

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 956*

Short Title: Venture Capital Investment Incentive.

(Public)

Sponsors: Senators Hoyle, Cooper, and Odom.

Referred to: Rules and Operations of the Senate.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. 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 2. 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. CERTIFIED NORTH CAROLINA CAPITAL COMPANIES.

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

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

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

1 (2) Its cash, marketable securities, and other liquid assets equal at least five
2 hundred thousand dollars (\$500,000).

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

5 (4) No insurance company or affiliate of an insurance company is a
6 managing general partner of the certified North Carolina capital
7 company or controls the direction of investments of the certified North
8 Carolina capital company. This subdivision does not preclude an
9 insurance company or any other party from exercising its legal rights
10 and remedies, which may include interim management of a certified
11 North Carolina capital company, in the event that a certified North
12 Carolina capital company is in default of its statutory obligations or its
13 contractual obligations to the insurance company or other party.

14 (b) Continuing Certification. – To remain certified as a certified North Carolina
15 capital company, the company must satisfy the following requirements:

16 (1) Within three years after the date it was initially certified, at least thirty
17 percent (30%) of the certified capital invested in the company must be
18 placed in approved investments.

19 (2) Within five years after the date it was initially certified, at least fifty
20 percent (50%) of the certified capital invested in the company must be
21 placed in approved investments.

22 (3) It shall not invest in a single approved business venture an amount that
23 is more than fifteen percent (15%) of the total certified capital under the
24 company's management at the time of the investment.

25 (4) No insurance company or affiliate of an insurance company is a
26 managing general partner of the certified North Carolina capital
27 company or controls the direction of investments of the certified North
28 Carolina capital company. This subdivision does not preclude an
29 insurance company or any other party from exercising its legal rights
30 and remedies, which may include interim management of a certified
31 North Carolina capital company, in the event that a certified North
32 Carolina capital company is in default of its statutory obligations or its
33 contractual obligations to the insurance company or other party.

34 (c) Permanent Certification. – A certified North Carolina capital company that has
35 satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified capital in
36 approved investments, as demonstrated by its most recent financial statement and report
37 filed in accordance with G.S. 53A-71, qualifies for permanent certification and is no
38 longer required to obtain continuing certification as required in G.S. 53A-71. A certified
39 North Carolina capital company that has qualified for permanent certification must
40 continue to submit annual financial statements and reports under G.S. 53A-71 for three
41 years after it qualifies for permanent certification.

42 **"§ 53A-71. Procedure for initial and continuing certification; reports.**

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

10 The Department shall review and approve or reject applications in the order
11 submitted. If more than one application is received by the Department on the same day,
12 all applications received on that day shall be reviewed and approved simultaneously,
13 except in the case of incomplete applications or applications for which additional
14 information is requested by the Department and is not supplied by the applicant within
15 the allowable time limits established by the Department. If more than one applicant is
16 certified on the same day, the Department shall ensure that all applicants certified on that
17 day are notified of certification at the same time.

18 (b) Continuing Certification. – A certified North Carolina capital company that has
19 not qualified for permanent certification must, in order to remain certified, submit an
20 annual application for continued certification and pay the annual review fee. The request
21 shall include any information and supporting documents required by the Secretary of
22 State to determine whether the company qualifies for continued certification.

23 The Department shall conduct an annual review of each certified North Carolina
24 capital company that has not qualified for permanent certification to determine if the
25 company is in compliance with the requirements for initial and continuing certification
26 and to ensure that the company's investments are in compliance with this Part. The
27 review shall be based upon the company's financial statements and other information
28 submitted in accordance with this section.

29 (c) Application Forms; Fees. – Applications for initial and continuing certification
30 under this section shall be in the form required by the Secretary of State. The Secretary
31 of State shall prepare blank forms for the applications. Each application shall be signed
32 by the owners, a manager, or an executive officer of the company. There shall be
33 annexed to the application the affirmation of the person making the application in the
34 following form: 'Under penalties prescribed by law, I certify and affirm that to the best
35 of my knowledge and belief this application is true and complete.' A person who submits
36 a false application is guilty of a Class 1 misdemeanor.

37 The Secretary of State shall charge an applicant a fee of one thousand dollars (\$1,000)
38 for initial certification as a certified North Carolina capital company and a fee of one
39 thousand dollars (\$1,000) for annual review for continuing certification as a certified
40 North Carolina capital company. Fees collected under this section shall be applied to the
41 cost of administering this Part.

