HOUSE BILL 305

Short Title: Jump-start Businesses/New Markets Tax Credit. (Public)

Sponsors: Representatives R. Moore, Hanes, C. Graham, and Hamilton (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Commerce and Job Development, if favorable, Regulatory Reform, if favorable, Finance, if favorable, Appropriations.

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NEW MARKETS JOBS ACT AND THE JUMP-START OUR BUSINESS START-UPS ACT.

The General Assembly of North Carolina enacts:

PART I. NEW MARKETS JOBS ACT OF 2015

SECTION 1.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:


§ 105-129.100. Short title.

The provisions of this Article shall be known and may be cited as the "North Carolina New Markets Jobs Act of 2015."

§ 105-129.101. Definitions.

The following definitions apply in this Article:

(1) Affiliate. – An entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the entity specified.

(2) Applicable percentage. – Zero percent (0%) for the first two reduction allowance dates, twelve percent (12%) for the next three reduction allowance dates, and eleven percent (11%) for the following two reduction allowance dates.

(3) Below the line reduction of tax or "reduction." – A subtraction from the total amount of State premium tax liability made after all additions and deductions have been made to the gross premium amount and after the appropriate rates of tax have been applied; for the purposes of constitutional, statutory, and common law interpretation and enforcement, the reduction shall be afforded the same property and contractual protections as a credit.

(4) Department. – The Department of Commerce.

(5) Long-term debt security. – Any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its
original maturity date. The qualified community development entity that
issues the debt instrument may not make cash interest payments on the debt
instrument during the period beginning on the date of issuance and ending
on the final reduction allowance date in an amount that exceeds the
cumulative operating income, as defined by regulations adopted under
section 45D of the Internal Revenue Code of 1986, as amended, of the
qualified community development entity for that period prior to giving effect
to the interest expense of such long-term debt security. The foregoing shall
in no way limit the holder's ability to accelerate payments on the debt
instrument in situations where the qualified community development entity
has defaulted on covenants designed to ensure compliance with this section
or section 45D of the Internal Revenue Code of 1986, as amended.

(6) Purchase price. – The amount paid to the qualified community development
entity upon the issuance of a qualified equity investment.

(7) Qualified active low-income community business. – The meaning given
such term in section 45D of the Internal Revenue Code of 1986, as amended,
and 26 C.F.R. § 1.45D-1 but limited to those businesses meeting the SBA
size eligibility standards established in 13 C.F.R. § 121.101-201 at the time
the qualified low-income community investment is made. A business shall
be considered a qualified active low-income community business for the
duration of the qualified community development entity's investment in or
loan to the business if the entity reasonably expects, at the time it makes the
investment or loan, that the business will continue to satisfy the requirements
for being a qualified active low-income community business, other than the
SBA size standards, throughout the entire period of the investment or loan.
The term excludes any business that derives or projects to derive fifteen
percent (15%) or more of its annual revenue from the rental or sale of real
estate. This exclusion does not apply to a business that is controlled by or
under common control with another business if the second business (i) does
not derive or project to derive fifteen percent (15%) or more of its annual
revenue from the rental or sale of real estate and (ii) is the primary tenant of
the real estate leased from the first business.

(8) Qualified community development entity. – The meaning given such term in
section 45D of the Internal Revenue Code of 1986, as amended; provided
that such entity has entered into, for the current year or any prior year, an
allocation agreement with the Community Development Financial
Institutions Fund of the U.S. Treasury Department with respect to credits
authorized by section 45D of the Internal Revenue Code of 1986, as
amended, which includes the State of North Carolina within the service area
set forth in the allocation agreement. The term shall include qualified
community development entities that are controlled by or are under common
control with the qualified community development entity.

