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(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA PROVIDING ACCESS TO CAPITAL FOR
ENTREPRENEURS AND SMALL BUSINESS ACT, TO PROVIDE PUBLIC
DISCLOSURE OF WRITTEN DETERMINATIONS MADE BY THE DEPARTMENT OF
REVENUE, AND TO PROHIBIT CITIES FROM CHARGING FEES FOR UTILITY USE
OF RIGHT-OF-WAY.

The General Assembly of North Carolina enacts:

**PART I. THE NORTH CAROLINA PROVIDING ACCESS TO CAPITAL FOR
ENTREPRENEURS AND SMALL BUSINESS ACT**

SECTION 1. G.S. 78A-17 is amended by adding a new subdivision to read:

"(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in accordance with G.S. 78A-17.1."

SECTION 2. Article 3 of Chapter 78A of the General Statutes is amended by adding a new section to read:

§ 78A-17.1. Invest NC exemption.

(a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security is a business entity formed under the laws of the State and/or registered with the Secretary of State.

(2) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and/or SEC rule 147, 17 C.F.R. § 230.147.

(3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption does not exceed the cap provided in this subdivision.

a. One million dollars (\$1,000,000), less the aggregate amount received for all sales of securities by the issuer made in reliance upon this exemption within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has not undergone and made available to each prospective investor and the Administrator the documentation resulting from a financial audit or review with respect to



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- 1 its most recently completed fiscal year and meeting generally accepted
2 accounting principles.
- 3 b. Two million dollars (\$2,000,000), less the aggregate amount received
4 for all sales of securities by the issuer made in reliance upon this
5 exemption within the 12 months before the first offer or sale made in
6 reliance upon this exemption, if the issuer has undergone and made
7 available to each prospective investor and the Administrator the
8 documentation resulting from a financial audit or review with respect to
9 its most recently completed fiscal year and meeting generally accepted
10 accounting principles.
- 11 (4) The issuer has not accepted more than five thousand dollars (\$5,000) from any
12 single purchaser in an offering made in reliance upon this exemption in any
13 12-month period unless the purchaser is an accredited investor as defined by
14 rule 501 of SEC regulation D, 17 C.F.R. § 230.501.
- 15 (5) Not less than 10 days prior to the commencement of an offering of securities in
16 reliance on this exemption or the use of any publicly available Web site in
17 connection with any such offering, the issuer shall file a notice with the
18 Administrator, in writing or in electronic form as specified by the
19 Administrator, containing the following:
- 20 a. A notice of claim of exemption from registration, specifying that the
21 issuer will be conducting an offering in reliance upon this exemption,
22 accompanied by the filing fee as specified in this section.
- 23 b. A copy of the disclosure statement to be provided to prospective
24 investors in connection with the offering, containing the following:
- 25 1. A description of the company, its type of entity, the address and
26 telephone number of its principal office, its history, its business
27 plan, and the intended use of the offering proceeds, including
28 any amounts to be paid, as compensation or otherwise, to any
29 owner, executive officer, director, managing member, or other
30 person occupying a similar status or performing similar
31 functions on behalf of the issuer.
- 32 2. The identity of all persons owning more than ten percent (10%)
33 of the ownership interests of any class of securities of the
34 company.
- 35 3. The identity of the executive officers, directors, managing
36 members, and other persons occupying a similar status or
37 performing similar functions in the name of and on behalf of the
38 issuer, including their titles and their prior experience.
- 39 4. The terms and conditions of the securities being offered and of
40 any outstanding securities of the company, the minimum and
41 maximum amount of securities being offered, if any, and either
42 the percentage ownership of the company represented by the
43 offered securities or the valuation of the company implied by the
44 price of the offered securities.
- 45 5. The identity of any person who has been or will be retained by
46 the issuer to assist the issuer in conducting the offering and sale
47 of the securities, including any Web sites, but excluding persons
48 acting solely as accountants or attorneys and employees whose
49 primary job responsibilities involve the operating business of the
50 issuer rather than assisting the issuer in raising capital, and for
51 each person identified in response to this sub-sub-subdivision, a

