

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2028

Short Title: NC Venture Capital Enhancement Act. (Public)

Sponsors: Representatives Brubaker, Wainwright, Daughtridge (Primary Sponsors); Barnhart, Faison, Glazier, T. Harrell, Harrison, Howard, Insko, McComas, McLawhorn, Ross, Thomas, and Tillis.

Referred to: Commerce, Small Business and Entrepreneurship, if favorable, Finance.

May 10, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE RENEWABLE ENERGY, JOB CREATION, AND
3 VENTURE CAPITAL.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 105 of the General Statutes is amended by creating a
6 new Article to read:

7 "Article 3K.

8 "Venture Capital Enhancement.

9 **"§ 105-129.100. Title.**

10 This Article is known as the "North Carolina Venture Capital Enhancement Act."

11 **"§ 105-129.101. Findings; purpose.**

12 (a) The General Assembly finds that:

13 (1) Fundamental changes have occurred in national and international
14 financial markets and in the State's financial markets.

15 (2) A critical shortage of seed and venture capital resources exists in the
16 State, and that shortage is impairing the growth of commerce in the
17 State.

18 (3) A need exists to increase the availability of venture equity capital for
19 emerging, expanding, and restructuring enterprises in North Carolina,
20 including enterprises in the life sciences, advanced manufacturing, and
21 information technology.

22 (4) Increased venture equity capital investments in emerging, expanding,
23 and restructuring enterprises in North Carolina will create new jobs in
24 the State and help to diversify the State's economic base.

25 (5) A well-trained workforce is critical for the maintenance and
26 development of North Carolina's economy.

27 (b) This Article is enacted to accomplish the following:

- 1 (1) Mobilize private investment in a broad variety of venture capital
2 partnerships in diversified industries and locales.
- 3 (2) Retain the private-sector culture of focusing on rate of return in the
4 investing process.
- 5 (3) Secure the services of the best managers in the venture capital
6 industry, regardless of location.
- 7 (4) Facilitate the organization of the North Carolina Capital Venture Fund
8 to seek private investments and to create interest in those investments
9 by offering State incentives for private persons to make investments in
10 the North Carolina Capital Venture Fund.
- 11 (5) Promote the renewable energy, high technology, and biotechnology
12 industries.
- 13 (6) Accomplish the purposes referred to in subdivisions (a)(1) through (5)
14 of this section in a manner that would maximize the direct economic
15 impact for the State while minimizing any appropriations by the State.

16 **"§ 105-129.102. Definitions.**

17 The following definitions apply in this Article:

- 18 (1) Board. – The North Carolina Capital Investment Board.
- 19 (2) Certificate. – A contract between the Board and a designated investor
20 under which a contingent tax credit is available and issued to the
21 designated investor.
- 22 (3) Commitment. – A written commitment by a designated purchaser to
23 purchase from the Board certificates presented to the Board for
24 redemption by a designated investor. Each commitment shall state the
25 dollar amount of contingent tax credits that the designated purchaser
26 has committed to purchase from the Board.
- 27 (4) Contingent tax credit. – A contingent tax credit issued under this
28 Article that is available against tax liabilities imposed by Articles 3
29 and 4 of Chapter 105 of the General Statutes, if there are insufficient
30 funds in the redemption reserve, and the Board has not exercised other
31 options for redemption under G.S. 105-129.119.
- 32 (5) Corporation. – The North Carolina Capital Investment Corporation
33 created under G.S. 105-129.106.
- 34 (6) Department. – The Department of Revenue.
- 35 (7) Designated investor. – A person who purchases an equity interest in
36 the North Carolina Capital Venture Fund or a transferee of a certificate
37 or contingent tax credit.
- 38 (8) Designated purchaser. – A person who enters into a written
39 undertaking with the Board to purchase a commitment or a transferee
40 who assumes the obligations to make the purchase described in the
41 commitment.
- 42 (9) High technology. – Machinery or equipment that generates renewable
43 energy.