(9) Qualified equity investment. – Any equity investment in or long-term debt
security issued by a qualified community development entity that meets each
of the following requirements:

a. Is acquired after the effective date of this act at its original issuance
   solely in exchange for cash.

b. Has at least eighty-five percent (85%) of its cash purchase price used
   by the qualified community development entity to make qualified
   low-income community investments in qualified active low-income
community businesses located in this State by the first anniversary of the initial reduction allowance date.

c. Is designated by the qualified community development entity as a qualified equity investment under this subdivision and is certified by the Department as not exceeding the limitation contained in G.S. 105-129.102(d)(5). This term shall include any qualified equity investment that does not meet the provisions of sub-subdivision a. of this subdivision if such investment was a qualified equity investment in the hands of a prior holder.

(10) Qualified low-income community investment. – Any capital or equity investment in or loan to any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of the businesses' affiliates, with the proceeds of qualified equity investments certified under G.S. 105-129.102(d) that shall count toward satisfaction of the requirements of sub-subdivision b. of G.S. 105-129.101(9) and sub-subdivision c. of G.S. 105-129.102(e)(1) shall be seven million dollars ($7,000,000), exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized thereon.

(11) Reduction allowance date. – With respect to any qualified equity investment, the date on which the investment is initially made and each of the six anniversary dates thereafter.

(12) Rural census tracts. – Any census tract in which a qualified active low-income community business is located that also is located in a county designated as Tier 1 or Tier 2 by the North Carolina Department of Commerce as of or after 2015.

(13) Secretary. – The Secretary of Commerce.

(14) State premium tax liability. – Any liability incurred by any entity under the gross premiums tax or the retaliatory premium tax levied in Article 8B of this Chapter, or, if the tax liability under the gross premiums tax or the retaliatory premium tax levied in Article 8B of this Chapter is eliminated or reduced, the term shall also mean any tax liability imposed on an insurance company or other person that had premium tax liability under the laws of this State.

§ 105-129.102. Reduction for qualified equity investment.

(a) Reduction Established. – An entity that makes a qualified equity investment earns a vested contractual right to a below-the-line reduction of tax applicable to the entity's State premium tax liability on future premium tax reports filed under Article 8B of Chapter 105 of the General Statutes. On or after each reduction allowance date of the qualified equity investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a portion of the tax reduction during the taxable year, including the reduction allowance date. The tax reduction amount is equal to the applicable percentage for the reduction allowance date multiplied by the purchase price paid to the qualified community development entity. The amount of the tax reduction claimed in that taxable year by a taxpayer shall not exceed the amount of such taxpayer's State tax liability for the tax year for which the tax reduction is claimed. Any amount of tax reduction that the taxpayer is prohibited from claiming in a taxable year as a result of this section may be carried forward for use in any subsequent taxable year.

(b) Transferability. – A tax reduction claimed pursuant to this Article is not refundable or saleable on the open market. Tax reductions earned by or allocated to a partnership, limited
liability company, or S Corporation may be allocated to the partners, members, or shareholders of such entity for their use in accordance with the provisions of any agreement among such partners, members, or shareholders. These allocations are not considered a sale for purposes of this section. The Department shall issue a certificate to each entity allocated a tax reduction under this Article.

(c) Certification of Qualified Equity Investments. – A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax reductions under this section shall apply to the Department, which shall begin accepting applications on July 1, 2015. The qualified community development entity must submit an application on a form that the Department provides that includes each of the following:

(1) Evidence of the entity’s certification as a qualified community development entity, including evidence of the service area of the entity that includes this State.

(2) A copy of an allocation agreement executed by the entity or its controlling entity and the Community Development Financial Institutions Fund.

(3) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund.

(4) A description of the proposed amount, structure, and purchaser of the qualified equity investment.

(5) If known, identifying information for any taxpayer eligible to utilize tax reductions earned as a result of the issuance of the qualified equity investment.

(6) Examples of the types of qualified active low-income businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the Federal New Markets Tax Credit Program. Applications are not required to identify qualified active low-income community businesses in which they will invest when submitting an application.

(7) A nonrefundable application fee of five thousand dollars ($5,000).

