

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL DRS15255-MC-59

Short Title: North Carolina Venture Fund. (Public)

Sponsors: Senators Salvador, Newton, and deViere (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FUNDING FOR INITIAL CAPITAL FOR DEVELOPING
3 TECHNOLOGY COMPANIES AND VENTURES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Part 2I of Article 10 of Chapter 143B of the General Statutes reads as
6 rewritten:

7 "Part 2I. One North Carolina Small Business Program.

8 "Subpart A. SBIR/STTR Programs.

9 ...

10 "Subpart B. Technology Development Funding.

11 "**§ 143B-437.85. Technology Development Investment Program.**

12 (a) Program. – The North Carolina Technology Development Investment Program is
13 established as a means of providing early-stage, evergreen venture capital for the purpose of
14 fostering and funding upcoming businesses in the State and supporting entrepreneurs in their
15 efforts to build valuable companies.

16 (b) Definitions. – The following definitions apply in this section.

17 (1) Board. – The Board of Directors of the Corporation.

18 (2) Corporation. – The North Carolina Technology Development Corporation.

19 (3) Improve. – To add, alter, construct, equip, expand, extend, improve, install,
20 reconstruct, rehabilitate, remodel, or repair.

21 (4) Investment committee. – A committee appointed by the Board to advise on
22 and approve investments as required under this subpart.

23 (5) Principal business operations. – The headquarters from which the business's
24 officers direct, control, and coordinate the business's activities.

25 (6) Qualified business. – A business that, at the time of the first investment in the
26 business under a program of the Corporation, except as otherwise provided in
27 this subpart, meets all of the following requirements:

28 a. It either (i) has its principal business operations located in the State,
29 has over half its workforce working in the State, and intends to
30 maintain its principal business operations in the State after receiving
31 an investment under the program or (ii) is a business or start-up
32 business that is approved by the investment committee and will, as a
33 result of the investment, have a substantial economic impact in the
34 State through job creation, capital investment, and contribution to the
35 State's technology ecosystem.



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- 1 b. It enters an agreement to use the investment primarily to (i) support
2 business operations in the State or (ii) in the case of a start-up
3 company, establish and support business operations in the State.
4 c. It has 250 or fewer employees.
5 d. The business is not primarily engaged in (i) retail sales, (ii) real estate
6 development, (iii) insurance, banking, or lending, or (iv) the provision
7 of professional services by accountants, attorneys, or physicians.

8 (7) Rural area. – Any area of this State not located in an area designated a
9 metropolitan statistical area or primary metropolitan statistical area in
10 United States Office of Management and Budget Bulletin No. 20-01,
11 March 6, 2020, and its attachments.

12 (c) Corporation. – The North Carolina Technology Development Corporation is created
13 as a body corporate and politic having the powers and jurisdiction as provided under this section
14 or any other law. The Corporation is a State agency created to perform essential governmental
15 and public functions. These functions include, at a minimum, to (i) assist in transferring to the
16 private sector the results and products of scientific research and development conducted by
17 colleges, universities, and federal research institutions in the State, (ii) assist in commercializing
18 those results and products, (iii) assist in commercializing technology developed in the private
19 sector, (iv) foster the commercialization of research and development conducted by colleges,
20 universities, and the private sector to create and sustain businesses throughout all regions of the
21 State, (v) generally assist early-stage and start-up businesses in the State, (vi) invest in North
22 Carolina-based technology companies and promote the commercialization and growth of
23 technology companies and jobs in the State, (vii) build a long-term entrepreneurial capacity and
24 sustained venture capital presence in the State, (viii) create pathways to follow-on financing in
25 the State, and (ix) foster inclusive and diverse entrepreneurship and innovation throughout the
26 State, which may include initiatives to raise awareness of programs to assist small, minority, and
27 women-owned businesses through marketing and other efforts. The Corporation shall be located
28 within the Department of Commerce and shall be subject to the direction and supervision of the
29 Secretary.

