

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 475

Short Title: Small Business Capital & Growth Act.

(Public)

Sponsors: Representatives Shaw, Linney; Adams, Alexander, Beall, Berry, Black, Blue, Bowen, Boyd-McIntyre, Braswell, W. Brown, Buchanan, Church, Cunningham, Earle, Easterling, Fitch, Fox, Gamble, Hensley, Hiatt, Hightower, Hill, H. Hunter, R. Hunter, Hurley, Locke, McAllister, McLaughlin, Mercer, G. Miller, Oldham, Ramsey, Rayfield, Redwine, Robinson, Sexton, Snowden, Sutton, Thompson, Tolson, Wainwright, Warner, Wilkins, G. Wilson, Womble, Wright, and Yongue.

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

March 15, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE NORTH CAROLINA CAPITAL ACCESS AUTHORITY
3 TO PROVIDE EQUITY AND CREDIT FINANCING TO SMALL AND MEDIUM-
4 SIZED BUSINESSES TO CREATE JOBS FOR NORTH CAROLINA.
5 The General Assembly of North Carolina enacts:
6 TABLE OF CONTENTS
7 I. CAPITAL ACCESS AUTHORITY AND FUND
8 II. REVENUES EARMARKED FOR CAPITAL ACCESS FUND
9 III. INVESTMENTS BY STATE TREASURER
10 IV. INSURANCE TAX CREDIT FOR INVESTMENTS
11 V. BONDS FOR INDUSTRIAL FACILITIES
12 VI. BANK TAX DEDUCTION FOR INVESTMENTS
13 VII. CONFORMING CHANGES
14 VIII. EFFECTIVE DATES

PART I.

15

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

Sec. 3. 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. THE NORTH CAROLINA CAPITAL ACCESS AUTHORITY.**"§ 53A-50. Creation of Authority; purpose.**

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

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

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

(a) Board of Directors. – The Authority shall be governed by a Board of Directors. The Board shall consist of 12 appointed members and 10 ex officio members. As the holder of an office, each member of the Board shall take the oath required by Article VI, § 7 of the North Carolina Constitution before assuming the duties of a Board member. The Governor shall designate a chair and a vice-chair of the Board. The chair shall convene the first meeting of the Board.

(b) Appointed Members. – Four members shall be appointed by the Governor, one who represents the banking industry, one who represents a North Carolina Enterprise Corporation created pursuant to Part 2 of this Article, one who represents small business interests, and one who represents public interests. Four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one who represents community development corporations, one who represents environmental interests, one who

1 represents medium-sized business interests, and one who represents public interests.
2 Four members shall be appointed by the General Assembly upon the recommendation of
3 the President Pro Tempore of the Senate in accordance with G.S. 120-121, one who owns
4 a minority business as defined in G.S. 143-128, one who represents a public utility, one
5 who represents a nonprofit organization active in infrastructure development under the
6 Community Reinvestment Act, and one who represents public interests.

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

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

21 The Governor may remove any appointed member of the Board for misfeasance,
22 malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The authority who
23 appointed a member of the Board may remove the member for using improper influence
24 in accordance with G.S. 143B-13(c).

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

- 27 (1) The State Treasurer, or the Treasurer's designee.
- 28 (2) The Secretary of State, or the Secretary's designee.
- 29 (3) The Commissioner of Agriculture, or the Commissioner's designee.
- 30 (4) The State Auditor, or the Auditor's designee.
- 31 (5) The State Superintendent of Public Instruction, or the Superintendent's
32 designee.
- 33 (6) The Attorney General, or the Attorney General's designee.
- 34 (7) The Commissioner of Labor, or the Commissioner's designee.
- 35 (8) The Commissioner of Insurance, or the Commissioner's designee.
- 36 (9) The Secretary of Commerce, or the Secretary's designee.
- 37 (10) The President of the North Carolina Community College System, or the
38 President's designee.

39 (d) Organization of the Board. – The Board shall adopt bylaws with respect to the
40 calling of meetings, quorums, voting procedures, the keeping of records, and other
41 organizational and administrative matters as the Board may determine. A quorum shall
42 consist of a majority of the members of the Board. No vacancy in the membership of the

1 Board shall impair the right of a quorum to exercise all rights and to perform all the
2 duties of the Board and the Authority.

