

**GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2003**

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SENATE DRS35390-LY-131 (11/05)

Short Title: Job Growth and Infrastructure Act.

(Public)

Sponsors: Senator Kerr.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE THE FOLLOWING CHANGES RECOMMENDED BY THE GOVERNOR: (1) APPROPRIATE TWENTY-FIVE MILLION DOLLARS FOR INDUSTRIAL SITE INFRASTRUCTURE FOR MAJOR PROJECTS; (2) MODIFY THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM; (3) PROVIDE INCENTIVES FOR MAJOR PHARMACEUTICAL AND BIOPROCESSING FACILITIES BY EXTENDING THE BILL LEE ACT SUNSET FOR THESE INDUSTRIES AND AUTHORIZING SALES TAX REFUNDS FOR CONSTRUCTION MATERIALS FOR THESE INDUSTRIES; (4) CREATE A LIFE SCIENCES REVENUE BOND AUTHORITY; (5) TO SUPPORT A TRADITIONAL INDUSTRY AND ENCOURAGE THE USE OF DOMESTIC TOBACCO BY CREATING A TAX CREDIT FOR MANUFACTURERS WHO EXPORT CIGARETTES, INCREASE EMPLOYMENT IN THIS STATE, AND UTILIZE STATE PORTS; AND (6) TO EXTEND THE SUNSET ON THE CIGARETTE EXPORTATION TAX CREDIT AND TO MODIFY THE BASE YEAR, CARRYFORWARD, AND ELIGIBILITY PROVISIONS OF THAT CREDIT.

The General Assembly of North Carolina enacts:

PART 1. MAJOR INDUSTRIAL SITE INFRASTRUCTURE

SECTION 1.1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437.02. Site infrastructure development.

(a) Findings. – The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and

1 industry within the State and by recruiting and attracting new business
2 and industry to the State.

3 (2) Both short-term and long-term economic trends at the State, national,
4 and international levels have made the successful implementation of
5 the State's economic development policy and programs both more
6 critical and more challenging; and the decline in the State's traditional
7 industries, and the resulting adverse impact upon the State and its
8 citizens, have been exacerbated in recent years by adverse national and
9 State economic trends that contribute to the reduction in the State's
10 industrial base and that inhibit the State's ability to sustain or attract
11 new and expanding businesses.

12 (3) The economic condition of the State is not static and recent changes in
13 the State's economic condition have created economic distress that
14 requires the enactment of a new program as provided in this section
15 that is designed to stimulate new economic activity and to create new
16 jobs within the State.

17 (4) The enactment of this section is necessary to stimulate the economy,
18 facilitate economic recovery, and create new jobs in North Carolina
19 and this section will promote the general welfare and confer, as its
20 primary purpose and effect, benefits on citizens throughout the State
21 through the creation of new jobs, an enlargement of the overall tax
22 base, an expansion and diversification of the State's industrial base,
23 and an increase in revenue to the State and its political subdivisions.

24 (5) The purpose of this section is to stimulate economic activity and to
25 create new jobs within the State.

26 (b) Fund. – The Site Infrastructure Development Fund is created as a restricted
27 reserve in the Department of Commerce. The Department may use the funds in the fund
28 only in accordance with this section for site development. Funds in the fund do not
29 revert but remain available to the Department for these purposes.

30 (c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In
31 addition, the following definitions apply in this section:

32 (1) Department. – The Department of Commerce.

33 (2) Site development. – Any of the following:

34 a. A restricted grant or a forgivable loan made to a business to
35 enable the business to acquire land, improve land, or both.

36 b. A grant to one or more State agencies or nonprofit corporations
37 to enable the grantees to acquire land, improve land, or both and
38 to lease the property to a business.

39 c. A grant to one or more local government units to enable the
40 units to acquire land, improve land, or both and to lease the
41 property to a business.

