

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 475
Committee Substitute Favorable 5/24/95

Short Title: Small Business Capital & Growth Act.

(Public)

Sponsors:

Referred to:

March 15, 1995

A BILL TO BE ENTITLED

**AN ACT TO CREATE THE NORTH CAROLINA CAPITAL ACCESS AUTHORITY
TO PROVIDE EQUITY AND CREDIT FINANCING TO SMALL AND MEDIUM-
SIZED BUSINESSES TO CREATE JOBS FOR NORTH CAROLINA.**

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

- I. CAPITAL ACCESS AUTHORITY AND FUND**
- II. REVENUES EARMARKED FOR CAPITAL ACCESS FUND**
- III. INVESTMENTS BY STATE TREASURER**
- IV. INSURANCE TAX CREDIT FOR INVESTMENTS**
- V. BONDS FOR INDUSTRIAL FACILITIES**
- VI. CONFORMING CHANGES**
- VII. EFFECTIVE DATES**

PART I.

CAPITAL ACCESS AUTHORITY AND FUND

Section 1. This act is the Small Business Capital and Growth Act of 1995.

Sec. 2. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions", and the remainder of

1 Article 3 of Chapter 53A of the General Statutes is designated Part 2, entitled "North
2 Carolina Enterprise Corporations".

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

5 **"PART 3. THE NORTH CAROLINA CAPITAL ACCESS AUTHORITY.**

6 **"§ 53A-50. Creation of Authority; purpose.**

7 (a) Creation. – The North Carolina Capital Access Authority is created as a body
8 corporate and politic having the powers and jurisdiction as provided under this Part or
9 any other law. The Authority is a State agency created to perform essential governmental
10 and public functions. The Authority shall be located within the Department of
11 Commerce, but shall exercise all of its powers, including the power to employ, direct, and
12 supervise all personnel, independently of the Secretary of Commerce and,
13 notwithstanding any other provision of law, shall be subject to the direction and
14 supervision of the Secretary only with respect to the management functions of
15 coordinating and reporting.

16 (b) Purpose. – The purpose of The North Carolina Capital Access Authority is to
17 promote, stimulate, develop, and advance economic prosperity and stimulate job creation
18 in rural areas, underdeveloped communities, depressed urban commercial areas, and
19 economically distressed areas of North Carolina through mezzanine finance investments
20 and loans to Qualified North Carolina Businesses and through facilitation of development
21 projects in connection with private economic development. To stimulate development
22 broadly across the State, the Authority shall, to the maximum extent feasible consistent
23 with sound business practices, provide financing and credit available to businesses
24 located throughout the State. The Authority shall support nonspeculative, mainstream
25 businesses as provided in this Part.

26 **"§ 53A-51. Governing body of Authority.**

27 (a) Board of Directors. – The Authority shall be governed by a Board of Directors.
28 The Board shall consist of 12 appointed members and eight ex officio members. As the
29 holder of an office, each member of the Board shall take the oath required by Article VI,
30 § 7 of the North Carolina Constitution before assuming the duties of a Board member.
31 The Governor shall designate a chair and a vice-chair of the Board. The chair shall
32 convene the first meeting of the Board.

33 (b) Appointed Members. – Four members shall be appointed by the Governor, one
34 who represents the banking industry, one who represents a North Carolina Enterprise
35 Corporation created pursuant to Part 2 of this Article, one who represents small business
36 interests, and one who represents public interests. Four members shall be appointed by
37 the General Assembly upon the recommendation of the Speaker of the House of
38 Representatives in accordance with G.S. 120-121, one who represents community
39 development corporations, one who represents environmental interests, one who
40 represents medium-sized business interests, and one who represents public interests.
41 Four members shall be appointed by the General Assembly upon the recommendation of
42 the President Pro Tempore of the Senate in accordance with G.S. 120-121, one who owns
43 a minority business as defined in G.S. 143-128, one who represents a public utility, one

1 who represents a nonprofit organization active in infrastructure development under the
2 Community Reinvestment Act, and one who represents public interests.

3 In making appointments to the Board, the Governor and the General Assembly shall
4 give consideration to the geographical representation of the Western region, the Piedmont
5 region, and the Eastern region of the State. In addition, the appointments should reflect
6 the ethnic and gender diversity of the State as nearly as practical. The appointing
7 authority shall make a replacement appointment to serve for the unexpired term in the
8 case of a vacancy. A vacancy in an appointment made by the General Assembly shall be
9 filled in accordance with G.S. 120-122.

10 The initial appointments to the Board shall be for terms beginning on July 1, 1995.
11 Of the initial appointments made by the Governor, by the General Assembly upon the
12 recommendation of the Speaker of the House of Representatives, and by the General
13 Assembly upon the recommendation of the President Pro Tempore of the Senate, two
14 appointments from each group shall be designated to expire on July 1, 1997; the
15 remaining terms shall expire July 1, 1999. Thereafter, all appointments shall be for a
16 term of four years.

17 The Governor may remove any appointed member of the Board for misfeasance,
18 malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Authority who
19 appointed a member of the Board may remove the member for using improper influence
20 in accordance with G.S. 143B-13(c).

21 (c) Ex Officio Members. – The following members shall be ex officio, voting
22 members of the Board:

23 (1) The State Treasurer, or the Treasurer's designee.

24 (2) The Secretary of State, or the Secretary's designee.

25 (3) The Commissioner of Agriculture, or the Commissioner's designee.

26 (4) The Attorney General, or the Attorney General's designee.

27 (5) The Commissioner of Labor, or the Commissioner's designee.

28 (6) The Commissioner of Insurance, or the Commissioner's designee.

29 (7) The Secretary of Commerce, or the Secretary's designee.

30 (8) The President of the North Carolina Community College System, or the
31 President's designee.

