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Short Title: Venture Capital Investment Incentive.

(Public)

Sponsors:

Referred to:

April 26, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL
3 INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE
4 PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of Article 3
7 of Chapter 53A of the General Statutes, entitled "General Provisions" and the remainder
8 of Article 3 of Chapter 53A of the General Statutes is designated Part 2, entitled "North
9 Carolina Enterprise Corporations".

10 Sec. 2. Article 3 of Chapter 53A of the General Statutes, as amended by this
11 act, is further amended by adding a new Part to read:

12 **"PART 3. CERTIFIED NORTH CAROLINA CAPITAL COMPANIES.**
13 **"§ 53A-70. Requirements for certification of a certified North Carolina capital**
14 **company.**

15 (a) Initial Certification. – In order to be initially certified as a certified North
16 Carolina capital company, a company must satisfy the following requirements:

1 (1) It is a partnership, corporation, trust, or limited liability company,
2 whether for-profit or nonprofit, whose primary business activity is
3 the investment of cash in approved business ventures.

4 (2) Its cash, marketable securities, and other liquid assets equal at least
5 two hundred thousand dollars (\$200,000).

6 (3) Its officers and its board of directors, partners, trustees, or managers
7 are thoroughly acquainted with the requirements of this Part.

8 (b) Continuing Certification. – To remain certified as a certified North Carolina
9 capital company, the company must satisfy the following requirements:

10 (1) Within three years after the date it was initially certified, at least
11 thirty percent (30%) of the certified capital invested in the company
12 must be placed in approved investments.

13 (2) Within five years after the date it was initially certified, at least fifty
14 percent (50%) of the certified capital invested in the company must
15 be placed in approved investments.

16 (3) It shall not invest in a single approved business venture an amount
17 that is more than fifteen percent (15%) of the total certified capital
18 under the company's management at the time of the investment.

19 (c) Permanent Certification. – A certified North Carolina capital company that has
20 satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified capital in
21 approved investments, as demonstrated by its most recent financial statement and report
22 filed in accordance with G.S. 53A-71, qualifies for permanent certification and is no
23 longer required to obtain continuing certification as required in G.S. 53A-71. A certified
24 North Carolina capital company that has qualified for permanent certification must
25 continue to submit annual financial statements and reports under G.S. 53A-71 for three
26 years after it qualifies for permanent certification.

27 **"§ 53A-71. Procedure for initial and continuing certification; reports.**

28 (a) Initial Certification. – In order to be initially certified as a certified North
29 Carolina capital company, a company must file an application with the Division and pay
30 the initial certification fee set by the Secretary of State. The application shall include any
31 information and supporting documents required by the Secretary of State to determine
32 whether the company qualifies for initial certification. Within 60 days after an
33 application is filed, the Division shall determine whether the applicant qualifies for initial
34 certification and shall either issue the certification or shall refuse the certification and
35 notify the applicant in detail of the grounds for the refusal, including suggestions for the
36 removal of those grounds.

37 (b) Continuing Certification. – A certified North Carolina capital company that has
38 not qualified for permanent certification must, in order to remain certified, submit an
39 annual application for continued certification and pay the annual review fee set by the
40 Secretary of State. The request shall include any information and supporting documents
41 required by the Secretary of State to determine whether the company qualifies for
42 continued certification.

1 The Division shall conduct an annual review of each certified North Carolina capital
2 company that has not qualified for permanent certification to determine if the company is
3 in compliance with the requirements for initial and continuing certification and to ensure
4 that the company's investments are in compliance with this Part. The review shall be
5 based upon the company's financial statements and other information submitted in
6 accordance with this section.

7 (c) Application Forms; Fees. – Applications for initial and continuing certification
8 under this section shall be in the form required by the Secretary of State. The Secretary
9 of State shall prepare blank forms for the applications. Each application shall be signed
10 by the owners, a manager, or an executive officer of the company. There shall be
11 annexed to the application the affirmation of the person making the application in the
12 following form: 'Under penalties prescribed by law, I certify and affirm that to the best
13 of my knowledge and belief this application is true and complete.' A person who submits
14 a false application is guilty of a Class 1 misdemeanor.

