

2012 Kansas Statutes

74-8316. Technology-based venture-capital fund authorized; investments in fund qualify for Kansas income tax credit by corporations; authorized investments fund limitations. (a) The secretary is hereby authorized to facilitate the establishment of a technology-based venture-capital fund in which the department may invest only moneys from the economic development initiatives fund specifically so allocated. The department may also credit the fund with gifts, donations or grants received from any source other than state government and with proceeds from the fund. Investments in the fund shall qualify for the income tax credit allowed pursuant to K.S.A. 74-8304, and amendments thereto.

(b) The technology-based venture-capital fund may invest the assets as follows:

(1) To carry out the purposes of this act through investments in qualified securities and through the forms of financial assistance authorized by this act, 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 fund;

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

(F) the fund, in connection with the provision of any form of financial assistance, may enter into royalty agreements with an enterprise.

(2) To invest in such other investments as are lawful for Kansas fiduciaries pursuant to K.S.A. 58-24a02, and amendments thereto.

(c) Distributions received by the corporation may be reinvested in any fund consistent with the purposes of this act.

(d) The secretary may invest only in a fund whose investment guidelines permit the fund's purchase of qualified securities issued by an enterprise as a part of a resource and technology project subject to the following:

(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 fund manager or the fund's board of directors shall request.

(2) Approval of the investment by the fund may be made after the fund manager or the fund's board of directors finds, based upon the application submitted by the enterprise and such additional investigation as the fund manager or the fund's board of directors shall make and incorporate in its minutes, that:

(A) The proceeds of the investment will be used only to cover the venture-capital needs of the enterprise except as authorized by this section;

(B) the enterprise has a reasonable possibility of success;

(C) the fund's participation is instrumental to the success of the enterprise because funding otherwise available for the enterprise is not available on commercially feasible 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 fund will recoup at least its initial investment; and

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

(e) All investments made pursuant to this section shall be evaluated by the fund's investment committee and the fund shall be audited annually by an independent auditing firm.

(f) The fund shall not make investments in qualified securities issued by enterprises in excess of the amount necessary to own more than 49% of the qualified securities in any one enterprise at the time of the purchase by the fund, 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 fund manager, the investment of the fund therein, a greater percentage of such securities may be owned by the fund.

(g) At least 75% of the total investment of the fund must be in Kansas businesses.

(h) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

History: L. 1995, ch. 127, § 1; L. 2001, ch. 75, § 12; L. 2011, ch. 104, § 32; L. 2012, ch. 135, § 8; Jan. 1, 2013.