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

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

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

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

20 **"§ 53A-52. Capital Access Financing Fund.**

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

27 **"§ 53A-53. Capital Access Financing Program.**

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

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

1 (c) Sound Business Practices. – The Authority shall adopt rules and standards to
2 assure that all financing provided from the Fund is consistent with sound business
3 practices, including requirements that all loans be collateralized, that applicants have
4 sound credit ratings and meet experience standards set by the Authority, and that
5 mezzanine finance investments not be speculative. The Authority shall assure that all
6 financing agreements include strong remedies for defaults, including foreclosure on
7 collateral. The Authority shall assure that financing agreements meet standards such that
8 the loans can be sold on the secondary market.

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

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

24 (f) Minimum and Maximum Financing Amount. – The Authority shall provide
25 financing in amounts no less than five hundred thousand dollars (\$500,000) per business.
26 The Authority shall establish maximum financing amounts for different types and sizes of
27 businesses, not to exceed ten million dollars (\$10,000,000) per business. In no case shall
28 the amount of financing for a business exceed twenty-five thousand dollars (\$25,000) per
29 job to be created as a result of the financing.

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

1 investments. The Authority shall not invest in a business formed for the primary purpose
2 of acquiring all or part of the stock or assets of one or more existing businesses.

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

6 **"§ 53A-54. Powers of the Authority.**

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

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

1 (11) With the approval of any unit of local government, to use officers,
2 employees, agents, and facilities of the unit of local government for the
3 purposes and upon the terms as may be mutually agreeable.

4 (12) To receive and use appropriations from the State, including an
5 appropriation from the proceeds of State general obligation bonds or
6 notes.

7 (b) To execute the powers provided in subsection (a) of this section, the Board
8 shall determine the policies of the Authority by majority vote of the members of the
9 Board present and voting, a quorum having been established. Once a policy is
10 determined, the Board shall communicate it to the executive director, who shall have the
11 sole and exclusive authority to execute the policy of the Authority. No member of the
12 Board shall have the responsibility or authority to give operational directives to any
13 employee of the Authority other than the executive director.

14 **"§ 53A-55. Facilitating financing of development projects.**

15 (a) Recommendation. – If the Authority determines that a proposed development
16 project is one that would be eligible for financing by the North Carolina Industrial and
17 Pollution Control Facilities Financing Authority created in Chapter 159D of the General
18 Statutes and makes the findings required in this section, the Authority may recommend
19 that the Industrial and Pollution Control Facilities Financing Authority issue bonds to
20 finance the project pursuant to G.S. 159D-6. The Authority shall transmit its
21 recommendation in writing to the chair of the board of commissioners of the Industrial
22 and Pollution Control Facilities Financing Authority. The recommendation shall be
23 accompanied by a request that bonds be issued, a certification of the Authority's findings
24 under this section, and any other information required by the Industrial and Pollution
25 Control Facilities Financing Authority.

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

29 (1) The financing of the development project is necessary to enable one or
30 more Qualified North Carolina Businesses to create or save, directly or
31 indirectly, jobs in a rural area, an underdeveloped community, a
32 depressed urban commercial area, or an economically distressed area of
33 the State.

34 (2) The jobs to be created or saved meet the minimum wage standard
35 established by the Authority under G.S. 53A-53(e).

36 (3) The affected business is a type of business to which the Authority has
37 assigned a priority pursuant to G.S. 53A-53(g).

38 (4) The number of jobs to be created or saved will be large enough to have
39 a measurable impact on the area immediately surrounding the proposed
40 project and will be commensurate with the size and cost of the proposed
41 project.

42 (5) The proposed operator of the proposed development project has
43 demonstrated or can demonstrate the capability to operate the project.

1 (6) The financing of the project will not cause or result in the abandonment
2 of an existing industrial or manufacturing facility of the proposed
3 operator or an affiliate elsewhere within the State unless the facility is to
4 be abandoned because of obsolescence, lack of available labor in the
5 area, or site limitations.

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

10 **"§ 53A-56. Taxation of property of Authority.**

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

13 **"§ 53A-57. Authority funds.**

14 All Authority funds shall be deposited in one or more banks to be designated by the
15 Board. Funds of the Authority shall be paid out only upon warrants signed by the
16 treasurer or assistant treasurer of the Authority and countersigned by the chair, the acting
17 chair, or the executive director. No warrants shall be drawn or issued disbursing any of
18 the funds of the Authority except for a purpose authorized by this Part and only when the
19 account or expenditure has been audited and approved by the Authority or its executive
20 director.

