

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995**

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SENATE BILL 495

Short Title: Small Business Capital & Growth Act. (Public)

Sponsors: Senators Jordan, McKoy, Lucas, Edwards, Martin of Guilford, Ballance,
Dannelly, and Rand.

Referred to: Commerce

March 28, 1995

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA CAPITAL ACCESS
AUTHORITY TO PROVIDE EQUITY AND CREDIT FINANCING TO SMALL
AND MEDIUM-SIZED BUSINESSES TO CREATE JOBS FOR NORTH
CAROLINA.

The General Assembly of North Carolina enacts:

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PART I.

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".

1 Sec. 3. Article 3 of Chapter 53A of the General Statutes, as amended by this
2 act, is further amended by adding a new Part to read:

3 "Part 3. The North Carolina Capital Access Authority.

4 **"§ 53A-50. Creation of Authority, purpose.**

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

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

25 **"§ 53A-51. Governing body of Authority.**

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

32 (b) Appointed Members. -- Four members shall be appointed by the Governor,
33 one who represents the banking industry, one who represents a North Carolina
34 Enterprise Corporation created pursuant to Part 2 of this Article, one who represents
35 small business interests, and one who represents public interests. Four members shall be
36 appointed by the General Assembly upon the recommendation of the Speaker of the
37 House of Representatives in accordance with G.S. 120-121, one who represents
38 community development corporations, one who represents environmental interests, one
39 who represents medium-sized business interests, and one who represents public
40 interests. Four members shall be appointed by the General Assembly upon the
41 recommendation of the President Pro Tempore of the Senate in accordance with G.S.
42 120-121, one who owns a minority business as defined in G.S. 143-128, one who
43 represents a public utility, one who represents a nonprofit organization active in

1 infrastructure development under the Community Reinvestment Act, and one who
2 represents public interests.

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

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

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

21 (c) Ex Officio Members. -- The following members shall be ex officio, voting
22 members of the Board:

23 (1) The State Treasurer, or the Treasurer's designee.

24 (2) The Secretary of State, or the Secretary's designee.

25 (3) The Commissioner of Agriculture, or the Commissioner's designee.

26 (4) The State Auditor, or the Auditor's designee.

27 (5) The State Superintendent of Public Instruction, or the Superintendent's
28 designee.

29 (6) The Attorney General, or the Attorney General's designee.

30 (7) The Commissioner of Labor, or the Commissioner's designee.

31 (8) The Commissioner of Insurance, or the Commissioner's designee.

32 (9) The Secretary of Commerce, or the Secretary's designee.

33 (10) The President of the North Carolina Community College System, or
34 the President's designee.

35 (d) Organization of the Board. -- The Board shall adopt bylaws with respect to
36 the calling of meetings, quorums, voting procedures, the keeping of records, and other
37 organizational and administrative matters as the Board may determine. A quorum shall
38 consist of a majority of the members of the Board. No vacancy in the membership of the
39 Board shall impair the right of a quorum to exercise all rights and to perform all the
40 duties of the Board and the Authority.

41 (e) Compensation of the Board. -- No part of the revenues or assets of the
42 Authority shall inure to the benefit of or be distributable to the members of the
43 Board or officers or other private persons. The members of the Board shall receive
44 no salary for their services but shall be entitled to receive per diem and necessary

1 travel and subsistence expenses payable to members of State boards and agencies
2 generally pursuant to G.S. 138-5 and G.S. 138-6, as the case may be.

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

6 (g) Executive Director and Other Employees. -- The Board shall appoint an
7 executive director, whose salary shall be fixed by the Board, to serve at its pleasure. The
8 executive director or a person designated by the executive director shall appoint,
9 employ, dismiss, and, within the limits of available funding, fix the compensation of
10 other employees as considered necessary.

11 (h) Office. -- The Board shall establish an office for the transaction of the
12 Authority's business at the place the Board finds advisable or necessary to implement
13 the provisions of this Part.

