

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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Committee Substitute Favorable 5/1/95
Committee Substitute #2 Favorable 6/27/95

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

(Public)

Sponsors:

Referred to:

March 9, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY REMOVING
3 TECHNICAL REQUIREMENTS FOR THE FORMATION OF NORTH
4 CAROLINA ENTERPRISE CORPORATIONS, AUTHORIZING THE
5 FORMATION OF NONPROFIT ENTERPRISE CORPORATIONS, AND
6 PROHIBITING AN ENTERPRISE CORPORATION FROM INVESTING IN A
7 BUSINESS CONTROLLED BY OR RELATED TO A PERSON WHO HAS
8 INVESTED IN ENTERPRISE CORPORATION.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 53A-37 reads as rewritten:

11 "**§ 53A-37. Definitions.**

12 The following definitions apply in this Article:

- 13 (1) Business. —A corporation, partnership, association, or sole
14 proprietorship operated for profit.
15 (1b) Control. – Defined in G.S. 105-163.010.
16 (2) Equity security. —Common stock, preferred stock, an interest in a
17 partnership, subordinated debt, or a warrant that is convertible into, or

1 entitles the holder to receive upon its exercise, common stock, preferred
2 stock, or an interest in a partnership.

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

5 (4) Qualified North Carolina Business. — A business whose headquarters
6 and principal business operations are located in North Carolina and
7 which, ~~that~~, together with its affiliates on a consolidated basis, had gross
8 income during the immediately preceding fiscal year, determined in
9 accordance with generally accepted accounting principles without
10 taking into account extraordinary items, of less than forty million dollars
11 (\$40,000,000).

12 (4a) Related. — Defined in G.S. 105-163.010.

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

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

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

22 (8) ~~Traditional Financial Institutions—~~financial institutions. — Corporations or
23 associations chartered under Chapters 53 or 54B of the General
24 Statutes."

25 Sec. 2. G.S. 53A-38(b) reads as rewritten:

26 "(b) Persons who wish to associate themselves for the purpose of establishing a
27 North Carolina Enterprise Corporation shall file a certificate of incorporation with the
28 Secretary of State. The certificate shall be in accordance with ~~G.S. 55-7.~~ either G.S. 55-2-
29 02 or G.S. 55A-2-02. An existing corporation may become a North Carolina Enterprise
30 Corporation by filing amended articles of incorporation with the Secretary of State's
31 office in accordance with Article 10 of either Chapter 55 or Chapter 55A of the General
32 Statutes."

33 Sec. 3. G.S. 53A-40 is repealed.

34 Sec. 4. G.S. 53A-41 reads as rewritten:

35 "**§ 53A-41. Governing law.**

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

39 Sec. 5. G.S. 53A-42 reads as rewritten:

40 "**§ 53A-42. Powers.**

41 A North Carolina Enterprise Corporation created under this Article shall have all the
42 powers conferred on a business corporations by corporation if it was incorporated under

1 Chapter 55 of the General Statutes. ~~Statutes or all the powers conferred on a nonprofit~~
2 corporation if it was incorporated under Chapter 55A of the General Statutes."

3 Sec. 6. G.S. 53A-44 reads as rewritten:

4 **"§ 53A-44. Prohibited investments.**

5 ~~Investments by a~~ A North Carolina Enterprise Corporation shall not be made invest in
6 any business unless the business can demonstrate to the satisfaction of the North Carolina
7 Enterprise Corporation that the business cannot obtain sufficient financing through
8 traditional financial institutions. A North Carolina Enterprise Corporation shall not
9 invest in a business that is related to or controlled by one of the Enterprise Corporation's
10 investors."

11 Sec. 7. G.S. 53A-45 reads as rewritten:

12 **"§ 53A-45. Board of directors.**

13 The business and affairs of a North Carolina Enterprise Corporation shall be managed
14 and conducted by a board of directors and by ~~such any~~ officers and agents as the
15 corporation ~~by its bylaws shall authorize.~~ authorizes in its bylaws. The initial board of
16 directors shall be those listed in the Articles of Incorporation.