- 1 (10) North Carolina Capital Venture Fund. – A private, for-profit limited
2 partnership or limited liability company established under
3 G.S. 105-129.112 in which a designated investor purchases an equity
4 interest.
- 5 (11) Person. – An individual, partnership, limited liability company,
6 corporation, association, organization, business trust, estate, trust, or
7 any other legal or commercial entity.
- 8 (12) Redemption reserve. – The reserve established by the corporation to
9 facilitate the cash redemption of certificates.
- 10 (13) Renewable energy. – Energy that is derived from one or more of the
11 following:
- 12 a. Biomass equipment that uses renewable biomass resources for
13 biofuel production of ethanol, methanol, and biodiesel;
14 anaerobic biogas production of methane utilizing agricultural
15 and animal waste or garbage; or commercial thermal or
16 electrical generation. The term also includes related devices for
17 converting, conditioning, and storing the liquid fuels, gas, and
18 electricity produced with biomass equipment.
- 19 b. Hydroelectric generators located at existing dams or in
20 free-flowing waterways, and related devices for water supply
21 and control and converting, conditioning, and storing the
22 electricity generated.
- 23 c. Solar energy equipment that uses solar radiation as a substitute
24 for traditional energy for water heating, active space heating
25 and cooling, passive heating, daylighting, generating electricity,
26 distillation, desalination, detoxification, or the production of
27 industrial or commercial process heat. The term also includes
28 related devices necessary for collecting, storing, exchanging,
29 conditioning, or converting solar energy to other useful forms
30 of energy.
- 31 d. Wind equipment required to capture and convert wind energy
32 into electricity or mechanical power, and related devices for
33 converting, conditioning, and storing the electricity produced.
- 34 e. Geothermal equipment that uses the internal heat of the earth as
35 a substitute for traditional energy for water heating and active
36 space heating and cooling.

37 (14) Secretary. – The Secretary of Revenue.

38 **"§ 105-129.103. North Carolina Capital Investment Board.**

39 (a) There is created within the Department the North Carolina Capital Investment
40 Board to exercise the powers conferred by this Article. The purpose of the Board is to
41 mobilize venture equity capital for investment in a manner that will result in a
42 significant potential to create jobs and to diversify and stabilize the economy of the
43 State.

1 **(b)** The Board shall consist of five members. One member shall be the State
2 Treasurer. Four shall be appointed by the Governor. The four members appointed by the
3 Governor shall serve five-year staggered terms with the initial terms of the first four
4 members to be five years for one member, four years for one member, and three years
5 for the remaining members.

6 **(c)** When a vacancy occurs in the membership of the Board for any reason, the
7 vacancy shall be filled in the same manner as the appointment of the original member
8 for the unexpired term of the Board member being replaced.

9 **(d)** Appointed members of the Board may not serve more than two full
10 consecutive terms except where the Governor determines that an additional term is in
11 the best interest of the State.

12 **(e)** Three members of the Board constitute a quorum for conducting business and
13 exercising Board power, provided that a minimum of three affirmative votes is required
14 for Board action and at least one of the affirmative votes is cast by the State Treasurer.

15 **(f)** Members of the Board may not receive compensation or benefits for their
16 services but may receive per diem and expenses incurred in the performance of the
17 members' official duties at rates established in G.S. 138-5. Members of the Board may
18 decline to receive per diem and expenses for their services.

19 **(g)** Members of the Board shall be selected on the basis of demonstrated
20 expertise and competence in at least one of the following:

21 **(1)** The supervision of investment managers.

22 **(2)** The fiduciary management of investment funds.

23 **(3)** The management and administration of tax credit allocation programs.

24 **(h)** The Board and its members are considered to be a governmental entity with
25 all of the rights, privileges, and immunities of a governmental entity of the State.

26 **(i)** Meetings of the Board, except to the extent necessary to protect confidential
27 information with respect to investments in the North Carolina Capital Venture Fund, are
28 subject to Article 33C of Chapter 143 of the General Statutes.

29 **§ 105-129.104. Board duties and powers.**

30 **(a)** The duties of the Board include the following:

31 **(1)** To establish criteria and procedures for the allocation and issuance of
32 contingent tax credits to designated investors by means of certificates
33 issued by the Board. A contingent tax credit may not be issued unless
34 the North Carolina Capital Venture Fund first agrees to treat the
35 amount of the tax credit redeemed by the State as a loan from the State
36 to the North Carolina Capital Venture Fund and agrees to repay the
37 loan upon terms and conditions established by the Board.