(8) The refundable performance deposit required by G.S. 105-129.104.

(9) Whether the application is for the Rural Reserve under G.S. 105-129.109.

(d) (1) Within 30 days after receipt of a completed application containing the information set forth in subsection (c) of this section, including the payment of the application fee and the performance deposit, the Department shall grant or deny the application in full or in part. If the Department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application is denied and must be resubmitted in full with a new submission date.

(2) If the application is deemed complete, the Department shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for a reduction under this section, subject to the limitations contained in subdivision (5) of this subsection; provided that the Department shall not certify qualified equity investments for any applicant on a combined basis with all of its affiliates, in excess of sixty million
dollars ($60,000,000) unless such applicant has (i) already had qualified equity investments certified under this section, (ii) satisfied the requirements of subdivision (6) of this subsection with respect to such qualified equity investments, and (iii) filed a new application after satisfying the requirements of (i) and (ii) of this subdivision. The Department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the reductions and their respective reduction amounts. If the names of the taxpayers who are eligible to utilize the reductions change due to a transfer of a qualified equity investment or a change in an allocation pursuant to subsection (b) of this section, the qualified community development entity shall notify the Department of such change.

(3) Once the Department has certified a qualified equity investment, the qualified community development entity may suballocate all or any portion of the amount of the certified qualified equity investment to one or more qualified community development entities with the same controlling entity as the applicant qualified community development entity, provided that the applicant qualified community development entity files a notice of such suballocation with the Department and the recipient of the suballocation meets all the requirements of a qualified community development entity under this section. The notice of suballocation shall include the information required in the application for all suballocatees.

(4) The Department shall certify qualified equity investments in the order applications are received by the Department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Department shall certify, consistent with remaining tax reduction capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(5) The Department shall certify two hundred eight million three hundred thirty-three thousand three hundred thirty-three dollars ($208,333,333) in qualified equity investment authority pursuant to two allocations, one for the Rural Reserve and one for the Statewide Reserve, each as described in G.S. 105-129.109(a). If a pending request cannot be fully certified due to this limit, the Department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

(6) Within 45 days after receiving notice of certification, the qualified community development entity or any transferee under this section shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee must provide the Department with evidence of the receipt of the cash investment within 50 days of the applicant receiving notice of certification. If the qualified community development entity or transferee does not receive the cash investment and issue the qualified equity investment within 45 days following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Department for certification. A certification that lapses reverts back to the Department and shall be reissued pro rata to other applicants whose...
qualified equity investment allocations were reduced under this section and thereafter in accordance with the application process.

(e) Disallowance.—

(1) The Department may determine that reductions previously claimed or to be claimed by a taxpayer under this Article should be disallowed. Notice that a reduction shall be disallowed shall be transmitted in writing to the taxpayer and the Department of Revenue. Disallowance may be determined if any of the following occurs:

a. Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax reduction under this section is recaptured under section 45D of the Internal Revenue Code of 1986, as amended. In such case, the Department's disallowance shall be proportionate to the federal recapture with respect to such qualified equity investment.

b. The qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment. In such case, the Department's disallowance shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment.

c. The qualified community development entity fails to (i) invest at least eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income investments in the State within 12 months of the issuance of the qualified equity investment and (ii) maintain such level of investment in qualified low-income community investments in the State until the last reduction allowance date for the qualified equity investment. For qualified equity investments made under the Rural Reserve, all qualified low-income community investments required to meet the requirements of this subsection must be made in qualified active low-income community businesses located in rural census tracts within this State.

d. Any distribution or debt payment in violation of G.S. 105-129.107(a).

e. Failure to comply with G.S. 105-129.108, 105-129.109, or 105-129.110.

(2) For purposes of this section, an investment shall be considered held by a qualified community development entity even if the investment has been sold or repaid if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of such capital. Periodic amounts received as repayment of principal on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community.
development entity through the seventh anniversary of the issuance of the qualified equity investment.