32 (d) Organization of the Board. – The Board shall adopt bylaws with respect to the
33 calling of meetings, quorums, voting procedures, the keeping of records, and other
34 organizational and administrative matters as the Board may determine. A quorum shall
35 consist of a majority of the members of the Board. No vacancy in the membership of the
36 Board shall impair the right of a quorum to exercise all rights and to perform all the
37 duties of the Board and the Authority.

38 (e) Compensation of the Board. – No part of the revenues or assets of the
39 Authority shall inure to the benefit of or be distributable to the members of the Board or
40 officers or other private persons. The members of the Board shall receive no salary for
41 their services but shall be entitled to receive per diem and necessary travel and
42 subsistence expenses payable to members of State boards and agencies generally
43 pursuant to G.S. 138-5 and G.S. 138-6, as the case may be.

1 (f) Treasurer. – The Board shall select the Authority's treasurer. The Board shall
2 require a surety bond of the appointee in an amount fixed by the Board, and the premium
3 shall be paid by the Authority as a necessary expense of the Authority.

4 (g) Executive Director and Other Employees. – The Board shall appoint an
5 executive director, whose salary shall be fixed by the Board, to serve at its pleasure. The
6 executive director or a person designated by the executive director shall appoint, employ,
7 dismiss, and, within the limits of available funding, fix the compensation of other
8 employees as considered necessary.

9 (h) Office. – The Board shall establish an office for the transaction of the
10 Authority's business at the place the Board finds advisable or necessary to implement the
11 provisions of this Part.

12 **"§ 53A-52. Capital Access Financing Fund.**

13 The Authority shall establish the Capital Access Financing Fund as a trust fund. The
14 Fund shall consist of loans, gifts, grants, appropriations, investments, and any other funds
15 made available for the Fund. The Authority shall use monies in the Fund to provide
16 mezzanine finance capital, credit, and other types of financing as appropriate for
17 Qualified North Carolina Businesses and to facilitate development projects in connection
18 with private economic development.

19 **"§ 53A-53. Capital Access Financing Program.**

20 (a) Program Established. – The Authority shall establish and implement a Capital
21 Access Financing Program in accordance with this section to create at least 40,000 jobs
22 during its first five years. The purpose of the program is to provide mezzanine finance
23 capital, credit, and other financing to Qualified North Carolina Businesses in rural areas,
24 underdeveloped communities, depressed urban commercial areas, and economically
25 distressed areas of the State. Financing shall be targeted to businesses that will create
26 well-paying jobs for North Carolina citizens.

27 (b) Procedures. – The Authority shall establish a procedure for businesses to apply
28 for financing from the Fund. The application must include information regarding the
29 applicant's experience, credit rating, track record in previous businesses, and any other
30 information required by the Authority. Each application shall also include documentation
31 of the number of jobs to be created as a result of the financing and the expected average
32 wage the jobs will pay. In the case of a loan, the Authority shall require the applicant to
33 provide a certified appraisal of the collateral that will secure the loan. The Authority may
34 require an applicant to sign a letter of intent and make other commitments or contracts
35 before receiving financing from the Fund.

36 (c) Sound Business Practices. – The Authority shall adopt rules and standards to
37 assure that all financing provided from the Fund is consistent with sound business
38 practices, including requirements that all loans be collateralized, that applicants have
39 sound credit ratings and meet experience standards set by the Authority, and that
40 mezzanine finance investments not be speculative. The Authority shall assure that all
41 financing agreements include strong remedies for defaults, including foreclosure on
42 collateral. The Authority shall assure that financing agreements meet standards such that
43 the loans can be sold on the secondary market.

1 (d) Matching. – The Authority shall establish matching requirements for receipt of
2 financing from the Fund. These requirements shall be flexible, tailored to the type, size,
3 and circumstances of the business seeking financing.

4 (e) Minimum Wage Standards. – The Authority shall establish a minimum wage
5 standard that jobs to be created by a business must meet as a condition of receiving
6 financing from the Fund. The standard for the average weekly wage to be paid for the
7 jobs shall include minimum dollar amounts for different types of industries and a
8 requirement that the wage is at least twenty-five percent (25%) above the median weekly
9 wage paid in the county in which the jobs will be located. For the purpose of this
10 subsection, the median wage in a county is the median average wage for all insured
11 industries in the county as computed by the Employment Security Commission for the
12 most recent period for which data are available. The Authority may waive or alter the
13 minimum wage requirement if the area in which the jobs are to be created has an
14 especially severe rate of unemployment or in similar cases involving extreme
15 circumstances.

16 (f) Minimum and Maximum Financing Amount. – The Authority shall provide
17 financing in amounts no less than two hundred fifty thousand dollars (\$250,000) per
18 business. The Authority shall establish maximum financing amounts for different types
19 and sizes of businesses, not to exceed ten million dollars (\$10,000,000) per business. In
20 no case shall the amount of financing for a business exceed twenty-five thousand dollars
21 (\$25,000) per job to be created as a result of the financing.

22 (g) Priority of Investments. – In choosing businesses to finance, the Authority
23 shall give priority to start-up businesses; businesses that engage primarily in
24 manufacturing, processing, warehousing, wholesaling, research and development, or a
25 service-related industry; businesses that will create high-quality jobs; and businesses that
26 cannot obtain sufficient financing through traditional financial institutions. The
27 Authority shall assign a lower priority to real estate related businesses as defined in G.S.
28 105-163.010 and to businesses that engage primarily in providing a professional service
29 as defined in Chapter 55B of the General Statutes, construction or contracting, selling or
30 leasing at retail, providing personal grooming or cosmetics services, or offering any form
31 of entertainment, amusement, recreation, or athletic or fitness activity for which an
32 admission or a membership is charged. The Authority shall not invest in a business
33 engaged as a substantial part of its business in the purchase, sale, or development, or
34 purchasing, selling, or holding for investment of commercial paper, notes, other
35 indebtedness, financial instruments, securities, or real property, or otherwise in making
36 investments. The Authority shall not invest in a business formed for the primary purpose
37 of acquiring all or part of the stock or assets of one or more existing businesses.

