

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 882  
HOUSE BILL 2227

AN ACT TO AUTHORIZE THE CREATION OF NORTH CAROLINA  
ENTERPRISE CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53A of the General Statutes is amended by adding at the end a new Article to read:

"Article 3.

"North Carolina Enterprise Corporations.

"§ 53A-35. **Short Title.**—This Article shall be known and may be cited as the North Carolina Enterprise Corporation Act.

"§ 53A-36. **Legislative findings and purpose.**—(a) The General Assembly finds and declares that there exists in the State of North Carolina a serious shortage of mezzanine finance capital and credit available for investment in rural areas in the State. This shortage of mezzanine finance capital and credit is severe throughout the rural areas of the State, has persisted for a number of years, and constitutes a grave threat to the welfare and prosperity of all residents of the State.

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

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

"§ 53A-37. **Definitions.**—The following definitions apply in this Article:

(1) **Business.** A corporation, partnership, association, or sole proprietorship operated for profit.

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

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

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

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

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

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

(8) **Traditional Financial Institutions.** Corporations or associations chartered under Chapters 53 or 54B of the General Statutes.

**"§ 53A-38. Incorporation authorized.**—(a) One or more persons, a majority of whom are residents of this State, may, by filing a certificate of incorporation as provided in subsection (b), incorporate a North Carolina Enterprise Corporation under the provisions of this Article.

(b) Persons who wish to associate themselves for the purpose of establishing a North Carolina Enterprise Corporation shall file a certificate of incorporation with the Secretary of State. The certificate shall be in accordance with G.S. 55-7.

**"§ 53A-39. Purpose.**—The purpose of a North Carolina Enterprise Corporation shall be to promote, stimulate, develop, and advance economic prosperity and stimulate job creation in North Carolina's rural areas primarily through mezzanine finance investments in Qualified North Carolina Businesses. To stimulate development broadly across the State, a North Carolina Enterprise Corporation, to the maximum extent feasible consistent with sound business practices, will make mezzanine financing and other types of financing available to small businesses and to businesses located throughout all the rural areas of North Carolina.

**"§ 53A-40. Corporate name.**—The name of the corporation shall include the words 'North Carolina Enterprise Corporation'.

**"§ 53A-41. Governing law.**—Except as otherwise provided in this act, a North Carolina Enterprise Corporation shall be governed by Chapter 55 of the General Statutes.

**"§ 53A-42. Powers.**—A North Carolina Enterprise Corporation created under this Article shall have all the powers conferred on business corporations by Chapter 55 of the General Statutes.

**"§ 53A-43. Primary investments.**—The primary investments of a North Carolina Enterprise Corporation shall be in Qualified North Carolina Businesses that have significant potential to create jobs and diversify and stabilize the economy of rural areas of this State.

**"§ 53A-44. Prohibited investments.**—Investments by a North Carolina Enterprise Corporation shall not be made in any business unless the business can demonstrate to

the satisfaction of the North Carolina Enterprise Corporation that the business cannot obtain sufficient financing through traditional financial institutions.

**"§ 53A-45. Board of directors.**—The business and affairs of a North Carolina Enterprise Corporation shall be managed and conducted by a board of directors and by such officers and agents as the corporation by its bylaws shall authorize. The initial board of directors shall be those listed in the Articles of Incorporation. At the initial shareholders meeting, and thereafter annually, the voting common stock shareholders shall elect a board of directors comprised of not less than thirteen members in accordance with the following conditions:

(1) Not less than five (5) members who are employed by the North Carolina banks that invest in the common stock of the North Carolina Enterprise Corporation;

(2) Not less than five (5) members who are representatives of North Carolina savings and loans, insurance companies, utility companies, endowment funds, public investors, private businesses, private individuals, or others that invest in the common stock of the North Carolina Enterprise Corporation;

(3) Not less than two (2) members who are the representatives of appropriate public interests, which persons shall not be employed by any bank, entity, or person that owns common stock of the North Carolina Enterprise Corporation;

(4) One member who is the President or the Chief Executive Officer of the North Carolina Enterprise Corporation.