14 **"§ 53A-52. Capital Access Financing Fund.**

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

21 **"§ 53A-53. Capital Access Financing Program.**

22 (a) Program Established. -- The Authority shall establish and implement a
23 Capital Access Financing Program in accordance with this section to create at least
24 40,000 jobs during its first five years. The purpose of the program is to provide
25 mezzanine finance capital, credit, and other financing to Qualified North Carolina
26 Businesses in rural areas, underdeveloped communities, depressed urban commercial
27 areas, and economically distressed areas of the State. Financing shall be targeted to
28 businesses that will create well-paying jobs for North Carolina citizens.

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

38 (c) Sound Business Practices. -- The Authority shall adopt rules and standards to
39 assure that all financing provided from the Fund is consistent with sound business
40 practices, including requirements that all loans be collateralized, that applicants have
41 sound credit ratings and meet experience standards set by the Authority, and that
42 mezzanine finance investments not be speculative. The Authority shall assure that all
43 financing agreements include strong remedies for defaults, including foreclosure on

1 collateral. The Authority shall assure that financing agreements meet standards such that
2 the loans can be sold on the secondary market.

3 (d) Matching. -- The Authority shall establish matching requirements for receipt
4 of financing from the Fund. These requirements shall be flexible, tailored to the type,
5 size, and circumstances of the business seeking financing.

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

18 (f) Minimum and Maximum Financing Amount. -- The Authority shall provide
19 financing in amounts no less than five hundred thousand dollars (\$500,000) per
20 business. The Authority shall establish maximum financing amounts for different types
21 and sizes of businesses, not to exceed ten million dollars (\$10,000,000) per business. In
22 no case shall the amount of financing for a business exceed twenty-five thousand dollars
23 (\$25,000) per job to be created as a result of the financing.

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

41 (h) Technical Assistance. -- The Authority shall provide technical assistance and
42 support to businesses to enable them to obtain loan guarantees and other support from
43 federal agencies and other sources.

44 **"§ 53A-54. Powers of the Authority.**

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

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

43 (b) To execute the powers provided in subsection (a) of this section, the Board
44 shall determine the policies of the Authority by majority vote of the members of the

1 Board present and voting, a quorum having been established. Once a policy is
2 determined, the Board shall communicate it to the executive director, who shall have the
3 sole and exclusive authority to execute the policy of the Authority. No member of the
4 Board shall have the responsibility or authority to give operational directives to any
5 employee of the Authority other than the executive director.

6 **"§ 53A-55. Facilitating financing of development projects.**

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

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

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

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

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

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

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

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

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

1 **"§ 53A-56. Taxation of property of Authority.**

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

4 **"§ 53A-57. Authority funds.**

5 All Authority funds shall be deposited in one or more banks to be designated by the
6 Board. Funds of the Authority shall be paid out only upon warrants signed by the
7 treasurer or assistant treasurer of the Authority and countersigned by the chair, the
8 acting chair, or the executive director. No warrants shall be drawn or issued disbursing
9 any of the funds of the Authority except for a purpose authorized by this Part and only
10 when the account or expenditure has been audited and approved by the Authority or its
11 executive director.

12 **"§ 53A-58. Cooperation by other State agencies.**

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

15 **"§ 53A-59. Annual and quarterly reports.**

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

22 The Authority shall submit quarterly reports to the Joint Legislative Commission on
23 Governmental Operations. The reports shall summarize the Authority's activities during
24 the quarter and contain any information about the Authority's activities that is requested
25 by the Commission.

26 **"§ 53A-60. Dissolution.**

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

33 **"§ 53A-61. Tax credit.**

34 A person who invests in the Capital Access Financing Fund or the North Carolina
35 Capital Access Authority is entitled to a tax credit as provided in Article 8C of Chapter
36 105 of the General Statutes."

37 PART II.

38 REVENUES EARMARKED FOR CAPITAL ACCESS FUND

39 Sec. 4. G.S. 147-69.1(d) reads as rewritten:

40 "(d) Unless otherwise provided by law, the interest or income received and
41 accruing from all deposits or investments of such cash balances shall be paid into the
42 State's General Fund, except that all interest or income received and accruing on the
43 monthly balance of the Highway Fund shall be paid into the State Highway Fund. The
44 cash balances of the several funds may be combined for deposit or investment purposes;

1 and when such combined deposits or investments are made, the interest or income
2 received and accruing from all deposits or investments shall be prorated among the
3 funds in conformity with applicable law and the rules and regulations adopted by the
4 Governor and Council of State.