(3) A recaptured reduction and the related qualified equity investment authority under the Rural Reserve or the Statewide Reserve, as applicable, reverts back to the Department and shall be reissued pro rata to other applicants whose qualified equity investment allocations were reduced under this section and thereafter in accordance with the application process.

"§ 105-129.103. Notice of noncompliance.

Enforcement of the disallowance under this Article shall not occur until the qualified community development entity shall have been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

"§ 105-129.104. Refundable performance deposit.

(a) For each application submitted, a qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for a reduction under this Article shall make a performance deposit in the amount of the greater of one-quarter of one percent (1/4 of 1%) of the amount of the equity investment or long-term debt security requested to be designated as a qualified equity investment or five hundred thousand dollars ($500,000) to the Department for deposit in the New Markets performance guarantee account, which is hereby established. The entity shall forfeit the amount deposited if (i) the qualified community development entity together with any qualified community development entities to which it has suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d), if any, fail to issue the total amount of qualified equity investments certified by the Department and receive cash in the total amount certified under G.S. 105-129.102 within 45 days after receiving notice of certification or (ii) the qualified community development entity or any qualified community development entity that issues suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d) certified under this Article fails to invest at least eighty-five percent (85%) of the purchase price of any qualified equity investment issued in qualified low-income community investments within 12 months of the issuance of the qualified equity investment; provided that forfeiture for the failure under clauses (i) and (ii) of this subsection is not subject to the cure period established in G.S. 105-129.103.

(b) The performance deposit required under this section shall be paid to the Department and held in the New Markets performance guarantee account without any portion being repaid until such time as compliance with clause (ii) of subsection (a) of this section has been established. The qualified community development entity may request a refund of the performance deposit from the Department no sooner than 30 days after having met the requirements of clause (ii) of subsection (a) of this section. The State Treasurer shall have 30 days to comply with the request or give notice of noncompliance.

"§ 105-129.105. Letter rulings.

(a) The Secretary shall issue letter rulings regarding the tax reduction program authorized under this Article, subject to the terms and conditions set forth in this section. For the purposes of this Article, the term "letter ruling" means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

(b) The Secretary shall respond to a request for a letter ruling within 60 days of receipt of such request. The applicant may provide a draft letter ruling for the Secretary's consideration. The applicant may withdraw the request for a letter ruling in writing prior to the issuance of the letter ruling. The Secretary may refuse to issue a letter ruling for good cause but must list the specific reasons for refusing to issue the letter ruling. Good cause includes any of the following:

(1) The applicant requests the director to determine whether a statute is constitutional or a regulation is lawful.
The request involves a hypothetical situation or alternative plan. The facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling. The issue is currently being considered in a rule-making procedure, contested case, or other agency or judicial proceeding that may definitely resolve the issue.

(c) Letter rulings shall bind the Secretary and the Secretary's agents and their successors and all other State agencies until such time as the entity or its shareholders, members, or partners, as applicable, claim all of the reductions on a North Carolina tax return or report, subject to the terms and conditions set forth in properly published regulations. The letter ruling shall apply only to the applicant.

(d) In rendering letter rulings and making other determinations under this Article, to the extent applicable, the Department and the Department of Revenue shall look for guidance to section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder.

§ 105-129.106. Retaliatory tax.
An entity claiming a reduction under this Article is not required to pay any additional retaliatory tax levied under G.S. 105-228.8 as a result of claiming the reduction. It is the intent of the General Assembly that an entity claiming a reduction under this Article is not required to pay any additional tax that may arise as a result of claiming that reduction.

