

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1997**

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**SENATE BILL 271**

Short Title: Small Business Capital & Growth Act.

(Public)

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Sponsors: Senators Shaw of Cumberland; Jenkins and Phillips.

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Referred to: Finance.

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February 27, 1997

**A BILL TO BE ENTITLED**

**AN ACT TO ESTABLISH THE NORTH CAROLINA CAPITAL ACCESS  
AUTHORITY, WHICH WILL CREATE 25,000 JOBS FOR NORTH CAROLINA  
BY PROVIDING LOAN GUARANTEES FOR SMALL AND MEDIUM-SIZED  
BUSINESSES.**

The General Assembly of North Carolina enacts:

**TABLE OF CONTENTS**

**I. CAPITAL ACCESS AUTHORITY AND FUND**

**II. INVESTMENTS BY STATE TREASURER**

**III. CONFORMING CHANGES**

**IV. EFFECTIVE DATE**

**PART I.**

**CAPITAL ACCESS AUTHORITY AND FUND**

Section 1. This act is the Small Business Capital and Growth Act of 1997.

Section 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".

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

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

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

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

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

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

(b) Appointed Members. – Three members shall be appointed by the Governor, one who represents the banking industry, created pursuant to Part 2 of this Article, one who represents small business interests, and one who represents public interests. Three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one who represents community development corporations, one who represents medium-sized business interests, and one who represents public interests. Three members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one who owns a minority business as defined in G.S. 143-128, one who represents a nonprofit organization active in infrastructure development under the Community Reinvestment Act, and one who represents public interests.

In making appointments to the Board, the Governor and the General Assembly shall give consideration to the geographical representation of the Western region, the Piedmont region, and the Eastern region of the State. In addition, the appointments should reflect the ethnic and gender diversity of the State as nearly as practical. The appointing authority shall make a replacement appointment to serve for the unexpired term in the

1 case of a vacancy. A vacancy in an appointment made by the General Assembly shall be  
2 filled in accordance with G.S. 120-122.

3 The initial appointments to the Board shall be for terms beginning on July 1, 1997.  
4 Of the initial appointments made by the General Assembly upon the recommendation of  
5 the Speaker of the House of Representatives and by the General Assembly upon the  
6 recommendation of the President Pro Tempore of the Senate, one appointment from each  
7 group shall be designated to expire on July 1, 1999. Of the initial appointments made by  
8 the Governor, two appointments shall be designated to expire on July 1, 1999. The  
9 remaining terms shall expire July 1, 2001. Thereafter, each appointment shall be for a  
10 term of four years.

11 The Governor may remove any appointed member of the Board for misfeasance,  
12 malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Authority who  
13 appointed a member of the Board may remove the member for using improper influence  
14 in accordance with G.S. 143B-13(c).

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

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

18 (2) The Secretary of Commerce, or the Secretary's designee.

19 (d) Organization of the Board. – The Board shall adopt bylaws with respect to the  
20 calling of meetings, quorums, voting procedures, the keeping of records, and other  
21 organizational and administrative matters as the Board may determine. A quorum shall  
22 consist of a majority of the members of the Board. No vacancy in the membership of the  
23 Board shall impair the right of a quorum to exercise all rights and to perform all the  
24 duties of the Board and the Authority.

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

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

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

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

42 **"§ 53A-52. Capital Access Financing Fund.**

1        The Authority shall establish the Capital Access Financing Fund as a special revenue  
2 fund. The Fund shall consist of loans, gifts, grants, appropriations, and any other funds  
3 made available for the Fund. Revenue in the Fund does not revert at the end of a fiscal  
4 year, and interest and other investment income earned by the Fund accrues to the Fund.

5        The Authority shall use monies in the Fund only to guarantee private loans made by  
6 federally insured lending institutions to Qualified North Carolina Businesses. The total  
7 amount of loan guarantees issued may not exceed five times the amount of money in the  
8 Fund.

9        **"§ 53A-53. Capital Access Financing Program.**

10        (a) Program Established. – The Authority shall establish and implement a Capital  
11 Access Financing Program in accordance with this section to guarantee private loans  
12 made by federally insured lending institutions to Qualified North Carolina Businesses in  
13 rural areas, underdeveloped communities, depressed urban commercial areas, and  
14 economically distressed areas of the State. Financing shall be targeted to businesses that  
15 will create well-paying jobs for North Carolina citizens.