38 **(2)** To establish criteria and procedures for assessing the likelihood of
39 future certificate redemptions by designated investors, including
40 criteria and procedures for evaluating the value of investments made
41 by the North Carolina Capital Venture Fund and the returns from the
42 North Carolina Capital Venture Fund.

- 1 (3) To establish criteria and procedures for registering and redeeming
2 contingent tax credits by designated investors holding certificates
3 issued by the Board.
- 4 (4) To establish a target rate of return or range of returns on venture
5 capital investments of the North Carolina Capital Venture Fund.
- 6 (5) To establish criteria and procedures governing commitments obtained
7 by the Board from designated purchasers including entering into
8 commitments with designated purchasers and drawing on
9 commitments to redeem certificates from designated investors.
- 10 (b) The Board shall have the power to do the following:
- 11 (1) Expend and invest funds.
- 12 (2) Enter into contracts.
- 13 (3) Insure against loss.
- 14 (4) Make, amend, and revoke rules for the conduct of its affairs, consistent
15 with this Article and in accordance with the North Carolina
16 Administrative Procedure Act. All rules made by the Board under this
17 subdivision are subject to review by the Rules Review Commission.
- 18 (5) Perform any other act necessary to carry out its purpose.

19 **§ 105-129.105. Criteria established by Board in fulfillment of duties.**

20 (a) The criteria and procedures established by the Board for the allocation and
21 issuance of contingent tax credits shall include the contingencies that must be met for a
22 certificate and its related tax credits to be issued by the Board, transferred by a
23 designated investor, and redeemed by a designated investor in order to receive a
24 contingent tax credit. In addition, the criteria and procedures under this subsection shall
25 also tie the contingencies for redemption of certificates to the targeted rates of return
26 and scheduled redemptions of equity interests purchased by designated investors in the
27 North Carolina Capital Venture Fund.

28 (b) The Board may charge a placement fee to the North Carolina Capital Venture
29 Fund for the issuance of a certificate and related contingent tax credit to a designated
30 investor. The fee shall be charged only to pay for reasonable and necessary costs of the
31 Board and may not exceed one-half of one percent (.5%) of the equity investment of the
32 designated investor.

33 (c) The criteria and procedures established by the Board for redeeming
34 certificates shall give priority to the redemption amount from the available funds in the
35 redemption reserve. To the extent there are insufficient funds in the redemption reserve
36 to redeem certificates, the criteria and procedures for this subsection shall grant the
37 Board the option to redeem certificates by either certifying a contingent tax credit to the
38 designated investor or making demand on designated purchasers consistent with the
39 requirements of G.S. 105-129.120.

40 (d) The Board shall, in consultation with the corporation, publish an annual
41 report of the activities conducted by the North Carolina Capital Venture Fund, and
42 present the report to the Governor and the Joint Legislative Committee on
43 Governmental Operations. The annual report may not identify any specific designated

1 investor who has redeemed or transferred a certificate. The annual report shall contain
2 the following:

3 (1) A copy of the audit of the North Carolina Capital Venture Fund and a
4 valuation of the assets of the North Carolina Capital Venture Fund.

5 (2) A review of the progress of the investment fund allocation manager in
6 implementing its investment plan.

7 (3) A description of any redemption or transfer of a certificate issued
8 under this Article.

9 (e) Beginning July 1, 2009, and thereafter every two years, the Board shall
10 publish a progress report which shall evaluate the progress of the State in accomplishing
11 the purposes stated in G.S. 105-129.101. The Board shall give a copy of the report to the
12 General Assembly.

13 **§ 105-129.106. North Carolina Capital Investment Corporation; powers and**
14 **purposes.**

15 (a) There is created an independent quasi-public nonprofit corporation known as
16 the North Carolina Capital Investment Corporation. For purposes of this section,
17 "quasi-public" corporation is defined as an artificial person, private in ownership,
18 individually created as a corporation by the State which has accepted from the State the
19 grant of a franchise or contract involving the performance of a public purpose relating to
20 the State of its citizens.

21 (b) The corporation shall file with the Secretary of State articles of incorporation
22 and any amendment to its articles of incorporation. In addition to the articles of
23 incorporation, the corporation may adopt bylaws and operational policies that are
24 consistent with this Article.

25 (c) The purposes of the corporation include the following:

26 (1) To organize the North Carolina Capital Venture Fund.