15 The Secretary of State may charge an applicant a fee for initial certification as a
16 certified North Carolina capital company and a fee for annual review for continuing
17 certification as a certified North Carolina capital company. The fees set by the Secretary
18 of State may not exceed the estimated cost to the Division of initial certification or annual
19 review, as appropriate, as determined by the Secretary of State.

20 (d) Periodic Reports. – Each certified North Carolina capital company shall
21 provide the Division an annual audited financial statement and report that includes an
22 opinion of an independent certified public accountant. The audit shall address the
23 methods of operation and conduct of the business of the company to determine whether
24 the company has complied with this Part and whether the cash invested in the company
25 has been invested as required by this Part. The audit shall also determine whether each
26 business in which the company has invested is an approved business venture as defined in
27 this Article. In addition, each certified North Carolina capital company shall provide the
28 Division a midyear, unaudited update of its annual financial statement and report. The
29 reports and updates shall be in the form prescribed by the Secretary of State and shall
30 include any information required by the Secretary of State about the company and about
31 the approved business ventures in which it has invested.

32 A certified North Carolina capital company that has not qualified for permanent
33 certification shall submit the annual financial statement and report and the midyear
34 update on the due dates specified by the Division. A certified North Carolina capital
35 company that has qualified for permanent certification is no longer required to submit
36 midyear updates but shall continue to submit the annual financial statement and report on
37 the due dates specified by the Division for three years after the company qualifies for
38 permanent certification. Thereafter, no additional financial statements and reports are
39 required under this subsection.

40 **"§ 53A-72. Distributions; maximum interest rate.**

41 (a) Distributions. – A certified North Carolina capital company may make
42 qualified distributions at any time. A certified North Carolina capital company may,
43 without restriction, make distributions and payments to debt holders with respect to debt

1 owed them by the company. A certified North Carolina capital company may make other
2 distributions only after it has qualified for permanent certification.

3 (b) Maximum Interest Rate. – A certified North Carolina capital company shall not
4 charge interest on a senior, secured loan at an annual rate that exceeds the prime rate plus
5 three percent (3%).

6 **"§ 53A-73. Tax credits.**

7 A person who invests cash in a certified North Carolina capital company is entitled to
8 a tax credit as provided in Article 8C of Chapter 105 of the General Statutes.
9 Notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General
10 Statutes, a certified North Carolina capital company is not allowed a tax credit under that
11 Division for its investments.

12 **"§ 53A-74. Decertification of certified North Carolina capital company.**

13 (a) Grounds for Decertification. – Any material violation of this Part shall be
14 grounds for decertification under this section.

15 (b) Procedure for Decertification. – If the Division determines that a certified
16 North Carolina capital company is not in compliance with any requirement for continuing
17 certification, it shall, by written notice, inform the officers of the company and the board
18 of directors, manager, trustees, or general partners that the company will be decertified in
19 120 days after the date the notice is mailed unless the company corrects the deficiencies
20 to bring itself in compliance with the requirements for certification. At the end of the
21 120-day grace period, if the certified North Carolina capital company is still not in
22 compliance, the Division shall decertify the company and send a notice of decertification
23 to the company and to the Department of Revenue and the Department of Insurance.

24 (c) Effect of Decertification. – If a certified North Carolina capital company is
25 decertified, no further tax credits for an investment in the company are allowed pursuant
26 to G.S. 105-228.10D.

27 **"§ 53A-75. Rules; report.**

28 The Secretary of State may adopt rules to implement this Part. The Secretary of State
29 shall report to the Legislative Research Commission by October 1 of each odd-numbered
30 year and by February 1 of each even-numbered year the number of certified North
31 Carolina capital companies certified under this Part, the date each company was created,
32 the amount and percentage of certified capital invested by each company, and any other
33 information requested by the Legislative Research Commission."