16        (b) Procedures; Fee. – The Authority shall establish a procedure for participating  
17 lending institutions to apply for loan guarantees on behalf of loan applicants. Each  
18 application shall include documentation of the number of jobs to be created as a result of  
19 the financing and the expected average wage the jobs will pay. The Authority shall adopt  
20 rules and standards to assure that all loan guarantees provided from the Fund are  
21 consistent with sound business practices, including requirements that all loans be  
22 collateralized, that applicants have sound credit ratings and meet experience standards set  
23 by the Authority, and that financing not be speculative. The Authority shall assure that  
24 guaranteed loans meet standards such that the loans can be sold on the secondary market.

25        The Authority shall charge a fee of one percent (1%) of the guaranteed amount of the  
26 loan. The face of each guarantee issued must contain a statement that the Authority is  
27 obligated to pay the guarantee only from the revenue in the Fund and that neither the  
28 taxing power nor the faith and credit of the State or any of its political subdivisions is  
29 pledged in payment of the guarantee.

30        (c) Minimum Wage Standards. – The Authority shall require as a condition of  
31 receiving a loan guarantee from the Fund that jobs to be created by a business must pay at  
32 least twenty-five percent (25%) above the median weekly wage paid in the county in  
33 which the jobs will be located. For the purpose of this subsection, the median wage in a  
34 county is the median average wage for all insured industries in the county as computed  
35 by the Employment Security Commission for the most recent period for which data are  
36 available. The Authority may waive or alter the minimum wage requirement if the area  
37 in which the jobs are to be created has an especially severe rate of unemployment or in  
38 similar cases involving extreme circumstances.

39        (d) Minimum and Maximum Guarantee. – A loan guarantee may not exceed ninety  
40 percent (90%) of the unpaid balance of the loan. The Authority shall provide loan  
41 guarantees in amounts no less than fifty thousand dollars (\$50,000) per business and no  
42 greater than one hundred fifty thousand dollars (\$150,000) per business. The amount of

1 loan guarantees should not exceed twenty thousand dollars (\$20,000) per job to be  
2 created, on average.

3 (e) Priority of Financing. – In choosing businesses to finance, the Authority shall  
4 give priority to start-up businesses; businesses that engage primarily in manufacturing,  
5 processing, warehousing, wholesaling, research and development, or a service-related  
6 industry; businesses that will create high-quality jobs; and businesses that cannot obtain  
7 sufficient financing through traditional financial institutions. The Authority shall assign a  
8 lower priority to real estate related businesses as defined in G.S. 105-163.010 and to  
9 businesses that engage primarily in providing a professional service as defined in Chapter  
10 55B of the General Statutes, construction or contracting, selling or leasing at retail,  
11 providing personal grooming or cosmetic services, or offering any form of entertainment,  
12 amusement, recreation, or athletic or fitness activity for which an admission or a  
13 membership is charged. The Authority shall not finance a business engaged as a  
14 substantial part of its business in the purchase, sale, or development, or purchasing,  
15 selling, or holding for investment of commercial paper, notes, other indebtedness,  
16 financial instruments, securities, or real property, or otherwise in making investments.  
17 The Authority shall not finance a business formed for the primary purpose of acquiring  
18 all or part of the stock or assets of one or more existing businesses.

19 (f) Disbursements. – The Authority shall pay a participating lender the amount  
20 owed under a guarantee on a defaulted loan upon certification of the lender that all  
21 collateral for that loan that can reasonably be liquidated has been liquidated.

22 (g) Technical Assistance. – The Authority shall provide technical assistance and  
23 support to businesses to enable them to obtain loan guarantees and other support from  
24 federal agencies and other sources.