38 (h) Technical Assistance. – The Authority shall provide technical assistance and
39 support to businesses to enable them to obtain loan guarantees and other support from
40 federal agencies and other sources.

41 **"§ 53A-54. Powers of the Authority.**

42 (a) The Authority shall have all of the powers necessary to execute the provisions
43 of this Part, which shall include at least the following powers:

- 1 (1) The powers of a corporate body, including the power to sue and be sued
2 and to adopt and use a common seal.
- 3 (2) To own, acquire, finance, rent, lease, dispose of, encumber, mortgage,
4 or manage real or personal property, but not to acquire property by
5 eminent domain.
- 6 (3) To pay all necessary costs and expenses in the formation, organization,
7 administration, and operation of the Authority.
- 8 (4) To apply for, accept, and administer loans and grants of money from
9 any federal agency, from the State or its political subdivisions, or from
10 any other public or private sources available, to expend the money in
11 accordance with the requirements imposed by the lender or donor, and
12 to give any evidences of indebtedness that are required. No
13 indebtedness of any kind incurred or created by the Authority shall
14 constitute an indebtedness of the State or its political subdivisions, and
15 no indebtedness of the Authority shall involve or be secured by the
16 faith, credit, or taxing power of the State or its political subdivisions.
- 17 (5) To form and contract with a licensed small business investment
18 company as defined in the Small Business Investment Act of 1958, 15
19 U.S.C. §§ 661 et seq., to obtain funding and administer loans to
20 Qualified North Carolina Businesses.
- 21 (6) To adopt bylaws or rules implementing the provisions of this Part.
- 22 (7) To indemnify the Authority and its officers, directors, agents,
23 employees, and adjoining property owners, or the general public against
24 loss or liability resulting from any act or omission by or on behalf of the
25 Authority.
- 26 (8) To purchase or finance real or personal property in the manner provided
27 for cities and counties under G.S. 160A-20.
- 28 (9) To recommend that the North Carolina Industrial and Pollution Control
29 Facilities Financing Authority created under Chapter 159D of the
30 General Statutes issue bonds to finance development projects identified
31 by the Authority, as provided in G.S. 53A-55.
- 32 (10) To arrange for the State Treasurer to invest in the equity securities of
33 Qualified North Carolina Businesses pursuant to G.S. 147-69.2(b)(10a).
- 34 (11) With the approval of any unit of local government, to use officers,
35 employees, agents, and facilities of the unit of local government for the
36 purposes and upon the terms as may be mutually agreeable.
- 37 (12) To receive and use appropriations from the State, including an
38 appropriation from the proceeds of State general obligation bonds or
39 notes.

40 (b) To execute the powers provided in subsection (a) of this section, the Board
41 shall determine the policies of the Authority by majority vote of the members of the
42 Board present and voting, a quorum having been established. Once a policy is
43 determined, the Board shall communicate it to the executive director, who shall have the

1 sole and exclusive authority to execute the policy of the Authority. No member of the
2 Board shall have the responsibility or authority to give operational directives to any
3 employee of the Authority other than the executive director.

4 **"§ 53A-55. Facilitating financing of development projects.**

5 (a) Recommendation. – If the Authority determines that a proposed development
6 project is one that would be eligible for financing by the North Carolina Industrial and
7 Pollution Control Facilities Financing Authority created in Chapter 159D of the General
8 Statutes and makes the findings required in this section, the Authority may recommend
9 that the Industrial and Pollution Control Facilities Financing Authority issue bonds to
10 finance the project pursuant to G.S. 159D-6. The Authority shall transmit its
11 recommendation in writing to the chair of the board of commissioners of the Industrial
12 and Pollution Control Facilities Financing Authority. The recommendation shall be
13 accompanied by a request that bonds be issued, a certification of the Authority's findings
14 under this section, and any other information required by the Industrial and Pollution
15 Control Facilities Financing Authority.

16 (b) Findings. – Before recommending that the Industrial and Pollution Control
17 Facilities Financing Authority issue bonds to finance a proposed development project, the
18 Authority shall find that all of the following conditions have been met:

- 19 (1) The financing of the development project is necessary to enable one or
20 more Qualified North Carolina Businesses to create or save, directly or
21 indirectly, jobs in a rural area, an underdeveloped community, a
22 depressed urban commercial area, or an economically distressed area of
23 the State.
- 24 (2) The jobs to be created or saved meet the minimum wage standard
25 established by the Authority under G.S. 53A-53(e).
- 26 (3) The affected business is a type of business to which the Authority has
27 assigned a priority pursuant to G.S. 53A-53(g).
- 28 (4) The number of jobs to be created or saved will be large enough to have
29 a measurable impact on the area immediately surrounding the proposed
30 project and will be commensurate with the size and cost of the proposed
31 project.
- 32 (5) The proposed operator of the proposed development project has
33 demonstrated or can demonstrate the capability to operate the project.
- 34 (6) The financing of the project will not cause or result in the abandonment
35 of an existing industrial or manufacturing facility of the proposed
36 operator or an affiliate elsewhere within the State unless the facility is to
37 be abandoned because of obsolescence, lack of available labor in the
38 area, or site limitations.

39 (c) Local Government Commission Fee. – In reviewing a proposed bond issue
40 under G.S. 159D-8 that has been recommended and requested by the Authority under this
41 section, the Local Government Commission shall waive any fees it would otherwise
42 impose for the review.

43 **"§ 53A-56. Taxation of property of Authority.**

1 Property owned by the Authority is exempt from taxation in accordance with Article
2 V, § 2 of the North Carolina Constitution.