34 Sec. 3. G.S. 53A-37 reads as rewritten:

35 **"§ 53A-37. Definitions.**

36 The following definitions apply in this Article:

37 (1) Approved business venture. – A business that satisfies all of the
38 following conditions as of the time of a certified North Carolina
39 capital company's first investment in the business:

40 a. It is headquartered in this State, it operates primarily in this State
41 or does substantially all of its production in this State, and it
42 employs a majority of its employees in this State.

- 1 b. It has no more than 300 employees and, during its most recent
2 fiscal year, it had gross revenues of no more than seven million
3 dollars (\$7,000,000) on a consolidated basis as determined in
4 accordance with generally accepted accounting principles.
5 c. It is not a subsidiary of another corporation.
6 d. It satisfies the conditions established in G.S. 105-163.013(b)(3)
7 through (6).
8 (2) Approved investment. – The investment of cash by a certified North
9 Carolina capital company in such a manner as to acquire capital in a
10 business that, at the time of the company's first investment in the
11 business, was an approved business venture. The capital acquired
12 may be any debt, equity, or hybrid security, whether secured or
13 unsecured, of any nature, including a debt instrument or security that
14 has the characteristics of debt but provides for conversion into equity
15 or equity participation instruments such as options or warrants.
16 (3) Business. – A corporation, a partnership, an association, a limited
17 liability company, or a sole proprietorship operated for profit.
18 (4) Certified capital. – The cash invested in a certified North Carolina
19 capital company, either in the form of equity or debt capital, during
20 the 365-day period after the company has been initially certified as
21 provided in Part 3 of this Article.
22 (5) Certified North Carolina capital company. – A partnership,
23 corporation, trust, or limited liability company whose primary
24 business activity is the investment of cash in approved business
25 ventures and that is certified by the Secretary of State as provided in
26 Part 3 of this Article.
27 (6) Division. – The Securities Division of the Department of the
28 Secretary of State.
29 ~~(2)~~(7) Equity security. – Common stock, preferred stock, an interest in a
30 partnership, subordinated debt, or a warrant that is convertible into, or
31 entitles the holder to receive upon its exercise, common stock, preferred
32 stock, or an interest in a partnership.
33 (8) Reserved.
34 ~~(3)~~(9) Mezzanine finance. – An investment in the equity securities or
35 subordinated debt of a Qualified North Carolina Business.
36 (10) Person. – An individual, a corporation, a partnership, an association,
37 a trust, a limited liability company, or another legal entity.
38 (11) Qualified distribution. – A distribution or payment to equity owners
39 of a certified North Carolina capital company or to their
40 shareholders, officers, directors, partners, members, managers,
41 employees, or affiliates, in connection with any of the following:

- 1 a. Reasonable costs and expenses of forming, syndicating,
2 managing, and operating the company, including management
3 fees.
4 b. An increase in State or federal taxes, penalties, or interest of the
5 company's equity owners to the extent the increase relates to the
6 ownership, management, or operation of the company.

7 ~~(4)~~(12) Qualified North Carolina Business. – A business whose headquarters
8 and principal business operations are located in North Carolina and
9 which, together with its affiliates on a consolidated basis, had gross
10 income during the immediately preceding fiscal year, determined in
11 accordance with generally accepted accounting principles without
12 taking into account extraordinary items, of less than forty million dollars
13 (\$40,000,000).

14 ~~(5)~~(13) Rural areas. – Any county in North Carolina which does not include
15 within its boundaries a city, as defined by G.S. 160A-1(2), with a
16 population greater than one percent (1%) of the population of North
17 Carolina.

18 ~~(6)~~(14) Security. – A security as defined in G.S. 78A-2(11).

19 ~~(7)~~(15) Subordinated debt. – Indebtedness that is or will be
20 subordinated to other indebtedness of the issuer. Subordinated
21 debt may be convertible into common stock, preferred stock, or
22 an interest in a partnership.

23 ~~(8)~~(16) Traditional Financial Institutions. – ~~financial institutions.~~ – Corporations or
24 associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General
25 Statutes."