5 The State Treasurer shall, on a monthly basis beginning July 1, 1995, and ending
6 July 1, 2000, credit to the Capital Access Financing Fund created in G.S. 53A-52 fifteen
7 percent (15%) of the interest or income received and accruing during the previous
8 month from the State's General Fund."

9 Sec. 5. Article 2 of Chapter 105 of the General Statutes is amended by adding
10 a new section to read:

11 **"§ 105-33.2. Transfer to Capital Access Financing Fund.**

12 The Secretary shall, on a monthly basis beginning July 1, 1995, and ending July 1,
13 1998, credit to the Capital Access Financing Fund created in G.S. 53A-52 the net
14 proceeds of the taxes collected under this Article during the previous month."

15 PART III.

16 INVESTMENTS BY STATE TREASURER

17 Sec. 6. G.S. 147-69.2(b) reads as rewritten:

18 "(b) It shall be the duty of the State Treasurer to invest the cash of the funds
19 enumerated in subsection (a) of this section in excess of the amount required to meet the
20 current needs and demands on such funds, selecting from among the following:

- 21 (1) Any of the investments authorized by G.S. 147-69.1(c);
- 22 (2) General obligations of other states of the United States;
- 23 (3) General obligations of cities, counties and special districts in North
24 Carolina;
- 25 (4) Obligations of any company, other organization or legal entity
26 incorporated or otherwise created or located within or without the
27 United States if such obligations bear one of the three highest ratings
28 of at least one nationally recognized rating service and do not bear a
29 rating below the three highest by any nationally recognized rating
30 service which rates the particular security;
- 31 (5) Notes secured by mortgages insured by the Federal Housing
32 Administration or guaranteed by the Veterans Administration on real
33 estate located within the State of North Carolina;
- 34 (6) Asset-backed securities (whether considered debt or equity) provided
35 they bear ratings by nationally recognized rating services as provided
36 in G.S. 147-69.2(b)(4) and that they do not bear a rating below the
37 three highest by any nationally recognized rating service which rates
38 the particular securities;
- 39 (7) With respect to Retirement Systems' assets referred to in G.S. 147-
40 69.2(b)(8), (i) insurance contracts which provide for participation in
41 individual or pooled separate accounts of insurance companies, (ii)
42 group trusts, (iii) individual, common or collective trust funds of banks
43 and trust companies and (iv) real estate investment trusts; provided the
44 investment manager has assets under management of at least one

1 hundred million dollars (\$100,000,000); provided such investment
2 assets are managed primarily for the purpose of investing in or owning
3 real estate or related debt financing located in the United States; and
4 provided that the investment authorized by this subsection shall not
5 exceed ten percent (10%) of the book value of all invested assets of the
6 Retirement Systems;

7 (8) With respect to assets of the Teachers' and State Employees'
8 Retirement System, the Consolidated Judicial Retirement System, the
9 Firemen's and Rescue Workers' Pension Fund, the Local
10 Governmental Employees' Retirement System, and the Legislative
11 Retirement System (hereinafter referred to collectively as the
12 Retirement Systems), preferred or common stocks issued by any
13 company incorporated or otherwise created or located within or
14 without the United States, provided:

15 a. That common stock or preferred stock of such corporation is
16 registered on a national securities exchange as provided in the
17 Federal Securities Exchange Act or quoted through the National
18 Association of Securities Dealers' Automated Quotations
19 (NASDAQ) system;

20 b. That such corporation shall have paid a cash dividend on its
21 common stock in each year of the 5-year period next preceding
22 the date of investment and the aggregate net earnings available
23 for dividends on the common stock of such corporation for the
24 whole of such period shall have been at least equal to the
25 amount of such dividends paid;

26 c. That in applying the dividend and earnings test under this
27 section to any issuing, assuming, or guaranteeing corporation,
28 where such corporation shall have acquired its property or any
29 substantial part thereof within a five-year period immediately
30 preceding the date of investment by consolidation, merger, or
31 by the purchase of all or a substantial portion of the property of
32 any other corporation or corporations, or shall have acquired the
33 assets of any unincorporated business enterprise by purchase or
34 otherwise, the dividends and net earnings of the several
35 predecessor or constituent corporations or enterprises shall be
36 consolidated and adjusted so as to ascertain whether or not the
37 applicable requirements of this section have been complied
38 with;