3 **"§ 53A-57. Authority funds.**

4 All Authority funds shall be deposited in one or more banks to be designated by the
5 Board. Funds of the Authority shall be paid out only upon warrants signed by the
6 treasurer or assistant treasurer of the Authority and countersigned by the chair, the acting
7 chair, or the executive director. No warrants shall be drawn or issued disbursing any of
8 the funds of the Authority except for a purpose authorized by this Part and only when the
9 account or expenditure has been audited and approved by the Authority or its executive
10 director.

11 **"§ 53A-58. Cooperation by other State agencies.**

12 All State officers and agencies shall render the services to the Authority within their
13 respective functions as may be requested by the Authority.

14 **"§ 53A-59. Annual and quarterly reports.**

15 The Authority shall, promptly following the close of each fiscal year, submit an
16 annual report of its activities for the preceding year to the Governor, the General
17 Assembly, and the Local Government Commission. Each report shall be accompanied by
18 an audit of its books and accounts. The costs of all audits, whether conducted by the
19 State Auditor's staff or contracted with a private auditing firm, shall be paid from funds
20 of the Authority.

21 The Authority shall submit quarterly reports to the Joint Legislative Commission on
22 Governmental Operations. The reports shall summarize the Authority's activities during
23 the quarter and contain any information about the Authority's activities that is requested
24 by the Commission.

25 **"§ 53A-60. Dissolution.**

26 Whenever the Board determines by resolution that the purposes for which the
27 Authority was formed have been substantially fulfilled and that all obligations incurred
28 by the Authority have been fully paid or satisfied, the Board may declare the Authority to
29 be dissolved. On the effective date of the resolution, the title to all funds and other
30 property owned by the Authority at the time of the dissolution shall vest in the State and
31 possession of the funds and other property shall be delivered to the State.

32 **"§ 53A-61. Tax credit.**

33 A person who invests in the Capital Access Financing Fund or the North Carolina
34 Capital Access Authority is entitled to a tax credit as provided in Article 8C of Chapter
35 105 of the General Statutes."

36 **PART II.**

37 **REVENUES EARMARKED FOR CAPITAL ACCESS FUND**

38 **Sec. 4.** Article 2 of Chapter 105 of the General Statutes is amended by adding
39 a new section to read:

40 **"§ 105-33.2. Transfer to Capital Access Financing Fund.**

41 The Secretary shall, on a monthly basis beginning July 1, 1995, and ending July 1,
42 1998, credit to the Capital Access Financing Fund created in G.S. 53A-52 the net
43 proceeds of the taxes collected under this Article during the previous month."

PART III.
INVESTMENTS BY STATE TREASURER

Sec. 5. G.S. 147-69.2(b) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

- (1) Any of the investments authorized by G.S. 147-69.1(c);
- (2) General obligations of other states of the United States;
- (3) General obligations of cities, counties and special districts in North Carolina;
- (4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or without the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular security;
- (5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North Carolina;
- (6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the three highest by any nationally recognized rating service which rates the particular securities;
- (7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts which provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars (\$100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement Systems;
- (8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, and the Legislative Retirement System (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated or otherwise created or located within or without the United States, provided:

- 1 a. That common stock or preferred stock of such corporation is
2 registered on a national securities exchange as provided in the
3 Federal Securities Exchange Act or quoted through the National
4 Association of Securities Dealers' Automated Quotations
5 (NASDAQ) system;
- 6 b. That such corporation shall have paid a cash dividend on its
7 common stock in each year of the 5-year period next preceding
8 the date of investment and the aggregate net earnings available
9 for dividends on the common stock of such corporation for the
10 whole of such period shall have been at least equal to the amount
11 of such dividends paid;
- 12 c. That in applying the dividend and earnings test under this section
13 to any issuing, assuming, or guaranteeing corporation, where
14 such corporation shall have acquired its property or any
15 substantial part thereof within a five-year period immediately
16 preceding the date of investment by consolidation, merger, or by
17 the purchase of all or a substantial portion of the property of any
18 other corporation or corporations, or shall have acquired the
19 assets of any unincorporated business enterprise by purchase or
20 otherwise, the dividends and net earnings of the several
21 predecessor or constituent corporations or enterprises shall be
22 consolidated and adjusted so as to ascertain whether or not the
23 applicable requirements of this section have been complied with;
- 24 d. That the book value of common and preferred stocks including
25 securities convertible into common stocks shall not exceed fifty
26 ~~per centum~~ percent (50%) of the book value of all invested assets
27 of the Retirement Systems; provided, further:
- 28 1. Not more than one and one-half ~~per centum~~ percent (1
29 1/2%) of the book value of such assets shall be invested in
30 the stock of a single corporation, and provided further;
- 31 2. The total number of shares in a single corporation shall
32 not exceed eight ~~per centum~~ percent (8%) of the issued and
33 outstanding stock of such corporation, and provided
34 further;
- 35 3. As used in this subdivision d. and elsewhere in this
36 section, book value shall mean adjusted cost basis as
37 shown on the records of the State Treasurer.
- 38 e. Up to five ~~per cent~~ percent (5%) of the limits authorized in
39 subdivision d. may be invested in the stocks or shares of a
40 diversified investment company registered under the 'Investment
41 Company Act of 1940' which has total assets of at least fifty
42 million dollars (\$50,000,000).

