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SENATE BILL DRS15255-MC-59

**Short Title:** North Carolina Venture Fund. **(Public)**

(Public)

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

### Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FUNDING FOR INITIAL CAPITAL FOR DEVELOPING TECHNOLOGY COMPANIES AND VENTURES.

The General Assembly of North Carolina enacts:

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

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

## "Subpart A. SBIR/STTR Programs.

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#### "Subpart B. Technology Development Funding."

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

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

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

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

**(2) Corporation.** — The North Carolina Technology Development Corporation.

(3) Improve. – To add, alter, construct, equip, reconstruct, rehabilitate, remodel, or repair.

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

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

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

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



- 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Establishment; Purpose. – The Startup Capital Enterprise Fund is established as a 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

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

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

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

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

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

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

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

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

- (1) With respect to each venture firm that received funds from the Fund, (i) the name and address of the venture firm, (ii) the names of individuals making decisions on behalf of the venture firm to make qualified investments under the Program, (iii) the amount of funds from the Fund received during the previous fiscal year, (iv) the cumulative amount of funds from the Fund 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.