42 (d) Eligibility. – To be eligible for consideration for site development for a
43 project, a business must meet both of the following conditions:

- 1 (1) The business will invest at least one hundred million dollars
2 (\$100,000,000) of private funds in the project.
- 3 (2) The project will employ at least 100 new employees.
- 4 (e) Selection. – The Department of Commerce shall administer the selection of
5 projects to receive site development. The selection process shall include the following
6 components:
- 7 (1) Criteria. – The Department of Commerce must develop criteria to be
8 used to identify and evaluate eligible projects for possible site
9 development.
- 10 (2) Initial evaluation. – The Department must evaluate major competitive
11 projects to determine if site development is merited and to determine
12 whether the project is eligible and appropriate for consideration for site
13 development.
- 14 (3) Application. – The Department must require a business to submit an
15 application in order for a project to be considered for site development.
16 The Department must prescribe the form of the application, the
17 application process, and the information to be provided, including all
18 information necessary to evaluate the project in accordance with the
19 applicable criteria.
- 20 (4) Committee. – The Department must submit to the Economic
21 Investment Committee the applications for projects the Department
22 considers eligible and appropriate for consideration for site
23 development. In evaluating each application, the Committee must
24 consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.
- 25 (5) Findings. – In order to recommend a project for site development, the
26 Committee must make all of the following findings:
- 27 a. The conditions for eligibility have been met.
- 28 b. Site development for the project is necessary to carry out the
29 public purposes provided in subsection (a) of this section.
- 30 c. The project is consistent with the economic development goals
31 of the State and of the area where it will be located.
- 32 d. The affected local governments have participated in recruitment
33 and offered incentives in a manner appropriate to the project.
- 34 e. The price and nature of any real property to be acquired is
35 appropriate to the project and not unreasonable or excessive.
- 36 f. Site development under this section is necessary for the
37 completion of the project in this State.
- 38 (6) Recommendations. – If the Committee recommends a project for site
39 development, it must recommend the amount of State funds to be
40 committed, the preferred form and details of the State participation,
41 and the performance criteria and safeguards to be required in order to
42 protect the State's investment.
- 43 (f) Agreement. – Unless the Secretary of Commerce determines that the project
44 is no longer eligible or appropriate for site development, the Department shall enter into

1 an agreement to provide site development within available funds for a project
2 recommended by the Committee. Each site development agreement is binding and
3 constitutes a continuing contractual obligation of the State and the business. The site
4 development agreement must include all of the performance criteria, remedies, and
5 other safeguards recommended by the Committee or required by the Department to
6 secure the State's investment. Nothing in this section constitutes a guarantee or
7 assumption by the State of any debt of any business or authorizes the taxing power or
8 the full faith and credit of the State to be pledged.

9 The Department shall cooperate with the Department of Administration and the
10 Attorney General's Office in preparing the documentation for the site development
11 agreement. The Attorney General shall review the terms of all proposed agreements to
12 be entered into under this section. To be effective against the State, an agreement
13 entered into under this section must be signed personally by the Attorney General.

14 (g) Safeguards. – To ensure that public funds are used only to carry out the
15 public purposes provided in this section, the Department shall require that each business
16 that receives State-funded site development must agree to meet performance criteria to
17 protect the State's investment and assure that the projected benefits of the project are
18 secured. The performance criteria to be required shall include creation and maintenance
19 of an appropriate level of employment and investment over the term of the agreement
20 and any other criteria the Department considers appropriate. The agreement must
21 require the business to repay or reimburse an appropriate portion of the State funds
22 expended for the site development, based on the extent of any failure by the business to
23 meet the performance criteria. The agreement must provide a method for securing these
24 payments from the business, such as structuring the site development as a conditional
25 grant, a forgivable loan, or a revocable lease.

26 (h) Monitoring and Reports. – The Department is responsible for monitoring
27 compliance with the performance criteria under each site development agreement and
28 for administering the repayment in case of default. The Department shall pay for the
29 cost of this monitoring from funds appropriated to it for that purpose or for other
30 economic development purposes.

31 Within two months after the end of each calendar quarter, the Department shall
32 report to the Joint Legislative Commission on Governmental Operations regarding the
33 Site Infrastructure Development Program. This report shall include a listing of each
34 agreement negotiated and entered into during the preceding quarter, including the name
35 of the business, the cost/benefit analysis conducted by the Committee during the
36 application process, a description of the project, and the amount of the site development
37 incentive expected to be paid under the agreement during the current fiscal year. The
38 report shall also include detailed information about any defaults and repayment during
39 the preceding quarter. The Department shall publish this report on its web site and shall
40 make printed copies available upon request."