- 1 f. Individual, common or collective trust funds of banks or trust
2 companies provided that the investment manager has assets
3 under management of at least one hundred million dollars
4 (\$100,000,000).
- 5 g. That investments may be made in securities convertible into
6 common stocks issued by any such company, if such securities
7 bear one of the four highest ratings of at least one nationally
8 recognized rating service and do not bear a rating below the four
9 highest by any nationally recognized rating service which may
10 then rate the particular security.
- 11 (9) Obligations and securities of the North Carolina Enterprise Corporation,
12 or of a limited partnership in which the North Carolina Enterprise
13 Corporation is the only general partner, not to exceed twenty million
14 dollars (\$20,000,000) from all funds.
- 15 (10) A limited partnership interest in a partnership whose primary purpose is
16 to invest in venture capital or corporate buyout transactions, not to
17 exceed thirty million dollars (\$30,000,000) from all funds.
- 18 (10a) Obligations of the North Carolina Capital Access Authority created
19 in Article 3 of Chapter 53A of the General Statutes, obligations of
20 the North Carolina Industrial and Pollution Control Facilities
21 Financing Authority created under Chapter 159D of the General
22 Statutes issued at the request of the North Carolina Capital Access
23 Authority pursuant to G.S. 53A-55 and G.S. 159D-6, or equity
24 securities issued by a Qualified North Carolina Business as defined
25 in G.S. 53A-37. To the extent possible consistent with the State
26 Treasurer's duties, the State Treasurer shall invest at least twenty-
27 five million dollars (\$25,000,000) pursuant to this subdivision each
28 fiscal year until July 1, 2000.
- 29 (11) With respect to assets of the Escheat Fund, obligations of the North
30 Carolina Global TransPark Authority authorized by G.S. 63A-
31 4(a)(22), not to exceed twenty-five million dollars (\$25,000,000),
32 that have a final maturity not later than September 1, 1999. The
33 obligations shall bear interest at the rate set by the State Treasurer.
34 No commitment to purchase obligations may be made pursuant to
35 this subdivision after September 1, 1993, and no obligations may be
36 purchased after September 1, 1994. In the event of a loss to the
37 Escheat Fund by reason of an investment made pursuant to this
38 subdivision, it is the intention of the General Assembly to hold the
39 Escheat Fund harmless from any such loss by appropriating to ~~such~~
40 the Escheat Fund funds equivalent to ~~such~~ the loss.
- 41 (12) With respect to assets of the Escheat Fund, obligations of the North
42 Carolina Industrial and Pollution Control Facilities Financing
43 Authority created under Chapter 159D of the General Statutes issued

1 at the request of the North Carolina Capital Access Authority
2 pursuant to G.S. 53A-55 and G.S. 159D-6. The obligations shall
3 bear interest at the rate set by the State Treasurer and may be
4 subordinated in right of payment to other obligations of the North
5 Carolina Industrial and Pollution Control Facilities Financing
6 Authority. In the event of a loss to the Escheat Fund by reason of an
7 investment made pursuant to this subdivision, it is the intention of
8 the General Assembly to hold the Escheat Fund harmless from any
9 such loss by appropriating to the Escheat Fund funds equivalent to
10 the loss."

PART IV.

INSURANCE TAX CREDIT FOR INVESTMENTS

11 Sec. 6. Article 3 of Chapter 53A of the General Statutes, as amended by this
12 act, is further amended by adding a new Part to read:

"PART 4. 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:

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

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

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

24 (b) Annual Recertification. – In order to be recertified, a certified North Carolina
25 capital company must satisfy the following requirements:

26 (1) Within three years after the date it was initially certified, at least thirty
27 percent (30%) of the total cash invested in the company must be placed
28 in approved investments.

29 (2) Within five years after the date it was initially certified, at least fifty
30 percent (50%) of the total cash invested in the company must be placed
31 in approved investments.

32 (3) It shall not invest in a single qualified business venture an amount that
33 is more than fifteen percent (15%) of the total cash under the company's
34 management at the time of the investment.

35 **"§ 53A-71. Procedure for certification and recertification; 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 Division and pay
38 the initial certification fee set by the Secretary of State. The application shall include any
39 information and supporting documents required by the Secretary of State to determine
40 whether the company qualifies for initial certification. Within 60 days after an
41 application is filed, the Secretary of State shall certify or recertify the company.
42 Within 60 days after an application is filed, the Secretary of State shall certify or recertify the company.
43 Within 60 days after an application is filed, the Secretary of State shall certify or recertify the company.

1 application is filed, the Division shall determine whether the applicant qualifies for initial
2 certification and shall either issue the certification or shall refuse the certification and
3 notify the applicant in detail of the grounds for the refusal, including suggestions for the
4 removal of those grounds.

5 (b) Annual Recertification. – To remain certified as a certified North Carolina
6 capital company, a company must apply annually for recertification and pay the annual
7 recertification fee set by the Secretary of State. The application shall include any
8 information and supporting documents required by the Secretary of State to determine
9 whether the company qualifies for recertification.

10 The Division shall conduct an annual review of each certified North Carolina capital
11 company to determine if the company is in compliance with the requirements for
12 certification and recertification, to advise the company as to the certification status of its
13 approved investments, and to ensure that the company's investments are in compliance
14 with this Part.

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

24 The Secretary of State may charge an applicant a fee for initial certification as a
25 certified North Carolina capital company and a fee for annual recertification as a certified
26 North Carolina capital company. The fees set by the Secretary of State may not exceed
27 the estimated cost to the Division of initial certification or annual recertification, as
28 appropriate, as determined by the Secretary of State.

29 (d) Quarterly Reports. – Each certified North Carolina capital company shall
30 report the following to the Division on a quarterly basis:

31 (1) The name of each person who has invested cash in the certified North
32 Carolina capital company.

33 (2) The amount of each investor's cash investment and the date on which
34 the certified North Carolina capital company received the investment.

35 (3) The amount of cash invested in the certified North Carolina capital
36 company as of the end of the quarter.

37 (4) All approved investments that the certified North Carolina capital
38 company has made.

39 (5) Any other information required by the Secretary of State.

40 (e) Annual Financial Statements. – Each certified North Carolina capital company
41 shall provide the Division within 90 days after the end of its fiscal year an annual audited
42 financial statement that includes an opinion of an independent certified public accountant.
43 The audit shall address the methods of operation and conduct of the business of the

1 company to determine whether the company has complied with this Part and whether the
2 cash invested in the company has been invested as required by this Part.