26 Sec. 4. Chapter 105 of the General Statutes is amended by adding a new
27 Article to read:

28 **"ARTICLE 8C.**

29 **"PREMIUMS TAX CREDIT FOR INVESTMENTS IN**
30 **NORTH CAROLINA SMALL BUSINESSES.**

31 **"§ 105-228.10A. Purpose.**

32 The purpose of this Article is to stimulate a substantial increase in venture capital
33 investments in North Carolina by providing an incentive for insurance companies to
34 invest in certified North Carolina capital companies.

35 **"§ 105-228.10B. Definitions.**

36 The following definitions apply in this Article:

37 (1) Certified capital. – Defined in G.S. 53A-37.

38 (2) Certified North Carolina capital company. – A certified North
39 Carolina capital company created under Article 3 of Chapter 53A of
40 the General Statutes.

41 (3) Commissioner. – The Commissioner of Insurance.

42 **"§ 105-228.10C. Premiums tax credit for investments.**

1 (a) Credit. – A person who invests certified capital in a certified North Carolina
2 capital company is allowed against the gross premiums tax imposed by G.S. 105-228.5
3 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the
4 taxpayer during the taxable year. To claim the credit allowed by this section, the
5 taxpayer must provide the Commissioner any supporting documentation the
6 Commissioner requires.

7 (b) Limitations. – The taxpayer may not take the entire credit for the taxable year
8 the investment is made, but may take up to ten percent (10%) of the aggregate credit
9 allowed under this section for that taxable year and for each succeeding taxable year until
10 the entire credit has been used. The credit allowed by this section may not exceed the
11 taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all credits
12 allowable except payments of tax by or on behalf of the taxpayer. Subject to the ten
13 percent (10%) limitation, any unused portion of the credit may be carried forward to
14 succeeding taxable years.

15 (c) Transfer of Credit. – A taxpayer may transfer a credit allowed under this
16 section to another taxpayer. The taxpayer must apply for the approval of the
17 Commissioner before transferring the credit. The application shall be in the form
18 prescribed by the Commissioner. The application shall identify the proposed transferor
19 and transferee, state the transferor's tax credit balance before and after the proposed
20 transfer, state the amount of the credit to be transferred and the proposed date of the
21 transfer, and include any other information the Commissioner requires regarding the
22 proposed transfer.

23 The Commissioner shall approve the proposed transfer if the application is accurate
24 and complete and the Commissioner determines that the proposed transfer will not have
25 an adverse effect on either taxpayer or their policyholders or shareholders. Within 60
26 days after receiving an application, the Commissioner shall notify the applicant that the
27 proposed transfer has been approved or disapproved.

28 The Commissioner shall maintain records and monitor all transferred credits to ensure
29 that transfers do not result in multiple parties claiming the same credit.

30 **"§ 105-228.10D. Effect of decertification.**

31 If a certified North Carolina capital company is decertified under G.S. 53A-74, no tax
32 credit or carryforward of a tax credit for an investment in the company is allowed under
33 this Article for a taxpayer's taxable year beginning in the calendar year the decertification
34 occurred or for subsequent taxable years. Decertification of a certified North Carolina
35 capital company does not affect a tax credit allowed under this Article for a taxpayer's
36 taxable year that began before the calendar year in which the decertification occurred.

37 **"§ 105-228.10E. Report by Commissioner.**

38 The Commissioner shall report to the Legislative Research Commission by October 1
39 of each year the total amount of credit allowed under this Article during the preceding
40 fiscal year and the number of taxpayers that claimed a credit under this Article during the
41 preceding fiscal year."

42 Sec. 5. G.S. 58-6-25(a) reads as rewritten:

1 (a) Charge Levied. — There is levied on each insurance company an annual charge
2 to defray the cost to the Department of regulating the insurance industry and other
3 industries and the general administrative expenses of the State incident thereto. As used
4 in this section, the term 'insurance company' means a company that pays the gross
5 premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not
6 include a hospital, medical, or dental service corporation regulated under Articles 65 and
7 66 of this Chapter. The term 'insurance company' does not include a company regulated
8 under Article 67 of this Chapter. The charge levied in this section is in addition to all
9 other fees and taxes. The charge shall be at a percentage rate of the company's premium
10 tax liability for the taxable year. In determining an insurance company's premium tax
11 liability for a taxable year, the credit allowed by G.S. 105-228.10C shall be disregarded
12 and additional taxes imposed by G.S. 105-228.8 shall be disregarded."

