

Article 76A.

NCInnovation.

§ 143-728. NCInnovation.

(a) Findings. – The General Assembly of North Carolina finds the following:

- (1) North Carolina is competing with other states for the ability to commercialize innovations resulting from in-State, world-class higher education research institutions.
- (2) By fully optimizing the commercialization of those innovations, the State has opportunities for creating new jobs and new companies and achieving greater economic prosperity, particularly in rural areas.
- (3) Other states have successfully used a public-private partnership model to harness innovation efforts from research universities so as to create jobs, to accelerate commercial opportunities, and to support the commercial growth and scale of emerging technologies.
- (4) North Carolina will benefit from similar efforts to accelerate commercialization of theoretical and applied science and inventions stemming from the efforts and activities of its higher education research institutions.

(b) Purpose. – The purpose of this section is to establish a framework whereby the State may provide funds to be used by a nonprofit corporation, acting on behalf of and for the primary benefit of the State, to establish and support a network of regional innovation hubs, to better leverage the high technology research and development capabilities of its higher education research institutions, and to provide funding to bridge the gap between such research and development capabilities and the application and commercialization of the same, and to support such commercialization and application, along with resulting emerging technologies, to promote the welfare of the people of the State and to maximize the economic growth in the State.

(c) Endowment. – NCInnovation is approved to receive funds from the State for the purposes and on the terms and conditions set forth in this Article.

(d) Requirements. – In order to receive the endowment and retain State funds, all of the following requirements must be met:

- (1) NCInnovation shall adhere to the following governance provisions related to its governing board:
 - a. The board shall be composed of 13 voting members as follows: four members appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, four members appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, and the remaining members elected as provided in the bylaws of NCInnovation. The directors shall hold staggered four-year terms and shall elect their own chair from among their number. Appointing and electing authorities shall ensure that appointed and elected members have expertise and experience in one or more of the following areas: research, development, product commercialization, entrepreneurial business development, and capital formation.
 - b. NCInnovation shall comply with the limitations on lobbying set forth in section 501(c)(3) of the Internal Revenue Code.
 - c. No State employee or elected official may serve on the board.
 - d. The board shall meet at least quarterly at the call of its chair.

- e. The amount of State funds that may be used for the annual salary of any one officer or employee of NCInnovation shall not exceed the greater of (i) one hundred forty thousand dollars (\$140,000) or (ii) the amount most recently set by the General Assembly in a Current Operations Appropriations Act.
 - f. Members of the board may not be compensated for their services. The amount of State funds that may be used to provide per diems and allowances to a member of the board engaged in carrying out the purposes and requirements of this Article shall not exceed the amount provided in G.S. 138-5.
- (2) NCInnovation shall amend its articles of incorporation to enable NCInnovation to carry out the purposes and requirements of this Article. The articles of incorporation, as amended, shall provide for the following:
- a. Consultation; reporting. – NCInnovation shall consult with the Joint Legislative Commission on Governmental Operations prior to the board of directors adopting bylaws or any amendment to its bylaws. NCInnovation shall also report on its programs and activities to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Fiscal Research Division on or before September 15 of each fiscal year and more frequently as requested by any of these entities. The report shall include all of the following information:
 1. Every expenditure for establishing and supporting a network of regional innovation hubs and every award of grants, funds, or other support by NCInnovation in the prior fiscal year. This information shall include, at a minimum, the recipient, amount, term, and purpose of the award.
 2. Outcome data collected by NCInnovation, including the number of jobs created.
 3. Cumulative regional innovation hub network expenditure and funding award data by program and by county.
 4. An unaudited report, itemized by category, of overhead and administrative costs for the previous fiscal year.
 5. Current fiscal year budget, planned activities, and goals for the current fiscal year.
 6. Developed performance metrics for recipients of funding and support by NCInnovation.
 7. A detailed explanation of how annual salaries are determined, including base pay schedules and any additional salary amounts or bonuses that may be earned as a result of job performance. The explanation shall include the means used by NCInnovation to foster employee efforts in rural and low-income areas in the State.

