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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 the
3 investment of cash in approved business ventures.
- 4 (2) Its cash, marketable securities, and other liquid assets equal at least two
5 hundred thousand dollars (\$200,000).
- 6 (3) Its officers and its board of directors, partners, trustees, or managers are
7 thoroughly acquainted with the requirements of this Part.
- 8 (4) No insurance company, as defined in Chapter 58 of the General
9 Statutes, doing business in this State is a managing general partner of
10 the capital company or controls the direction of investments of the
11 capital company.

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

- 14 (1) Within three years after the date it was initially certified, at least thirty
15 percent (30%) of the certified capital invested in the company must be
16 placed in approved investments.
- 17 (2) Within five years after the date it was initially certified, at least fifty
18 percent (50%) of the certified capital invested in the company must be
19 placed in approved investments.
- 20 (3) It shall not invest in a single approved business venture an amount that
21 is more than fifteen percent (15%) of the total certified capital under the
22 company's management at the time of the investment.
- 23 (4) No insurance company, as defined in Chapter 58 of the General
24 Statutes, doing business in this State is a managing general partner of
25 the capital company or controls the direction of investments of the
26 capital company.

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

35 **"§ 53A-71. Procedure for initial and continuing certification; reports.**

36 (a) Initial Certification. – In order to be initially certified as a certified North
37 Carolina capital company, a company must file an application with the Department and
38 pay the initial certification fee. The application shall include any information and
39 supporting documents required by the Secretary of State to determine whether the
40 company qualifies for initial certification. Within 60 days after an application is filed, the
41 Department shall determine whether the applicant qualifies for initial certification and
42 shall either issue the certification or shall refuse the certification and notify the applicant

1 in detail of the grounds for the refusal, including suggestions for the removal of those
2 grounds.

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

8 The Department shall conduct an annual review of each certified North Carolina
9 capital company that has not qualified for permanent certification to determine if the
10 company is in compliance with the requirements for initial and continuing certification
11 and to ensure that the company's investments are in compliance with this Part. The
12 review shall be based upon the company's financial statements and other information
13 submitted in accordance with this section.

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

22 The Secretary of State shall charge an applicant a fee of one thousand dollars (\$1,000)
23 for initial certification as a certified North Carolina capital company and a fee of one
24 thousand dollars (\$1,000) for annual review for continuing certification as a certified
25 North Carolina capital company. Fees collected under this section shall be applied to the
26 cost of administering this Part.

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

39 A certified North Carolina capital company that has not qualified for permanent
40 certification shall submit the annual financial statement and report and the midyear
41 update on the due dates specified by the Department. A certified North Carolina capital
42 company that has qualified for permanent certification is no longer required to submit
43 midyear updates but shall continue to submit the annual financial statement and report on

1 the due dates specified by the Department for three years after the company qualifies for
2 permanent certification. Thereafter, no additional financial statements and reports are
3 required under this subsection.

4 **"§ 53A-72. Distributions; maximum interest rate.**

5 (a) Distributions. – A certified North Carolina capital company may make
6 qualified distributions at any time. A certified North Carolina capital company may,
7 without restriction, make distributions and payments to debt holders with respect to debt
8 owed them by the company. A certified North Carolina capital company may make other
9 distributions only after it has qualified for permanent certification.

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

13 **"§ 53A-73. Tax credits.**

14 A person who invests cash in a certified North Carolina capital company is entitled to
15 a tax credit as provided in Article 8C of Chapter 105 of the General Statutes but,
16 notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General
17 Statutes, is not allowed a tax credit under that Division for the investment. In addition,
18 notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General
19 Statutes, a certified North Carolina capital company is not allowed a tax credit under that
20 Division for its investments.

21 **"§ 53A-74. Decertification of certified North Carolina capital company.**

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

24 (b) Procedure for Decertification. – If the Department determines that a certified
25 North Carolina capital company is not in compliance with any requirement for continuing
26 certification, it shall, by written notice, inform the officers of the company and the board
27 of directors, manager, trustees, or general partners that the company will be decertified in
28 120 days after the date the notice is mailed unless the company corrects the deficiencies
29 to bring itself in compliance with the requirements for certification. At the end of the
30 120-day grace period, if the certified North Carolina capital company is still not in
31 compliance, the Department shall decertify the company and send a notice of
32 decertification to the company and to the Department of Revenue and the Department of
33 Insurance.