42 (d) Periodic Reports. – Each certified North Carolina capital company shall
43 provide the Department an annual audited financial statement and report that includes an

1 opinion of an independent certified public accountant. The audit shall address the
2 methods of operation and conduct of the business of the company to determine whether
3 the company has complied with this Part and whether the cash invested in the company
4 has been invested as required by this Part. The audit shall also determine whether each
5 business in which the company has invested is an approved business venture as defined in
6 this Article. In addition, each certified North Carolina capital company shall provide the
7 Department a midyear, unaudited update of its annual financial statement and report. The
8 reports and updates shall be in the form prescribed by the Secretary of State and shall
9 include any information required by the Secretary of State about the company and about
10 the approved business ventures in which it has invested.

11 A certified North Carolina capital company that has not qualified for permanent
12 certification shall submit the annual financial statement and report and the midyear
13 update on the due dates specified by the Department. A certified North Carolina capital
14 company that has qualified for permanent certification is no longer required to submit
15 midyear updates but shall continue to submit the annual financial statement and report on
16 the due dates specified by the Department for three years after the company qualifies for
17 permanent certification. Thereafter, no additional financial statements and reports are
18 required under this subsection.

19 **"§ 53A-72. Distributions; maximum interest rate.**

20 (a) Distributions. – A certified North Carolina capital company may make
21 qualified distributions at any time. A certified North Carolina capital company may,
22 without restriction, make distributions and payments to debt holders with respect to debt
23 owed them by the company, but no distributions or payments may be made to an equity
24 holder, or any of its affiliates, that is entitled to a credit under Article 8C of Chapter 105
25 of the General Statutes until the certified North Carolina capital company has qualified
26 for permanent certification. A certified North Carolina capital company may make other
27 distributions only after it has qualified for permanent certification.

28 (b) Maximum Interest Rate. – A certified North Carolina capital company shall not
29 charge interest on a senior, secured loan at an annual rate that exceeds the prime rate plus
30 three percent (3%).

31 **"§ 53A-73. Tax credits.**

32 (a) Credit Allowed. – A person who invests cash in a certified North Carolina
33 capital company is entitled to a tax credit as provided in Article 8C of Chapter 105 of the
34 General Statutes but, notwithstanding the provisions of Division V of Article 4 of
35 Chapter 105 of the General Statutes, is not allowed a tax credit under that Division for the
36 investment. In addition, notwithstanding the provisions of Division V of Article 4 of
37 Chapter 105 of the General Statutes, a certified North Carolina capital company is not
38 allowed a tax credit under that Division for its investments.

39 (b) Allocation of Credits. – The Department shall allocate the total amount of
40 credit allowed pursuant to G.S. 105-228.10E among taxpayers as provided in this section.
41 A certified North Carolina capital company may apply for allocation of credits on behalf
42 of its investors no earlier than the first business day after it is certified. The application

1 shall be in the form required by the Secretary of State and shall provide all of the
2 following:

- 3 (1) The name of each investor.
- 4 (2) The amount each investor has committed to invest in the company.
- 5 (3) Proof that the investor has committed to invest the funds subject to
6 allocation of the applicable credits pursuant to this section.
- 7 (4) The maximum amount of credit the investment would entitle the
8 investor to under G.S. 105-228.10C for the current taxable year and the
9 following nine taxable years.
- 10 (5) Any other information required by the Secretary of State.

11 Upon receipt of a completed application, the Department shall determine the amount
12 of available credit not yet allocated for each taxable year specified in the application.
13 Within seven business days after receipt of the application, the Department shall allocate
14 to the North Carolina capital company, on behalf of the investors named in the
15 application, the total amount of credit applied for in the application, but only to the extent
16 of available credit not yet allocated for each taxable year. The Department's allocations
17 of credit under this section shall be in writing.

18 The Department shall allocate available credit to applicants in the order the
19 applications are received. If more than one certified North Carolina capital company
20 submits a completed application on the same day, the Department shall make the
21 allocations to those applicants simultaneously. If the amount of credit applied for in the
22 simultaneous applications exceeds the amount of available credit not yet allocated for a
23 taxable year, the Department shall allocate the available credit for that taxable year
24 among the simultaneous applicants on a pro rata basis in proportion to the amount of
25 credit applied for by each.

