

SENATE BILL 402

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

INTRODUCED BY

Martin Hickey

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC FINANCE; AMENDING THE VENTURE CAPITAL PROGRAM ACT; REVISING THE DEFINITION OF "VENTURE PRIVATE EQUITY FUND"; REVISING INVESTMENT GUIDELINES; ELIMINATING BOND REQUIREMENTS FOR NEW MEXICO FINANCE AUTHORITY EMPLOYEES; PROVIDING AN EXCEPTION TO THE INSPECTION OF PUBLIC RECORDS ACT
SFC→; ~~MAKING AN APPROPRIATION.~~←SFC SFC→.←SFC

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

.224515.2AIC March 15, 2023 (11:35am)

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

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

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

"6-33-2. DEFINITIONS.--As used in the Venture Capital 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;

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

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

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

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

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

- (1) investments in venture private equity funds; or
- (2) early stage investments in New Mexico

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businesses whose investments or enterprises enhance the economic development objectives of the state.

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

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

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

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

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

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

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(b) is necessary to protect the investment; and

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

C. In making investments pursuant to the Venture Capital Program Act, the authority may make differential rate investments for economic development purposes.

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

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

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

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venture capital program fund or any other funds managed by the authority, as authorized by law."

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

"[NEW MATERIAL] PROPRIETARY INFORMATION--CONFIDENTIALITY.--Information obtained by the authority in order to make investments from the venture capital program fund, which information is proprietary, technical, trade secret or business information, shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act."

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