

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS75312-LYxf-66 (1/31)

Short Title: State Venture Capital Fund. (Public)

Sponsors: Senator Hartsell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A STATE VENTURE CAPITAL FUND.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article 10 of Chapter 143B of the General Statutes is amended
5 by adding a new Part to read:

6 "Part 2K. New North Carolina Venture Capital Program.

7 **"§ 143B-437.100. New North Carolina Venture Capital Program; Fund.**

8 (a) Program Established. – There is established a program to be known as the
9 New North Carolina Venture Capital Program. The program is to be administered by the
10 Economic Investment Committee established under G.S. 143B-437.54. The program
11 shall provide guarantees to venture capital partnerships for investments in North
12 Carolina-related companies that are in the early stage or mid-stage of development as
13 provided in this Part.

14 (b) Fund Established. – The New North Carolina Venture Capital Fund is
15 established as a special revenue fund in the Department of Commerce. Moneys in the
16 Fund shall be used to support the New North Carolina Venture Capital Program
17 established under subsection (a) of this section.

18 **"§ 143B-437.101. Applications.**

19 (a) Application Contents. – A venture capital partnership may submit an
20 application to the Committee requesting a guarantee of investments of principal to be
21 made in North Carolina-related companies. The application shall be on the form
22 prescribed by the Committee and shall include or demonstrate all of the following:

23 (1) The applicant's name and address and the address of all of the
24 applicant's offices located in North Carolina.

25 (2) The resumes of the individuals responsible for the investment
26 decisions of the applicant.

- 1 (3) A history of the applicant's development, operations,
2 accomplishments, and historical investment returns, including past
3 performance of principals and partners and the applicant's history of
4 investments in North Carolina-related companies.
- 5 (4) The applicant's business plan, which may be a private placement
6 memorandum pursuant to 17 C.F.R. §§ 230.501 through 230.508
7 (relating to Regulation D – rules governing the limited offer and sale
8 of securities without registration under the Securities Act of 1933).
- 9 (5) A description of the intended industry sectors and stage of investment
10 in which the applicant will invest and the anticipated amount of
11 investment to be made in North Carolina-related companies.
- 12 (6) A statement of any recent changes in the principals or partners of the
13 applicant.
- 14 (7) A statement of the fees or other payment proposed to be paid to the
15 Committee by the applicant as consideration for the issuance of a
16 guarantee.
- 17 (8) Any other information required by the Committee.
- 18 (b) Application Review. – The Committee shall review the application to
19 determine all of the following:
- 20 (1) That the managing partner of the applicant has managed one or more
21 venture capital partnerships that have performance rankings in the top
22 quartile nationwide when compared to other venture capital
23 partnerships with similar investments made over the same period of
24 time.
- 25 (2) That the applicant will invest at least fifteen million dollars
26 (\$15,000,000) in North Carolina-related companies.
- 27 (3) That the applicant will agree to notify the Committee of all advisory,
28 valuation, and annual meetings of the applicant for the duration of the
29 guarantee and will permit a representative of the Committee to attend
30 these meetings. The Committee may request that the applicant provide
31 reimbursement for reasonable travel expenses if meetings are held
32 outside of the State or that a Committee representative be able to
33 participate in meetings by acceptable telecommunication means.
- 34 (4) That the applicant has or will open an office in North Carolina staffed
35 with at least one senior-level partner and will maintain the office for
36 the duration of the guarantee.
- 37 (5) That the applicant will provide the Committee with its annual financial
38 statements, audited by a nationally recognized independent certified
39 public accountant, for the duration of the guarantee. Financial
40 statements shall be prepared in accordance with generally accepted
41 accounting principles.
- 42 (6) That the Committee will have the ability to determine that the subject
43 of a proposed investment to be covered by the guarantee is a North

1 Carolina-related company acceptable to the Committee prior to the
2 applicant making an investment in the company.

3 (7) That the applicant has complied with all other requirements established
4 by the Committee.

5 **"§ 143B-437.102. Approval of guarantee.**

6 Upon being satisfied that all requirements have been met, the Committee may
7 approve the application, and, if approved, the State shall execute a guarantee agreement
8 in favor of the applicant. The guarantee agreement shall be drafted and approved by the
9 Attorney General. In addition to any other terms and conditions required by the
10 Committee or Attorney General, the guarantee agreement shall provide for all of the
11 following:

12 (1) The procedure for the submission of a claim for payment under the
13 guarantee agreement. A venture capital partnership will be required to
14 have an audit performed by a nationally recognized independent
15 certified public accounting firm prior to notifying the Committee that
16 it is making a claim under the guarantee. No claim may be made prior
17 to the completion of the seventh year following the first investment by
18 the applicant in a North Carolina-related company that is covered by
19 the guarantee.

20 (2) A provision that the guarantee will cover the first loss of the aggregate
21 amount of principal invested in North Carolina-related companies
22 covered by the guarantee.

23 (3) A procedure and schedule for the periodic reconciliation of amounts
24 payable under the guarantee.

25 (4) A requirement that any increase in the valuation of investments in
26 North Carolina-related companies covered by the guarantee
27 subsequent to the payment of a claim by the State will result in a
28 portion of the payment being returned to the State.

29 (5) A procedure for an expeditious process for the Committee to
30 determine that proposed investments to be covered by the guarantee
31 will be made to North Carolina-related companies acceptable to the
32 Committee.

33 (6) A prohibition against the transfer of the benefits of the guarantee to
34 another person without the prior approval of the Committee.

35 **"§ 143B-437.103. Limitations.**

36 (a) Approved Amount. – The liability of the State for any guarantee approved
37 under this Part is limited to the approved amount of that guarantee.

38 (b) Size Limitation. – A guarantee approved by the Committee shall not exceed
39 fifty percent (50%) of the total investments made in North Carolina-related companies
40 covered by the guarantee or thirty million dollars (\$30,000,000), whichever is less.

41 (c) Expiration. – The State may enter into guarantee agreements until July 1,
42 2011, or until the aggregate of approved guarantees equals one hundred million dollars
43 (\$100,000,000), whichever occurs first."

1 **SECTION 2.** There is appropriated from the General Fund to the New North
2 Carolina Venture Capital Fund, created pursuant to Section 1 of this act, the sum of one
3 hundred million dollars (\$100,000,000) for the 2007-2008 fiscal year.

4 **SECTION 3.** This act becomes effective July 1, 2007.