30 (d) Board of Directors. – The Corporation shall be governed by a Board of Directors. The
31 Board may appoint members of an advisory committee and, if appointed, shall adopt policies
32 establishing the responsibilities of the advisory committee. The Board shall consist of at least the
33 following 15 members, with the following appointments to be selected to reflect diversity and
34 the State's geography:

- 35 (1) The Secretary of Commerce or the Secretary's designee.
36 (2) Eight members and the chair appointed by the Governor, three of which shall
37 be members of the public, three of which shall have experience in
38 technology-based businesses, one of which shall represent the nonprofit
39 research sector of the State, and one of which shall have expertise in venture
40 capital financing.
41 (3) Three members appointed by the General Assembly upon the
42 recommendation of the Speaker of the House of Representatives pursuant to
43 G.S. 120-121, one of which shall represent colleges and universities in the
44 State, one of which shall have experience in technology-based businesses, and
45 one of which shall represent the nonprofit research sector of the State.
46 (4) Three members appointed by the General Assembly upon the
47 recommendation of the President Pro Tempore of the Senate pursuant to
48 G.S. 120-121, one of which shall represent colleges and universities in the
49 State, one of which shall have experience in technology-based businesses, and
50 one of which shall have expertise in venture capital financing.

1 All members of the Board shall remain in office until their successors are appointed and
2 qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for
3 the remainder of the unexpired term. A vacancy in an appointment made by the General
4 Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy
5 shall qualify in the same manner as a person appointed for a full term. The Governor may remove
6 any member of the Board for misfeasance, malfeasance, or nonfeasance in accordance with
7 G.S. 143B-13(d). The person who appointed a member of the Board may remove the member
8 for using improper influence in accordance with G.S. 143B-13(c).

9 The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting
10 procedures, the keeping of records, and other organizational and administrative matters as the
11 Board may determine. A quorum shall consist of a majority of the members of the Board. No
12 vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights
13 and to perform all the duties of the Board and the Corporation. The Board shall appoint an
14 executive director, whose salary shall be fixed by the Board, to serve at its pleasure. The
15 executive director or a person designated by the executive director shall appoint, employ, dismiss,
16 and, within the limits of available funding, fix the compensation of other employees as considered
17 necessary.

18 No part of the revenues or assets of the Corporation shall inure to the benefit of or be
19 distributable to the members of the Board or officers or other private persons. The members of
20 the Board shall receive no salary for their services but shall be entitled to receive per diem and
21 allowances in accordance with the provisions of G.S. 138-5.

22 (e) Representation. – The representation of the corporation shall be as follows:

23 (1) Legal representation. – The Attorney General is the legal advisor to the
24 Corporation and shall assign one assistant Attorney General as general
25 counsel to the Corporation, which shall (i) advise the Executive Director, the
26 Board, and any other official of the Corporation as requested by the
27 Corporation, (ii) supervise any other assistant Attorneys General assigned to
28 the Corporation by the Attorney General, and (iii) perform for the Corporation
29 any other duties the Attorney General assigns. The general counsel may
30 provide no assistance other than what is permitted under this subsection. With
31 the approval of the Attorney General, the Corporation may retain additional
32 necessary lawyers.

33 (2) Other representation. – The Corporation may retain any necessary
34 accountants, engineers, financial advisors, or other consultants.

35 (f) Applicable Laws. – The Corporation is subject to the requirements of (i) Chapter 132
36 of the General Statutes and (ii) Article 33C of Chapter 143 of the General Statutes. Officers,
37 employees, the Board, any advisory committee, and the investment committee are public
38 servants, as defined in G.S. 138A-3, and are subject to the requirements of Chapter 138A of the
39 General Statutes. Employees of the Corporation whose annual compensation is less than eighty
40 thousand dollars (\$80,000) are not subject to G.S. 138A-22. The Corporation is exempt from
41 Article 3 of Chapter 143 of the General Statutes.