21 **"§ 53A-58. Cooperation by other State agencies.**

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

24 **"§ 53A-59. Annual and quarterly reports.**

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

31 The Authority shall submit quarterly reports to the Joint Legislative Commission on
32 Governmental Operations. The reports shall summarize the Authority's activities during
33 the quarter and contain any information about the Authority's activities that is requested
34 by the Commission.

35 **"§ 53A-60. Dissolution.**

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

42 **"§ 53A-61. Tax credit.**

- 1 (5) Notes secured by mortgages insured by the Federal Housing
2 Administration or guaranteed by the Veterans Administration on real
3 estate located within the State of North Carolina;
- 4 (6) Asset-backed securities (whether considered debt or equity) provided
5 they bear ratings by nationally recognized rating services as provided in
6 G.S. 147-69.2(b)(4) and that they do not bear a rating below the three
7 highest by any nationally recognized rating service which rates the
8 particular securities;
- 9 (7) With respect to Retirement Systems' assets referred to in G.S. 147-
10 69.2(b)(8), (i) insurance contracts which provide for participation in
11 individual or pooled separate accounts of insurance companies, (ii)
12 group trusts, (iii) individual, common or collective trust funds of banks
13 and trust companies and (iv) real estate investment trusts; provided the
14 investment manager has assets under management of at least one
15 hundred million dollars (\$100,000,000); provided such investment
16 assets are managed primarily for the purpose of investing in or owning
17 real estate or related debt financing located in the United States; and
18 provided that the investment authorized by this subsection shall not
19 exceed ten percent (10%) of the book value of all invested assets of the
20 Retirement Systems;
- 21 (8) With respect to assets of the Teachers' and State Employees' Retirement
22 System, the Consolidated Judicial Retirement System, the Firemen's and
23 Rescue Workers' Pension Fund, the Local Governmental Employees'
24 Retirement System, and the Legislative Retirement System (hereinafter
25 referred to collectively as the Retirement Systems), preferred or
26 common stocks issued by any company incorporated or otherwise
27 created or located within or without the United States, provided:
- 28 a. That common stock or preferred stock of such corporation is
29 registered on a national securities exchange as provided in the
30 Federal Securities Exchange Act or quoted through the National
31 Association of Securities Dealers' Automated Quotations
32 (NASDAQ) system;
- 33 b. That such corporation shall have paid a cash dividend on its
34 common stock in each year of the 5-year period next preceding
35 the date of investment and the aggregate net earnings available
36 for dividends on the common stock of such corporation for the
37 whole of such period shall have been at least equal to the amount
38 of such dividends paid;
- 39 c. That in applying the dividend and earnings test under this section
40 to any issuing, assuming, or guaranteeing corporation, where
41 such corporation shall have acquired its property or any
42 substantial part thereof within a five-year period immediately
43 preceding the date of investment by consolidation, merger, or by

- 1 the purchase of all or a substantial portion of the property of any
2 other corporation or corporations, or shall have acquired the
3 assets of any unincorporated business enterprise by purchase or
4 otherwise, the dividends and net earnings of the several
5 predecessor or constituent corporations or enterprises shall be
6 consolidated and adjusted so as to ascertain whether or not the
7 applicable requirements of this section have been complied with;
- 8 d. That the book value of common and preferred stocks including
9 securities convertible into common stocks shall not exceed fifty
10 ~~per centum~~ percent (50%) of the book value of all invested assets
11 of the Retirement Systems; provided, further:
- 12 1. Not more than one and one-half ~~per centum~~ percent (1
13 1/2%) of the book value of such assets shall be invested in
14 the stock of a single corporation, and provided further;
- 15 2. The total number of shares in a single corporation shall
16 not exceed eight ~~per centum~~ percent (8%) of the issued and
17 outstanding stock of such corporation, and provided
18 further;
- 19 3. As used in this subdivision d. and elsewhere in this
20 section, book value shall mean adjusted cost basis as
21 shown on the records of the State Treasurer.
- 22 e. Up to five ~~per cent~~ percent (5%) of the limits authorized in
23 subdivision d. may be invested in the stocks or shares of a
24 diversified investment company registered under the 'Investment
25 Company Act of 1940' which has total assets of at least fifty
26 million dollars (\$50,000,000).
- 27 f. Individual, common or collective trust funds of banks or trust
28 companies provided that the investment manager has assets
29 under management of at least one hundred million dollars
30 (\$100,000,000).
- 31 g. That investments may be made in securities convertible into
32 common stocks issued by any such company, if such securities
33 bear one of the four highest ratings of at least one nationally
34 recognized rating service and do not bear a rating below the four
35 highest by any nationally recognized rating service which may
36 then rate the particular security.
- 37 (9) Obligations and securities of the North Carolina Enterprise Corporation,
38 or of a limited partnership in which the North Carolina Enterprise
39 Corporation is the only general partner, not to exceed twenty million
40 dollars (\$20,000,000) from all funds.
- 41 (10) A limited partnership interest in a partnership whose primary purpose is
42 to invest in venture capital or corporate buyout transactions, not to
43 exceed thirty million dollars (\$30,000,000) from all funds.