26 **"§ 53A-74. Decertification of certified North Carolina capital company.**

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

29 (b) Procedure for Decertification. – If the Department determines that a certified
30 North Carolina capital company is not in compliance with any requirement for continuing
31 certification, it shall, by written notice, inform the officers of the company and the board
32 of directors, manager, trustees, or general partners that the company will be decertified in
33 120 days after the date the notice is mailed unless the company corrects the deficiencies
34 to bring itself in compliance with the requirements for certification. At the end of the
35 120-day grace period, if the certified North Carolina capital company is still not in
36 compliance, the Department shall decertify the company and send a notice of
37 decertification to the company and to the Department of Revenue and the Department of
38 Insurance.

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

42 **"§ 53A-75. Rules; report.**

1 The Secretary of State may adopt rules to implement this Part. The Secretary of State
2 shall report to the Legislative Research Commission by October 1 of each odd-numbered
3 year and by February 1 of each even-numbered year the number of certified North
4 Carolina capital companies certified under this Part, the date each company was created,
5 the amount and percentage of certified capital invested by each company, the amount of
6 tax credits allocated to each company, and any other information requested by the
7 Legislative Research Commission."

8 Section 3. G.S. 53A-37 reads as rewritten:

9 **"§ 53A-37. Definitions.**

10 The following definitions apply in this Article:

11 (1) Affiliate of a certified North Carolina capital company or insurance
12 company. – Any of the following:

13 a. A person who directly or indirectly beneficially owns (whether
14 through rights, options, convertible interests, or otherwise),
15 controls, or holds power to vote ten percent (10%) or more of the
16 outstanding voting securities or other ownership interests of the
17 company.

18 b. A person ten percent (10%) or more of whose outstanding voting
19 securities or other ownership interests are, directly or indirectly,
20 beneficially owned (whether through rights, options, convertible
21 interests, or otherwise), controlled or held with power to vote by
22 the company.

23 c. A person who directly or indirectly controls, is controlled by, or
24 is under common control with the company.

25 d. A partnership in which the company is a general partner.

26 e. A person who is an officer, a director, or an agent of the
27 company, or is an immediate family member of an officer, a
28 director, or an agent of the company.

29 (2) Approved business venture. – A business that satisfies all of the
30 following conditions as of the time of a certified North Carolina capital
31 company's first investment in the business:

32 a. It is headquartered in this State, it operates primarily in this State
33 or does substantially all of its production in this State, and it
34 employs a majority of its employees in this State.

35 b. It has no more than 300 employees and, during its most recent
36 fiscal year, it had gross revenues of no more than seven million
37 dollars (\$7,000,000) on a consolidated basis as determined in
38 accordance with generally accepted accounting principles.

39 c. It is not a subsidiary of another corporation.

40 d. It satisfies the conditions established in G.S. 105-163.013(b)(3)
41 through (6).

42 (3) Approved investment. – The investment of cash by a certified North
43 Carolina capital company in such a manner as to acquire capital in a

1 business that, at the time of the first investment in the business by a
2 certified North Carolina capital company, was an approved business
3 venture. The capital acquired may be any debt, equity, or hybrid
4 security, whether secured or unsecured, of any nature, including a debt
5 instrument or security that has the characteristics of debt but provides
6 for conversion into equity or equity participation instruments such as
7 options or warrants.

8 (4) Business. – A corporation, a partnership, an association, a limited
9 liability company, or a sole proprietorship operated for profit.

10 (5) Certified capital. – The cash invested in a certified North Carolina
11 capital company, either in the form of equity or debt capital, during the
12 365-day period after the company has been initially certified as
13 provided in Part 3 of this Article. If the certified capital is in the form of
14 debt capital, the debt instrument issued by the certified North Carolina
15 capital company, at par value or a premium, must have an original
16 maturity date of at least five years after the date of issuance and a
17 repayment schedule that is no faster than a level principal amortization.

18 (6) Certified North Carolina capital company. – A partnership, corporation,
19 trust, or limited liability company whose primary business activity is the
20 investment of cash in approved business ventures and that is certified by
21 the Secretary of State as provided in Part 3 of this Article.

22 (7) Department. – The Department of the Secretary of State.

23 (2) (8) Equity security. – Common stock, preferred stock, an interest
24 in a partnership, subordinated debt, or a warrant that is convertible
25 into, or entitles the holder to receive upon its exercise, common stock,
26 preferred stock, or an interest in a partnership.

27 (9) Insurance company. – Defined in G.S. 58-1-5.

28 (3) (10) Mezzanine finance. – An investment in the equity securities
29 or subordinated debt of a Qualified North Carolina Business.

30 (11) Person. – An individual, a corporation, a partnership, an association, a
31 trust, a limited liability company, or another legal entity.