**"§ 53A-46. Tax credit.**—A person or corporation that invests in the equity securities of a North Carolina Enterprise Corporation may be entitled to a tax credit as provided in G.S. 105-163.010 through G.S. 105-163.014.

**"§ 53A-47. Charter void unless business begun; Article void unless corporation organized.**—If a corporation organized pursuant to this Article fails to begin business within three years after the effective date of its charter then its charter is void. If, at the expiration of three years after July 1, 1988, no corporation has been organized pursuant to this Article, then on that date this Article shall expire."

Sec. 2. G.S. 105-163.010 is amended by adding after subdivision (6) a new subdivision to read:

"(6a) North Carolina Enterprise Corporation.—A corporation established in accordance with Article 3 of Chapter 53A of the General Statutes."

Sec. 2.1. The title of Division V of Article 4 of Chapter 105 of the General Statutes reads as rewritten: "DIVISION V. ~~INCOME~~—TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS."

Sec. 3. G.S. 105-163.011(a) and (b) read as rewritten:

**"§ 105-163.011. ~~Income tax credit~~ Tax credits allowed.**—(a) Corporations. Subject to the limitations contained in G.S. 105-163.012, a corporation that invests in the equity securities of a North Carolina Capital Resource Corporation, a North Carolina Enterprise Corporation, or a qualified investment organization is allowed as a credit against the tax imposed by Division I of this Article or the tax imposed by G.S. 105-116, 105-120.2, and 105-122 for the taxable year an amount equal to twenty-five percent (25%) of the amount invested or seven hundred fifty thousand dollars (\$750,000), whichever is less. The credit may not be taken for the year in which the

investment is made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the investment was made.

(b) Individuals. Subject to the limitations contained in G.S. 105-163.012, an individual who invests in the equity securities or subordinated debt of (i) a North Carolina Capital Resource Corporation, (ii) a qualified investment organization, (iii) a qualified business venture, ~~or~~ (iv) a qualified grantee business, or (v) a North Carolina Enterprise Corporation is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested or one hundred thousand dollars (\$100,000), whichever is less. The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the investment was made."

Sec. 3.1. G.S. 105-163.011(c) reads as rewritten:

"(c) Application.—To be eligible for the ~~income~~-tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the investment was made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require."

Sec. 4. G.S. 105-163.012(b)(1) reads as rewritten:

"(1) A total of six million dollars (\$6,000,000) in tax credits for investments in North Carolina Enterprise Corporations or North Carolina Capital Resource Corporations shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer."

Sec. 4.1. G.S. 105-163.012(a) reads as rewritten:

"(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of tax imposed by Division I or II of this Article or by Article 3 of this Chapter, as appropriate, for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years."

Sec. 4.2. G.S. 105-120.2 is amended by adding a new subsection (f) at the end to read:

"(f) In determining the total tax payable by any holding company under this section, there shall be allowed as a credit on such tax the amount of the credit authorized under Division V of Article 4 of this Chapter."

Sec. 4.3. G.S. 105-122 is amended by adding a new paragraph at the end of subsection (d) to read:

"In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter."

Sec. 4.4. G.S. 105-116 is amended by adding at the end of subsection (c) a new paragraph to read:

"In determining the total tax payable by any company under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter."

Sec. 5. G.S. 147-69.1(c) is amended by adding a new subdivision to read:

"(6) Obligations or securities of The North Carolina Enterprise Corporation; provided that the investment may not exceed twenty million dollars (\$20,000,000) and that the investment may be made solely from the General Fund and the Highway Fund."

Sec. 6. All actions and proceedings heretofore taken by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to the Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes of North Carolina, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated, and confirmed.

Sec. 7. Sections 2, 2.1, 3, 3.1, 4, 4.1, 4.2, 4.3, and 4.4 of this act are effective for taxable years beginning on or after January 1, 1988. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1988.