41 **SECTION 1.2.(a)** There is appropriated from the General Fund to the Site
42 Infrastructure Development Fund in the Department of Commerce the sum of
43 twenty-five million dollars (\$25,000,000) for the 2003-2004 fiscal year to be used only
44 in accordance with G.S. 143B-437.02, as enacted by this part.

1 **SECTION 1.2.(b)** There is appropriated from the General Fund to the
2 Department of Commerce the sum of sixty-five thousand dollars (\$65,000) for the
3 2004-2005 fiscal year for a program administrator for the site infrastructure
4 development program created by this part. It is the intent of the General Assembly that
5 funds for administering this program shall be part of the Department of Commerce's
6 continuation budget.

7 **SECTION 1.2.(c)** Site development funded by money appropriated under
8 this section is not subject to Article 8 of Chapter 143 of the General Statutes (public
9 contracts) or Article 3 of Chapter 143 of the General Statutes (purchases and contracts).
10 Actions involving expenditures of public moneys or use of public lands for projects and
11 programs involved in site development funded by money appropriated under this
12 section are exempt from the requirements of Article 1 of Chapter 113A of the General
13 Statutes. This exemption does not apply to an ordinance adopted under G.S. 113A-8.

14 **SECTION 1.3.** G.S. 150B-1(d) is amended by adding a new subdivision to
15 read:

16 "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to
17 the following:

18 ...

19 (12) The Department of Commerce and the Economic Investment
20 Committee in developing criteria and administering the Site
21 Infrastructure Development Program under G.S. 143B-437.02."

22 **SECTION 1.4.** G.S. 143B-437.54(c) reads as rewritten:

23 "(c) Conflict of Interest. – It is unlawful for a current or former member of the
24 Committee to, while serving on the Committee or within two years after the end of
25 service on the Committee, provide services for compensation, as an employee,
26 consultant, or otherwise, to any business or a related member of the business that is
27 awarded a grant under this Part or under G.S. 143B-437.02 while the member is serving
28 on the Committee. Violation of this subsection is a Class 1 misdemeanor. In addition to
29 the penalties imposed under G.S. 15A-1340.23, the court shall also make a finding as to
30 what compensation was received by the defendant for services in violation of this
31 section and shall order the defendant to forfeit that compensation.

32 If a person is convicted under this section, the person shall not provide services for
33 compensation, as an employee, consultant, or otherwise, to any business or a related
34 member of the business that was awarded a grant under this Part or under G.S.
35 143B-437.02 while the member was serving on the Committee until two years after the
36 person's conviction under this section."

37 **SECTION 1.5.** This part is effective when it becomes law.

38 **PART 2. JOB DEVELOPMENT INVESTMENT GRANT CHANGES**

39 **SECTION 2.1.** G.S. 143B-437.51 reads as rewritten:

40 "**§ 143B-437.51. Definitions.**

41 The following definitions apply in this Part:

42 ...

1 (2) ~~Base years. – The first two complete calendar years—24 months~~
2 ~~following the effective date of an agreement, date set by the Committee~~
3 ~~for performance to begin under the agreement.~~

4 ...

5 (5a) Enterprise tier. – The classification assigned to an area pursuant to
6 G.S. 105-129.3."

7 **SECTION 2.2.** G.S. 143B-437.52 is amended by adding a new subsection to
8 read:

9 "(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this
10 section and G.S. 143B-437.57(a)(11), the Committee may designate that the increase or
11 maintenance of employment is measured at the level of a division or another operating
12 unit of a business, rather than at the business level, if both of the following conditions
13 are met:

14 (1) The Committee makes an explicit finding that the designation is
15 necessary to secure the project in this State.

16 (2) The designation contains terms to ensure that the business does not
17 create eligible positions by transferring or shifting to the project
18 existing positions from another project of the business or a related
19 entity of the business."

20 **SECTION 2.3.** G.S. 143B-437.53(d) is repealed.

21 **SECTION 2.4.** G.S. 143B-437.54(d) reads as rewritten:

22 "(d) Public Notice. – At least 20 days before the effective date of any criteria or
23 nontechnical amendments to criteria, the Committee must publish the proposed criteria
24 on the Department of Commerce's web site and provide notice to persons who have
25 requested notice of proposed criteria. In addition, the Committee must accept oral and
26 written comments on the proposed criteria during the 15 business days beginning on the
27 first day that the Committee has completed these notifications. For the purpose of this
28 subsection, a technical amendment is either of the following:

29 (1) An amendment that corrects a spelling or grammatical error.