27 (2) To select a venture capital investment fund allocation manager to
28 make venture capital fund investments by the North Carolina Capital
29 Venture Fund.

30 (3) To negotiate the terms of a contract with the venture capital investment
31 fund allocation manager.

32 (4) To execute the contract with the selected venture capital investment
33 fund manager on behalf of the North Carolina Capital Venture Fund.

34 (5) To receive funds paid by designated investors for the issuance of
35 certificates by the Board for investment in the North Carolina Capital
36 Venture Fund.

37 (6) To receive investment returns from the North Carolina Capital Venture
38 Fund.

39 (7) To establish the redemption reserve to be used by the corporation to
40 redeem certificates.

41 (d) The corporation is prohibited from exercising governmental functions, having
42 members, pledging the credit or taxing power of the State or any political subdivision of
43 the State, or making its debts payable out of any moneys except those of the
44 corporation. The obligations of the corporation are not obligations of the State or any

1 political subdivision of the State within the meaning of any constitutional or statutory
2 debt limitations, but are obligations of the corporation payable solely and only from the
3 corporation's funds.

4 (e) The corporation is authorized to engage consultants and legal counsel, expend
5 and invest funds, enter into contracts, insure against loss, hire employees, and perform
6 any other act necessary to carry out its purposes.

7 **"§ 105-129.107. Incorporator; appointment committee.**

8 (a) The State Treasurer shall serve as the incorporator of the corporation. The
9 State Treasurer shall appoint three individuals to serve on an appointment committee,
10 which will elect the initial board of directors of the corporation. In electing the initial
11 board of directors, the appointment committee shall exercise due care to assure that
12 persons elected have the requisite financial experience necessary in order to carry out
13 the duties of the corporation as established in this Article, including in areas related to
14 venture capital investment, investment management, and supervision of investment
15 managers and investment funds. The appointment committee shall terminate its
16 existence upon the election of the initial board of directors of the corporation.

17 (b) The division shall assist the incorporator and the appointment committee in
18 any manner determined necessary and appropriate by the incorporator and appointment
19 committee in order to administer this section.

20 **"§ 105-129.108. Board of directors.**

21 (a) The initial board of directors of the corporation shall consist of five members.
22 After the election of the initial board of directors, vacancies in the board of directors of
23 the corporation shall be filled by election by the remaining directors of the corporation.

24 (b) Board members shall serve three-year terms, except that of the five initial
25 members, two shall serve three-year terms, two shall serve two-year terms, and one
26 shall serve a one-year term. Board members shall serve until their successors are elected
27 and qualified and may serve successive terms. A majority of the Board members may
28 remove a Board member for cause. The Board shall select a chair by majority vote for a
29 term of one year. Three members of the Board are a quorum for the transaction of
30 business.

31 (c) Members of the board of directors are subject to any restrictions on conflicts
32 of interest specified in the organizational documents of the corporation. Members are
33 not permitted to have any interest in any venture capital investment fund allocation
34 manager selected by the corporation under this Article or in any investments made by
35 the North Carolina Capital Venture Fund.

36 (d) Directors of the corporation shall be compensated for direct expenses and
37 mileage but may not receive a director's fee or salary for service as directors.

38 **"§ 105-129.109. Investment manager.**

39 (a) After incorporation, the corporation shall conduct a national solicitation for
40 investment plan proposals from qualified venture capital investment fund allocation
41 managers for the raising and investing of capital by the North Carolina Capital Venture
42 Fund in accordance with the requirements of this section. The selected venture capital
43 investment fund allocation manager shall have substantial, successful experience in the
44 design, implementation, and management of seed and venture capital investment

1 programs and in capital formation and shall have demonstrated expertise in the
2 management and fund allocation of investments in venture capital funds.

3 (b) Any proposed investment plan shall address the applicant's level of
4 experience and quality of management, investment philosophy and process, probability
5 of success in fund-raising, prior investment fund results, and plan for achieving the
6 purposes of this section.

7 **"§ 105-129.110. Management fee; additional financial assistance.**

8 The corporation may charge a management fee on assets under management in the
9 North Carolina Capital Venture Fund. The fee shall be no more than necessary to pay
10 for reasonable and necessary costs of the corporation and shall be in addition to any fee
11 charged to the North Carolina Capital Venture Fund by the venture capital investment
12 fund allocation manager selected by the corporation.