§ 105-129.107. Decertification.
(a) Once certified under this Article, a qualified equity investment may not be decertified unless all of the requirements of this section have been met. Until all qualified equity investments issued by a qualified community development entity or any transferee qualified community development entity under G.S. 105-129.102(d) are decertified under this section, the qualified community development entity or any transferee qualified community development entity under G.S. 105-129.102(d) shall not be entitled to distribute to its equity holders or make cash payments on long-term debt securities that have been designated as qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating income, as defined by regulations adopted under section 45D of the Internal Revenue Code of 1986, as amended, earned by the qualified community development entity since issuance of the qualified equity investment, prior to giving effect to any interest expense of long-term debt securities designated as qualified equity investments and (ii) fifty percent (50%) of the purchase price of the qualified equity investments issued by the qualified community development entity.

(b) To be decertified, all of the following conditions must be met:
(1) The qualified equity investment is beyond its seventh reduction allowance date.
(2) The qualified equity investment was in compliance with the requirements of this Article through its seventh reduction allowance date, including any cures.
(3) The qualified equity investment has its proceeds invested in qualified active low-income community investments such that the total qualified active low-income community investments made, cumulatively including reinvestments, exceeds one hundred fifty percent (150%) of its qualified equity investment. For purposes of making this calculation, qualified low-income community investments to any one qualified active low-income community business, on a collective basis with affiliates, in excess of seven million dollars ($7,000,000) are not included unless the investments are made with capital returned or repaid from qualified low-income community...
investments made by the qualified community development entity in other
qualified active low-income community businesses or interest earned on or
profits realized from any qualified low-income community investments.

(c) A qualified community development entity that seeks to have a qualified equity
investment decertified under this section shall send notice to the Department of its request for
decertification along with evidence supporting the request. The provisions of subdivision (2) of
subsection (b) of this section are met if no disallowance action has been commenced by the
Department as of the seventh reduction allowance date. A request under this section shall not
be unreasonably denied and shall be responded to within 30 days of receiving the request. If the
request is denied for any reason, the burden of proof shall be on the Department in any
administrative or legal proceeding that follows.

§ 105-129.108. Limitation on fees.
No qualified community development entity shall be entitled to pay any affiliate of such
qualified community development entity any fees in connection with any activity under this
Article prior to decertification under G.S. 105-129.107 of all qualified equity investments
issued by the qualified community development entity. The foregoing shall not prohibit a
qualified community development entity from allocating or distributing income earned by it to
the affiliates or paying reasonable interest on amounts lent to the qualified community
development entity by such affiliates.

§ 105-129.109. Rural Investment Reserve.
(a) Of the maximum total two hundred eight million three hundred thirty-three
thousand three hundred thirty-three dollars ($208,333,333) of qualified equity investments
eligible for certification by the Department under G.S. 105-129.102, one hundred fifty-six
million two hundred fifty thousand dollars ($156,250,000) of the total shall be reserved for
applications submitted for a portion of the New Markets Jobs Act of 2015 hereby designated
the "Rural Reserve." The fifty-two million eighty-three thousand three hundred thirty-three
dollars ($52,083,333) not in the Rural Reserve shall be designated the "Statewide Reserve."
(b) A qualified community development entity may apply for both the Rural Reserve
and the Statewide Reserve, provided it does so in separate applications.
(c) All qualified low-income community investments made under the Rural Reserve of
qualified equity investment authority shall only be made in qualified active low-income
community businesses located in rural census tracts in the State, including those necessary to
meet the standards for decertification contained in G.S. 105-129.107.
(d) Qualified low-income community investments made under the Statewide Reserve of
qualified equity investment authority shall not be geographically restricted so long as the
qualified active low-income community business is located in the State.

§ 105-129.110. New capital requirement.
No qualified active low-income community business that receives a qualified low-income
community investment from a qualified community development entity that issues qualified
equity investments under this Article, or any affiliates of such a qualified active low-income
community business, may directly or indirectly (i) own or have the right to acquire an
ownership interest in a qualified community development entity or member or affiliate of a
qualified community development entity, including, but not limited to, a holder of a qualified
equity investment issued by the qualified community development entity or (ii) loan to or
invest in a qualified community development entity or member or affiliate of a qualified
community development entity, including, but not limited to, a holder of a qualified equity
investment issued by a qualified community development entity, where the proceeds of such
loan or investment are directly or indirectly used to fund or refinance the purchase of a
qualified equity investment hereunder. For purposes of this section, a qualified community
development entity shall not be considered an affiliate of a qualified active low-income
community business solely as a result of its qualified low-income community investment in such business.