- 1 description of the consideration being paid to such person for
2 such assistance.
- 3 6. A description of any litigation or legal proceedings involving the
4 company or its management.
- 5 7. The names and addresses, including URL, of any Web sites that
6 will be used in connection with the offering.
- 7 c. An escrow agreement with a bank or other depository institution located
8 within this State or approved by the Administrator in which the investor
9 funds will be deposited, providing that all offering proceeds will be
10 released to the issuer only when the aggregate capital raised from all
11 investors is equal to or greater than the minimum target offering amount
12 specified in the disclosure document provided to the Administrator
13 pursuant to sub-subdivision (a)(5)b. of this section and that all investors
14 may cancel their commitments to invest if that target offering amount is
15 not raised by the time stated in the disclosure document.
- 16 (6) The issuer is not, either before or as a result of the offering, an investment
17 company, as defined in section 3 of the Investment Company Act of 1940, 15
18 U.S.C. § 8a-3, or an entity that would be an investment company but for the
19 exclusions currently provided in section 3(c) of the Act, or subject to the
20 reporting requirements of section 13 or 15(d) of the Securities Exchange Act of
21 1934, 15 U.S.C. § 78m and 78o(d).
- 22 (7) The issuer shall inform all prospective purchasers under this section that the
23 securities have not been registered under federal or State securities law and that
24 the securities are subject to limitations on resale. The issuer shall display the
25 following legend conspicuously on the cover page of the disclosure document:
26 "IN MAKING AN INVESTMENT DECISION, INVESTORS MUST
27 RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND
28 THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND
29 RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN
30 RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES
31 COMMISSION OR REGULATORY AUTHORITY.
32 FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT
33 CONFIRMED THE ACCURACY OR DETERMINED THE
34 ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO
35 THE CONTRARY IS A CRIMINAL OFFENSE. THESE
36 SECURITIES ARE SUBJECT TO RESTRICTIONS ON
37 TRANSFERABILITY AND RESALE AND MAY NOT BE
38 TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER
39 THE SECURITIES ACT OF 1933, AS AMENDED, AND THE
40 APPLICABLE STATE SECURITIES LAWS, PURSUANT TO
41 REGISTRATION OR EXEMPTION THEREFROM. INVESTORS
42 SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO
43 BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN
44 INDEFINITE PERIOD OF TIME."
- 45 (8) The issuer shall require each purchaser to certify in writing "I understand and
46 acknowledge that:
- 47 a. I am investing in a high-risk, speculative business venture. I may lose
48 all of my investment, and I can afford the loss of my investment.
- 49 b. This offering has not been reviewed or approved by any state or federal
50 securities commission or other regulatory authority and that no such

- 1 person or authority has confirmed the accuracy or determined the
2 adequacy of any disclosure made to me relating to this offering.
3 c. The securities I am acquiring in this offering are illiquid, that there is no
4 ready market for the sale of such securities, that it may be difficult or
5 impossible for me to sell or otherwise dispose of this investment, and
6 that, accordingly, I may be required to hold this investment indefinitely.
7 d. I may be subject to tax on my share of the taxable income and losses of
8 the company, whether or not I have sold or otherwise disposed of my
9 investment or received any dividends or other distributions from the
10 company."
- 11 (9) If the offer or sale of securities is made through an Internet Web site, the
12 following requirements apply:
- 13 a. Prior to the offer of an investment opportunity to residents of this State
14 through a Web site, the issuer shall provide to the Web site and to the
15 Administrator evidence that the issuer is organized under North
16 Carolina law or that it is authorized to do business within the State.
- 17 b. The issuer shall obtain from each purchaser of a security under this
18 section evidence that the purchaser is a resident of North Carolina and,
19 if applicable, an accredited investor.
- 20 c. The Web site operator shall register with the Administrator by filing a
21 statement that it is a business entity that is organized under North
22 Carolina law or that it is authorized to do business within the State and
23 that it is being utilized to offer and sell securities pursuant to this
24 exemption. As part of the registration, the Web site shall notify the
25 Administrator of its and the issuer's identity, location, and contact
26 information.
- 27 d. The issuer and the Web site must keep and maintain records of the
28 offers and sales of securities effected through the Web site and must
29 provide ready access to the records to the Administrator, upon request.
30 The Administrator may access, inspect, and review any Web site and its
31 records.
- 32 (10) All payments for purchase of securities must be directed to and held by the
33 bank or depository institution subject to the provisions of sub-subdivision
34 (a)(5)c. of this section. The bank or depository institution shall notify the
35 Administrator of the receipt of payments for securities and the identity and
36 residence of the investors. The information shall be confidential and considered
37 trade secrets within the scope of G.S. 132-1.2 while in the possession of the
38 Administrator.
- 39 (11) No offers or sales of a security shall be made through an Internet Web site
40 unless the Web site is registered with the Administrator pursuant to
41 sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to the
42 registration provisions of G.S. 78A-36 provided that all of the following apply:
- 43 a. It does not offer investment advice or recommendations.
44 b. It does not solicit purchases, sales, or offers to buy the securities offered
45 or displayed on the Web site.
- 46 c. It does not compensate employees, agents, or other persons for the
47 solicitation or based on the sale of securities displayed or referenced on
48 the Web site.
- 49 d. It is not compensated based on the amount of securities sold, and it does
50 not hold, manage, possess, or otherwise handle investor funds or
51 securities.