1 (10a) Obligations of the North Carolina Capital Access Authority created
2 in Article 3 of Chapter 53A of the General Statutes, obligations of
3 the North Carolina Industrial and Pollution Control Facilities
4 Financing Authority created under Chapter 159D of the General
5 Statutes issued at the request of the North Carolina Capital Access
6 Authority pursuant to G.S. 53A-55 and G.S. 159D-6, or equity
7 securities issued by a Qualified North Carolina Business as defined
8 in G.S. 53A-37. To the extent possible consistent with the State
9 Treasurer's duties, the State Treasurer shall invest at least twenty-
10 five million dollars (\$25,000,000) pursuant to this subdivision each
11 fiscal year until July 1, 2000.

12 (11) With respect to assets of the Escheat Fund, obligations of the North
13 Carolina Global TransPark Authority authorized by G.S. 63A-
14 4(a)(22), not to exceed twenty-five million dollars (\$25,000,000),
15 that have a final maturity not later than September 1, 1999. The
16 obligations shall bear interest at the rate set by the State Treasurer.
17 No commitment to purchase obligations may be made pursuant to
18 this subdivision after September 1, 1993, and no obligations may be
19 purchased after September 1, 1994. In the event of a loss to the
20 Escheat Fund by reason of an investment made pursuant to this
21 subdivision, it is the intention of the General Assembly to hold the
22 Escheat Fund harmless from any such loss by appropriating to ~~such~~
23 the Escheat Fund funds equivalent to ~~such~~ the loss.

24 (12) With respect to assets of the Escheat Fund, obligations of the North
25 Carolina Industrial and Pollution Control Facilities Financing
26 Authority created under Chapter 159D of the General Statutes issued
27 at the request of the North Carolina Capital Access Authority
28 pursuant to G.S. 53A-55 and G.S. 159D-6. The obligations shall
29 bear interest at the rate set by the State Treasurer and may be
30 subordinated in right of payment to other obligations of the North
31 Carolina Industrial and Pollution Control Facilities Financing
32 Authority. In the event of a loss to the Escheat Fund by reason of an
33 investment made pursuant to this subdivision, it is the intention of
34 the General Assembly to hold the Escheat Fund harmless from any
35 such loss by appropriating to the Escheat Fund funds equivalent to
36 the loss."

PART IV.

INSURANCE TAX CREDIT FOR INVESTMENTS

37
38
39 Sec. 7. Article 3 of Chapter 53A of the General Statutes, as amended by this
40 act, is further amended by adding a new Part to read:

"PART 4. CERTIFIED NORTH CAROLINA CAPITAL COMPANIES.

41
42 **"§ 53A-70. Requirements for certification of a certified North Carolina capital**
43 **company.**

1 (a) Initial Certification. – In order to be initially certified as a certified North
2 Carolina capital company, a company must satisfy the following requirements.

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

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

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

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

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

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

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

21 **"§ 53A-71. Procedure for certification and recertification; reports.**

22 (a) Initial Certification. – In order to be initially certified as a certified North
23 Carolina capital company, a company must file an application with the Division and pay
24 the initial certification fee set by the Secretary of State. The application shall include any
25 information and supporting documents required by the Secretary of State to determine
26 whether the company qualifies for initial certification. Within 60 days after an
27 application is filed, the Division shall determine whether the applicant qualifies for initial
28 certification and shall either issue the certification or shall refuse the certification and
29 notify the applicant in detail of the grounds for the refusal, including suggestions for the
30 removal of those grounds.