13 **"§ 105-129.111. Dissolution.**

14 Upon the dissolution of the North Carolina Capital Venture Fund, the corporation
15 shall be liquidated and dissolved. Upon dissolution or privatization of the corporation,
16 any assets owned by the corporation shall be distributed to the State.

17 **"§ 105-129.112. Organization of North Carolina Capital Venture Fund.**

18 (a) The corporation shall organize the North Carolina Capital Venture Fund. The
19 Fund shall be organized as a private, for-profit, limited partnership or limited liability
20 company under North Carolina law having the corporation as the general partner or
21 manager. The North Carolina Capital Venture Fund shall make investments in private
22 seed and venture capital partnerships or entities in a manner and for the following
23 purposes:

- 24 (1) To encourage the availability of a wide variety of venture capital in the
25 State.
- 26 (2) To strengthen the economy of the State.
- 27 (3) To help business in the State gain access to sources of capital.
- 28 (4) To help build a significant, permanent source of capital available to
29 serve the needs of businesses in the State.
- 30 (5) To accomplish all these benefits in a way that minimizes the use of
31 contingent tax credits.

32 (b) The North Carolina Capital Venture Fund shall be organized to provide for
33 equity interests for designated investors which provide for a designated scheduled rate
34 of return and a scheduled redemption in accordance with rules made by the Board
35 pursuant to the North Carolina Administrative Procedure Act.

36 **"§ 105-129.113. Compensation from the North Carolina Capital Venture Fund to**
37 **the corporation; redemption reserve.**

38 Any returns in excess of those payable to designated investors shall be deposited in
39 the redemption reserve and held by the corporation as a first-priority reserve for the
40 redemption of certificates. Any returns received by the corporation from investment of
41 amounts held in the redemption reserve shall be added to the redemption reserve until it
42 has reached a total of one hundred million dollars (\$100,000,000). If at the end of any
43 calendar year the redemption reserve exceeds one hundred million dollars
44 (\$100,000,000), the excess shall be deposited in the General Fund no later than April 1

1 of the following year. Funds held by the corporation in the redemption reserve shall be
2 invested in a manner consistent with the exercise of ordinary business care and
3 prudence under the facts and circumstances prevailing at the time. In so doing, the funds
4 shall be invested with consideration given to the long- and short-term needs of the
5 corporation, its present and anticipated financial requirements, expected total returns,
6 and general economic conditions.

7 **"§ 105-129.114. Investments by North Carolina Capital Venture Fund.**

8 (a) The North Carolina Capital Venture Fund shall make determinations of
9 whether to invest funds in venture capital funds based on the following factors:

10 (1) Whether the venture capital fund is managed by investment managers
11 who have made a commitment to equity investments in businesses
12 located within the State and who have committed to maintain a
13 physical presence within the State. In evaluating the commitment to
14 equity investments in businesses located within the State, the Fund
15 shall consider the following:

16 a. The investments made in North Carolina-based entities.

17 b. The correspondent relationships established with North
18 Carolina-based venture capital funds.

19 c. The commitment made to expand the reach of expertise within
20 the State by adding additional investment areas of expertise.

21 (2) Whether the venture capital fund has an experienced manager or
22 management team with demonstrated expertise and a successful
23 history in the investment of venture capital funds.

24 (b) Notwithstanding subsection (a) of this section, the Fund may invest funds in a
25 newly created venture capital fund if the managers or management team of the fund
26 have the experience, expertise, and a successful history in the investment of venture
27 capital funds as described in subdivision (a)(2) of this section.

28 (c) At minimum, ten percent (10%) of the Fund shall be invested in the
29 renewable energy sector, ten percent (10%) of the Fund shall be invested in high
30 technology, and ten percent (10%) of the Fund shall be invested in biotechnology.

31 **"§ 105-129.115. Powers of North Carolina Capital Venture Fund.**

32 The North Carolina Capital Venture Fund is authorized to engage consultants and
33 legal counsel, expend and invest funds, enter into contracts, insure against loss, hire
34 employees, issue equity interests to designated investors that have purchased certificates
35 from the Board, and perform any other act necessary to carry out its purposes. In
36 addition, the Fund may issue debt and borrow the funds needed to accomplish its goals,
37 open and manage bank and short-term investment accounts as considered necessary by
38 the venture capital investment fund allocation manager, and expend moneys to secure
39 investment ratings for investments by designated investors in the Fund. The Fund may
40 not secure its debt with contingent tax credits issued by the Board.