25 **"§ 53A-54. Powers of the Authority.**

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

- 28 (1) The powers of a corporate body, including the power to sue and be sued  
29 and to adopt and use a common seal.
- 30 (2) To own, acquire, finance, rent, lease, dispose of, encumber, mortgage,  
31 or manage real or personal property, but not to acquire property by  
32 eminent domain.
- 33 (3) To pay all necessary costs and expenses in the formation, organization,  
34 administration, and operation of the Authority.
- 35 (4) To apply for, accept, and administer loans and grants of money from  
36 any federal agency, from the State or its political subdivisions, or from  
37 any other public or private sources available, to expend the money in  
38 accordance with the requirements imposed by the lender or donor, and  
39 to give any evidences of indebtedness that are required. No  
40 indebtedness of any kind incurred or created by the Authority shall  
41 constitute an indebtedness of the State or its political subdivisions, and  
42 no indebtedness of the Authority shall involve or be secured by the  
43 faith, credit, or taxing power of the State or its political subdivisions.

1           (5) To make loans to or deposits with lending institutions and purchase or  
2           sell loans.

3           (6) To adopt bylaws or rules implementing the provisions of this Part.

4           (7) To indemnify the Authority and its officers, directors, agents,  
5           employees, and adjoining property owners, or the general public against  
6           loss or liability resulting from any act or omission by or on behalf of the  
7           Authority.

8           (8) To arrange for the State Treasurer to invest in its obligations pursuant to  
9           G.S. 147-69.2(b)(10a).

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

17 **"§ 53A-55. Purchases and sales of loans.**

18          If the Authority becomes the owner of a defaulted loan it may purchase or contract to  
19 purchase and sell or contract to sell the loan.

20 **"§ 53A-56. Taxation of property of Authority.**

21          Property owned by the Authority is exempt from taxation in accordance with Section  
22 2 of Article V of the North Carolina Constitution.

23 **"§ 53A-57. Authority funds; pledge.**

24          (a) All Authority funds shall be deposited in one or more banks to be designated  
25 by the Board. Funds of the Authority shall be paid out only upon warrants signed by the  
26 treasurer or assistant treasurer of the Authority and countersigned by the chair, the acting  
27 chair, or the executive director. Warrants shall be drawn or issued disbursing the funds  
28 of the Authority only for a purpose authorized by this Part and only when the account or  
29 expenditure has been audited and approved by the Authority or its executive director.

30          (b) The Authority may not pledge any money other than money in the Fund for  
31 payment of a loss. No action by the Authority constitutes the creation of a debt secured  
32 by a pledge of the taxing power or of the faith and credit of the State or any of its political  
33 subdivisions.

34          Any pledge made by the Authority shall be valid and binding from time to time when  
35 the pledge is made. The money, assets, or revenues of the Authority so pledged and  
36 thereafter received by the Authority shall immediately be subject to the lien of the pledge  
37 without any physical delivery or further act, and the lien of any pledge shall be valid and  
38 binding as against all parties having claims of any kind in tort, contract, or otherwise  
39 against the Authority, irrespective of whether the parties have notice of the lien. Neither  
40 the resolution nor any other instrument by which a pledge is created need be recorded or  
41 filed in order to establish and perfect a lien or security interest in the property so pledged  
42 by the Authority. This section does not prohibit the Authority from selling any assets

1 subject to any pledge except to the extent that the sale may be restricted by the trust  
2 agreement or resolution providing for the issuance of such obligations.

3 **"§ 53A-58. Cooperation by other State agencies.**

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

6 **"§ 53A-59. Annual reports.**

7 The Authority shall, promptly following the close of each fiscal year, submit an  
8 annual report of its activities for the preceding year to the Governor, the General  
9 Assembly, and the State Treasurer. Each report shall be accompanied by an audit of its  
10 books and accounts. The costs of all audits, whether conducted by the State Auditor's  
11 staff or contracted with a private auditing firm, shall be paid from funds of the Authority.

12 **"§ 53A-60. Dissolution.**

13 Whenever the Board determines by resolution that the purposes for which the  
14 Authority was formed have been substantially fulfilled and that all obligations incurred  
15 by the Authority have been fully paid or satisfied, the Board may declare the Authority to  
16 be dissolved. On the effective date of the resolution, the title to all funds and other  
17 property owned by the Authority at the time of the dissolution shall vest in the State and  
18 possession of the funds and other property shall be delivered to the State."