NCInnovation shall also provide to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee,

and the Fiscal Research Division (i) a copy of its annual audited financial statement for the previous fiscal year within 30 days of having received an audit report from an independent auditor and (ii) a copy of its annual federal income tax return for the previous fiscal year within 30 days of filing. In addition, the State Auditor may perform audits of NCInnovation pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds are being managed in accordance with the provisions of this Article.

- b. Transfer of assets. – NCInnovation shall not dispose of assets pursuant to G.S. 55A-12-02 without the approval of the General Assembly.
 - c. Charter repeal. – The charter of NCInnovation may be repealed at any time by the General Assembly pursuant to Section 1 of Article VIII of the North Carolina Constitution. NCInnovation shall not amend its articles of incorporation without the approval of the General Assembly.
 - d. Dissolution. – NCInnovation may be dissolved pursuant to Chapter 55A of the General Statutes or by the General Assembly. Upon dissolution, (i) all funds, other than excluded amounts and interest earned on excluded amounts, and (ii) all assets acquired with State funds shall be transferred to the General Fund.
- (3) NCInnovation shall act on behalf of, and perform its duties for the benefit of, the State. Where those duties involve the distribution of investment income, NCInnovation shall (i) consult with the North Carolina Collaboratory (Collaboratory), established under G.S. 116-255, for purposes of making determinations regarding terms and amounts of distributions and (ii) use the Collaboratory to manage the distributions. NCInnovation shall, at a minimum, perform the following duties:
- a. Establish and support a network of regional innovation hubs by doing one or more of the following:
 - 1. Establishing four university research hubs, each located in areas of the State where regional collaboration between academic, industrial, and capital formation networks are at or below average in comparison to the rest of the State.
 - 2. Providing full-time, collocated educational liaisons, business consultants, and technology transfer consultants in each university research hub established for the purposes of (i) building new and strengthening existing relationships between senior educational and regional industry leaders to facilitate ongoing engagement within and among regional networks and (ii) creating communication and information exchange between regional networks to identify areas of potential collaboration, filling needs, and otherwise maximizing complementary research, development, and commercialization.
 - 3. Conducting analysis of research activities, capacities, and capabilities of each higher education research institution in each university research hub in light of commercial innovation needs in the hub, including (i) identifying specific strengths and gaps

that could benefit from regional collaboration, (ii) identifying existing patents and research and, where applicable, how the patents or research might have commercial application for industry needs, and (iii) creating a strategic plan to guide future investments and identify resources or infrastructure required to implement and apply patents and research into commercialized innovation.

4. Providing the results of, and associated guidance concerning, conducted analyses to assist connecting hub-specific capabilities with regional commercial needs and to ensure applied research investments are aligned with regional strengths, capabilities, and commercial opportunities.
 5. Funding, supporting, and facilitating the development of partnerships and building capacity between regional industries and higher education research institutions.
 6. Drafting guidance for researchers to use in prioritizing targeted commercial opportunities and leveraging identified research strengths.
 7. Soliciting applications for grants to commercialize or develop the capability to commercialize applied research opportunities.
- b. Award grants, funds, and other resources to higher education research institutions under programs designed to do any of the following:
1. Provide capacity building to (i) expand applied research federal grant scouting and (ii) provide project management and support for researchers engaged in collaborations between such institutions.
 2. Support technology development, start-up support, and licensing assistance.
 3. Pursue intellectual property protections, including patent prosecution.
 4. Provide direct, non-dilutive funding designed to advance research and development to proof of commercial viability.
 5. Furnish additional support services after proof of commercial viability designed to assist researchers at such institutions in attaining, from sources other than NCInnovation, venture capital and capital formation.
- c. Protect the use of State funds by requiring, as a condition of awarding funds or providing support, that the recipient, for a minimum of five years, (i) have its headquarters and principal place of business in the State and (ii) be organized under the laws of this State for any commercialization resulting from or furthered by, in whole or part, such funds or support. NCInnovation may receive from a recipient neither future earnings or revenue of any kind nor equity or ownership interests of any kind.
- (4) NCInnovation shall contract with an independent investment manager to manage and invest the endowment for the purpose of generating investment

income. The contract shall establish the annual compensation for the investment manager, including any management fee, which shall reflect asset-based pricing using a tiered structure, with an overall blended rate not to exceed 15 basis points. Amounts paid pursuant to this subdivision are overhead and administrative costs of NCInnovation. The contract shall require that the investment manager disclose to NCInnovation any interest that it or an owner, stockholder, partner, officer, director, member, employee, or agent of the investment manager has in a recipient of investment income from NCInnovation to the extent the investment manager is aware of such recipients. The activities and investments of the investment manager are not subject to the reporting requirements of this Article.