3 **"§ 53A-72. Tax credit.**

4 A person who invests cash in a certified North Carolina capital company is entitled to
5 a tax credit as provided in Article 8C of Chapter 105 of the General Statutes.

6 **"§ 53A-73. Decertification of certified North Carolina capital company.**

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

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

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

22 **"§ 53A-74. Certification revoked for false application.**

23 If the Division finds that any of the information contained in an application for initial
24 certification was false at the time the application was filed, the Division shall revoke the
25 certification of the certified North Carolina capital company. A taxpayer who has
26 received a credit under Article 8C of Chapter 105 of the General Statutes for an
27 investment in a certified North Carolina capital company forfeits the credit pursuant to
28 G.S. 105-228.10D if the certification of the company is revoked because information in
29 the company's application for initial certification was false.

30 **"§ 53A-75. Rules.**

31 The Secretary of State may adopt rules to implement this Part."

32 Sec. 7. 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 BUSINESSES.**

37 **"§ 105-228.10A. Purpose.**

38 The purpose of this Article is to provide an incentive for insurance companies to
39 invest in certified North Carolina capital companies, in the North Carolina Capital Access
40 Authority, and in obligations of the North Carolina Industrial and Pollution Control
41 Facilities Financing Authority.

42 **"§ 105-228.10B. Definitions.**

43 The following definitions apply in this Article:

- 1 (1) Capital Access Financing Fund. – The Capital Access Financing Fund
2 established under Article 3 of Chapter 53A of the General Statutes.
3 (2) Certified North Carolina capital company. – A certified North Carolina
4 capital company created under Article 3 of Chapter 53A of the General
5 Statutes.
6 (3) North Carolina Capital Access Authority. – The North Carolina Capital
7 Access Authority created in Article 3 of Chapter 53A of the General
8 Statutes.

9 **"§ 105-228.10C. Premiums tax credit for investments.**

10 (a) Credit. – A person who invests cash in a certified North Carolina capital
11 company, who invests in the Capital Access Financing Fund or the North Carolina
12 Capital Access Authority, or who invests in obligations of the North Carolina Industrial
13 and Pollution Control Facilities Financing Authority created under Chapter 159D of the
14 General Statutes issued at the request of the North Carolina Capital Access Authority
15 pursuant to G.S. 53A-55 and G.S. 159D-6, is allowed against the gross premiums tax
16 imposed by G.S. 105-228.5 and G.S. 105-228.8 a credit equal to the amount invested by
17 the taxpayer during the taxable year. The credit for investments made in a certified North
18 Carolina capital company is allowed only for investments made within 365 days after the
19 date the company is initially certified by the Secretary of State under Article 3 of Chapter
20 53A of the General Statutes. To claim the credit allowed by this section, the taxpayer
21 must provide the Commissioner of Insurance any supporting documentation the
22 Commissioner requires.

23 (b) Limitations. – The taxpayer may not take the entire credit for the taxable year
24 the investment is made, but may take up to fifteen percent (15%) of the aggregate credit
25 allowed under this section for that taxable year and for each succeeding taxable year until
26 the entire credit has been used. The credit allowed by this section may not exceed the
27 taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all credits
28 allowable except payments of tax by or on behalf of the taxpayer. Subject to the fifteen
29 percent (15%) limitation, any unused portion of the credit may be carried forward to
30 succeeding taxable years.

31 **"§ 105-228.10D. Effect of decertification or revocation of certification.**

32 (a) Decertification. – If a certified North Carolina capital company is decertified
33 under G.S. 53A-73, no tax credit for an investment in the company is allowed under this
34 Article for a taxpayer's taxable year beginning in the calendar year the decertification
35 occurred or for subsequent taxable years. Decertification of a certified North Carolina
36 capital company does not affect a tax credit allowed under this Article for a taxpayer's
37 taxable year that began before the calendar year in which the decertification occurred.

38 (b) Revocation of Certification. – A taxpayer who has received a credit under this
39 Article for an investment in a certified North Carolina capital company forfeits the credit
40 if the certification of the company is revoked under G.S. 53A-74 because information in
41 the company's application for initial certification was false. A taxpayer who forfeits a
42 credit under this section is liable for all past taxes avoided as a result of the credit plus
43 interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes

1 would have been due if the credit had not been allowed. The past taxes and interest are
2 due 30 days after the date the credit is forfeited; a taxpayer who fails to pay the past taxes
3 and interest by the due date is subject to the penalties provided in G.S. 105-236.

4 **"§ 105-228.10E. Transfer or redemption of investment.**

5 A taxpayer who has received a credit under this Article for an investment forfeits the
6 credit in the following cases:

7 (1) Within one year after the investment was made, the taxpayer transfers
8 any of the securities received in the investment that qualified for the tax
9 credit to another person or entity, other than in a transfer resulting from
10 one of the following:

11 a. The death of the taxpayer.

12 b. A final distribution in liquidation to the owners of a taxpayer that
13 is a corporation or other entity.

14 c. A merger, consolidation, or similar transaction requiring
15 approval by the shareholders of the certified North Carolina
16 capital corporation under applicable State law, to the extent the
17 taxpayer does not receive cash or tangible property in the merger,
18 consolidation, or other similar transaction.

19 (2) Within five years after the investment was made, the Capital Access
20 Financing Fund, North Carolina Capital Access Authority, North
21 Carolina Industrial and Pollution Control Facilities Financing Authority,
22 or North Carolina capital corporation in which the investment was made
23 makes a redemption with respect to the securities received in the
24 investment.