1 e. It does not engage in such other activities as the Administrator, by rule,
2 determines appropriate.

3 (12) An executive officer, director, managing member, or person occupying a
4 similar status or performing similar functions in the name of and on behalf of
5 the issuer shall be exempt from the registration provisions of G.S. 78A-36,
6 provided that the person does not receive, directly or indirectly, any
7 commission or remuneration for offering and selling securities of the issuer
8 pursuant to this exemption.

9 (13) The issuer must provide a copy of the disclosure document provided to the
10 Administrator pursuant to sub-subdivision (a)(5)b. of this section to each
11 prospective investor at the time the offer of securities is made to the prospective
12 investor. In addition to the information described in sub-subdivision (a)(5)b. of
13 this section, the disclosure document provided to the Administrator and to
14 prospective investors should include additional information material to the
15 offering, including, where appropriate, a discussion of significant factors that
16 make the offering speculative or risky. This discussion must be concise and
17 organized logically and should not present risks that could apply to any issuer
18 or any offering.

19 (b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall be
20 cumulatively adjusted every fifth year by the Administrator to reflect the change in the Consumer
21 Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting each
22 dollar limitation to the nearest fifty thousand dollars (\$50,000).

23 (c) Report. – An issuer of a security, the offer and sale of which is exempt under this
24 section, shall provide a quarterly report to the issuer's investors until no securities issued under this
25 section are outstanding. The report required by this subsection shall be free of charge. An issuer
26 may satisfy the reporting requirement of this subsection by making the information available on an
27 Internet Web site if the information is made available within 45 days of the end of each fiscal
28 quarter and remains available until the succeeding quarterly report is issued. An issuer shall file
29 each such quarterly report with the Administrator and must provide a written copy of the report to
30 any investor upon request. The report must contain each of the following:

31 (1) Compensation received by each director and executive officer, including cash
32 compensation earned since the previous report and on an annual basis and any
33 bonuses, stock options, other rights to receive securities of the issuer or any
34 affiliate of the issuer, or other compensation received.

35 (2) An analysis by management of the issuer of the business operations and
36 financial condition of the issuer.

37 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section shall
38 not be used in conjunction with any other exemption under this Chapter, except offers and sales to
39 controlling persons shall not count toward the limitations in subdivision (3) or (4) of subsection (a)
40 of this section. A controlling person is an officer, director, partner, trustee, or individual occupying
41 similar status or performing similar functions with respect to the issuer or to a person owning ten
42 percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.

43 (e) Disqualification. – The exemption allowed by this section shall not apply if an issuer or
44 person affiliated with the issuer or offering is subject to any disqualification contained in 18
45 NCAC 06A .1207(a)(1) through (a)(6) or contained in rule 262 as promulgated under the
46 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply if
47 (i) upon a showing of good cause and without prejudice to any other action by the Administrator,
48 the Administrator determines that it is not necessary under the circumstances that an exemption be
49 denied and (ii) the issuer establishes that it made factual inquiry into whether any disqualification
50 existed under this subsection but did not know, and in the exercise of reasonable care could not
51 have known, that a disqualification existed under this subsection. The nature and scope of the

1 requisite inquiry will vary based on the circumstances of the issuer and the other offering
2 participants.

3 (f) Rules. – To effectuate the general purpose of this section, the Administrator may adopt
4 rules and issue orders that are necessary or appropriate in the public interest or for the protection
5 of investors. The Administrator may also adopt rules and issue orders coordinating the
6 interpretation and administration of this section with the related federal law and regulations.

7 (g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred fifty
8 dollars (\$150.00) for filing an exemption notice required by subsection (a) of this section. The fees
9 paid to the Administrator pursuant to this subsection shall be used to pay the costs incurred in
10 administering and enforcing this Chapter. The revenue derived from the fee shall be credited to a
11 nonreverting agency revenue account."