17 For a corporation organized under Chapter 55 of the General Statutes, At at the initial
18 shareholders meeting, and thereafter annually, the voting common stock shareholders
19 shall elect a board of directors comprised of not less than thirteen members in accordance
20 with the following conditions: members. For a corporation organized under Chapter 55A of
21 the General Statutes, the board of directors shall be appointed in accordance with the
22 corporation's bylaws but shall be comprised of not less than 13 members.

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

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

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

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

37 Sec. 8. G.S. 53A-46 reads as rewritten:

38 **"§ 53A-46. Tax credit.**

39 A person or corporation that invests in the equity securities of a North Carolina
40 Enterprise Corporation or in the equity securities of a limited partnership in which a
41 North Carolina Enterprise Corporation is the only general ~~partner~~ partner, or that makes a
42 contribution to a North Carolina Enterprise Corporation organized under Chapter 55A of

1 the General Statutes, is entitled to a tax credit as provided in G.S. 105-163.010 through
2 G.S. 105-163.014."

3 Sec. 9. G.S. 105-130.9(4) reads as rewritten:

4 "(4) ~~That portion~~The amount of a contribution ~~that is claimed as a~~for which
5 the taxpayer claims a tax credit pursuant to G.S. 105-130.34 or Division
6 V of this Article shall not be eligible for a deduction pursuant to~~under~~
7 this section. The amount of the credit claimed with respect to the
8 contribution is not, however, required to be added to income under G.S.
9 105-130.5(a)(10)."

10 Sec. 10. G.S. 105-134.6(c)(5) reads as rewritten:

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

- 13 a. The fair market value, up to a maximum of one hundred
14 thousand dollars (\$100,000), of the donated property interest for
15 which the taxpayer claims a credit for the taxable year under G.S.
16 105-151.12 and the 105-151.12.
- 17 b. The market price of the gleaned crop for which the taxpayer
18 claims a credit for the taxable year under G.S. 105-151.14.
- 19 c. The amount of a contribution to a nonprofit North Carolina
20 Enterprise Corporation for which the taxpayer claims a credit
21 under Division V of this Article, to the extent the contribution
22 was deducted by the taxpayer under the Code for the current or
23 an earlier taxable year."

24 Sec. 11. G.S. 105-163.010 is amended by renumbering definitions (9b) and
25 (9c) as (9c) and (9d), respectively, and by adding the following new definitions in the
26 appropriate alphabetical order:

27 "(5a) Invest. – Purchase an entity's equity securities or subordinated debt
28 directly from that entity or make a contribution directly to a
29 nonprofit North Carolina Enterprise Corporation.

30 (9b) Related. – Having a relationship described in section 267 or section
31 707(b) of the Code."

32 Sec. 12. G.S. 105-163.011 reads as rewritten:

33 "**§ 105-163.011. (Repealed effective for investments made on or after January 1,**
34 **1999) Tax credits allowed.**

35 (a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a
36 corporation that ~~purchases the equity securities of a North Carolina Enterprise Corporation~~
37 ~~directly from the~~invests in an Enterprise Corporation is allowed as a credit for the taxable
38 year an amount equal to twenty-five percent (25%) of the amount invested. The
39 aggregate amount of credit allowed a corporation for one or more investments in a single
40 taxable year under this Division, whether directly or indirectly as owner of a pass-through
41 entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The credit is
42 allowed against one or more of the following taxes:

- 43 (1) The income tax imposed by Division I of this Article.

1 (2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-
2 122.

3 (3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-
4 228.8.