39 d. That the book value of common and preferred stocks including
40 securities convertible into common stocks shall not exceed fifty
41 ~~per centum~~ percent (50%) of the book value of all invested
42 assets of the Retirement Systems; provided, further:

- 1 1. Not more than one and one-half ~~per centum~~ percent (1
2 1/2%) of the book value of such assets shall be invested
3 in the stock of a single corporation, and provided further;
4 2. The total number of shares in a single corporation shall
5 not exceed eight ~~per centum~~ per cent (8%) of the issued
6 and outstanding stock of such corporation, and provided
7 further;
8 3. As used in this subdivision d. and elsewhere in this
9 section, book value shall mean adjusted cost basis as
10 shown on the records of the State Treasurer.
- 11 e. Up to five ~~per cent~~ percent (5%) of the limits authorized in
12 subdivision d. may be invested in the stocks or shares of a
13 diversified investment company registered under the
14 'Investment Company Act of 1940' which has total assets of at
15 least fifty million dollars (\$50,000,000).
- 16 f. Individual, common or collective trust funds of banks or trust
17 companies provided that the investment manager has assets
18 under management of at least one hundred million dollars
19 (\$100,000,000).
- 20 g. That investments may be made in securities convertible into
21 common stocks issued by any such company, if such securities
22 bear one of the four highest ratings of at least one nationally
23 recognized rating service and do not bear a rating below the
24 four highest by any nationally recognized rating service which
25 may then rate the particular security.
- 26 (9) Obligations and securities of the North Carolina Enterprise
27 Corporation, or of a limited partnership in which the North Carolina
28 Enterprise Corporation is the only general partner, not to exceed
29 twenty million dollars (\$20,000,000) from all funds.
- 30 (10) A limited partnership interest in a partnership whose primary purpose
31 is to invest in venture capital or corporate buyout transactions, not to
32 exceed thirty million dollars (\$30,000,000) from all funds.
- 33 (10a) Obligations of the North Carolina Capital Access Authority created in
34 Article 3 of Chapter 53A of the General Statutes, obligations of the
35 North Carolina Industrial and Pollution Control Facilities Financing
36 Authority created under Chapter 159D of the General Statutes issued at
37 the request of the North Carolina Capital Access Authority pursuant to
38 G.S. 53A-55 and G.S. 159D-6, or equity securities issued by a Qualified
39 North Carolina Business as defined in G.S. 53A-37. To the extent
40 possible consistent with the State Treasurer's duties, the State Treasurer
41 shall invest at least twenty-five million dollars (\$25,000,000) pursuant to
42 this subdivision each fiscal year until July 1, 2000.
- 43 (11) With respect to assets of the Escheat Fund, obligations of the North
44 Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22),

1 not to exceed twenty-five million dollars (\$25,000,000), that have a final
2 maturity not later than September 1, 1999. The obligations shall bear
3 interest at the rate set by the State Treasurer. No commitment to purchase
4 obligations may be made pursuant to this subdivision after September 1,
5 1993, and no obligations may be purchased after September 1, 1994. In
6 the event of a loss to the Escheat Fund by reason of an investment made
7 pursuant to this subdivision, it is the intention of the General Assembly to
8 hold the Escheat Fund harmless from any such loss by appropriating to
9 ~~such the~~ Escheat Fund funds equivalent to ~~such the~~ loss.

10 (12) With respect to assets of the Escheat Fund, obligations of the North
11 Carolina Industrial and Pollution Control Facilities Financing Authority
12 created under Chapter 159D of the General Statutes issued at the request
13 of the North Carolina Capital Access Authority pursuant to G.S. 53A-55
14 and G.S. 159D-6. The obligations shall bear interest at the rate set by the
15 State Treasurer and may be subordinated in right of payment to other
16 obligations of the North Carolina Industrial and Pollution Control
17 Facilities Financing Authority. In the event of a loss to the Escheat Fund
18 by reason of an investment made pursuant to this subdivision, it is the
19 intention of the General Assembly to hold the Escheat Fund harmless
20 from any such loss by appropriating to the Escheat Fund funds equivalent
21 to the loss."