41 **"§ 105-129.116. Annual audits.**

42 (a) Each calendar year, an audit of the activities of the North Carolina Capital
43 Venture Fund shall be made as described in this section, the costs associated with which
44 shall be paid by the corporation. The audit shall be conducted by the State Auditor or an

1 independent auditor engaged by the State Auditor. An independent auditor may have no
2 business, contractual, or other connection to the corporation or the North Carolina
3 Capital Venture Fund.

4 (b) The annual audit report shall include a valuation of the assets owned by the
5 North Carolina Capital Venture Fund as of the end of the reporting year. The report
6 shall be delivered to the corporation and the Board.

7 **"§ 105-129.117. Certificates and contingent tax credits.**

8 (a) In accordance with the North Carolina Administrative Procedure Act, the
9 Board shall make rules governing the form, issuance, and redemption of certificates.
10 The Board's issuance of certificates and related contingent tax credits to designated
11 investors shall be subject to the following:

12 (1) The aggregate outstanding certificates may not exceed a total of one
13 hundred million dollars (\$100,000,000) of contingent tax credits.

14 (2) The certificates shall be issued contemporaneously with an investment
15 in the North Carolina Capital Venture Fund by a designated investor.

16 (3) Contingent tax credits shall be issued in a manner that not more than
17 twenty million dollars (\$20,000,000) of contingent tax credits may be
18 initially redeemable in any fiscal year.

19 (4) The credits are certifiable if there are insufficient funds in the
20 redemption reserve to make a cash redemption and the Board does not
21 exercise its other options under G.S. 105-129.119.

22 (b) In determining the one-hundred-million-dollar (\$100,000,000) maximum
23 limit in subdivision (a)(1) and the twenty-million-dollar (\$20,000,000) limitation in
24 subdivision (a)(3) of this section, the Board shall use the cumulative amount of
25 scheduled aggregate returns on certificates issued by the Board to designated investors.
26 Certificates and related contingent tax credits which have been redeemed shall be
27 included only to the extent of tax credits actually allowed. Certificates and related
28 contingent tax credits which have expired may not be included.

29 (c) Contingent tax credits may not be redeemed except by a designated investor
30 in accordance with the terms of a certificate from the Board and may not be redeemed
31 prior to the time the North Carolina Capital Venture Fund receives full payment from
32 the designated investor for the certificate. A contingent tax credit shall be claimed for a
33 tax year that begins during the calendar year maturity date stated on the certificate. An
34 investor who redeems a certificate and the related contingent tax credit shall allocate the
35 amount of the contingent tax credit to the taxpayers of the investor based on the
36 taxpayer's pro rata share of the investor's earnings. Any contingent tax credit in excess
37 of the taxpayer's tax liability for the tax year may be credited to the tax liability until the
38 earlier of the depletion of the contingent tax credit or a period not to exceed seven years.

39 (d) In calculating the amount of a contingent tax credit, the following
40 requirements shall be observed:

41 (1) A contingent tax credit shall be certified by the Board only if the actual
42 return to the designated investor is less than the return that was
43 targeted at the issuance of the certificate.

1 (2) The amount of the contingent tax credit may not exceed the difference
2 between the sum of the initial equity investment of the designated
3 investor in the North Carolina Capital Venture Fund, the scheduled
4 aggregate return to the designated investor at rates of return authorized
5 by the Board at the issuance of the certificate, and the aggregate actual
6 return received by the designated investor and any predecessor in
7 interest of the initial equity investment and interest on the initial equity
8 investment; and

9 (3) The rates, whether fixed rates or variable rates, shall be determined by
10 a formula stipulated in the certificate.

11 (e) The Board shall clearly indicate the following information on the certificate:

12 (1) The targeted return on the invested capital.

13 (2) The amount of the initial equity investment.

14 (3) The calculation formula for determining the scheduled aggregate
15 return on the initial equity investment.

16 (4) The calculation formula for determining the amount of the contingent
17 tax credit that may be claimed.