19 **PART II.**

20 **INVESTMENTS BY STATE TREASURER**

21 Section 4. G.S. 147-69.2(b) reads as rewritten:

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

- 25 (1) Any of the investments authorized by G.S. 147-69.1(c);
- 26 (2) General obligations of other states of the United States;
- 27 (3) General obligations of cities, counties and special districts in North  
28 Carolina;
- 29 (4) Obligations of any company, other organization or legal entity  
30 incorporated or otherwise created or located within or without the  
31 United States if such obligations bear one of the three highest ratings of  
32 at least one nationally recognized rating service and do not bear a rating  
33 below the three highest by any nationally recognized rating service  
34 which rates the particular security;
- 35 (5) Notes secured by mortgages insured by the Federal Housing  
36 Administration or guaranteed by the Veterans Administration on real  
37 estate located within the State of North Carolina;
- 38 (6) Asset-backed securities (whether considered debt or equity) provided  
39 they bear ratings by nationally recognized rating services as provided in  
40 G.S. 147-69.2(b)(4) and that they do not bear a rating below the three  
41 highest by any nationally recognized rating service which rates the  
42 particular securities;

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



- 1 d. That the book value of common and preferred stocks including  
2 securities convertible into common stocks shall not exceed fifty  
3 ~~per centum~~ percent (50%) of the book value of all invested assets  
4 of the Retirement Systems; provided, further:
- 5 1. Not more than one and one-half ~~per centum~~ percent (1  
6 1/2%) of the book value of such assets shall be invested in  
7 the stock of a single corporation, and provided further;
- 8 2. The total number of shares in a single corporation shall  
9 not exceed eight ~~per centum~~ percent (8%) of the issued and  
10 outstanding stock of such corporation, and provided  
11 further;
- 12 3. As used in this subdivision d. and elsewhere in this  
13 section, book value shall mean adjusted cost basis as  
14 shown on the records of the State Treasurer.
- 15 e. Up to five ~~per cent~~ percent (5%) of the limits authorized in  
16 subdivision d. may be invested in the stocks or shares of a  
17 diversified investment company registered under the 'Investment  
18 Company Act of 1940' which has total assets of at least fifty  
19 million dollars (\$50,000,000).
- 20 f. Individual, common or collective trust funds of banks or trust  
21 companies provided that the investment manager has assets  
22 under management of at least one hundred million dollars  
23 (\$100,000,000).
- 24 g. That investments may be made in securities convertible into  
25 common stocks issued by any such company, if such securities  
26 bear one of the four highest ratings of at least one nationally  
27 recognized rating service and do not bear a rating below the four  
28 highest by any nationally recognized rating service which may  
29 then rate the particular security.
- 30 (9) Obligations and securities of the North Carolina Enterprise Corporation,  
31 or of a limited partnership in which the North Carolina Enterprise  
32 Corporation is the only general partner, not to exceed twenty million  
33 dollars (\$20,000,000) from all funds.
- 34 (10) A limited partnership interest in a partnership whose primary purpose is  
35 to invest in venture capital or corporate buyout transactions, not to  
36 exceed thirty million dollars (\$30,000,000) from all funds.
- 37 (10a) Obligations of the North Carolina Capital Access Authority created in  
38 Article 3 of Chapter 53A of the General Statutes. To the extent possible  
39 consistent with the State Treasurer's duties, the State Treasurer shall  
40 invest at least one hundred million dollars (\$100,000,000) pursuant to  
41 this subdivision.
- 42 (11) With respect to assets of the Escheat Fund, obligations of the North  
43 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  
2 final maturity not later than September 1, 1999. The obligations shall  
3 bear interest at the rate set by the State Treasurer. No commitment to  
4 purchase obligations may be made pursuant to this subdivision after  
5 September 1, 1993, and no obligations may be purchased after  
6 September 1, 1994. In the event of a loss to the Escheat Fund by reason  
7 of an investment made pursuant to this subdivision, it is the intention of  
8 the General Assembly to hold the Escheat Fund harmless from any such  
9 loss by appropriating to ~~such~~ the Escheat Fund funds equivalent to ~~such~~  
10 the loss."