13 Sec. 6. The title of Chapter 53A of the General Statutes reads as rewritten:

14 **"CHAPTER 53A.**

15 **"BUSINESS DEVELOPMENT CORPORATIONS AND NORTH**
16 **CAROLINA CAPITAL RESOURCE CORPORATIONS. AND ACCESS TO**
17 **CAPITAL."**

18 Sec. 7. The title of Article 3 of Chapter 53A of the General Statutes reads as
19 rewritten:

20 **"ARTICLE 3.**

21 **"NORTH CAROLINA ENTERPRISE CORPORATIONS. CORPORATIONS AND**
22 **CERTIFIED NORTH CAROLINA CAPITAL COMPANIES."**

23 Sec. 8. G.S. 53A-35 and G.S. 53A-47 are repealed.

24 Sec. 9. G.S. 53A-36 reads as rewritten:

25 **"§ 53A-36. Legislative findings and purpose.**

26 (a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~ North
27 Carolina a serious shortage of mezzanine finance capital and credit available for
28 investment in rural ~~areas~~ areas and other areas in the State. This shortage of mezzanine
29 finance capital and credit is severe throughout ~~the rural areas of~~ the State, has persisted for
30 a number of years, and constitutes a grave threat to the welfare and prosperity of all
31 residents of the State. The lack of access to capital prevents North Carolina businesses
32 from creating jobs that would otherwise enhance the economy of the State and provide
33 livelihoods for North Carolina citizens.

34 (b) The General Assembly finds ~~and declares further~~ that private enterprise and
35 existing federal and State governmental programs have not adequately alleviated the
36 severe shortage of mezzanine finance capital and credit available for investments in ~~rural~~
37 ~~areas in the~~ this State.

38 (c) The General Assembly finds ~~and declares~~ that it is a matter of grave public
39 necessity that North Carolina Enterprise Corporations be authorized to be created and ~~to~~
40 ~~be~~ empowered to alleviate these severe shortages of mezzanine finance capital and credit
41 for investment in rural areas of the State. North Carolina Enterprise Corporations shall
42 help eliminate barriers to rural economic development by providing mezzanine finance
43 capital and credit, and other types of financing as appropriate, to businesses in rural areas

1 that have been unable to obtain sufficient financing through traditional financial
2 institutions.

3 (d) The General Assembly finds that it is a matter of grave public necessity that
4 certified North Carolina capital companies be authorized to be created as venture capital
5 companies whose primary business activity is the investment of cash in small North
6 Carolina business ventures that are in need of capital for survival, expansion, new
7 product development, or similar purposes."

8 Sec. 10. G.S. 53A-38(a) reads as rewritten:

9 "(a) One or more persons, a majority of whom are residents of this State, may, by
10 filing a certificate of incorporation as provided in subsection (b), incorporate a North
11 Carolina Enterprise Corporation under the provisions of this ~~Article-Part.~~"

12 Sec. 11. G.S. 53A-41 reads as rewritten:

13 "**§ 53A-41. Governing law.**

14 Except as otherwise provided in this ~~Article-Part,~~ a North Carolina Enterprise
15 Corporation shall be governed by Chapter 55 of the General Statutes."

16 Sec. 12. G.S. 53A-42 reads as rewritten:

17 "**§ 53A-42. Powers.**

18 A North Carolina Enterprise Corporation created under this ~~Article-Part~~ shall have all
19 the powers conferred on business corporations by Chapter 55 of the General Statutes."

20 Sec. 13. Sections 4 and 5 of this act and G.S. 53A-73, as enacted by Section 2
21 of this act, become effective for taxable years beginning on or after January 1, 1996, and
22 apply to investments made on or after July 1, 1996. The remainder of this act is effective
23 upon ratification. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as
24 enacted by this act, are repealed effective for investments made on or after January 1,
25 1999.