

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

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

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

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

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

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

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

**(a) A business plan including a description of the company 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 Missouri technology corporation shall request;**

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

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

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

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

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

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

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

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

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

**(i) Binding commitments have been made to the Missouri technology corporation by the company for adequate reporting of financial data to the Missouri technology corporation, 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 company, and for such control on the part of the Missouri technology corporation as the board of directors shall consider prudent over the management of the company, so as to protect the investment or financial commitment of the Missouri technology corporation, including in the discretion of the board and without limitation, right of access to financial and other records of the company, and membership or representation on the board of directors of the company.**

**6. The Missouri technology corporation shall not make investments in amounts greater than the lesser of seven hundred fifty thousand dollars or an amount that gives the**

**Missouri technology corporation forty-nine percent ownership interest in any one advanced technology company at the time of investment.**

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

**8. The Missouri technology corporation may adopt such rules, statements of policy, procedures, forms, and guidelines as may be necessary to carry out the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted 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 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 "Proof of Concept 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 by the Missouri technology corporation under the proof of concept technology business finance program. Moneys for the proof of concept technology business finance program established under this section shall be available from appropriations made by the general assembly from the proof of concept technology business finance program account of the Missouri technology investment fund. Any moneys remaining in the proof of concept technology business finance program account at the end of any fiscal year shall not lapse to the general revenue fund, as provided in section 33.080, RSMo, but shall remain in the proof of concept technology business finance program account.**

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

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

**(3) Loans shall be repaid to the Missouri technology corporation in an amount equal to two times the amount loaned. Repayment shall take place no later than five years from the date of the loan. Early repayment will result in prorating of the repayment amount.**

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

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

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

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

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

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

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

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

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

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

**(a) A business plan including a description of the company 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 advanced technology company, including the number, location, and types of jobs expected to be created; and**

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

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

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

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

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

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

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

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

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

**(h) Binding commitments have been made to the Missouri technology corporation by the company for adequate reporting of financial data to the Missouri technology corporation, 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 company.**

**6. The Missouri technology corporation may adopt such rules, statements of policy, procedures, forms, and guidelines as may be necessary to carry out the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**

and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted 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:

- (1) "Department", the Missouri department of economic development;
- (2) "Distressed community", as defined in section 135.530, RSMo;
- (3) "Equity investment", money or money equivalent in consideration for qualified securities. An equity investment shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the Internal Revenue Code;
- (4) "Investor":
  - (a) An individual who is an accredited investor, as defined in 17 CFR 230.501(a) as in effect on August 28, 2009; or
  - (b) Any partnership, corporation, trust, limited liability company, or not-for-profit entity that was established and is operated for the purpose of making preseed and seed stage investments in start-up companies, and is approved by the department;
- (5) "Qualified Missouri business", an independently owned and operated business which is headquartered and located in this state and which is in need of venture capital. Such business shall have no more than two hundred employees, eighty percent of which are employed in this state. Such business shall be involved in commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce but excluding retail, real estate, real estate development, insurance, and professional services provided by accountants, lawyers, or physicians. At the time approval is sought, such business shall be a small business concern that meets the requirements of the United States Small Business Administration's qualification size standards for its venture capital program, as defined in the Small Business Investment Act of 1958, as amended, and rules promulgated in 13 CFR 121.301(c), as amended;
- (6) "Qualified securities", securities that are not redeemable or repayable within seven years of issuance and that have been approved in form and substance by the department. Forms of such equity securities include:
  - (a) A general or limited partnership interest;
  - (b) Common stock;

**(c) Preferred stock, with or without voting rights, without regard to seniority position, and whether or not convertible into common stock; or**

**(d) Convertible debt;**

**(7) "Rural area", any city, town, or village with fewer than fifteen thousand inhabitants and located in any county that is not part of a standard metropolitan statistical area as defined by the United States Department of Commerce or its successor agency. However, any such city, town, or village located in any county so defined as a standard metropolitan statistical area may be designated a rural area by the office of rural development if:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**e. Insurance;**

**f. Construction or construction management or contracting;**

**g. Business consulting or brokerage;**

**h. Any business engaged primarily as a passive business, having irregular or noncontinuous operations, or deriving substantially all of the income of the business from**

passive investments that generate interest, dividends, royalties, or capital gains, or any business arrangements the effect of which is to immunize an investor from risk of loss;

- i. Any Missouri certified capital formation company;
  - j. Any activity that is in violation of the law; and
  - k. Any business raising money primarily to purchase real estate, land, or fixtures;
- (d) The business shall satisfy all other requirements of this section.

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

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

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

- (1) The business has a reasonable chance of success;
- (2) The ability of investors in the business to receive tax credits for cash investments in qualified securities of the business is necessary because funding otherwise available for the business is not available on commercially reasonable terms;
- (3) The business has the reasonable potential to create measurable employment within the state;
- (4) The business has an innovative and proprietary technology, product, and service;
- (5) The existing owners of the business and other founders have made or are committed to make a substantial financial and time commitment to the business;

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

**(7) Binding commitments have been made by the business to the department for adequate reporting of financial data, including a requirement for an annual report, or, if required by the department, an annual audit of the financial and operational records of the business, the right of access to the financial records of the business, and the right of the department to record and publish normal and customary data and information related to 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 business, what businesses were purchased, and what businesses may have moved out-of-state and the reason for such move.**

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