42 (g) Required Policies. – The Corporation shall adopt and publish a policy for conflicts of
43 interest policy and gifts to guide actions by the Board, officers, and employees of the Corporation
44 in the performance of their duties.

45 (1) The conflict of interest policy shall contain at a minimum the information in
46 this subdivision. No subject person of the Corporation may take any official
47 action or use the subject person's official position to profit in any manner the
48 subject person, the subject person's immediate family, a business with which
49 the subject person or the subject person's immediate family has a business
50 association, or a client of the subject person or the subject person's immediate
51 family with whom the subject person, or the subject person's immediate

1 family, has an existing business relationship. No subject person shall attempt
2 to profit from a potential investment if the profit is greater than that which
3 would be realized by other persons living in the area where the investment is
4 located. If the profit under this subdivision would be greater for the subject
5 person than other persons living in the area where the potential investment is
6 located, not only shall the subject person abstain from voting on that issue, but
7 once the conflict of interest is apparent, the subject person shall not discuss
8 the potential investment with any other subject person or representative except
9 to state that a conflict of interest exists. Under this subdivision, a subject
10 person is presumed to profit if the profit would be realized by the subject
11 person, the subject person's immediate family, a business with which the
12 subject person or the subject person's immediate family has a business
13 association, or a client of the subject person or the subject person's immediate
14 family with whom the subject person, or the subject person's immediate
15 family, has an existing business relationship with a company that is the subject
16 of a potential investment. No subject person, in contemplation of official
17 action by the subject person, or in reliance on information that was made
18 known to the subject person in the subject person's official capacity and that
19 has not been made public, shall (i) acquire a pecuniary interest in any property,
20 transaction, or enterprise or gain any pecuniary benefit that may be affected
21 by such information or official action or (ii) intentionally aid another to do
22 any of the above acts. As used in this subdivision, a "business association" is
23 a director, employee, officer, or partner of a business entity, or owner of more
24 than ten percent (10%) interest in any business entity; "immediate family"
25 includes a spouse, children, parents, brothers, and sisters; "official action" is
26 an action taken in connection with the subject person's duties, including, but
27 not limited to, voting on matters before the Board, proposing or objecting to
28 proposals for economic development actions by the State, discussing
29 economic development matters with other subject persons or State personnel
30 in an effort to further the matter after the conflict of interest has been
31 discovered, or taking actions in the course and scope of the position as a
32 subject person and actions leading to or resulting in profit; "profit" means to
33 receive monetary or economic gain or benefit, including an increase in value
34 whether or not recognized by sale or trade; and "subject person" is a member
35 of the Board, officer, or employee of the Corporation.

36 (2) The gift policy shall at a minimum prohibit an employee, officer, or member
37 of the Board from knowingly accepting a gift from a person whom the
38 employee, officer, or member of the Board knows or has reason to know (i) is
39 seeking to do business of any kind in the State or (ii) has financial interests
40 that may be substantially and materially affected, in a manner distinguishable
41 from the public generally, by the performance or nonperformance of official
42 duties of the employee, officer, or member of the Board. The gift policy may
43 provide exemptions to the extent similar exemptions are allowed to a
44 corporation with which the Department of Commerce contracts pursuant to
45 G.S. 143B-431.01.

46 (h) Corporate Duties; Powers. – The Corporation has the following duties and powers:

47 (1) The Corporation shall adopt regulations establishing the investment
48 committee, its responsibilities, and the procedures for appointing members of
49 the committee.

50 (2) The Corporation may do any of the following:

51 a. Adopt bylaws for the conduct of its business.

