

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 995

Short Title: Venture Capital Investment Incentive.

(Public)

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Sponsors: Representatives Wilkins, Robinson; Black, Bowie, J. Brown, Cansler, Church, Crawford, Culpepper, Eddins, Hiatt, Hill, Hurley, Justus, Lemmond, Linney, Locke, McMahan, Mercer, K. Miller, Miner, Mitchell, Owens, Pate, Pulley, Rayfield, Redwine, Rogers, Sharpe, Sherrill, Wainwright, Watson, and G. Wilson.

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Referred to: Business & Labor, if favorable, Finance.

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April 26, 1995

A BILL TO BE ENTITLED

AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

The General Assembly of North Carolina enacts:

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

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

**"PART 3. CERTIFIED NORTH CAROLINA CAPITAL COMPANIES.**

**"§ 53A-70. Requirements for certification of a certified North Carolina capital company.**

(a) Initial Certification. – In order to be initially certified as a certified North 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.**

41       A certified North Carolina capital company may make qualified distributions at any  
42 time. A certified North Carolina capital company may, without restriction, make  
43 distributions and payments to debt holders with respect to debt owed them by the

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

3 **"§ 53A-73. Tax credits.**

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 Notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General  
7 Statutes, a certified North Carolina capital company is not allowed a tax credit under that  
8 Division for its investments.

9 **"§ 53A-74. Decertification of certified North Carolina capital company.**

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

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

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

24 **"§ 53A-75. Rules; report.**

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

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

32 **"§ 53A-37. Definitions.**

33 The following definitions apply in this Article:

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

37 a. It is headquartered in this State, it operates primarily in this State  
38 or does substantially all of its production in this State, and it  
39 employs a majority of its employees in this State.

40 b. It has no more than 300 employees and, during its most recent  
41 fiscal year, it had gross revenues of no more than seven million  
42 dollars (\$7,000,000) on a consolidated basis as determined in  
43 accordance with generally accepted accounting principles.

- 1           c.     It is not a subsidiary of another corporation.
- 2           d.     It satisfies the conditions established in G.S. 105-163.013(b)(3)  
3                 through (6).
- 4       (2)     Approved investment. – The investment of cash by a certified North  
5                 Carolina capital company in such a manner as to acquire capital in a  
6                 business that, at the time of the company's first investment in the  
7                 business, was an approved business venture. The capital acquired  
8                 may be any debt, equity, or hybrid security, whether secured or  
9                 unsecured, of any nature, including a debt instrument or security that  
10                has the characteristics of debt but provides for conversion into equity  
11                or equity participation instruments such as options or warrants.
- 12       (3)     Business. – A corporation, a partnership, an association, a limited  
13                 liability company, or a sole proprietorship operated for profit.
- 14       (4)     Certified capital. – The cash invested in a certified North Carolina  
15                 capital company, either in the form of equity or debt capital, during  
16                 the 365-day period after the company has been initially certified as  
17                 provided in Part 3 of this Article.
- 18       (5)     Certified North Carolina capital company. – A partnership,  
19                 corporation, trust, or limited liability company whose primary  
20                 business activity is the investment of cash in approved business  
21                 ventures and that is certified by the Secretary of State as provided in  
22                 Part 3 of this Article.
- 23       (6)     Division. – The Securities Division of the Department of the  
24                 Secretary of State.
- 25       ~~(2)~~(7) Equity security. – Common stock, preferred stock, an interest in a  
26                 partnership, subordinated debt, or a warrant that is convertible into, or  
27                 entitles the holder to receive upon its exercise, common stock, preferred  
28                 stock, or an interest in a partnership.
- 29       (8)     Reserved.
- 30       ~~(3)~~(9) Mezzanine finance. – An investment in the equity securities or  
31                 subordinated debt of a Qualified North Carolina Business.
- 32       (10)    Person. – An individual, a corporation, a partnership, an association,  
33                 a trust, a limited liability company, or another legal entity.
- 34       (11)    Qualified distribution. – A distribution or payment to equity owners  
35                 of a certified North Carolina capital company or to their  
36                 shareholders, officers, directors, partners, members, managers,  
37                 employees, or affiliates, in connection with any of the following:
- 38           a.     Reasonable costs and expenses of forming, syndicating,  
39                 managing, and operating the company, including management  
40                 fees.
- 41           b.     An increase in State or federal taxes, penalties, or interest of the  
42                 company's equity owners to the extent the increase relates to the  
43                 ownership, management, or operation of the company.