30 (2) An amendment that makes a clarification based on public comment
31 and could have been anticipated by the public notice that immediately
32 preceded the public comment.

33 ~~The Committee shall do all of the following at least 15 business days prior to~~
34 ~~the adoption of or amendment to any proposed criteria:~~

35 (1) ~~Publish the proposed criteria on the Department of Commerce's web~~
36 ~~site.~~

37 (2) ~~Provide notice to persons who have requested notice of proposed~~
38 ~~criteria.~~

39 (3) ~~Accept oral and written comments on the proposed criteria."~~

40 **SECTION 2.5.** G.S. 143B-437.56(b) reads as rewritten:

41 "(b) The term of the grant shall not exceed 12 years starting with the first year a
42 grant payment is made. The first grant payment must be made within six years after the
43 date on which the grant was awarded."

44 **SECTION 2.6.** This part is effective when it becomes law.

PART 3. EXTEND BILL LEE CREDITS FOR CERTAIN MAJOR INDUSTRIES

SECTION 3.1. G.S. 105-129.2 is amended by adding a new subdivision to read:

"§ 105-129.2. Definitions.

The following definitions apply in this Article:

...

(8a) Eligible major industry. – A taxpayer is an eligible major industry for the purposes of this Article if the taxpayer is primarily engaged in one of the industries listed in G.S. 105-164.14(j)(3) and the Secretary of Commerce has certified that the owner of the facility will invest at least one hundred million dollars (\$100,000,000) of private funds to acquire, construct, and equip a facility in this State to engage in one or more of those industries."

SECTION 3.2. G.S. 105-129.2A reads as rewritten:

"§ 105-129.2A. Sunset; studies.

(a) **Sunset.** – This Article is repealed effective for business activities that occur on or after January 1, 2006.

(a1) **Sunset for Interstate Air Couriers.** – Notwithstanding subsection (a) of this section, in the case of an interstate air courier that enters into a real estate lease on or before January 1, 2006, with an airport authority that provides for the lease of at least 100 acres of real property with a lease term in excess of 15 years, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a2) **Sunset for Eligible Major Industries.** – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, 2006, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(b) **Equity Study.** – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

- (1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
- (2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.
- (3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) **Impact Study.** – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

- (1) Study of the distribution of tax incentives across new and expanding industries.

- 1 (2) Examination of data on economic recruitment for the period from 1994
2 through the most recent year for which data are available by county, by
3 industry type, by size of investment, and by number of jobs, and other
4 relevant information to determine the pattern of business locations and
5 expansions before and after the enactment of the William S. Lee Act
6 incentives.
- 7 (3) Measuring the direct costs and benefits of the tax incentives.
- 8 (4) Compiling available information on the current use of incentives by
9 other states and whether that use is increasing or declining.

10 (d) Report. – The Department of Commerce shall report the results of these
11 studies and its recommendations to the General Assembly biennially with the first report
12 due by April 1, 2001."

13 **SECTION 3.3.** G.S. 105-129.4(b1) reads as rewritten:

14 "(b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit
15 under this Article becomes eligible for the large investment enhancements provided for
16 credits under this Article if the Secretary of Commerce makes a written determination
17 that the taxpayer is expected to purchase or lease, and place in service in connection
18 with the eligible business within a two-year period, at least one hundred fifty million
19 dollars (\$150,000,000) worth of one or more of the following: real property, machinery
20 and equipment, or central office or aircraft facility property. In the case of an interstate
21 air courier that has or is constructing a hub in this ~~State~~, State and in the case of an
22 eligible major industry, this investment may be placed in service in connection with the
23 eligible business within a seven-year period. If the taxpayer fails to make the required
24 level of investment within the applicable period, the taxpayer forfeits the large
25 investment enhancements as provided in subsection (d) of this section."