12 **SECTION 3.** G.S. 78A-49(d) reads as rewritten:

13 "(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet,
14 circular, form letter, advertisement, or other sales literature or advertising communication
15 addressed or intended for distribution to prospective investors, unless the security or transaction is
16 exempted by ~~G.S. 78A-16 or 78A-17 (except 78A-17(9), (17), and (19))~~ G.S. 78A-16 and
17 G.S. 78A-17 (except G.S. 78A-17(9), (17), (19), and (20)) and such exemption has not been
18 denied or revoked under G.S. 78A-18 or the security is a security covered under federal law or the
19 transaction is with respect to a security covered under federal law."

20 **SECTION 4.(a)** Notwithstanding any provision of Article 2A of Chapter 150B of the
21 General Statutes, within 12 months of the effective date of this act, the Secretary of State shall
22 adopt rules to implement the provisions of this act in accordance with the following procedure:

- 23 (1) At least 15 business days prior to adopting a rule, submit the rule and a notice
24 of public hearing to the Codifier of Rules. The Codifier of Rules shall publish
25 the proposed rule and the notice of public hearing on the Internet within five
26 business days.
- 27 (2) At least 15 business days prior to adopting a rule, notify persons on the mailing
28 list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties
29 of the Secretary's intent to adopt a rule and of the public hearing.
- 30 (3) Accept written comments on the proposed rule for at least 15 business days
31 prior to adoption of the rule.
- 32 (4) Hold at least one public hearing on the proposed rule no less than five days
33 after the rule and notice have been published.

34 A rule adopted in accordance with this section becomes effective on the first day of the
35 month following the month the Secretary adopts the rule and submits the rule to the Codifier of
36 Rules for entry into the North Carolina Administrative Code.

37 **SECTION 4.(b)** Any rule adopted more than 12 months after the effective date of this
38 act shall comply with the requirements of Article 2A of Chapter 150B of the General Statutes.

40 **PART II. PUBLIC DISCLOSURE OF WRITTEN DETERMINATIONS MADE BY THE** 41 **DEPARTMENT OF REVENUE**

42 **SECTION 5.** Article 9 of Chapter 105 of the General Statutes is amended by adding a
43 new section to read:

44 **§ 105-264.2. Publication of written determinations.**

45 (a) Written Determinations. – A written determination applies the tax law to a specific set
46 of existing facts furnished by a particular taxpayer. A written determination is applicable only to
47 the individual taxpayer addressed and as such has no precedential value except to the taxpayer to
48 whom the determination is issued.

49 (b) Publication. – The text of a written determination must be published on the
50 Department's Web site within 90 days of the date the determination is provided to the taxpayer.
51 The text of a written determination must be redacted as provided in subsection (c) of this section

1 before it is published. The publication requirement of this section does not include disclosure of
2 background file documents.

3 (c) Redacted Written Determinations. – The Secretary must redact all of the following
4 from a written determination before it is published:

5 (1) The names, addresses, and other identifying details of the taxpayer to whom the
6 written determination pertains.

7 (2) The names, addresses, and other identifying details of any other person
8 referenced in the written determination.

9 (3) Information specifically exempted from disclosure by State or federal law.

10 (4) Trade secrets and commercial or financial information obtained from a person
11 that is privileged or confidential.

12 (d) Liability. – The Secretary must determine the appropriate extent of the redactions. The
13 Secretary is not liable for failure to make redactions unless the Secretary fails to make the
14 redactions in intentional and willful disregard of this section, has agreed to redact the information,
15 or has been ordered by a court to make the redaction.

16 (e) Definitions. – The following definitions apply in this section:

17 (1) Alternative apportionment ruling. – Written advice issued by the Secretary to a
18 taxpayer pursuant to a written request by the taxpayer for alternative
19 apportionment under G.S. 105-130.4(t1) or under G.S. 105-122(c1).

20 (2) Background file document. – Any one or more of the following:

21 a. The request for the written determination.

22 b. Any written materials submitted in support of the request.

23 c. Any communication between the Department and persons outside the
24 Department in connection with the written determination.

25 d. Any information submitted by the taxpayer in response to a request
26 from the Department for information that is required to provide the
27 written determination.

28 (3) Private letter ruling. – Written advice issued by the Secretary to a taxpayer
29 pursuant to a written request by the taxpayer for specific advice under
30 G.S. 105-264(b).