1           (4)(12)Qualified North Carolina Business. – A business whose headquarters  
2           and principal business operations are located in North Carolina and  
3           which, together with its affiliates on a consolidated basis, had gross  
4           income during the immediately preceding fiscal year, determined in  
5           accordance with generally accepted accounting principles without  
6           taking into account extraordinary items, of less than forty million dollars  
7           (\$40,000,000).

8           (5)(13)Rural areas. – Any county in North Carolina which does not include  
9           within its boundaries a city, as defined by G.S. 160A-1(2), with a  
10          population greater than one percent (1%) of the population of North  
11          Carolina.

12          (6)(14)Security. – A security as defined in G.S. 78A-2(11).

13               (7)(15) Subordinated debt. – Indebtedness that is or will be  
14               subordinated to other indebtedness of the issuer. Subordinated  
15               debt may be convertible into common stock, preferred stock, or  
16               an interest in a partnership.

17          (8)(16)Traditional ~~Financial Institutions~~–financial institutions. – Corporations or  
18          associations chartered under ~~Chapters~~–Chapter 53 or 54B of the General  
19          Statutes."

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

22                               **"ARTICLE 8C.**

23                               **"PREMIUMS TAX CREDIT FOR INVESTMENTS IN**  
24                               **NORTH CAROLINA SMALL BUSINESSES.**

25          **"§ 105-228.10A. Purpose.**

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

29          **"§ 105-228.10B. Definitions.**

30          The following definitions apply in this Article:

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

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

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

36          **"§ 105-228.10C. Premiums tax credit for investments.**

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

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

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

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

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

24 **"§ 105-228.10D. Effect of decertification.**

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

31 **"§ 105-228.10E. Report by Commissioner.**

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

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

37       "(a) Charge Levied. – There is levied on each insurance company an annual charge  
38 to defray the cost to the Department of regulating the insurance industry and other  
39 industries and the general administrative expenses of the State incident thereto. As used  
40 in this section, the term 'insurance company' means a company that pays the gross  
41 premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not  
42 include a hospital, medical, or dental service corporation regulated under Articles 65 and  
43 66 of this Chapter. The term 'insurance company' does not include a company regulated

1 under Article 67 of this Chapter. The charge levied in this section is in addition to all  
2 other fees and taxes. The charge shall be at a percentage rate of the company's premium  
3 tax liability for the taxable year. In determining an insurance company's premium tax  
4 liability for a taxable year, the credit allowed by G.S. 105-228.10C shall be disregarded  
5 and additional taxes imposed by G.S. 105-228.8 shall be disregarded."

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

7 **"CHAPTER 53A.**

8 **"BUSINESS DEVELOPMENT CORPORATIONS AND NORTH**  
9 **CAROLINA CAPITAL RESOURCE CORPORATIONS. AND ACCESS TO**  
10 **CAPITAL."**

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

13 **"ARTICLE 3.**

14 **"NORTH CAROLINA ENTERPRISE CORPORATIONS. CORPORATIONS AND**  
15 **CERTIFIED NORTH CAROLINA CAPITAL COMPANIES."**

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

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

18 **"§ 53A-36. Legislative findings and purpose.**

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

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

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

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



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

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

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

6 **"§ 53A-41. Governing law.**

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

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

10 **"§ 53A-42. Powers.**

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

13           Sec. 13. This act is effective for taxable years beginning on or after January 1,  
14 1995. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted by  
15 this act, are repealed effective for investments made on or after January 1, 1999.