11 **PART III.**  
12 **CONFORMING CHANGES**

13 Section 5. The title of Chapter 53A of the General Statutes reads as rewritten:

14 **"CHAPTER 53A.**  
15 **BUSINESS DEVELOPMENT CORPORATIONS AND NORTH**  
16 **CAROLINA CAPITAL RESOURCE CORPORATIONS. AND ACCESS TO**  
17 **CAPITAL."**

18 Section 6. The title of Article 3 of Chapter 53A of the General Statutes reads  
19 as rewritten:

20 **"ARTICLE 3.**  
21 **NORTH CAROLINA ENTERPRISE CORPORATIONS. CORPORATIONS AND**  
22 **THE**  
23 **NORTH CAROLINA CAPITAL ACCESS AUTHORITY."**

24 Section 7. G.S. 53A-35 and G.S. 53A-47 are repealed.

25 Section 8. G.S. 53A-36 reads as rewritten:

26 **"§ 53A-36. Legislative findings and purpose.**

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

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

40 (c) The General Assembly finds ~~and declares~~ that it is a matter of grave public  
41 necessity that North Carolina Enterprise Corporations be authorized to be created and ~~to~~  
42 ~~be~~ empowered to alleviate these severe shortages of mezzanine finance capital and credit  
43 for investment in rural areas of the State. North Carolina Enterprise Corporations shall

1 help eliminate barriers to rural economic development by providing mezzanine finance  
2 capital and credit, and other types of financing as appropriate, to businesses in rural areas  
3 that have been unable to obtain sufficient financing through traditional financial  
4 institutions.

5 (d) The General Assembly finds that it is a matter of grave public necessity that  
6 the North Carolina Capital Access Authority be created and empowered to alleviate these  
7 severe shortages of capital and credit for investment in rural areas, underdeveloped  
8 communities, depressed urban commercial areas, and economically distressed areas of  
9 the State. The Authority shall help eliminate barriers to economic development by  
10 providing loans, loan guarantees, and other types of financing as appropriate, to small and  
11 medium-sized businesses that may have been unable to obtain sufficient financing  
12 through traditional financial institutions."

13 Section 9. G.S. 53A-37 reads as rewritten:

14 "**§ 53A-37. Definitions.**

15 The following definitions apply in this Article:

16 (1) Authority. – The North Carolina Capital Access Authority created in  
17 Part 3 of this Article.

18 (2) Business. – A corporation, partnership, association, or sole  
19 proprietorship operated for profit.

20 (3) Depressed urban commercial area. – A commercial or industrial area of  
21 a city in which blight exists in the form of dilapidated, deteriorated,  
22 poorly ventilated, obsolete, overcrowded, unsanitary, or unsafe  
23 buildings; inadequate and unsafe streets; inadequate lots; or other  
24 conditions detrimental to the sound growth of the community, which  
25 tend to depress the value of neighboring properties, impair the tax base  
26 of the community, and inhibit private efforts to rehabilitate or improve  
27 other structures in the area.

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

32 ~~(2)~~(5) 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, preferred  
35 stock, or an interest in a partnership.

36 ~~(6), (7), (8)~~ Reserved.

37 ~~(3)~~(9) Mezzanine finance. – An investment in the equity securities or  
38 subordinated debt of a Qualified North Carolina Business.

39 (10) Person. – An individual, a corporation, a partnership, an association, a  
40 trust, or another legal entity.

41 ~~(4)~~(11) Qualified North Carolina Business. – A business whose headquarters  
42 and principal business operations are located in North Carolina and  
43 which, together with its affiliates on a consolidated basis, had gross

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 dollars  
4 (\$40,000,000).

5 ~~(5)~~(12)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)~~(13)Security. – A security as defined in G.S. 78A-2(11).

10 ~~(7)~~(14) Subordinated debt. – Indebtedness that is or will be  
11 subordinated to other indebtedness of the issuer. Subordinated  
12 debt may be convertible into common stock, preferred stock, or  
13 an interest in a partnership.

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

17 Section 10. G.S. 53A-38(a) reads as rewritten:

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

21 Section 11. G.S. 53A-41 reads as rewritten:

22 "**§ 53A-41. Governing law.**

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

25 Section 12. G.S. 53A-42 reads as rewritten:

26 "**§ 53A-42. Powers.**

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

29 Section 13. G.S. 120-123 is amended by adding a new subdivision to read:

30 "~~(48)~~ The North Carolina Capital Access Authority, as established by Article  
31 3 of Chapter 53A of the General Statutes."

#### 32 **PART IV.**

#### 33 **EFFECTIVE DATE**

34 Section 14. This act becomes effective July 1, 1997.