25 In the event the taxpayer transfers fewer than all the securities in a manner that would
26 result in a forfeiture, the amount of the credit that is forfeited is the product obtained by
27 multiplying the aggregate credit attributable to the investment by a fraction whose
28 numerator equals the number of securities transferred and whose denominator equals the
29 number of securities received on account of the investment to which the credit was
30 attributable. In addition, if the redemption amount is less than the amount invested by the
31 taxpayer in the securities to which the redemption is attributable, the amount of the credit
32 that is forfeited is further reduced by multiplying it by a fraction whose numerator equals
33 the redemption amount and whose denominator equals the aggregate amount invested by
34 the taxpayer in the securities involved in the redemption. The term 'redemption amount'
35 means all amounts paid that are treated as a distribution in part or full payment in
36 exchange for securities under section 302(a) of the Code."

37 **PART V.**

38 **BONDS FOR INDUSTRIAL FACILITIES**

39 Sec. 8. G.S. 159D-6 reads as rewritten:

40 **"§ 159D-6. Bonds.**

41 The authority is hereby authorized to provide for the issuance, at one time or from
42 time to time, of bonds of the authority for the purpose of paying all or any part of the cost
43 of any project. The authority may issue revenue bonds, in an amount not to exceed two

1 hundred fifty million dollars (\$250,000,000) outstanding, upon its own initiative or upon
2 the recommendation of the Capital Access Authority created in Article 3 of Chapter 53A
3 of the General Statutes. The principal of, the interest on and any premium payable under
4 the redemption of such bonds shall be payable solely from the funds herein authorized for
5 such payment. The bonds of each issue shall bear interest as may be determined by the
6 Local Government Commission of North Carolina with the approval of the authority and
7 the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor
8 provisions. The bonds of each issue shall be dated, shall mature at such time or times not
9 exceeding 30 years from the date of their issuance, and may be made redeemable before
10 maturity at such price or prices and under such terms and conditions, as may be fixed by
11 the authority prior to the issuance of the bonds. The authority shall determine the form
12 and the manner of execution of the bonds, including any interest coupons to be attached
13 thereto, and shall fix the denomination or denominations of the bonds and the place or
14 places of payment of principal and interest. In case any officer whose signature or a
15 facsimile of whose signature shall appear on any bonds or coupons shall cease to be such
16 officer before the delivery of such bonds, such signature or such facsimile shall
17 nevertheless be valid and sufficient for all purposes the same as if he had remained in
18 office until such delivery. The authority may also provide for the authentication of the
19 bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully
20 registered form, or both, as the authority may determine, and provision may be made for
21 the registration of any coupon bonds as to principal alone and also as to both principal
22 and interest, and for the reconversion into coupon bonds of any bonds registered as to
23 both principal and interest, and for the interchange of registered and coupon bonds.

24 The proceeds of the bonds of each issue shall be used solely for the payment of the
25 cost of the project or projects, or a portion thereof, for which such bonds shall have been
26 issued, and shall be disbursed in such manner and under such restrictions, if any, as the
27 authority may provide in the financing agreement and the security document. If the
28 proceeds of the bonds of any issue, by reason of increased construction costs or error in
29 estimates or otherwise, shall be less than such cost, additional bonds may in like manner
30 be issued to provide the amount of such deficiency. The authority may issue interim
31 receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds
32 when such bonds have been executed and are available for delivery. The authority may
33 also provide for the replacement of any bonds which shall become mutilated or shall be
34 destroyed or lost.

35 Bonds may be issued under the provisions of this Chapter without obtaining, except as
36 otherwise expressly provided in this Chapter, the consent of the State or of any political
37 subdivision or of any agency of either thereof, and without any other proceedings or the
38 happening of any conditions or things other than those proceedings, conditions or things
39 which are specifically required by this Chapter and the provisions of the financing
40 agreement and security document authorizing the issuance of such bonds and securing the
41 same."

42 Sec. 9. The first paragraph of G.S. 159D-7 reads as rewritten:

1 "The authority may issue bonds for a proposed industrial project recommended by the
2 Capital Access Authority pursuant to G.S. 53A-55 without first obtaining the approval of
3 the Secretary of Commerce. No Except for industrial projects recommended by the
4 Capital Access Authority, no bonds may be issued by the authority for any other project
5 unless the project for which the issuance thereof is proposed is first approved by the
6 Secretary of Commerce. The authority shall file an application for approval of its
7 proposed project with the Secretary of Commerce, and shall notify the Local Government
8 Commission of such filing."

9 **PART VI.**

10 **CONFORMING CHANGES**

11 Sec. 10. Article 1 of Chapter 53A of the General Statutes is repealed.

12 Sec. 11. The title of Chapter 53A of the General Statutes reads as rewritten:

13 **"CHAPTER 53A.**

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

17 Sec. 12. The title of Article 3 of Chapter 53A of the General Statutes reads as
18 rewritten:

19 **"ARTICLE 3.**

20 **"NORTH CAROLINA ENTERPRISE CORPORATIONS. CORPORATIONS, THE**
21 **NORTH CAROLINA CAPITAL ACCESS AUTHORITY, AND**
22 **CERTIFIED NORTH CAROLINA CAPITAL COMPANIES."**

23 Sec. 13. G.S. 53A-35 and G.S. 53A-47 are repealed.

24 Sec. 14. 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, underdeveloped communities, depressed urban
29 commercial areas, and economically distressed areas in the State. This shortage of
30 mezzanine finance capital and credit is severe throughout ~~the rural~~ these areas of the State,
31 has persisted for a number of years, and constitutes a grave threat to the welfare and
32 prosperity of all residents of the State. The lack of access to capital prevents North
33 Carolina businesses from creating jobs that would otherwise enhance the economy of the
34 State and provide livelihoods for North Carolina citizens.

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

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

1 capital and credit, and other types of financing as appropriate, to businesses in rural areas
2 that have been unable to obtain sufficient financing through traditional financial
3 institutions.