32 (12) Qualified distribution. – A distribution or payment to equity owners of a
33 certified North Carolina capital company or to their shareholders,
34 officers, directors, partners, members, managers, employees, or
35 affiliates, in connection with any of the following:

36 a. Reasonable costs and expenses of forming, syndicating,
37 managing, and operating the company, including management
38 fees.

39 b. An increase in State or federal taxes, penalties, or interest of the
40 company's equity owners to the extent the increase relates to the
41 ownership, management, or operation of the company.

42 (4) (13) Qualified North Carolina Business. – A business whose
43 headquarters and principal business operations are located in North

1 Carolina and which, together with its affiliates on a consolidated
2 basis, had gross income during the immediately preceding fiscal year,
3 determined in accordance with generally accepted accounting
4 principles without taking into account extraordinary items, of less
5 than forty million dollars (\$40,000,000).

6 (5) (14) Rural areas. — Any county in North Carolina which does not
7 include within its boundaries a city, as defined by G.S. 160A-1(2),
8 with a population greater than one percent (1%) of the population of
9 North Carolina.

10 (6) (15) Security. — A security as defined in G.S. 78A-2(11).

11 (7) (16) Subordinated debt. — Indebtedness that is or will be
12 subordinated to other indebtedness of the issuer. Subordinated debt
13 may be convertible into common stock, preferred stock, or an interest
14 in a partnership.

15 (8) (17) ~~Traditional Financial Institutions.~~ financial institutions. —
16 Corporations or associations chartered under ~~Chapters~~ Chapter 53 or
17 54B of the General Statutes."

18 Section 4. Chapter 105 of the General Statutes is amended by adding a new
19 Article to read:

20 **"ARTICLE 8C.**

21 **"PREMIUMS TAX CREDIT FOR INVESTMENTS IN**
22 **NORTH CAROLINA SMALL BUSINESSES.**

23 **"§ 105-228.10A. Purpose.**

24 The purpose of this Article is to stimulate a substantial increase in venture capital
25 investments in North Carolina by providing an incentive for insurance companies to
26 invest in certified North Carolina capital companies.

27 **"§ 105-228.10B. Definitions.**

28 The following definitions apply in this Article:

29 (1) Certified capital. — Defined in G.S. 53A-37.

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

33 **"§ 105-228.10C. Premiums tax credit for investments.**

34 (a) Credit. — A person who invests certified capital in a certified North Carolina
35 capital company is allowed against the gross premiums tax imposed by G.S. 105-228.5
36 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the
37 taxpayer during the taxable year, subject to the limitations provided in this Article. To
38 claim the credit allowed by this section, the taxpayer must provide the Secretary a copy
39 of the certified North Carolina capital company's application for allocation of credit under
40 G.S. 53A-73, a copy of the Secretary of State's written allocation of credit under G.S.
41 53A-73, and any other supporting documentation the Secretary requires.

42 (b) Limitations. — The taxpayer may not take the entire credit for the taxable year
43 the investment is made, but may take up to ten percent (10%) of the aggregate credit

1 allowed under this section for that taxable year and for each succeeding taxable year until
2 the entire credit has been used. The amount of credit taken may not exceed the taxpayer's
3 gross premiums tax liability for a taxable year reduced by the sum of all credits allowable
4 except payments of tax by or on behalf of the taxpayer. Subject to the ten percent (10%)
5 limitation, any unused portion of the credit may be carried forward to the five succeeding
6 taxable years.

7 (c) Transfer of Credit. – A taxpayer may transfer a credit allowed under this
8 section to another taxpayer. The taxpayer must apply for the approval of the
9 Commissioner of Insurance before transferring the credit. The application shall be in the
10 form prescribed by the Commissioner. The application shall identify the proposed
11 transferor and transferee, state the transferor's tax credit balance before and after the
12 proposed transfer, state the amount of the credit to be transferred and the proposed date of
13 the transfer, and include any other information the Commissioner requires regarding the
14 proposed transfer.

15 The Commissioner of Insurance shall approve the proposed transfer if the application
16 is accurate and complete and the Commissioner determines that the proposed transfer will
17 not have an adverse effect on either taxpayer or their policyholders or shareholders.
18 Within 60 days after receiving an application, the Commissioner shall notify the
19 applicant that the proposed transfer has been approved or disapproved.

20 The Commissioner of Insurance shall maintain records and monitor all transferred
21 credits to ensure that transfers do not result in multiple parties claiming the same credit.
22 The Commissioner shall provide the Secretary complete records of all transferred credits.