- 1 **b.** Adopt a seal.
2 **c.** Maintain offices at a place it designates in the State.
3 **d.** Accept loans, grants, or assistance of any kind from the federal or State
4 government, a local government, a college or university, or a private
5 source.
6 **e.** Enter into contracts and other legal instruments.
7 **f.** Sue or be sued.
8 **g.** Acquire, purchase, hold, lease as lessee, and use (i) a franchise, patent,
9 or license, (ii) any real, personal, mixed, tangible, or intangible
10 property, or an interest in the property listed in this sub-subdivision.
11 **h.** Sell, lease as lessor, transfer, license, assign, or dispose of property or
12 a property interest that it acquires.
13 **i.** Fix and collect rates, rentals, fees, royalties, and charges for services
14 and resources it provides or makes available.
15 **j.** Create, own, control, or be a member of a corporation, limited liability
16 company, partnership, or other entity, whether operated for profit or
17 not for profit.
18 **k.** Exercise power usually possessed by a private corporation in
19 performing similar functions unless to do so would conflict with State
20 law.
21 **l.** Enter into a project with a manufacturer to carry out its purpose. As
22 part of this authority, the Corporation may (i) acquire, develop,
23 improve, manage, market, license, sublicense, maintain, lease as lessor
24 or lessee, or operate a project in the State for such purpose and may
25 (ii) acquire, directly or indirectly, from a person or political
26 subdivision, by purchase, gift, or devise any property, rights-of-way,
27 franchises, easements, or other interests in land as necessary or
28 convenient to improve or operate a project to carry out such purpose
29 and on terms and prices it deems reasonable.
30 **m.** Do all things necessary or convenient to carry out the powers granted
31 by this subpart.

32 **(i)** Investments. – The Corporation may make grants to or provide equity investment
33 financing for qualifying businesses that are technology-based if the investments are made on
34 review and approval of a written application that contains (i) sufficient information to verify that
35 the qualified business has its principal business operations in the State or will have a substantial
36 economic impact on the State and (ii) a certification of the veracity of the information by an
37 authorized signatory of the qualified business. The Corporation shall adopt regulations to govern
38 investments that specify all of the following:

- 39 **(1)** The types of qualified businesses in which an investment may be made.
40 **(2)** The basic standards an enterprise must meet to qualify for an investment.
41 **(3)** The amount of money available for investment.
42 **(4)** The investment policy statement of the Corporation that describes the
43 procedures, criteria, investment philosophy, and guidelines for how the
44 Corporation's investment decisions will be made.
45 **(5)** A process for the consideration of whether investments help to foster inclusive
46 and diverse entrepreneurship, including the Corporation's support for
47 marketing and other efforts to raise awareness of programs to assist small,
48 minority, and women-owned businesses.

49 **(j)** Liabilities. – By entering into an agreement, providing an investment, or otherwise
50 acting, the Corporation is not obligating the State or any subdivision of the State. The Corporation
51 has no power to pledge the credit of the State or to impose any obligation upon the State or any

1 subdivision of the State, except and when such power is expressly granted by statute or by express
2 consent of the State or subdivision. A debt, claim, obligation, or liability of the Corporation or a
3 subsidiary of the Corporation is not a debt, claim, obligation, or liability of the State or a
4 subdivision of the State.

5 (k) Higher Education Cooperation. – The Board of Governors of The University of North
6 Carolina and the State Board of Community Colleges may contract with the Corporation or its
7 subsidiaries, assign to the Corporation or its subsidiaries intellectual property and other resources
8 to assist it in development and activities, and assign faculty and staff to the Corporation.

9 (l) Rural Inclusion. – The Corporation shall conduct outreach activities that seek to
10 include rural areas in the various opportunities resulting from activities of the Corporation. Those
11 outreach activities shall include all of the following:

12 (1) Working with the entities identified in subsection (k) of this section to support
13 faculty and students involved in science and engineering who focus on
14 opportunities in rural areas.

15 (2) Contacting businesses and entrepreneurs in rural areas to notify them of and
16 encourage them to participate in available opportunities.

17 (3) Identifying professional and technical trade associations and economic
18 development assistance organizations in rural areas and notifying them of
19 available opportunities.

20 (4) Partnering with regional economic development entities to foster local efforts
21 to support technology businesses in rural areas or otherwise identify networks
22 of technology businesses, entrepreneurs, and individuals operating in rural
23 areas.