§ 105-129.11. Reporting.
(a) A qualified community development entity that issues qualified equity investments shall submit a report to the Department within the first five business days after the first anniversary of the initial reduction allowance that provides documentation as to the investment of eighty-five percent (85%) of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in the State. The report shall include the following:

1. A bank statement of the qualified community development entity evidencing each qualified low-income community investment.
2. Evidence that the business was a qualified active low-income community business at the time of the qualified low-income community investment.
3. Evidence that the qualified active low-income community business was located in a rural census tract at the time of the qualified low-income community investment, if applicable under the Rural Reserve.

(b) After the initial report under subsection (a) of this section, a qualified community development entity shall submit an annual report to the Department on or before April 1 of the calendar year during the compliance period. An annual report is not due before the first anniversary of the initial reduction allowance date. The annual report shall include the following:

1. The number of employment positions created and retained as a result of qualified low-income community investments.
2. The average annual salary of positions described in subdivision (1) of this subsection.
3. Certification from the qualified community development entity that the grounds for disallowance under G.S. 105-129.102(e) have not occurred.

SECTION 1.(b) This Part becomes effective July 1, 2015, and applies to qualified equity investments made on or after that date.

PART II. JUMP-START OUR BUSINESS START-UPS ACT

SECTION 2.(a) 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.(b) 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 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 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 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 with respect to its most recently completed fiscal year 
and meeting generally accepted accounting principles.

b. Two million dollars ($2,000,000), less the aggregate amount received 
for all sales of securities by the issuer within the 12 months before 
the first offer or sale made in reliance upon this exemption, if the 
issuer has undergone and made available to each prospective investor 
and the Administrator the documentation resulting from a financial 
audit with respect to its most recently completed fiscal year and 
meeting generally accepted accounting principles.

(4) The issuer has not accepted more than two thousand dollars ($2,000) from 
any single purchaser unless the purchaser is an accredited investor as defined 

(5) Not less than 10 days prior to the commencement of an offer of securities 
in reliance on this exemption or the use of any publicly available Web site in 
connection with any such offering, the issuer shall file a notice with the 
Administrator, in writing or in electronic form as specified by the 
Administrator, containing the following:

a. A notice of claim of exemption from registration, specifying that the 
issuer will be conducting an offering in reliance upon this exemption, 
accompanied by the filing fee as specified in this section.

b. A copy of the disclosure statement to be provided to prospective 
investors in connection with the offering containing the following:

1. A description of the company, its type of entity, the address 
and telephone number of its principal office, its history, its 
business plan, and the intended use of the offering proceeds, 
including any amounts to be paid, as compensation or 
otherwise, to any owner, executive officer, director, 
managing member, or other person occupying a similar status 
or performing similar functions on behalf of the issuer.

2. The identity of all persons owning more than ten percent 
(10%) of the ownership interests of any class of securities of 
the company.

3. The identity of the executive officers, directors, managing 
members, and other persons occupying a similar status or 
performing similar functions in the name of and on behalf of 
the issuer, including their titles and their prior experience.

4. The terms and conditions of the securities being offered and 
of any outstanding securities of the company, the minimum 
and maximum amount of securities being offered, if any, and 
either the percentage ownership of the company represented 
by the offered securities or the valuation of the company 
implied by the price of the offered securities.

5. The identity of any person who has been or will be retained 
by the issuer to assist the issuer in conducting the offering 
and sale of the securities, including any Web sites, but 
excluding persons acting solely as accountants or attorneys 
and employees whose primary job responsibilities involve the 
operating business of the issuer rather than assisting the issuer 
in raising capital, and for each person identified in response
to this paragraph, a description of the consideration being paid to such person for such assistance.