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

37 **"§ 53A-75. Rules; report.**

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

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

2 **"§ 53A-37. Definitions.**

3 The following definitions apply in this Article:

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

- 1 (10) Person. – An individual, a corporation, a partnership, an association, a
- 2 trust, a limited liability company, or another legal entity.
- 3 (11) Qualified distribution. – A distribution or payment to equity owners of a
- 4 certified North Carolina capital company or to their shareholders,
- 5 officers, directors, partners, members, managers, employees, or
- 6 affiliates, in connection with any of the following:
- 7 a. Reasonable costs and expenses of forming, syndicating,
- 8 managing, and operating the company, including management
- 9 fees.
- 10 b. An increase in State or federal taxes, penalties, or interest of the
- 11 company's equity owners to the extent the increase relates to the
- 12 ownership, management, or operation of the company.
- 13 ~~(4)~~(12) Qualified North Carolina Business. – A business whose headquarters
- 14 and principal business operations are located in North Carolina and
- 15 which, together with its affiliates on a consolidated basis, had gross
- 16 income during the immediately preceding fiscal year, determined in
- 17 accordance with generally accepted accounting principles without
- 18 taking into account extraordinary items, of less than forty million dollars
- 19 (\$40,000,000).
- 20 ~~(5)~~(13) Rural areas. – Any county in North Carolina which does not include
- 21 within its boundaries a city, as defined by G.S. 160A-1(2), with a
- 22 population greater than one percent (1%) of the population of North
- 23 Carolina.
- 24 ~~(6)~~(14) Security. – A security as defined in G.S. 78A-2(11).
- 25 ~~(7)~~(15) Subordinated debt. – Indebtedness that is or will be
- 26 subordinated to other indebtedness of the issuer. Subordinated
- 27 debt may be convertible into common stock, preferred stock, or
- 28 an interest in a partnership.
- 29 ~~(8)~~(16) Traditional Financial Institutions. – ~~financial institutions.~~ – Corporations or
- 30 associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General
- 31 Statutes."

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

34 **"ARTICLE 8C.**

35 **"PREMIUMS TAX CREDIT FOR INVESTMENTS IN**
 36 **NORTH CAROLINA SMALL BUSINESSES.**

37 **"§ 105-228.10A. Purpose.**

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

41 **"§ 105-228.10B. Definitions.**

42 The following definitions apply in this Article:

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

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

4 **"§ 105-228.10C. Premiums tax credit for investments.**

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

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

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

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

32 The Commissioner of Insurance shall maintain records and monitor all transferred
33 credits to ensure that transfers do not result in multiple parties claiming the same credit.
34 The Commissioner shall provide the Secretary complete records of all transferred credits.

35 **"§ 105-228.10D. Effect of decertification.**

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

42 **"§ 105-228.10E. Report by Secretary; repeal.**

1 The Secretary shall certify to the Legislative Research Commission and the Joint
2 Legislative Commission on Governmental Operations by October 1 of each year the total
3 amount of credit taken under this Article during the preceding fiscal year and the number
4 of taxpayers that claimed a credit under this Article during the preceding fiscal year. If
5 the Secretary certifies that the total amount of credit taken under this Article during a
6 fiscal year exceeds five million dollars (\$5,000,000), this Article is repealed effective for
7 investments made on or after the following January 1."

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

9 "(a) Charge Levied. – There is levied on each insurance company an annual charge
10 for the purposes stated in subsection (d) of this section. As used in this section, the term
11 'insurance company' means a company that pays the gross premiums tax levied in G.S.
12 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical,
13 or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term
14 'insurance company' does not include a company regulated under Article 67 of this
15 Chapter. The charge levied in this section is in addition to all other fees and taxes. The
16 charge shall be at a percentage rate of the company's premium tax liability for the taxable
17 year. In determining an insurance company's premium tax liability for a taxable year, the
18 credit allowed by G.S. 105-228.10C shall be disregarded, and additional taxes imposed
19 by G.S. 105-228.8 shall be disregarded."

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

21 **"CHAPTER 53A.**

22 **"BUSINESS DEVELOPMENT CORPORATIONS AND NORTH**
23 **CAROLINA CAPITAL RESOURCE CORPORATIONS. AND ACCESS TO**
24 **CAPITAL."**

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

27 **"ARTICLE 3.**

28 **"NORTH CAROLINA ENTERPRISE CORPORATIONS. CORPORATIONS AND**
29 **CERTIFIED NORTH CAROLINA CAPITAL COMPANIES."**

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

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

32 **"§ 53A-36. Legislative findings and purpose.**

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

41 (b) The General Assembly finds ~~and declares further~~ that private enterprise and
42 existing federal and State governmental programs have not adequately alleviated the

1 severe shortage of mezzanine finance capital and credit available for investments in rural
2 areas in the ~~this~~ State.

3 (c) The General Assembly finds ~~and declares~~ that it is a matter of grave public
4 necessity that North Carolina Enterprise Corporations be authorized to be created and to
5 be empowered to alleviate these severe shortages of mezzanine finance capital and credit
6 for investment in rural areas of the State. North Carolina Enterprise Corporations shall
7 help eliminate barriers to rural economic development by providing mezzanine finance
8 capital and credit, and other types of financing as appropriate, to businesses in rural areas
9 that have been unable to obtain sufficient financing through traditional financial
10 institutions.

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

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

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

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

21 "**§ 53A-41. Governing law.**

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

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

25 "**§ 53A-42. Powers.**

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

28 Sec. 13. Sections 4 and 5 of this act and G.S. 53A-73, as enacted by Section 2
29 of this act, become effective for taxable years beginning on or after January 1, 1997, and
30 apply to investments made on or after that date. The remainder of this act is effective
31 upon ratification. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as
32 enacted by this act, are repealed effective for investments made on or after January 1,
33 2000.