31 (4) Redetermination private letter ruling. – Written advice issued by the Secretary
32 to a corporation under G.S. 105-130.5A concerning one or more of the
33 following:

34 a. Specific advice requested in writing by a corporation as to whether a
35 redetermination of a corporation's State net income or a combined return
36 is required by the Secretary, as provided under G.S. 105-130.5A(m).

37 b. A determination and agreement made jointly between the Secretary and
38 a corporation to an alternative filing methodology that accurately reports
39 State net income, as provided under G.S. 105-130.5A(c).

40 (5) Written determination. – Any one or more of the following:

41 a. An alternative apportionment ruling.

42 b. A private letter ruling.

43 c. A redetermination private letter ruling."

44 **SECTION 6.** G.S. 105-264(d) reads as rewritten:

45 "(d) Fee. – The Secretary may charge a fee for providing ~~specific written advice~~ a written
46 determination at the request of a taxpayer. The fee is a receipt of the Department and must be
47 applied to the costs of providing the ~~specific advice~~ written determination. The proceeds of the
48 fee must be credited to a special account within the Department and do not revert but remain in the
49 special account until spent by the Department for the costs of providing the ~~specific advice~~.
50 written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's
51 income or gross receipts, the relative complexity of the advice requested, or the tax schedule for

1 which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more
2 than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written
3 determination" has the same meaning as defined in G.S. 105-264.2."

4 **SECTION 7.** G.S. 105-259(b)(27) reads as rewritten:

5 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
6 access to tax information in the course of service to or employment by the State may not disclose
7 the information to any other person except as provided in this subsection. Standards used or to be
8 used for the selection of returns for examination and data used or to be used for determining the
9 standards may not be disclosed for any purpose. All other tax information may be disclosed only if
10 the disclosure is made for one of the following purposes:

11 ...

12 (27) To provide a publication or written determination required under this Chapter.
13 The term "written determination" has the same meaning as defined in
14 G.S. 105-264.2."

15 **SECTION 8.** The Department of Revenue must publish on its Web site the text of any
16 written determination issued on or after January 1, 2010, and before the enactment of this act,
17 within 120 days of the enactment of this act. The text of the written determination must be
18 redacted to remove identifying taxpayer information before being published as provided in
19 G.S. 105-264.2, as enacted by this act.

20 21 **PART III. PROHIBIT CITIES FROM CHARGING FEES FOR UTILITY USE OF** 22 **RIGHT-OF-WAY**

23 **SECTION 9.(a)** G.S. 160A-296 reads as rewritten:

24 **"§ 160A-296. Establishment and control of streets; center and edge lines.**

25 (a) A city shall have general authority and control over all public streets, sidewalks, alleys,
26 bridges, and other ways of public passage within its corporate limits except to the extent that
27 authority and control over certain streets and bridges is vested in the Board of Transportation.
28 General authority and control includes but is not limited to all of the following:

29 ...

30 (6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or
31 alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or
32 appliances of any kind either on, above, or below the surface. To the extent a
33 municipality is authorized under applicable law to impose a fee or charge with
34 respect to activities conducted in its rights-of-way, the fee or charge must apply
35 uniformly and on a competitively neutral and nondiscriminatory basis to all
36 comparable activities by similarly situated users of the rights-of-way. No fee or
37 charge for activities conducted in the right-of-way shall be assessed on
38 businesses listed in G.S. 160A-206(b), except the following:

39 a. Fees to recover any difference between a city's right-of-way
40 management expenses related to the activities of businesses listed in
41 G.S. 160A-206(b) and distributions under Article 5 of Chapter 105 of
42 the General Statutes.

43 b. Payments under agreements subject to G.S. 62-350.

44"

45 **SECTION 9.(b)** Subsection (a) of this section becomes effective July 1, 2017.

46 **SECTION 9.(c)** A city may not impose a fee or charge on businesses listed in
47 G.S. 160A-206(b) for activities conducted in the city's right-of-way, except fees or charges not
48 exceeding those in effect as of June 1, 2016, or payments under agreements subject to
49 G.S. 62-350.

50 **SECTION 9.(d)** Subsection (c) of this section is effective when it becomes law and is
51 repealed effective July 1, 2017.

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PART IV. EFFECTIVE DATE

SECTION 10. Except as otherwise provided, this act is effective when it becomes law.