- (5) NCInnovation may draw from, distribute, and otherwise expend investment income, including, without limitation, to make funding awards and establish or support a network of regional innovation hubs, in accordance with this Article, and such activities are subject to the reporting requirements of this Article. NCInnovation shall develop criteria for and notify the Joint Legislative Commission on Governmental Operations regarding each program NCInnovation will use to advance the purposes of this Article prior to using investment income for the program. NCInnovation shall provide a copy of materials describing each program to the Fiscal Research Division within 15 days of finalizing the program.
- (6) NCInnovation shall have received from fundraising efforts and sources, other than State funds, commitments to donate at least twenty-five million dollars (\$25,000,000) in private funds for support of its operations. The minimum commitment amount required by this subdivision must be received within five years of the receipt of any portion of the endowment.
- (7) NCInnovation shall adopt, publish, and provide to the Joint Legislative Commission on Governmental Operations a resolution or policy regarding conflicts of interest to guide actions by the governing board members, officers, and employees of NCInnovation in the performance of their duties and to prevent such persons from benefiting from or holding an equity position in any intellectual property, licensing, or business entity supported or funded by NCInnovation. The conflict of interest policy shall contain, at a minimum, that no subject person of NCInnovation 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 family, has an existing business relationship. No subject person shall attempt to profit from a proposed project lead resulting from commercialization of, or business formation resulting from, research if the profit is greater than that which would be realized by other persons living in the area where the project lead is located. If the profit under this subdivision would be greater for the subject person than other persons living in the area where the project lead is located, not only shall the subject person abstain from voting on that issue, but, once the conflict of

interest is apparent, the subject person shall not discuss the project lead with any other subject person except to state that a conflict of interest exists. Under this subdivision, a subject person is presumed to profit if the profit would be realized by 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 family has an existing business relationship with a company that is the subject of a proposed project lead. No subject person, in contemplation of official action by the subject person, or in reliance on information that was made known to the subject person in the subject person's official capacity and that has not been made public, shall (i) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by such information or official action or (ii) intentionally aid another to do any of the above acts. As used in this subdivision, the following terms mean:

- a. Board. – The governing board of NCInnovation.
- b. Board member. – A member of the board.
- c. Business association. – A director, employee, officer, or partner of a business entity, or owner of more than ten percent (10%) interest in any business entity.
- d. Immediate family. – Spouse, children, parents, brothers, and sisters.
- e. Official action. – Actions taken in connection with the subject person's duties, including, but not limited to, voting on matters before the board, discussing investment matters with other subject persons in an effort to further the matter after the conflict of interest has been discovered, or taking actions in the course and scope of the position as a subject person and actions leading to or resulting in profit.
- f. Profit. – Receive monetary or economic gain or benefit, including an increase in value whether or not recognized by sale or trade.
- g. Subject person. – A board member, officer, or employee of NCInnovation.

(8) NCInnovation shall adopt, publish, and provide to the Joint Legislative Commission on Governmental Operations a resolution or policy regarding gifts to guide actions by the governing board members, officers, and employees of NCInnovation in the performance of their duties. The gift policy required by this subdivision shall, at a minimum, prohibit an employee, officer, or member of the board of NCInnovation from knowingly accepting a gift from a person whom the employee, officer, or member of the board knows or has reason to know (i) is seeking to do business of any kind in the State or (ii) has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of official duties of the employee, officer, or member of the board. This prohibition shall not apply to either of the following:

- a. Gifts given to the employee, officer, or member of the board where the gift is food or beverages, transportation, lodging, entertainment, or related expenses associated with responsibilities or duties the employee,

officer, or member of the board is responsible for conducting on behalf of NCInnovation, provided (i) the employee, officer, or member of the board did not solicit the gift and did not accept the gift in exchange for the performance or nonperformance of corporate duties and (ii) the employee, officer, or member of the board reports electronically to the corporation within 30 days of receipt of the gift, including a description and value of the gift and a description of how the gift contributed to responsibilities or duties on behalf of NCInnovation.

b. Gifts of personal property valued at less than one hundred dollars (\$100.00) given to the employee, officer, or member of the board in the commission of corporate duties if the gift is given as a personal gift in another country as part of an overseas trade mission and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(9) NCInnovation shall maintain separate accounting records for and separate accounts for State funds and excluded amounts and shall not commingle State funds and excluded amounts. NCInnovation shall maintain records and accounts according to generally accepted accounting principles.