6. A description of any litigation or legal proceedings involving the company or its management.

7. The names and addresses, including URL, of any Web sites that will be used in connection with the offering.

c. An escrow agreement with a bank or other depository institution located within this State in which the investor funds will be deposited, providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the business plan as necessary to implement the business plan and that all investors may cancel their commitments to invest if that target offering amount is not raised by the time stated in the disclosure document.

(6) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 8a-3, or an entity that would be an investment company but for the exclusions provided in section 3(c) of the Act, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).

(7) The issuer shall inform all prospective purchasers under this section that the securities have not been registered under federal or State securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

"IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147, 17 C.F.R. § 230.147(e) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

(8) The issuer shall require each purchaser to certify in writing "I understand and acknowledge that:

a. I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment."
b. This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

c. The securities I am acquiring in this offering are illiquid, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.

d. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company."

(9) If the offer and sale of securities is made through an Internet Web site, the following requirements apply:

a. Prior to the offer of an investment opportunity to residents of this State through a Web site, the issuer shall provide to the Web site and to the Administrator evidence that the issuer is organized under North Carolina law and that it is authorized to do business within the State.

b. The issuer shall obtain from each purchaser of a security under this section evidence that the purchaser is a resident of North Carolina and, if applicable, an accredited investor.

c. The Web site operator shall register with the Administrator by filing a statement that it is a business entity that is organized under North Carolina law and that it is authorized to do business within the State and that it is being utilized to offer and sell securities pursuant to this exemption. As part of the registration, the Web site shall notify the Administrator of its and the issuer's identity, location, and contact information.

d. The issuer and the Web site must keep and maintain records of the offers and sales of securities effected through the Web site and must provide ready access to the records to the Administrator, upon request. The Administrator may access, inspect, and review any Web site and its records.

(10) All payments for purchase of securities must be directed to and held by the bank or depository institution subject to the provisions of sub-subdivision c. of subdivision (5) of subsection (a) of this section. The bank or depository institution shall notify the Administrator of the receipt of payments for securities and the identity and residence of the investors. The information shall be confidential and considered trade secrets within the scope of G.S. 132-1.2 while in the possession of the Administrator.

(11) No offers or sales of a security shall be made through an Internet Web site unless the Web site is registered with the Administrator pursuant to sub-subdivision c. of subdivision (9) of subsection (a) of this section. The Web site shall not be subject to the registration provisions of G.S. 78A-36 provided that all of the following apply:

a. It does not offer investment advice or recommendations.

b. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Web site.
c. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Web site.

d. It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities.

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

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

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

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

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

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

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

(d) Offers and Sales to Controlling Persons. – The exemption provided in this section shall not be used in conjunction with any other exemption under this Chapter, except offers and sales to controlling persons shall not count toward the limitation in subdivision (3) of subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.
(e) Disqualification. – The exemption allowed by this section shall not apply if an issuer or person affiliated with the issuer or offering is subject to any disqualification contained in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply if (i) upon a showing of good cause and without prejudice to any other action by the Administrator, the Administrator determines that it is not necessary under the circumstances that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) Rules. – The Administrator may adopt rules to implement the provisions of this section and to protect investors who purchase securities under this section.

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

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

(1) At least 15 business days prior to adopting a rule, submit the rule and a notice of public hearing to the Codifier of Rules. The Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet within five business days.

(2) At least 15 business days prior to adopting a rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of the Secretary's intent to adopt a rule and of the public hearing.

(3) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(4) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

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

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

SECTION 2.(e) Subsection (c) of this section is effective when it becomes law and expires 12 months after the effective date of this act. Subsection (d) of this section becomes effective 12 months after the effective date of this act and expires on July 1, 2017. The remainder of this Part is effective when it becomes law and expires on July 1, 2017.

PART III. EFFECTIVE DATE

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.