

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 422
Committee Substitute Favorable 5/1/95

Short Title: N.C. Enterprise Corporations/AB.

(Public)

Sponsors:

Referred to:

March 9, 1995

A BILL TO BE ENTITLED

1 AN ACT TO PERMIT A NORTH CAROLINA ENTERPRISE CORPORATION TO BE
2 ORGANIZED AS EITHER A FOR-PROFIT OR NONPROFIT CORPORATION,
3 TO CORRECT CERTAIN DEFICIENCIES IN THE REQUIRED COMPOSITION
4 OF NORTH CAROLINA ENTERPRISE CORPORATIONS BOARDS OF
5 DIRECTORS, AND TO MAKE CONFORMING CHANGES IN THE NORTH
6 CAROLINA ENTERPRISE CORPORATION ACT.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 53A-38(b) reads as rewritten:

10 "(b) Persons who wish to associate themselves for the purpose of establishing a
11 North Carolina Enterprise Corporation shall file a certificate of incorporation with the
12 Secretary of State. The certificate shall be in accordance with ~~G.S. 55-7.~~ either G.S. 55-2-
13 02 or G.S. 55A-2-02. An existing corporation may become a North Carolina Enterprise
14 Corporation by filing amended articles of incorporation with the Secretary of State's
15 office in accordance with either Article 10 of Chapter 55 or 55A of the General Statutes."

16 Sec. 2. G.S. 53A-40 is repealed.

17 Sec. 3. G.S. 53A-41 reads as rewritten:

18 "§ 53A-41. Governing law.

1 Except as otherwise provided in this Article, a North Carolina Enterprise Corporation
2 shall be governed by ~~Chapter 55~~ the applicable Chapter of the General Statutes. ~~Statutes~~
3 under which the corporation is incorporated."

4 Sec. 4. G.S. 53A-42 reads as rewritten:

5 "**§ 53A-42. Powers.**

6 A North Carolina Enterprise Corporation created under this Article shall have all the
7 powers conferred on a business corporations by corporation if it was incorporated under
8 Chapter 55 of the General Statutes. ~~Statutes~~ or a non-profit corporation if it was
9 incorporated under Chapter 55A of the General Statutes."

10 Sec. 5. G.S. 53A-44 reads as rewritten:

11 "**§ 53A-44. Prohibited investments.**

12 ~~Investments by a~~ A North Carolina Enterprise Corporation shall not ~~be made~~ invest in
13 any business unless the business can demonstrate to the satisfaction of the North Carolina
14 Enterprise Corporation that the business cannot obtain sufficient financing through
15 traditional financial institutions. A North Carolina Enterprise Corporation shall not
16 invest in a business in whose operation one of the Enterprise Corporation's investors
17 participates, as defined in G.S. 105-163.014(a)."

18 Sec. 6. G.S. 53A-45 reads as rewritten:

19 "**§ 53A-45. Board of directors.**

20 (a) The business and affairs of a North Carolina Enterprise Corporation shall be
21 managed and conducted by a board of directors and by ~~such any~~ officers and agents as the
22 corporation ~~by its bylaws shall authorize.~~ authorizes in its bylaws. The initial board of
23 directors shall be those listed in the Articles of Incorporation.

24 (b) For a corporation organized under Chapter 55 of the General Statutes, ~~At at~~ the
25 initial shareholders meeting, and thereafter annually, the voting common stock
26 shareholders shall elect a board of directors comprised of not less than thirteen ~~members~~
27 in accordance with the following conditions: members.

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

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

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

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

1 (c) For a corporation organized under Chapter 55A of the General Statutes, the
2 board of directors shall be appointed in accordance with the corporation's bylaws but
3 shall be comprised of not less than 13 members."

4 Sec. 7. G.S. 53A-46 reads as rewritten:

5 "**§ 53A-46. Tax credit.**

6 A person or corporation that invests in the equity securities of a North Carolina
7 Enterprise Corporation or in the equity securities of a limited partnership in which a
8 North Carolina Enterprise Corporation is the only general ~~partner~~-partner, or makes a
9 contribution to a North Carolina Enterprise Corporation under Chapter 55A of the
10 General Statutes, is entitled to a tax credit as provided in G.S. 105-163.010 through G.S.
11 105-163.014."

12 Sec. 8. G.S. 105-130.9(4) reads as rewritten:

13 "(4) ~~That portion~~The amount of a contribution that is claimed as a for which
14 the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 or
15 Division V of this Article shall not be eligible for a deduction pursuant to
16 under this section. The amount of the credit claimed with respect to the
17 contribution is not, however, required to be added to income under G.S.
18 105-130.5(a)(10)."

19 Sec. 9. G.S. 105-134.6(c)(5) reads as rewritten:

20 "(5) To prevent a double benefit from a tax credit, the following additions
21 shall be made:

22 a. The fair market value, up to a maximum of one hundred
23 thousand dollars (\$100,000), of the donated property interest for
24 which the taxpayer claims a credit for the taxable year under G.S.
25 105-151.12 and the 105-151.12.

26 b. The market price of the gleaned crop for which the taxpayer
27 claims a credit for the taxable year under G.S. 105-151.14.