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

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

41 (c) Application Forms; Fees. – Applications for initial certification and annual
42 recertification under this section shall be in the form required by the Secretary of State.
43 The Secretary of State shall prepare blank forms for the applications. Each application

1 shall be signed by the owners of the company or, in the case of a corporation, by its
2 president, vice-president, treasurer, or secretary. There shall be annexed to the
3 application the affirmation of the person making the application in the following form:
4 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge
5 and belief this application is true and complete.' A person who submits a false
6 application is guilty of a Class 1 misdemeanor.

7 The Secretary of State may charge an applicant a fee for initial certification as a
8 certified North Carolina capital company and a fee for annual recertification as a certified
9 North Carolina capital company. The fees set by the Secretary of State may not exceed
10 the estimated cost to the Division of initial certification or annual recertification, as
11 appropriate, as determined by the Secretary of State.

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

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

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

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

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

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

23 (e) Annual Financial Statements. – Each certified North Carolina capital company
24 shall provide the Division within 90 days after the end of its fiscal year an annual audited
25 financial statement that includes an opinion of an independent certified public accountant.
26 The audit shall address the methods of operation and conduct of the business of the
27 company to determine whether the company has complied with this Part and whether the
28 cash invested in the company has been invested as required by this Part.

29 **"§ 53A-72. Tax credit.**

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

32 **"§ 53A-73. Decertification of certified North Carolina Capital company.**

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

35 (b) Procedure for Decertification. – If the Division determines that a certified
36 North Carolina capital company is not in compliance with any requirement for continuing
37 in certification, it shall, by written notice, inform the officers of the company and the
38 board of directors, manager, trustees, or general partners that the company will be
39 decertified in 120 days after the date the notice is mailed unless the company corrects the
40 deficiencies to bring itself in compliance with the requirements for certification. At the
41 end of the 120-day grace period, if the certified North Carolina capital company is still
42 not in compliance, the Division shall decertify the company and send a notice of

1 decertification to the company and to the Department of Revenue and the Department of
2 Insurance.

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

6 **"§ 53A-74. Certification revoked for false application.**

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

14 **"§ 53A-75. Rules.**

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

16 Sec. 8. Chapter 105 of the General Statutes is amended by adding a new
17 Article to read:

18 **"ARTICLE 8C.**

19 **"PREMIUMS TAX CREDIT FOR INVESTMENTS IN**
20 **NORTH CAROLINA BUSINESSES.**

21 **"§ 105-228.10A. Purpose.**

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

26 **"§ 105-228.10B. Definitions.**

27 The following definitions apply in this Article.

28 (1) Capital Access Financing Fund. – The Capital Access Financing Fund
29 established under Article 3 of Chapter 53A of the General Statutes.

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

33 (3) North Carolina Capital Access Authority. – The North Carolina Capital
34 Access Authority created in Article 3 of Chapter 53A of the General
35 Statutes.

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

37 (a) Credit. – A person who invests cash in a certified North Carolina capital
38 company, who invests in the Capital Access Financing Fund or the North Carolina
39 Capital Access Authority, or who invests in obligations of the North Carolina Industrial
40 and Pollution Control Facilities Financing Authority created under Chapter 159D of the
41 General Statutes issued at the request of the North Carolina Capital Access Authority
42 pursuant to G.S. 53A-55 and G.S. 159D-6, is allowed against the gross premiums tax
43 imposed by G.S. 105-228.5 and G.S. 105-228.8 a credit equal to the amount invested by

1 the taxpayer during the taxable year. The credit for investments made in a certified North
2 Carolina capital company is allowed only for investments made within 365 days after the
3 date the company is initially certified by the Secretary of State under Article 3 of Chapter
4 53A of the General Statutes. To claim the credit allowed by this section, the taxpayer
5 must provide the Commissioner of Insurance any supporting documentation the
6 Commissioner requires.

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

15 **§ 105-228.10D. Effect of decertification or revocation of certification.**

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

22 (b) Revocation of Certification. – A taxpayer who has received a credit under this
23 Article for an investment in a certified North Carolina capital company forfeits the credit
24 if the certification of the company is revoked under G.S. 53A-74 because information in
25 the company's application for initial certification was false. A taxpayer who forfeits a
26 credit under this section is liable for all past taxes avoided as a result of the credit plus
27 interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes
28 would have been due if the credit had not been allowed. The past taxes and interest are
29 due 30 days after the date the credit is forfeited; a taxpayer who fails to pay the past taxes
30 and interest by the due date is subject to the penalties provided in G.S. 105-236.

