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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 53A-40. Corporate name.

The name of the corporation shall include the words "North Carolina Enterprise Corporation". (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 53A-41. Governing law.

Except as otherwise provided in this Article, a North Carolina Enterprise Corporation shall be governed by Chapter 55 of the General Statutes. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)

§ 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 (13) 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. (1987, Reg. Sess., 1988), c. 882, s. 1.)

§ 53A-46: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 8.

§ 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. (1987 (Reg. Sess., 1988), c. 882, s. 1.)