4 (d) The General Assembly finds that it is a matter of grave public necessity that
5 the North Carolina Capital Access Authority be created and empowered to alleviate these
6 severe shortages of mezzanine finance capital and credit for investment in rural areas,
7 underdeveloped communities, depressed urban commercial areas, and economically
8 distressed areas of the State. The Authority shall help eliminate barriers to economic
9 development by providing mezzanine finance capital and credit, and other types of
10 financing as appropriate, to small and medium-sized businesses that may have been
11 unable to obtain sufficient financing through traditional financial institutions. The
12 Authority shall also eliminate barriers to economic development by facilitating the
13 funding of development projects in connection with private economic development.

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

19 Sec. 15. G.S. 53A-37 reads as rewritten:

20 "**§ 53A-37. Definitions.**

21 The following definitions apply in this Article:

- 22 (1) Approved investment. – The investment of cash by a certified North
23 Carolina capital company in such a manner as to acquire capital in a
24 business that, at the time of the company's first investment in the
25 business, was a qualified business venture and was not a subsidiary
26 of another corporation. The capital acquired may be any debt,
27 equity, or hybrid security, whether secured or unsecured, of any
28 nature, including a debt instrument or security that has the
29 characteristics of debt but provides for conversion into equity or
30 equity participation instruments such as options or warrants.
- 31 (2) Authority. – The North Carolina Capital Access Authority created in
32 Part 3 of this Article.
- 33 (3) Business. – A corporation, partnership, association, or sole
34 proprietorship operated for profit.
- 35 (4) Certified North Carolina capital company. – A partnership,
36 corporation, trust, or limited liability company whose primary
37 business activity is the investment of cash in qualified business
38 ventures and that is certified by the Secretary of State as provided in
39 Part 4 of this Article.
- 40 (5) Depressed urban commercial area. – A commercial or industrial area
41 of a city in which blight exists in the form of dilapidated,
42 deteriorated, poorly ventilated, obsolete, overcrowded, unsanitary, or
43 unsafe buildings; inadequate and unsafe streets; inadequate lots; or

1 other conditions detrimental to the sound growth of the community,
2 which tend to depress the value of neighboring properties, impair the
3 tax base of the community, and inhibit private efforts to rehabilitate
4 or improve other structures in the area.

5 (6) Development project. – A project as defined in G.S. 159D-3.

6 (7) Distressed area. – A county that is designated one of the most
7 economically distressed counties of the State under G.S. 143B-437A
8 or a census tract that has more than fifteen percent (15%) of its
9 population below the poverty line according to the latest federal
10 decennial census.

11 (8) Division. – The Securities Division of the Department of the
12 Secretary of State.

13 (2)(9) Equity security. – Common stock, preferred stock, an interest in a
14 partnership, subordinated debt, or a warrant that is convertible into, or
15 entitles the holder to receive upon its exercise, common stock, preferred
16 stock, or an interest in a partnership.

17 (10) Reserved.

18 (3)(11) Mezzanine finance. – An investment in the equity securities or
19 subordinated debt of a Qualified North Carolina Business.

20 (12) Person. – An individual, a corporation, a partnership, an association,
21 a trust, or another legal entity.

22 (13) Qualified business venture. – Defined in G.S. 105-163.010.

23 (4)(14) Qualified North Carolina Business. – A business whose headquarters
24 and principal business operations are located in North Carolina and
25 which, together with its affiliates on a consolidated basis, had gross
26 income during the immediately preceding fiscal year, determined in
27 accordance with generally accepted accounting principles without
28 taking into account extraordinary items, of less than forty million dollars
29 (\$40,000,000).

30 (5)(15) Rural areas. – Any county in North Carolina which does not include
31 within its boundaries a city, as defined by G.S. 160A-1(2), with a
32 population greater than one percent (1%) of the population of North
33 Carolina.

34 (6)(16) Security. – A security as defined in G.S. 78A-2(11).

35 (7)(17) Subordinated debt. – Indebtedness that is or will be
36 subordinated to other indebtedness of the issuer. Subordinated
37 debt may be convertible into common stock, preferred stock, or
38 an interest in a partnership.

39 (8)(18) ~~Traditional Financial Institutions.~~ financial institutions. – Corporations or
40 associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General
41 Statutes."

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

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

4 Sec. 17. G.S. 53A-41 reads as rewritten:

5 "**§ 53A-41. Governing law.**

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

8 Sec. 18. G.S. 53A-42 reads as rewritten:

9 "**§ 53A-42. Powers.**

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

12 Sec. 19. G.S. 105-259(a) reads as rewritten:

13 "(a) Definitions. – The following definitions apply in this section:

14 (1) Employee or officer. – The term includes a former employee, a former
15 officer, and a current or former member of a State board or commission.

16 (2) Tax information. – Any information from any source concerning the
17 liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term
18 includes the following:

19 a. Information contained on a tax return, a tax report, or an
20 application for a license for which a tax is imposed.

21 b. Information obtained through an audit of a taxpayer or by
22 correspondence with a taxpayer.

23 c. Information on whether a taxpayer has filed a tax return or a tax
24 report.

25 d. A list or other compilation of the names, addresses, social
26 security numbers, or similar information concerning taxpayers.

27 e. Information supplied on or with an application for registration or
28 renewal of registration as a qualified business venture or a
29 qualified grantee business under Division V of Article 4 of this
30 Chapter.

31 f. Information supplied on or with an application for initial
32 certification or recertification as a certified North Carolina
33 capital company under Article 3 of Chapter 53A of the General
34 Statutes.

35 The term does not include (i) statistics classified so that information
36 about specific taxpayers cannot be identified or (ii) information
37 submitted to the Business License Information Office of the Department
38 of Secretary of State on a master application form for various business
39 licenses."

40 **PART VII.**
41 **EFFECTIVE DATES**

1 Sec. 20. Sections 7 and 19 of this act are effective for taxable years beginning
2 on or after January 1, 1995. The remainder of this act becomes effective July 1, 1995.
3 Section 4 of this act expires July 1, 1998.