23 **"§ 105-228.10D. Effect of decertification.**

24 If a certified North Carolina capital company is decertified under G.S. 53A-74, no tax
25 credit or carryforward of a tax credit for an investment in the company is allowed under
26 this Article for a taxpayer's taxable year beginning in the calendar year the decertification
27 occurred or for subsequent taxable years. Decertification of a certified North Carolina
28 capital company does not affect a tax credit allowed under this Article for a taxpayer's
29 taxable year that began before the calendar year in which the decertification occurred.

30 **"§ 105-228.10E. Annual ceiling; cap.**

31 (a) Annual Ceiling. – The total amount of tax credits that may be taken by all
32 taxpayers under this Article in a taxable year may not exceed fifteen million dollars
33 (\$15,000,000). This amount shall be allocated among taxpayers for each taxable year as
34 provided in G.S. 53A-73.

35 (b) Cap. – The amount of credit allowed a taxpayer under this Article for a taxable
36 year may not exceed ten percent (10%) of the annual ceiling for that year."

37 Section 5. G.S. 105-228.8(e) reads as rewritten:

38 "(e) This section shall not apply to special purpose obligations or assessments
39 based on premiums imposed in connection with particular kinds of insurance, to the
40 special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special
41 purpose taxes based on premiums. For purposes of this section, seventy-five percent
42 (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected
43 on contracts of insurance applicable to fire and lightning coverage shall not be a special

1 purpose obligation or assessment or a dedicated special purpose tax within the meaning
2 of this subsection. The credit allowed by G.S. 105-228.10C shall not be considered in
3 determining the amount of premium taxes imposed by this State."

4 Section 6. G.S. 58-6-25(a) reads as rewritten:

5 "(a) Charge Levied. – There is levied on each insurance company an annual charge
6 for the purposes stated in subsection (d) of this section. As used in this section, the term
7 'insurance company' means a company that pays the gross premiums tax levied in G.S.
8 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical,
9 or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term
10 'insurance company' does not include a company regulated under Article 67 of this
11 Chapter. The charge levied in this section is in addition to all other fees and taxes. The
12 charge shall be at a percentage rate of the company's premium tax liability for the taxable
13 year. In determining an insurance company's premium tax liability for a taxable year, the
14 following shall be disregarded:

15 (1) The additional taxes imposed by G.S. ~~105-228.8~~ and the ~~105-228.8~~.

16 (2) The additional local fire and lightning tax imposed by G.S. ~~105-~~
17 ~~228.5(d)(4)~~ shall be disregarded. ~~105-228.5(d)(4)~~.

18 (3) The credit allowed by G.S. 105-228.10C."

19 Section 7. The title of Chapter 53A of the General Statutes reads as rewritten:

20 **"CHAPTER 53A.**

21 **"BUSINESS DEVELOPMENT CORPORATIONS AND NORTH**
22 **CAROLINA CAPITAL RESOURCE CORPORATIONS. AND ACCESS TO**
23 **CAPITAL."**

24 Section 8. The title of Article 3 of Chapter 53A of the General Statutes reads
25 as rewritten:

26 **"ARTICLE 3.**

27 **"NORTH CAROLINA ENTERPRISE CORPORATIONS. CORPORATIONS AND**
28 **CERTIFIED NORTH CAROLINA CAPITAL COMPANIES."**

29 Section 9. G.S. 53A-35 and G.S. 53A-47 are repealed.

30 Section 10. G.S. 53A-36 reads as rewritten:

31 **"§ 53A-36. Legislative findings and purpose.**

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

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

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

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

14 Section 11. G.S. 53A-38(a) reads as rewritten:

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

18 Section 12. G.S. 53A-41 reads as rewritten:

19 "**§ 53A-41. Governing law.**

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

22 Section 13. G.S. 53A-42 reads as rewritten:

23 "**§ 53A-42. Powers.**

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

26 Section 14. Sections 4, 5, and 6 of this act and G.S. 53A-73, as enacted by
27 Section 2 of this act, become effective for taxable years beginning on or after January 1,
28 1997, and apply to investments made on or after that date. The remainder of this act is
29 effective when this act becomes law. An application for initial certification as a North
30 Carolina capital company pursuant to G.S. 53A-71 may not be submitted until the first
31 Monday that falls at least 45 days after this act becomes law. G.S. 53A-73 and Article
32 8C of Chapter 105 of the General Statutes, as enacted by this act, are repealed effective
33 for investments made on or after January 1, 2000.