(10) NCInnovation shall specifically and separately report on incidences where a person, including a related member of a person, has made a reported contribution and has received funds or support from NCInnovation. NCInnovation shall include the record in the report required to be filed pursuant to this section.

(11) NCInnovation shall limit the use of State funds for the severance pay of the chief executive officer and other officers of the nonprofit corporation to no more than the salary limitation contained in subdivision (1) of this subsection.

(12) NCInnovation complies with the following:

a. State funds shall not be used to hire a lobbyist.

b. No State funds may be used for overhead and administrative costs. It is the intent of the General Assembly (i) to make a determination of the appropriate maximum amount of investment income that may be used for overhead and administrative costs based on observed costs occurring within the first three years of receipt of the endowment, (ii) to allow for that maximum amount to be used for those purposes in subsequent years, and (iii), at that time, to require NCInnovation to prioritize the use of excluded amounts for overhead and administrative costs to the extent practicable.

c. Only excluded amounts may be used for any of the following: (i) alcohol, (ii) first-class airfare, (iii) charter flights, (iv) holiday parties or similar social gatherings, and (v) any meeting, whether a formal public meeting or an informal retreat, located outside of the State.

(e) Benefits. – An officer, employee, or member of a governing board of NCInnovation is not a State employee, is not covered by Chapter 126 of the General Statutes, and is not entitled to State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees.

(f) Use of Funds. – NCInnovation shall comply with the following:

- (1) Endowment. – The endowment may be used solely to produce investment income by an independent investment manager, as provided in this Article.
- (2) Investment income. – Investment income may be used for the following:
 - a. Establishing and supporting a network of regional innovation hubs.
 - b. Awarding grants, funds, and other resources to advance duties owed by NCInnovation under this Article.
 - c. Any other purpose expressly and specifically allowed for investment income in this Article.
- (3) State funds. – State funds may not be used for lobbying purposes.
- (4) Excluded amounts. – Excluded amounts may not be invested with the endowment.

(g) Applicable Laws. – NCInnovation is subject to the requirements of (i) Chapter 132 of the General Statutes and (ii) Article 33C of Chapter 143 of the General Statutes. Notwithstanding the provisions of this subsection, public records relating to programs, recipients, and projects funded by NCInnovation may be withheld so long as their inspection, examination, or copying would, as determined in the sole discretion of NCInnovation, frustrate the purpose for which such public records were created or would result in the harmful dissemination of confidential intellectual property of a recipient; however, the provisions of this subsection allowing public records to be withheld no longer apply as soon as that frustration or harmful dissemination ceases, and NCInnovation shall disclose as soon as practicable, and within 25 business days, public records from that time.

(h) Definitions. – The following definitions apply in this Article:

- (1) Endowment. – Funds provided to NCInnovation by the State upon meeting the requirements set forth in this section and any future funds NCInnovation receives from the State.
- (2) Excluded amounts. – Any funds raised by NCInnovation through fundraising efforts and returns or earnings of any kind resulting directly or indirectly from investment of such funds.
- (3) Higher education research institution. – A postsecondary constituent institution of The University of North Carolina, as defined in G.S. 116-2, or a community college, as defined in G.S. 115D-2.
- (4) Investment income. – Returns and earnings of any kind resulting directly or indirectly from investment of the endowment by an independent investment manager as allowed by this Article.
- (5) NCInnovation. – NCInnovation, Inc., a North Carolina nonprofit corporation under section 501(c)(3) of the Internal Revenue Code, provided it has its headquarters and principal place of business in the State and meets the requirements of this Article necessary to receive and retain the endowment.
- (6) State funds. – The endowment and investment income. (2023-134, s. 11.9(a).)