24 (5) Identifying technology firms in rural areas and marketing them to the
25 investment community and the venture capital firms receiving funds from the
26 Fund.

27 (m) Audit. – The books and records of the Corporation are subject to audit at any time by
28 the State and each year by an independent auditor.

29 (n) Report. – The Corporation shall report to the Joint Legislative Economic
30 Development and Global Engagement Oversight Committee and the Fiscal Research Division as
31 follows:

32 (1) On or before October 1 of each year on all of the following:

33 a. A summary of the Corporation's activities during the preceding fiscal
34 year.

35 b. A complete operating and financial statement covering the
36 Corporation's operations.

37 c. Information on all salaries and any incentive approved by the Board
38 for Corporation employees.

39 d. Information on outreach, training, mentorship, support, and
40 investment in minority and women-owned qualified businesses.

41 e. Information on entities that have current investments and entities that
42 received funding or investments in the current year on (i) principal
43 business operations, (ii) number of employees in the State and outside
44 of the State, (iii) capital or other investments made in the State, and
45 (iv) proposed or actual job creation or capital investment in the State
46 as a result of investment by or support of the Corporation.

47 f. A list of the businesses that received funding that no longer qualify as
48 a qualified business.

49 g. Information on the creation of and appointments made to an advisory
50 committee and the responsibilities of the advisory committee and
51 members of the committee.

1 (2) On or before October 1 of each year and quarterly thereafter on the qualified
2 businesses receiving support through programs administered by the
3 Corporation, including (i) the number of employees in the State, (ii) the
4 number of employees outside of the State, (iii) the capital or other investments
5 made in the State, and (iv) the proposed job creation or capital investment in
6 the State as a result of investment by or support of the Corporation.

7 **"§ 143B-437.86. Startup Capital Authority.**

8 (a) Authority. – The Startup Capital Authority is created within the Corporation. The
9 Authority consists of nine members, as provided in this subsection. The geographic diversity of
10 the State shall be a consideration by the person who appointed the member, and members of the
11 Authority must be State residents who are not elected officials. The term of a member is four
12 years; however, the initial terms shall be made so as to stagger the initial membership terms. All
13 members of the Authority shall remain in office until their successors are appointed and qualify.
14 A vacancy in an appointment made by the Governor shall be filled by the Governor for the
15 remainder of the unexpired term. A vacancy in an appointment made by the General Assembly
16 shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy shall qualify
17 in the same manner as a person appointed for a full term. The Authority shall determine the
18 manner of election of officers, other than the chair, and the officers' terms of office. The person
19 who appointed a member may remove the member of the Authority with or without cause. A
20 member of the Authority may not be employed by or have any financial interest in a qualified
21 business or venture firm or hold any other relationship or financial interest that would impair the
22 impartiality and independent judgment of the member. The membership of the Authority shall
23 be as follows:

24 (1) Five members and the chair appointed by the Governor. At least three
25 members appointed under this subdivision shall have experience in working
26 with companies that have raised investment capital for seed-stage to
27 venture-stage companies or in providing professional services to the venture
28 capital industry, one of whom shall have experience in higher education
29 research and development and technology transfer projects. At least one
30 member appointed under this subdivision shall have experience as a small
31 business owner. At least one member appointed under this subdivision shall
32 have experience as a business executive that has raised venture capital
33 investments.

34 (2) Two members appointed by the Speaker of the House of Representatives,
35 which shall have experience and expertise in venture capital investments.

36 (3) Two members appointed by the President Pro Tempore of the Senate, which
37 shall have experience and expertise in venture capital investments.

38 (b) Action. – An act of the Authority must be approved by a majority vote of the members
39 attending a meeting at which a quorum is present. A quorum is constituted when five members
40 of the Authority are present.

41 (c) Expenses. – A member of the Authority may not receive compensation as a member.
42 A member is entitled to per diem and reimbursement for travel and subsistence expenses at the
43 rate applicable to members of State boards and commissions generally for each day engaged in
44 official business. A member is subject to G.S. 138A-22.