28 c. The amount of a contribution to a nonprofit North Carolina
29 Enterprise Corporation deducted by the taxpayer under the Code
30 and for which the taxpayer was allowed a credit under Division
31 V of this Article."

32 Sec. 10. G.S. 105-163.011(a) reads as rewritten:

33 "(a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a
34 corporation that purchases the equity securities of a North Carolina Enterprise
35 Corporation directly from ~~the~~an Enterprise Corporation organized under Chapter 55 of
36 the General Statutes is allowed as a credit for the taxable year an amount equal to twenty-
37 five percent (25%) of the amount invested. Subject to the limitations contained in G.S.
38 105-163.012, a corporation that makes a contribution directly to a North Carolina
39 Enterprise Corporation organized under Chapter 55A of the General Statutes is allowed
40 as a credit for the taxable year an amount equal to twenty-five percent (25%) of the
41 amount contributed. For purposes of this Article, such a contribution is considered an
42 investment. The aggregate amount of credit allowed a corporation for one or more
43 investments in a single taxable year under this Division, whether directly or indirectly as

1 owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars
2 (\$750,000). The credit is allowed against one or more of the following taxes:

- 3 (1) The income tax imposed by Division I of this Article.
- 4 (2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.
- 5 (3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-
6 228.8.

7 The credit may not be taken for the year in which the investment is made but shall be
8 taken for the taxable year beginning during the calendar year in which the application for
9 the credit becomes effective as provided in subsection (c) of this section. This
10 subsection does not apply to a corporation that is also a pass-through entity."

11 Sec. 11. G.S. 105-163.011(b) reads as rewritten:

12 "(b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
13 individual who purchases the equity securities or subordinated debt of (i) a qualified
14 business venture, (ii) a qualified grantee business, or (iii) a North Carolina Enterprise
15 Corporation organized under Chapter 55 of the General Statutes directly from that entity
16 is allowed as a credit against the tax imposed by Division II of this Article for the taxable
17 year an amount equal to twenty-five percent (25%) of the amount invested. Subject to
18 the limitations contained in G.S. 105-163.012, an individual who makes a contribution
19 directly to a North Carolina Enterprise Corporation organized under Chapter 55A of the
20 General Statutes is allowed as a credit against the tax imposed by Division II of this
21 Article for the taxable year an amount equal to twenty-five percent (25%) of the amount
22 contributed. For purposes of this Article, such a contribution is considered an
23 investment. The aggregate amount of credit allowed an individual for one or more
24 investments in a single taxable year under this Division, whether directly or indirectly as
25 owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000). The
26 credit may not be taken for the year in which the investment is made but shall be taken
27 for the taxable year beginning during the calendar year in which the application for the
28 credit becomes effective as provided in subsection (c) of this section."

29 Sec. 12. G.S. 105-163.014(a) reads as rewritten:

30 "(a) Participation in Business. – A taxpayer who has received a credit under this
31 Division for an investment in a qualified business venture or qualified grantee business
32 forfeits the credit if, within three years after the investment was made, the taxpayer
33 participates in the operation of the qualified business venture or qualified grantee
34 business. A taxpayer who has received a credit under this Division for an investment in a
35 North Carolina Enterprise Corporation forfeits the credit if, within three years after the
36 investment was made, the taxpayer participates in the operation of a business in which
37 the North Carolina Enterprise Corporation has invested. For the purpose of this section, a
38 taxpayer participates in the operation of a ~~qualified business venture or a qualified grantee~~
39 business if the taxpayer, the taxpayer's spouse, parent, sibling, or child, or an employee of
40 any of these individuals or of a ~~business an entity~~ controlled by any of these individuals,
41 provides services of any nature to the ~~qualified business venture or qualified grantee~~
42 business for compensation, whether as an employee, as a contractor, or otherwise. However, a
43 person who provides services to a ~~qualified business venture or a qualified grantee~~ business,

1 whether as an officer, as a member of the board of directors, or otherwise does not
2 participate in its operation if the person receives as compensation only reasonable
3 reimbursement of expenses incurred in providing the services, participation in a stock
4 option or stock bonus plan, or both."

5 Sec. 13. G.S. 105-163.014(d) reads as rewritten:

6 "(d) Transfer or Redemption of Investment. – A taxpayer who has received a credit
7 under this Division for an investment in a North Carolina Enterprise ~~Corporation,~~
8 Corporation organized under Chapter 55 of the General Statutes, a qualified business
9 venture, or a qualified grantee business forfeits the credit in the following cases:

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

- 14 a. The death of the taxpayer.
- 15 b. A final distribution in liquidation to the owners of a taxpayer that
16 is a corporation or other entity.
- 17 c. A merger, consolidation, or similar transaction requiring
18 approval by the shareholders of the North Carolina Enterprise
19 Corporation, qualified business venture, or qualified grantee
20 business under applicable State law, to the extent the taxpayer
21 does not receive cash or tangible property in the merger,
22 consolidation, or other similar transaction.

23 (2) Within five years after the investment was made, the North Carolina
24 Enterprise Corporation, qualified business venture, or qualified grantee
25 business in which the investment was made makes a redemption with
26 respect to the securities received in the investment.

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

39 Sec. 14. Sections 8 and 9 of this act are effective for taxable years beginning
40 on or after January 1, 1995. The remainder of this act is effective upon ratification.