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

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

21 (b1) Pass-Through Entities. – Subject to the limitations provided in G.S. 105-
22 163.012, a pass-through entity that ~~purchases the equity securities or subordinated debt of~~
23 invests in a qualified grantee business, a qualified business venture, or a North Carolina
24 Enterprise Corporation ~~directly from the business or Corporation~~ is eligible for a tax credit
25 equal to twenty-five percent (25%) of the amount invested. The aggregate amount of
26 credit allowed a pass-through entity for one or more investments in a single taxable year
27 under this Division, whether directly or indirectly as owner of another pass-through
28 entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-
29 through entity is not eligible for the credit for the year in which the investment by the
30 pass-through entity is made but shall be eligible for the credit for the taxable year
31 beginning during the calendar year in which the application for the credit becomes
32 effective as provided in subsection (c) of this section.

33 Each individual who is an owner of a pass-through entity is allowed as a credit against
34 the tax imposed by Division II of this Article for the taxable year an amount equal to the
35 owner's allocated share of the credits for which the pass-through entity is eligible under
36 this subsection. The aggregate amount of credit allowed an individual for one or more
37 investments in a single taxable year under this Division, whether directly or indirectly as
38 owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

39 Each corporation that is an owner of a pass-through entity is allowed as a credit for
40 the taxable year an amount equal to the corporation's allocated share of the tax credits for
41 which the pass-through entity is eligible under this subsection as a result of the pass-
42 through entity's investment in equity securities of a North Carolina Enterprise
43 Corporation. The credit is allowed against one or more of the following taxes:

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

6 The aggregate amount of credit allowed a corporation for one or more investments in
7 a single taxable year under this Division, whether directly or indirectly as owner of a
8 pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000).

9 If an owner's share of the pass-through entity's credit is limited due to the maximum
10 allowable credit under this section for a taxable year or if a corporate owner is not
11 eligible for the credit because the investment was not made in a North Carolina
12 Enterprise Corporation, the pass-through entity and its owners may not reallocate the
13 unused credit among the other owners.

14 (c) Application. – To be eligible for the tax credit provided in this section, the
15 taxpayer must file an application for the credit with the Secretary on or before April 15 of
16 the year following the calendar year in which the investment was made. The Secretary
17 may grant extensions of this deadline, as the Secretary finds appropriate, upon the request
18 of the taxpayer, except that the application may not be filed after September 15 of the
19 year following the calendar year in which the investment was made. An application is
20 effective for the year in which it is timely filed. The application shall be on a form
21 prescribed by the Secretary and shall include any supporting documentation that the
22 Secretary may require. If an investment for which a credit is applied for was paid for
23 other than in money, the taxpayer shall include with the application a certified appraisal
24 of the value of the property used to pay for the investment. The application for a credit
25 for an investment made by a pass-through entity must be filed by the pass-through entity.

26 (d) Penalties. – The penalties provided in G.S. 105-236 apply in this Division."

27 Sec. 13. G.S. 105-163.014 is amended by adding a new subsection to read:

28 "(d1) Relationship to Business. – A taxpayer who has received a credit under this
29 Division for an investment in a North Carolina Enterprise Corporation forfeits the credit
30 if, within three years after the investment was made, the taxpayer controls or is related to
31 a business to which the North Carolina Enterprise Corporation has provided financing."

32 Sec. 14. G.S. 105-163.014(d) reads as rewritten:

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

- 37 (1) Within one year after the investment was made, the taxpayer
38 transfers any of the securities received in the investment that
39 qualified for the tax credit to another person or entity, other than in a
40 transfer resulting from one of the following:
 - 41 a. The death of the taxpayer.
 - 42 b. A final distribution in liquidation to the owners of a taxpayer that
43 is a corporation or other entity.

1 c. A merger, consolidation, or similar transaction requiring
2 approval by the shareholders of the North Carolina Enterprise
3 Corporation, qualified business venture, or qualified grantee
4 business under applicable State law, to the extent the taxpayer
5 does not receive cash or tangible property in the merger,
6 consolidation, or other similar transaction.

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

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

23 Sec. 15. Sections 9 through 13 of this act are effective for taxable years
24 beginning on or after January 1, 1995. The remainder of this act is effective upon
25 ratification. If Division V of Article 4 of Chapter 105 of the General Statutes expires or
26 is repealed, the amendments made by this act to that Division expire or are repealed on
27 the same date.