45 (d) Duties. – The Authority shall provide advice to and consult with the Corporation in
46 connection with the administration of the Program under this subpart. The Authority shall meet
47 at least quarterly to review the Corporation's investment policies, investment decisions, and
48 adherence to the statutory and regulatory requirements imposed on the Corporation.

49 **"§ 143B-437.87. Startup Capital Enterprise Fund.**

50 (a) Establishment; Purpose. – The Startup Capital Enterprise Fund is established as a
51 special revenue fund in the Department of Commerce. The purpose of the Fund is to make

1 qualified investments in qualified businesses located throughout the State to provide greater
2 access to startup companies. The Corporation shall allocate the funds in the Fund as follows:

3 (1) Sixty-seven percent (67%) to one or more venture firms to fund the making
4 of qualified investments based on the criteria set forth in this subpart;
5 provided, that not more than twenty percent (20%) of this amount is invested
6 in sidecar fund affiliates of the venture firms.

7 (2) The remainder to the Fund for qualified investment in qualified businesses
8 under the policies and procedures of the Fund.

9 (b) Allocation. – The Corporation and each venture firm that has been designated to
10 receive funds from the Fund shall enter into a contract under which the allocated funds will be
11 transferred by the Corporation to the venture firm for investment as provided in this subpart.

12 **§ 143B-437.88. Venture firms.**

13 (a) Evaluation. – Subject to the approval of the Corporation, the Authority shall obtain
14 the services of an independent third party to (i) establish application procedures for an entity to
15 be certified as a venture firm for participation in the Program and (ii) review and evaluate
16 applications for venture firm certification under this subpart. The independent third party shall
17 do all of the following:

18 (1) Review and evaluate the application, organizational documents, and business
19 history of each applicant.

20 (2) Evaluate whether the applicant is likely to achieve the investment criteria set
21 forth in this subpart.

22 (3) Recommend to the Authority which venture firms should receive funds from
23 the Fund under the Program.

24 (b) Selection. – Upon receiving recommendations submitted to the Authority pursuant to
25 subsection (a) of this section, the Authority shall select venture firms (i) to receive funds from
26 the Fund consistent with the investment criteria set forth in this subpart and (ii) to make
27 investments in the State equal to or exceeding the amount of funds received. Subject to the
28 approval of the Corporation, the Authority may enter into written agreements, including
29 partnership agreements and side agreements, necessary to carry out the provisions of this subpart.
30 In selecting applicants for venture firm certification, the Authority shall consider all of the
31 following:

32 (1) The management structure of the applicant, including (i) the investment
33 experience of the principals, (ii) the applicant's reputation in the venture firm
34 industry, (iii) the applicant's ability to attract co-investment capital and
35 syndicate investments in qualified businesses in the State, (iv) the knowledge,
36 experience, and capabilities of the applicant in subject areas relevant to
37 venture-stage businesses in the State, (v) the tenure and turnover history of
38 principals and senior investment professionals of the applicant, and (vi)
39 whether the State's investment in the applicant under this Program would
40 exceed fifteen percent (15%) of the total invested in the applicant by all
41 investors, including investments in any sidecar fund affiliates.

42 (2) The applicant's investment strategy, including (i) the applicant's track record
43 of investing in venture-stage businesses, (ii) the applicant's history of
44 attracting co-investment capital and syndicate investments, (iii) the soundness
45 of the applicant's investment strategy and the compatibility of that strategy
46 with business opportunities in the State, and (iv) the applicant's history of job
47 creation through investment.

48 (3) The extent of an applicant's commitment to making investments that (i) create
49 employment opportunities in the State, (ii) grow the State economy and
50 qualified businesses in the State, (iii) complement the research and
51 development projects of State academic institutions, and (iv) foster the

1 development of technologies and industries that present opportunities for the
2 growth of qualified businesses in the State.