31 **§ 105-228.10E. Transfer or redemption of investment.**

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

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

38 a. The death of the taxpayer.

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

41 c. A merger, consolidation, or similar transaction requiring
42 approval by the shareholders of the certified North Carolina
43 capital corporation under applicable State law, to the extent the

1 taxpayer does not receive cash or tangible property in the merger,
2 consolidation, or other similar transaction.

- 3 (2) Within five years after the investment was made, the Capital Access
4 Financing Fund, North Carolina Capital Access Authority, North
5 Carolina Industrial and Pollution Control Facilities Financing Authority,
6 or North Carolina capital corporation in which the investment was made
7 makes a redemption with respect to the securities received in the
8 investment.

9 In the event the taxpayer transfers fewer than all the securities in a manner that would
10 result in a forfeiture, the amount of the credit that is forfeited is the product obtained by
11 multiplying the aggregate credit attributable to the investment by a fraction whose
12 numerator equals the number of securities transferred and whose denominator equals the
13 number of securities received on account of the investment to which the credit was
14 attributable. In addition, if the redemption amount is less than the amount invested by the
15 taxpayer in the securities to which the redemption is attributable, the amount of the credit
16 that is forfeited is further reduced by multiplying it by a fraction whose numerator equals
17 the redemption amount and whose denominator equals the aggregate amount invested by
18 the taxpayer in the securities involved in the redemption. The term 'redemption amount'
19 means all amounts paid that are treated as a distribution in part or full payment in
20 exchange for securities under section 302(a) of the Code."

21 PART V.

22 BONDS FOR INDUSTRIAL FACILITIES

23 Sec. 9. G.S. 159D-6 reads as rewritten:

24 "§ 159D-6. Bonds.

25 The authority is hereby authorized to provide for the issuance, at one time or from
26 time to time, of bonds of the authority for the purpose of paying all or any part of the cost
27 of any project. The authority may issue bonds upon its own initiative or upon the
28 recommendation of the Capital Access Authority created in Article 3 of Chapter 53A of
29 the General Statutes. The principal of, the interest on and any premium payable under the
30 redemption of such bonds shall be payable solely from the funds herein authorized for
31 such payment. The bonds of each issue shall bear interest as may be determined by the
32 Local Government Commission of North Carolina with the approval of the authority and
33 the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor
34 provisions. The bonds of each issue shall be dated, shall mature at such time or times not
35 exceeding 30 years from the date of their issuance, and may be made redeemable before
36 maturity at such price or prices and under such terms and conditions, as may be fixed by
37 the authority prior to the issuance of the bonds. The authority shall determine the form
38 and the manner of execution of the bonds, including any interest coupons to be attached
39 thereto, and shall fix the denomination or denominations of the bonds and the place or
40 places of payment of principal and interest. In case any officer whose signature or a
41 facsimile of whose signature shall appear on any bonds or coupons shall cease to be such
42 officer before the delivery of such bonds, such signature or such facsimile shall
43 nevertheless be valid and sufficient for all purposes the same as if he had remained in

1 office until such delivery. The authority may also provide for the authentication of the
2 bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully
3 registered form, or both, as the authority may determine, and provision may be made for
4 the registration of any coupon bonds as to principal alone and also as to both principal
5 and interest, and for the reconversion into coupon bonds of any bonds registered as to
6 both principal and interest, and for the interchange of registered and coupon bonds.

7 The proceeds of the bonds of each issue shall be used solely for the payment of the
8 cost of the project or projects, or a portion thereof, for which such bonds shall have been
9 issued, and shall be disbursed in such manner and under such restrictions, if any, as the
10 authority may provide in the financing agreement and the security document. If the
11 proceeds of the bonds of any issue, by reason of increased construction costs or error in
12 estimates or otherwise, shall be less than such cost, additional bonds may in like manner
13 be issued to provide the amount of such deficiency. The authority may issue interim
14 receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds
15 when such bonds have been executed and are available for delivery. The authority may
16 also provide for the replacement of any bonds which shall become mutilated or shall be
17 destroyed or lost.

18 Bonds may be issued under the provisions of this Chapter without obtaining, except as
19 otherwise expressly provided in this Chapter, the consent of the State or of any political
20 subdivision or of any agency of either thereof, and without any other proceedings or the
21 happening of any conditions or things other than those proceedings, conditions or things
22 which are specifically required by this Chapter and the provisions of the financing
23 agreement and security document authorizing the issuance of such bonds and securing the
24 same."