18 (f) Once moneys are invested by a designated investor, the certificate shall be
19 binding on the Board and may not be modified, terminated, or rescinded. Funds invested
20 by a designated investor for a certificate shall be paid to the corporation for placement
21 in the North Carolina Capital Venture Fund.

22 **"§ 105-129.118. Transfer and registration of certificates.**

23 (a) A certificate and the related contingent tax credit may be transferred by the
24 designated investor. The Board shall develop a system for registration of any certificate
25 and related contingent tax credit issued or transferred under this Article. The system
26 shall also permit verification that any contingent tax credit claimed upon a tax return is
27 valid and any transfers of the certificate and related contingent tax credit were made in
28 accordance with the requirements of this Article.

29 (b) A certificate or contingent tax credit issued or transferred under this Article is
30 not a security under Chapter 78A of the General Statutes.

31 **"§ 105-129.119. Redemption of certificates.**

32 (a) If a designated investor elects to redeem a certificate, the certificate shall be
33 presented to the Board for redemption no later than June 30 of the calendar year
34 maturity date stated on the certificate. Upon presentment, the Board shall determine and
35 certify the amount of the contingent tax credit that may be claimed by the designated
36 investor. This determination shall be based upon the limitations in G.S. 105-129.117
37 and any rules made by the Board in accordance with the North Carolina Administrative
38 Procedure Act.

39 (b) If there are sufficient funds in the redemption reserve, the Board shall direct
40 the corporation to make a cash redemption of the certificate. If there are insufficient
41 funds in the redemption reserve, the Board may elect to redeem the certificate either by
42 certifying a contingent tax credit to the designated investor or by making demand on
43 designated purchasers to purchase certificates in accordance with G.S. 105-129.120.

1 (c) The Board shall certify to the Department of Revenue the contingent tax
2 credit which can be claimed by the designated investor with respect to the redemption of
3 the certificate.

4 **"§ 105-129.120. Use of commitments to redeem certificates.**

5 (a) The Board may elect to draw on a commitment to redeem a certificate from a
6 designated investor. The Board, upon making an election under this section, shall (i)
7 inform the designated purchaser of the amount of the contingent tax credit that must be
8 purchased from the Board, (ii) specify the date on which the purchase must be
9 consummated, and (iii) use the funds delivered to the Board by the designated purchaser
10 to redeem the certificate from the designated investor.

11 (b) The Board has discretion in determining which commitment or commitments
12 and what portion of those commitments to use to redeem certificates. The contingent tax
13 credits acquired by a designated purchaser under this section are subject to
14 G.S. 105-129.118.

15 **"§ 105-129.121. Powers and effectiveness.**

16 (a) This Article may not be construed as a restriction or limitation upon any
17 power which the Board might otherwise have under any other law of this State, and the
18 provisions of this Article are cumulative to those powers. This Article shall be construed
19 to provide a complete, additional, and alternative method for performing the duties
20 authorized and shall be regarded as bestowing supplemental, additional powers to those
21 conferred by any other laws.

22 (b) The provisions of any contract entered into by the Board or the North
23 Carolina Capital Venture Fund may not be compromised, diminished, invalidated, or
24 affected by either of the following:

- 25 (1) The level, timing, or degree of success of the North Carolina Capital
26 Venture Fund or the investment funds in which the North Carolina
27 Capital Venture Fund invests.
28 (2) The extent to which the investment funds are invested in North
29 Carolina venture capital projects or are successful in accomplishing
30 any economic development objectives.

31 **"§ 105-129.122. Permissible investments.**

32 Investments by designated investors in the North Carolina Capital Venture Fund are
33 permissible investments under applicable laws of the State for State-chartered banks,
34 State-chartered savings and loan associations, State-chartered credit unions,
35 State-chartered industrial loan corporations, domestic insurance companies, or any
36 combination thereof.

37 **"§ 105-129.123. Exemption from certain statutes.**

38 Except as otherwise provided in this Article, the corporation is exempt from statutes
39 governing State agencies. The corporation shall be subject to Article 33C of Chapter
40 143 of the General Statutes.

41 **"§ 105-129.124. Severability.**

42 If any provision of this act or its application is held invalid, the invalidity does not
43 affect other provisions or applications of this act that can be given effect without the
44 invalid provisions or application, and to this end the provisions of this act are severable.

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SECTION 2. This act is effective when it becomes law.