3 (4) The applicant's commitment to the State, including (i) the applicant's presence
4 in the State through permanent local offices or affiliation with local
5 investment firms, (ii) the local presence of senior investment professionals,
6 (iii) the applicant's history of investing in venture-stage businesses in the
7 State, (iv) the applicant's ability to identify investment opportunities through
8 working relationships with State research and development institutions and
9 State-based businesses, (v) the applicant's relationship with other venture
10 firms in the region, (vi) the applicant's history of investing in areas relevant to
11 venture-stage businesses in the State, and (vii) the applicant's commitment to
12 investing a similar or greater amount of funds received under this subpart in
13 State-based venture and qualified businesses.

14 (c) Application. – An applicant shall file an application with the Corporation on a form
15 required by the Corporation and shall include the applicant's most recent financial statements.
16 The Corporation shall accept applications for certification for a period of three months at the
17 Corporation's choosing at the same time each year. If a venture firm is disqualified as provided
18 in this subpart, the Corporation may receive applications for a period of not less than two months
19 at any time during the calendar year.

20 (d) Certification. – In order to be certified as a venture firm for participation in the
21 Program, all of the following requirements must be met:

22 (1) The applicant must have, at the time of application, an equity capitalization,
23 net assets, or written commitments of at least five hundred thousand dollars
24 (\$500,000) in the form of cash or cash equivalents.

25 (2) At least two principals or persons employed to direct the investment of the
26 funds from the Fund of the applicant, both of which must have at least five
27 years of money management experience in the venture capital or private
28 equity sectors.

29 (3) The venture firm has not been disqualified from participating in the Program
30 for a period of at least two years and is not a firm with majority ownership
31 composed of members who had ownership or leadership roles in a firm that
32 has been disqualified in that same time frame.

33 (e) Notification. – Within 90 days of filing an application timely, the Secretary shall
34 either issue the certification or refuse to issue the certification with a detailed explanation of the
35 grounds for refusal.

36 (f) Continuity. – A business classified as a qualified business at the time of the first
37 investment in the business by a venture firm or the Fund established in G.S. 143B-437.87 remains
38 classified as a qualified business and may receive follow-on investments from a venture firm or
39 the Fund as provided in this subsection. A follow-on investment from a venture firm is a qualified
40 investment even if the business does not meet the definition of a qualified business at the time of
41 the follow-on investment. A follow-on investment from the Fund is not a qualified investment if,
42 at the time of the follow-on investment, the business no longer meets the definition of a qualified
43 business.

44 (g) Notice. – A venture firm shall inform the Corporation in writing when the venture
45 firm requires funds from the Fund for investment or for the payment of approved fees and
46 expenses.

47 (h) Reporting. – Not later than March 31 of each year, a venture firm participating in the
48 Program shall report to the Corporation on (i) the amount of funds from the Fund remaining
49 uninvested at the end of the preceding calendar year, (ii) all qualified investments made during
50 the preceding calendar year, including the number of employees of each business at the time the
51 qualified investment was made and as of December 31 of that year, (iii) for any qualified

1 investment in which the venture firm no longer has a position as of the end of the calendar year,
2 the number of employees of the business as of the date the investment was terminated, and (iv)
3 any other information the Corporation requires to ascertain the impact of the Program on the
4 economy of the State. Not later than 180 days following the end of its fiscal year, a venture firm
5 shall provide to the Corporation an audited financial statement that includes the opinion of an
6 independent certified public accountant. Not later than 60 days following the sale or other
7 disposition of a qualified investment, the selling venture firm shall provide to the Corporation a
8 report on the amount of the interest sold or disposed of and the consideration received for the
9 sale or disposition.