22 PART IV.

23 INSURANCE TAX CREDIT FOR INVESTMENTS

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

26 "Part 4. Certified North Carolina Capital Companies.

27 **§ 53A-70. Requirements for certification of a certified North Carolina capital**
28 **company.**

29 (a) Initial Certification. -- In order to be initially certified as a certified North
30 Carolina capital company, a company must satisfy the following requirements.

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

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

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

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

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

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

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

4 **§ 53A-71. Procedure for certification and recertification; reports.**

5 (a) Initial Certification. -- In order to be initially certified as a certified North
6 Carolina capital company, a company must file an application with the Division and pay
7 the initial certification fee set by the Secretary of State. The application shall include
8 any information and supporting documents required by the Secretary of State to
9 determine whether the company qualifies for initial certification. Within 60 days after
10 an application is filed, the Division shall determine whether the applicant qualifies for
11 initial certification and shall either issue the certification or shall refuse the certification
12 and notify the applicant in detail of the grounds for the refusal, including suggestions
13 for the removal of those grounds.

14 (b) Annual Recertification. -- To remain certified as a certified North Carolina
15 capital company, a company must apply annually for recertification and pay the annual
16 recertification fee set by the Secretary of State. The application shall include any
17 information and supporting documents required by the Secretary of State to determine
18 whether the company qualifies for recertification.

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

24 (c) Application Forms; Fees. -- Applications for initial certification and annual
25 recertification under this section shall be in the form required by the Secretary of State.
26 The Secretary of State shall prepare blank forms for the applications. Each application
27 shall be signed by the owners of the company or, in the case of a corporation, by its
28 president, vice-president, treasurer, or secretary. There shall be annexed to the
29 application the affirmation of the person making the application in the following form:
30 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge
31 and belief this application is true and complete.' A person who submits a false
32 application is guilty of a Class 1 misdemeanor.

33 The Secretary of State may charge an applicant a fee for initial certification as a
34 certified North Carolina capital company and a fee for annual recertification as a
35 certified North Carolina capital company. The fees set by the Secretary of State may not
36 exceed the estimated cost to the Division of initial certification or annual recertification,
37 as appropriate, as determined by the Secretary of State.

38 (d) Quarterly Reports. -- Each certified North Carolina capital company shall
39 report the following to the Division on a quarterly basis:

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

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

1 **"§ 105-228.10A. Purpose.**

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

6 **"§ 105-228.10B. Definitions.**

7 The following definitions apply in this Article.

8 (1) Capital Access Financing Fund. -- The Capital Access Financing Fund
9 established under Article 3 of Chapter 53A of the General Statutes.

10 (2) Certified North Carolina capital company. -- A certified North
11 Carolina capital company created under Article 3 of Chapter 53A of
12 the General Statutes.

13 (3) North Carolina Capital Access Authority. -- The North Carolina
14 Capital Access Authority created in Article 3 of Chapter 53A of the
15 General Statutes.

16 **"§ 105-228.10C. Premiums tax credit for investments.**

17 (a) Credit. -- A person who invests cash in a certified North Carolina capital
18 company, who invests in the Capital Access Financing Fund or the North Carolina
19 Capital Access Authority, or who invests in obligations of the North Carolina Industrial
20 and Pollution Control Facilities Financing Authority created under Chapter 159D of the
21 General Statutes issued at the request of the North Carolina Capital Access Authority
22 pursuant to G.S. 53A-55 and G.S. 159D-6, is allowed against the gross premiums tax
23 imposed by G.S. 105-228.5 and G.S. 105-228.8 a credit equal to the amount invested by
24 the taxpayer during the taxable year. The credit for investments made in a certified
25 North Carolina capital company is allowed only for investments made within 365 days
26 after the date the company is initially certified by the Secretary of State under Article 3
27 of Chapter 53A of the General Statutes. To claim the credit allowed by this section, the
28 taxpayer must provide the Commissioner of Insurance any supporting documentation
29 the Commissioner requires.

