

1 SENATE BILL 402

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Martin Hickey

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10 AN ACT

11 RELATING TO PUBLIC FINANCE; AMENDING THE VENTURE CAPITAL
12 PROGRAM ACT; REVISING THE DEFINITION OF "VENTURE PRIVATE EQUITY
13 FUND"; REVISING INVESTMENT GUIDELINES; ELIMINATING BOND
14 REQUIREMENTS FOR NEW MEXICO FINANCE AUTHORITY EMPLOYEES;
15 PROVIDING AN EXCEPTION TO THE INSPECTION OF PUBLIC RECORDS ACT;
16 MAKING AN APPROPRIATION.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 6-33-1 NMSA 1978 (being Laws 2022,
20 Chapter 21, Section 1) is amended to read:

21 "6-33-1. SHORT TITLE.--~~[This act]~~ Chapter 6, Article 33
22 NMSA 1978 may be cited as the "Venture Capital Program Act"."

23 SECTION 2. Section 6-33-2 NMSA 1978 (being Laws 2022,
24 Chapter 21, Section 2) is amended to read:

25 "6-33-2. DEFINITIONS.--As used in the Venture Capital
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Program Act:

A. "authority" means the New Mexico finance authority;

B. "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and at least eighty percent of its assets located in New Mexico; and

C. "venture private equity fund" means an entity that makes, manages or sources potential investments in New Mexico businesses and that:

(1) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or business purposes in early stages of development;

(2) holds out prospects for capital appreciation from such investments;

(3) has at least one full-time manager with at least three years of professional experience in assessing the growth prospects of businesses or evaluating business plans; and

~~[(4) is committed to investing or helps secure investing by others, in an amount at least equal to the total~~

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1 ~~investment made by the authority in that fund pursuant to the~~
2 ~~Venture Capital Program Act, in New Mexico businesses and that~~
3 ~~hold promise for attracting additional capital from individual~~
4 ~~or institutional investors nationwide for businesses in New~~
5 ~~Mexico; and~~

6 ~~(5)]~~ (4) accepts investments only from
7 accredited investors, as that term is defined in the federal
8 Securities Act of 1933, as amended, and rules and regulations
9 promulgated pursuant to that section, or federally recognized
10 Indian nations, tribes and pueblos with at least five million
11 dollars (\$5,000,000) in overall investment assets."

12 SECTION 3. Section 6-33-4 NMSA 1978 (being Laws 2022,
13 Chapter 21, Section 4) is amended to read:

14 "6-33-4. INVESTMENTS--QUALIFICATIONS--BOARD APPROVAL.--

15 A. In making investments pursuant to the Venture
16 Capital Program Act, the authority shall make:

17 (1) investments in venture private equity
18 funds; or

19 (2) early stage investments in New Mexico
20 businesses whose investments or enterprises enhance the
21 economic development objectives of the state.

22 B. The authority is authorized to make investments
23 in New Mexico businesses to create new job opportunities and to
24 support new, emerging or expanding businesses in a manner
25 consistent with the constitution of New Mexico if:

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1 [~~(1)~~ the investments are made in conjunction
2 with cooperative investment agreements with parties that have
3 demonstrated abilities and relationships in making investments
4 in new, emerging or expanding businesses;

5 ~~(2)~~ (1) an investment in any one business [~~or~~
6 industry] does not exceed ten percent of the balance of the
7 venture capital program fund; [~~and~~

8 (2) an investment in any one industry does not
9 exceed thirty percent of the balance of the venture capital
10 program fund; and

11 (3) the investments represent no more than
12 fifty-one percent of the total investment capital in a
13 business; provided, however, that nothing in this subsection
14 prohibits the ownership of more than fifty-one percent of the
15 total investment capital in a New Mexico business if the
16 additional ownership interest:

17 (a) is due to foreclosure or other
18 action by the authority pursuant to agreements with the
19 business or other investors in that business;

20 (b) is necessary to protect the
21 investment; and

22 (c) does not require an additional
23 investment of the fund.

24 C. In making investments pursuant to the Venture
25 Capital Program Act, the authority may make differential rate

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1 investments for economic development purposes.

2 [G.] D. The authority shall make investments
3 pursuant to the Venture Capital Program Act only upon approval
4 of the board of directors of the authority and within
5 guidelines and policies established by the board."

6 SECTION 4. Section 6-33-5 NMSA 1978 (being Laws 2022,
7 Chapter 21, Section 5) is amended to read:

8 "6-33-5. [BOND] BUDGET.--[A. ~~Before a responsible~~
9 ~~employee of the authority enters upon the employee's duties,~~
10 ~~the authority shall require an individual bond for that~~
11 ~~employee or shall include all employees of the authority under~~
12 ~~a blanket bond for an amount and for a coverage deemed best to~~
13 ~~protect the state's interest. The bond premiums shall be paid~~
14 ~~by the venture capital program fund. B.] The authority shall~~
15 annually prepare a budget for administering and investing all
16 funds managed by the venture capital program, which shall be
17 reviewed and approved by the board of directors of the
18 authority. Funds provided for the operating budget of the
19 venture capital program may be made from the assets of the
20 venture capital program fund or any other funds managed by the
21 authority, as authorized by law."

22 SECTION 5. A new section of the Venture Capital Program
23 Act is enacted to read:

24 "[NEW MATERIAL] PROPRIETARY INFORMATION--
25 CONFIDENTIALITY.--Information obtained by the authority in

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1 order to make investments from the venture capital program
2 fund, which information is proprietary, technical, trade secret
3 or business information, shall be confidential and not subject
4 to inspection pursuant to the Inspection of Public Records
5 Act."

6 SECTION 6. APPROPRIATION.--Thirty-five million dollars
7 (\$35,000,000) is appropriated from the general fund to the
8 venture capital program fund for expenditure in fiscal year
9 2024 and subsequent fiscal years for investments pursuant to
10 the Venture Capital Program Act. Any unexpended or
11 unencumbered balance remaining at the end of a fiscal year
12 shall not revert to the general fund.