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NC crowdfunding bill clears committee hurdle



By BENJI JONES, special to WRAL TechWire

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Editor's note: As WRAL TechWire reported earlier this week, Senate sponsors of crowdfunding legislation reintroduced it as a separate bill after a larger economic development bill in which it is included had failed to make much progress in the N.C. General Assembly. The separate bill cleared a hurdle Wednesday as Benji

Jones of the Smith Anderson law firm reports.

RALEIGH, N.C. - The NC Senate Finance Committee considered SB481, the NC PACES Act: "Providing Access to Capital for Entrepreneurs and Small Business" and passed it by unanimous voice vote on Wednesday. The bill now moves on to a full vote on the NC Senate floor. The bill has broad bi-partisan support, and if passed by the full Senate will be sent to the NC House for consideration during the short session.

The bill, as now proposed, has two parts. Part I is the NC PACES crowdfunding exemption, which includes minor technical changes designed to enable it to stay current with changes in federal laws recently proposed by the Securities and Exchange Commission (the SEC). Part II is unrelated to the NC PACES exemption, and is called the "Public Disclosure of Written Determinations made by the Department of Revenue". This part requires the DOR to publish redacted versions of written determinations letters sent in response to taxpayer requests for clarification of tax regulation and laws. This provides greater transparency and more information to taxpayers who may need similar clarifications.

NC PACES offers small businesses a new path to raise capital – one that historically has not been available due to federal regulations that limit the use of general advertising and that prohibit ordinary investors from participating in private offerings. Congress addressed this issue with the 2012 JOBS Act, making private offerings more available to all types of investors and to all types of companies.

In my mind, the more options to access capital we give companies – within a balanced regulatory structure – the better. However, there is no one-size-fits-all solution. Different types of companies need to be able to access capital in different ways. The small business, the local mom-and-pop shop – these are the companies that are being left behind by the federal JOBS Act, which is simply too complicated, too burdensome, too expensive and (right now) too



novel to really fit well for the pizzeria that needs a new wood burning stove or the baker who wants to open or expand a storefront business.



This is why we need NC PACES – to provide another option, a local path for our North Carolina small businesses to reach North Carolina investors.

NC PACES permits local companies to use advertising to approach local investors without regard to wealth or income limitations. While working in conjunction with federal exemptions, the bill otherwise eliminates the burden of compliance with expensive, time-consuming and confusing rules imposed by federal crowdfunding under Title III of the JOBS Act.

Under NC PACES our companies can raise up to \$1 million every 12 months (or \$2 million with audited or reviewed financials) from their friends, family, customers or clients that are North Carolina residents. This is twice the amount permitted under federal rules. North Carolina businesses can use a third-party website to help them conduct the offering, but, again unlike federal regulations, they are not required to do so. Although they must file disclosure materials for review by the North Carolina Securities Division and will continue to be subject to liability under federal law and North Carolina statutes, no filings with the SEC are required.

NC PACES offers a simpler, local solution for small businesses in need of capital. A local company will be able to reach local investors to attempt to access the critical funding they need to succeed and to grow.

Only with NC PACES can they look to their neighbors for this support, without going to Wall Street, Silicon Valley or Washington, DC.

Close to 40 other states have adopted or are considering similar local crowdfunding legislation.

NC PACES is the chance for Main Street, NC to claim its place on the investment crowdfunding map.

So, if you believe this is a good thing, contact your State Senator or Member of the House of Representatives today and encourage them to pass SB481 as soon as possible!

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Benji Jones is a partner at the Smith Anderson law firm with extensive experience in representing companies in exempt and non-exempt securities offerings.

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