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

38 **"§ 105-228.10D. Effect of decertification or revocation of certification.**

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

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

2 "**§ 159D-6. Bonds.**

3 The authority is hereby authorized to provide for the issuance, at one time or from
4 time to time, of bonds of the authority for the purpose of paying all or any part of the
5 cost of any project. The authority may issue bonds upon its own initiative or upon the
6 recommendation of the Capital Access Authority created in Article 3 of Chapter 53A of the
7 General Statutes. The principal of, the interest on and any premium payable under the
8 redemption of such bonds shall be payable solely from the funds herein authorized for such
9 payment. The bonds of each issue shall bear interest as may be determined by the Local
10 Government Commission of North Carolina with the approval of the authority and the
11 obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions.
12 The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30
13 years from the date of their issuance, and may be made redeemable before maturity at such
14 price or prices and under such terms and conditions, as may be fixed by the authority prior
15 to the issuance of the bonds. The authority shall determine the form and the manner of
16 execution of the bonds, including any interest coupons to be attached thereto, and shall fix
17 the denomination or denominations of the bonds and the place or places of payment of
18 principal and interest. In case any officer whose signature or a facsimile of whose signature
19 shall appear on any bonds or coupons shall cease to be such officer before the delivery of
20 such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for
21 all purposes the same as if he had remained in office until such delivery. The authority
22 may also provide for the authentication of the bonds by a trustee or fiscal agent. The
23 bonds may be issued in coupon or in fully registered form, or both, as the authority may
24 determine, and provision may be made for the registration of any coupon bonds as to
25 principal alone and also as to both principal and interest, and for the reconversion into
26 coupon bonds of any bonds registered as to both principal and interest, and for the
27 interchange of registered and coupon bonds.

28 The proceeds of the bonds of each issue shall be used solely for the payment of the
29 cost of the project or projects, or a portion thereof, for which such bonds shall have been
30 issued, and shall be disbursed in such manner and under such restrictions, if any, as the
31 authority may provide in the financing agreement and the security document. If the
32 proceeds of the bonds of any issue, by reason of increased construction costs or error in
33 estimates or otherwise, shall be less than such cost, additional bonds may in like manner
34 be issued to provide the amount of such deficiency. The authority may issue interim
35 receipts or temporary bonds, with or without coupons, exchangeable for definitive
36 bonds when such bonds have been executed and are available for delivery. The
37 authority may also provide for the replacement of any bonds which shall become
38 mutilated or shall be destroyed or lost.

39 Bonds may be issued under the provisions of this Chapter without obtaining, except
40 as otherwise expressly provided in this Chapter, the consent of the State or of any
41 political subdivision or of any agency of either thereof, and without any other
42 proceedings or the happening of any conditions or things other than those proceedings,
43 conditions or things which are specifically required by this Chapter and the provisions
44 of the financing agreement and security document authorizing the issuance of such
45 bonds and securing the same."

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

2 "**§ 53A-36. Legislative findings and purpose.**

3 (a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~
4 North Carolina a serious shortage of mezzanine finance capital and credit available for
5 investment in ~~rural areas~~—areas, underdeveloped communities, depressed urban
6 commercial areas, and economically distressed areas in the State. This shortage of
7 mezzanine finance capital and credit is severe throughout ~~the rural~~these areas of the
8 State, has persisted for a number of years, and constitutes a grave threat to the welfare
9 and prosperity of all residents of the State. The lack of access to capital prevents North
10 Carolina businesses from creating jobs that would otherwise enhance the economy of
11 the State and provide livelihoods for North Carolina citizens.

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

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

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

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

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

40 "**§ 53A-37. Definitions.**

41 The following definitions apply in this Article:

- 42 (1) Approved investment. -- The investment of cash by a certified North
43 Carolina capital company in such a manner as to acquire capital in a
44 business that, at the time of the company's first investment in the