10 (i) Distributions. – A venture firm certified for participation in the Program may make a
11 qualified distribution at any time. To make a distribution that is not a qualified distribution, a
12 venture firm shall pay to the State Controller the venture firm's pro rata share of distributions
13 made to all limited partners as provided under the applicable partnership documents and any
14 agreement with the Corporation, and the State Controller shall deposit those amounts in the
15 General Fund within 30 days of receipt; provided, however, that if the Corporation has an
16 obligation under applicable venture firm investment documents to return to the venture firm a
17 payment previously distributed to the State Controller, the State Controller shall deposit an
18 amount equal to that payment into the Fund established in G.S. 143B-437.87 to cover the
19 obligation. If the State Controller makes a deposit equal to the payment into the Fund and the
20 Corporation determines the money deposited into the Fund is no longer required to be returned
21 to a venture firm under the applicable investment documents, the State Controller shall recover
22 the deposit and remit it to the General Fund.

23 (j) Reinvestment. – Investment returns resulting from the qualified investments made
24 under the Program by the Fund established in G.S. 143B-437.87 shall be used to make additional
25 qualified investments in qualified businesses by the Fund.

26 (k) Disqualification. – Each venture firm certified to participate in the Program shall
27 make equity investments in an amount not less than fifty percent (50%) of the capital allocated
28 to qualified businesses within three years of each capital allocation. In the event a venture firm
29 fails to meet the requirements of this subsection, the Corporation shall do all of the following:

- 30 (1) Rescind the allocation and authorization for that firm from the date of
31 noncompliance with this subsection and remove that firm's certification for
32 participation in the program.
- 33 (2) Cease making the payment of management and other fees to the venture firm
34 from the date of noncompliance with this subsection.
- 35 (3) Consult and coordinate with the Attorney General for the recovery of any
36 funds, as may be necessary.

37 **"§ 143B-437.89. Rulemaking; report.**

38 (a) Rulemaking. – The Corporation shall administer the Fund and may engage in
39 rulemaking to carry out the provisions and purposes of the Fund and this subpart.

40 (b) Report. – The Corporation shall submit an annual report on tax credits generated
41 under this subpart to the Revenue Laws Study Committee, the House Appropriations Committee,
42 the Senate Appropriations/Base Budget Committee, and the Fiscal Research Division of the
43 General Assembly. The report required by this subsection shall be published on the Corporation's
44 website in a publicly available format with any proprietary or confidential information redacted.
45 The report shall include all of the following:

- 46 (1) With respect to each venture firm that received funds from the Fund, (i) the
47 name and address of the venture firm, (ii) the names of individuals making
48 decisions on behalf of the venture firm to make qualified investments under
49 the Program, (iii) the amount of funds from the Fund received during the
50 previous fiscal year, (iv) the cumulative amount of funds from the Fund
51 received, (v) the amount of funds from the Fund remaining uninvested at the

1 end of the previous fiscal year, (vi) the names and locations of qualified
2 businesses receiving funds from the Fund and the amount of each qualified
3 investment, (vii) for the previous fiscal year, the aggregate fair market value
4 of all qualified investments as calculated according to generally accepted
5 accounting principles, and (viii) the amount of any qualified distribution or
6 nonqualified distribution taken during the previous fiscal year, including any
7 management fee.

8 (2) With respect to the Startup Capital Enterprise Fund, (i) the amount of funds
9 remaining uninvested at the end of the previous fiscal year, (ii) the names and
10 locations of qualified businesses receiving funds from the Fund and the
11 amount of each qualified investment, and (iii) for the previous fiscal year, the
12 aggregate fair market value of all qualified investments as calculated
13 according to generally accepted accounting principles.

14 (3) For the previous fiscal year, with respect to each qualified business in which
15 venture firms or the Startup Capital Enterprise Fund have invested, (i) the
16 classification of the qualified business according to the industrial sector and
17 the size of the business, (ii) the total number of jobs created in the State by the
18 investment and the average wages paid for the jobs, and (iii) the total number
19 of jobs retained in the State as a result of the investment and the average wages
20 paid for the jobs."

21 **SECTION 2.** It is the intent of the General Assembly to use American Rescue Plan
22 Act of 2021 funds to fund the Technology Development Investment Program created pursuant to
23 this act.

24 **SECTION 3.** This act becomes effective when an act of the General Assembly
25 appropriating funds for its implementation becomes effective.