25 Sec. 10. The first paragraph of G.S. 159D-7 reads as rewritten:

26 "The authority may issue bonds for a proposed industrial project recommended by the
27 Capital Access Authority pursuant to G.S. 53A-55 without first obtaining the approval of
28 the Secretary of Commerce. ~~No~~ Except for industrial projects recommended by the
29 Capital Access Authority, no bonds may be issued by the authority for any other project
30 unless the project for which the issuance thereof is proposed is first approved by the
31 Secretary of Commerce. The authority shall file an application for approval of its
32 proposed project with the Secretary of Commerce, and shall notify the Local Government
33 Commission of such filing."

34 PART VI.

35 BANK TAX DEDUCTION FOR INVESTMENTS

36 Sec. 11. G.S. 105-130.5(a) is amended by adding a new subdivision to read:

37 "(2a) That portion of a financial institution's interest expense that is
38 allocable to interest exempt from taxation under this Division. The
39 allocable portion of the interest expense is the portion for which
40 deduction would be disallowed pursuant to section 265(b) of the
41 Code if the interest were earned on a tax-exempt obligation as
42 defined in section 265(b) of the Code. The addition required by this
43 subdivision shall be reduced, however, by 20 times the amount the

1 financial institution has, during the taxable year, invested in or
 2 loaned to the North Carolina Capital Access Authority or the Capital
 3 Access Financing Fund created in Article 3 of Chapter 53A of the
 4 General Statutes or has invested in obligations of the North Carolina
 5 Industrial and Pollution Control Facilities Financing Authority
 6 created under Chapter 159D of the General Statutes issued at the
 7 request of the North Carolina Capital Access Authority pursuant to
 8 G.S. 53A-55 and G.S. 159D-6."

9 Sec. 12. Notwithstanding G.S. 105-163.41, no addition to tax may be made
 10 under that statute for a taxable year beginning on or after January 1, 1995, and before
 11 January 1, 1996, with respect to an underpayment of corporation income tax to the extent
 12 the underpayment was created or increased by this act.

13 **PART VII.**

14 **CONFORMING CHANGES**

15 Sec. 13. Article 1 of Chapter 53A of the General Statutes is repealed.

16 Sec. 14. The title of Chapter 53A of the General Statutes reads as rewritten:

17 **"CHAPTER 53A.**

18 **"BUSINESS DEVELOPMENT CORPORATIONS AND NORTH**
 19 **CAROLINA CAPITAL RESOURCE CORPORATIONS. AND ACCESS TO**
 20 **CAPITAL."**

21 Sec. 15. The title of Article 3 of Chapter 53A of the General Statutes reads as
 22 rewritten:

23 **"ARTICLE 3.**

24 **"NORTH CAROLINA ENTERPRISE CORPORATIONS. CORPORATIONS, THE**
 25 **NORTH CAROLINA CAPITAL ACCESS AUTHORITY, AND**
 26 **CERTIFIED NORTH CAROLINA CAPITAL COMPANIES."**

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

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

29 **"§ 53A-36. Legislative findings and purpose.**

30 (a) The General Assembly finds ~~and declares~~ that there exists in the ~~State of~~ North
 31 Carolina a serious shortage of mezzanine finance capital and credit available for
 32 investment in rural ~~areas—~~areas, underdeveloped communities, depressed urban
 33 commercial areas, and economically distressed areas in the State. This shortage of
 34 mezzanine finance capital and credit is severe throughout ~~the rural~~ these areas of the State,
 35 has persisted for a number of years, and constitutes a grave threat to the welfare and
 36 prosperity of all residents of the State. The lack of access to capital prevents North
 37 Carolina businesses from creating jobs that would otherwise enhance the economy of the
 38 State and provide livelihoods for North Carolina citizens.