- 1 business, was a qualified business venture and was not a subsidiary of
2 another corporation. The capital acquired may be any debt, equity, or
3 hybrid security, whether secured or unsecured, of any nature, including
4 a debt instrument or security that has the characteristics of debt but
5 provides for conversion into equity or equity participation instruments
6 such as options or warrants.
- 7 (2) Authority. -- The North Carolina Capital Access Authority created in
8 Part 3 of this Article.
- 9 (3) Business. -- A corporation, partnership, association, or sole
10 proprietorship operated for profit.
- 11 (4) Certified North Carolina capital company. -- A partnership,
12 corporation, trust, or limited liability company whose primary business
13 activity is the investment of cash in qualified business ventures and
14 that is certified by the Secretary of State as provided in Part 4 of this
15 Article.
- 16 (5) Depressed urban commercial area. -- A commercial or industrial area
17 of a city in which blight exists in the form of dilapidated, deteriorated,
18 poorly ventilated, obsolete, overcrowded, unsanitary or unsafe
19 buildings; inadequate and unsafe streets; inadequate lots; or other
20 conditions detrimental to the sound growth of the community, which
21 tend to depress the value of neighboring properties, impair the tax base
22 of the community, and inhibit private efforts to rehabilitate or improve
23 other structures in the area.
- 24 (6) Development project. -- A project as defined in G.S. 159D-3.
- 25 (7) Distressed area. -- A county that is designated one of the most
26 economically distressed counties of the State under G.S. 143B-437A
27 or a census tract that has more than fifteen percent (15%) of its
28 population below the poverty line according to the latest federal
29 decennial census.
- 30 (8) Division. -- The Securities Division of the Department of the Secretary
31 of State.
- 32 (~~2~~) (9) Equity security. -- Common stock, preferred stock, an interest in a
33 partnership, subordinated debt, or a warrant that is convertible into, or
34 entitles the holder to receive upon its exercise, common stock,
35 preferred stock, or an interest in a partnership.
- 36 (10) Reserved.
- 37 (~~3~~) (11) Mezzanine finance. -- An investment in the equity securities or
38 subordinated debt of a Qualified North Carolina Business.
- 39 (12) Person. -- An individual, a corporation, a partnership, an association, a
40 trust, or another legal entity.
- 41 (13) Qualified business venture. -- Defined in G.S. 105-163.010.
- 42 (~~4~~) (14) Qualified North Carolina Business. -- A business whose headquarters
43 and principal business operations are located in North Carolina and
44 which, together with its affiliates on a consolidated basis, had gross
45

1 income during the immediately preceding fiscal year, determined in
2 accordance with generally accepted accounting principles without
3 taking into account extraordinary items, of less than forty million
4 dollars (\$40,000,000).

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

9 ~~(6)~~ (16) Security. -- A security as defined in G.S. 78A-2(11).

10 ~~(7)~~ (17) Subordinated debt. -- Indebtedness that is or will be subordinated to
11 other indebtedness of the issuer. Subordinated debt may be convertible
12 into common stock, preferred stock, or an interest in a partnership.

13 ~~(8)~~ (18) Traditional ~~Financial Institutions.~~ financial institutions. -- Corporations
14 or associations chartered under ~~Chapters~~ Chapter 53 or 54B of the
15 General Statutes."

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

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

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

21 "**§ 53A-41. Governing law.**

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

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

25 "**§ 53A-42. Powers.**

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

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

30 "(a) Definitions. -- The following definitions apply in this section:

31 (1) Employee or officer. -- The term includes a former employee, a former
32 officer, and a current or former member of a State board or
33 commission.

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

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

39 b. Information obtained through an audit of a taxpayer or by
40 correspondence with a taxpayer.

41 c. Information on whether a taxpayer has filed a tax return or a tax
42 report.

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

1 e. Information supplied on or with an application for registration
2 or renewal of registration as a qualified business venture or a
3 qualified grantee business under Division V of Article 4 of this
4 Chapter.

5 f. Information supplied on or with an application for initial
6 certification or recertification as a certified North Carolina
7 capital company under Article 3 of Chapter 53A of the General
8 Statutes.

9 The term does not include (i) statistics classified so that information
10 about specific taxpayers cannot be identified or (ii) information
11 submitted to the Business License Information Office of the
12 Department of Secretary of State on a master application form for
13 various business licenses."

14 PART VIII.

15 EFFECTIVE DATES

16 Sec. 23. Sections 8, 11, 12, and 22 of this act are effective for taxable years
17 beginning on or after January 1, 1995. Section 11 of this act expires effective for taxable
18 years beginning on or after January 1, 2000. The remainder of this act becomes effective
19 July 1, 1995. Section 4 of this act expires July 1, 2000. Section 5 of this act expires July
20 1, 1998.