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

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

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

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

24 Sec. 18. G.S. 53A-37 reads as rewritten:

25 "**§ 53A-37. Definitions.**

26 The following definitions apply in this Article:

- 27 (1) Approved investment. – The investment of cash by a certified North
28 Carolina capital company in such a manner as to acquire capital in a
29 business that, at the time of the company's first investment in the
30 business, was a qualified business venture and was not a subsidiary
31 of another corporation. The capital acquired may be any debt,
32 equity, or hybrid security, whether secured or unsecured, of any
33 nature, including a debt instrument or security that has the
34 characteristics of debt but provides for conversion into equity or
35 equity participation instruments such as options or warrants.
- 36 (2) Authority. – The North Carolina Capital Access Authority created in
37 Part 3 of this Article.
- 38 (3) Business. – A corporation, partnership, association, or sole
39 proprietorship operated for profit.
- 40 (4) Certified North Carolina capital company. – A partnership,
41 corporation, trust, or limited liability company whose primary
42 business activity is the investment of cash in qualified business

1 ventures and that is certified by the Secretary of State as provided in
2 Part 4 of this Article.

3 (5) Depressed urban commercial area. – A commercial or industrial area
4 of a city in which blight exists in the form of dilapidated,
5 deteriorated, poorly ventilated, obsolete, overcrowded, unsanitary, or
6 unsafe buildings; inadequate and unsafe streets; inadequate lots; or
7 other conditions detrimental to the sound growth of the community,
8 which tend to depress the value of neighboring properties, impair the
9 tax base of the community, and inhibit private efforts to rehabilitate
10 or improve other structures in the area.

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

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

17 (8) Division. – The Securities Division of the Department of the
18 Secretary of State.

19 ~~(2)~~(9) Equity security. – Common stock, preferred stock, an interest in a
20 partnership, subordinated debt, or a warrant that is convertible into, or
21 entitles the holder to receive upon its exercise, common stock, preferred
22 stock, or an interest in a partnership.

23 (10) Reserved.

24 ~~(3)~~(11) Mezzanine finance. – An investment in the equity securities or
25 subordinated debt of a Qualified North Carolina Business.

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

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

29 ~~(4)~~(14) Qualified North Carolina Business. – A business whose headquarters
30 and principal business operations are located in North Carolina and
31 which, together with its affiliates on a consolidated basis, had gross
32 income during the immediately preceding fiscal year, determined in
33 accordance with generally accepted accounting principles without
34 taking into account extraordinary items, of less than forty million dollars
35 (\$40,000,000).

36 ~~(5)~~(15) Rural areas. – Any county in North Carolina which does not include
37 within its boundaries a city, as defined by G.S. 160A-1(2), with a
38 population greater than one percent (1%) of the population of North
39 Carolina.

40 ~~(6)~~(16) Security. – A security as defined in G.S. 78A-2(11).

41 ~~(7)~~(17) Subordinated debt. – Indebtedness that is or will be
42 subordinated to other indebtedness of the issuer. Subordinated

1 debt may be convertible into common stock, preferred stock, or
2 an interest in a partnership.

3 ~~(8)(18) Traditional Financial Institutions. – financial institutions. – Corporations or~~
4 associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General
5 Statutes."

6 Sec. 19. G.S. 53A-38(a) reads as rewritten:

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

10 Sec. 20. G.S. 53A-41 reads as rewritten:

11 "**§ 53A-41. Governing law.**

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

14 Sec. 21. G.S. 53A-42 reads as rewritten:

15 "**§ 53A-42. Powers.**

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

18 Sec. 22. G.S. 105-259(a) reads as rewritten:

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

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

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

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

27 b. Information obtained through an audit of a taxpayer or by
28 correspondence with a taxpayer.

29 c. Information on whether a taxpayer has filed a tax return or a tax
30 report.

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

33 e. Information supplied on or with an application for registration or
34 renewal of registration as a qualified business venture or a
35 qualified grantee business under Division V of Article 4 of this
36 Chapter.

37 f. Information supplied on or with an application for initial
38 certification or recertification as a certified North Carolina
39 capital company under Article 3 of Chapter 53A of the General
40 Statutes.

41 The term does not include (i) statistics classified so that information
42 about specific taxpayers cannot be identified or (ii) information
43 submitted to the Business License Information Office of the Department

1 of Secretary of State on a master application form for various business
2 licenses."

3 **PART VIII.**

4 **EFFECTIVE DATES**

5 Sec. 23. Sections 8, 11, 12, and 22 of this act are effective for taxable years
6 beginning on or after January 1, 1995. Section 11 of this act expires effective for taxable
7 years beginning on or after January 1, 2000. The remainder of this act becomes effective
8 July 1, 1995. Section 4 of this act expires July 1, 2000. Section 5 of this act expires July
9 1, 1998.