26 **SECTION 3.4.** G.S. 105-129.4(d) reads as rewritten:

27 "(d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the
28 taxpayer was not eligible for the credit for the calendar year in which the taxpayer
29 engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits
30 a large investment enhancement of a tax credit if the taxpayer fails to timely make the
31 required level of investment under subsection (b1) of this section. If an eligible major
32 industry fails to timely make the required level of investment under G.S. 105-129.2(8a),
33 the taxpayer forfeits all credits allowed under this Article that it would not otherwise
34 have been eligible for if it were not an eligible major industry. A taxpayer forfeits the
35 credit for substantial investment in other property allowed under G.S. 105-129.12A if
36 the taxpayer fails to timely create the number of required new jobs or to timely make the
37 required level of investment under subsection (b5) of this section. A taxpayer forfeits
38 the technology commercialization credit allowed under G.S. 105-129.9A if the taxpayer
39 fails to make the level of investment required by subsection (e) of that section within the
40 required period or if the taxpayer fails to meet the terms of its licensing agreement with
41 a research university. If a taxpayer claimed a twenty percent (20%) technology
42 commercialization credit under G.S. 105-129.9A(d) and fails to make the level of
43 investment required under that subsection within the required period, but does make the

1 level of investment required under subsection (e) of that section within the required
2 period, the taxpayer forfeits one-fourth of the twenty percent (20%) credit.

3 A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided
4 as a result of the credit plus interest at the rate established under G.S. 105-241.1(i),
5 computed from the date the taxes would have been due if the credit had not been
6 allowed. The past taxes and interest are due 30 days after the date the credit is forfeited;
7 a taxpayer that fails to pay the past taxes and interest by the due date is subject to the
8 penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs, the
9 technology commercialization credit, or the credit for investing in machinery and
10 equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs
11 for which the credit for creating jobs was claimed or the jobs at the location with respect
12 to which the technology commercialization credit or the credit for investing in
13 machinery and equipment was claimed."

14 **SECTION 3.5.** G.S. 105-129.5(c) reads as rewritten:

15 "(c) Carryforward. – Any unused portion of a credit with respect to a large
16 investment, with respect to the technology commercialization credit allowed in G.S.
17 105-129.9A, or with respect to substantial investment in other property under G.S.
18 105-129.12A may be carried forward for the succeeding 20 years. Any unused portion
19 of a credit with respect to research and development activities under G.S. 105-129.10
20 may be carried forward for the succeeding 15 years. Any unused portion of a credit may
21 be carried forward for the succeeding 10 years if, before the taxpayer claims the credit,
22 the Secretary of Commerce makes a written determination that the taxpayer is expected
23 to purchase or lease, and place in service in connection with the eligible business within
24 a two-year period, at least fifty million dollars (\$50,000,000) worth of one or more of
25 the following: real property, machinery and equipment, or central office or aircraft
26 facility property. In the case of an interstate air courier that has or is constructing a hub
27 in this ~~State, State~~ and in the case of an eligible major industry, this investment may be
28 placed in service in connection with the eligible business within a seven-year period. If
29 the taxpayer fails to make the required level of investment within the applicable period,
30 the taxpayer forfeits this enhanced carryforward period. Any unused portion of any
31 other credit may be carried forward for the succeeding five years."

32 **SECTION 3.6.** G.S. 105-129.8(d) reads as rewritten:

33 "(d) Planned Expansion. – A taxpayer that signs a letter of commitment with the
34 Department of Commerce to create at least twenty new full-time jobs in a specific area
35 within two years of the date the letter is signed qualifies for the credit in the amount
36 allowed by this section based on the area's enterprise tier and development zone
37 designation for that year even though the employees are not hired that year. In the case
38 of an interstate air courier that has or is constructing a hub in this ~~State, State~~ and in the
39 case of an eligible major industry, the applicable time period is seven years. The credit
40 shall be available in the taxable year after at least twenty employees have been hired if
41 the hirings are within the applicable commitment period. The conditions outlined in
42 subsection (a) apply to a credit taken under this subsection except that if the area is
43 redesignated to a higher-numbered enterprise tier or loses its development zone
44 designation after the year the letter of commitment was signed, the credit is allowed

1 based on the area's enterprise tier and development zone designation for the year the
2 letter was signed. If the taxpayer does not hire the employees within the applicable
3 period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies
4 for a credit under subsection (a) in the year any new employees are hired, the taxpayer
5 may take the credit under that subsection."

6 **SECTION 3.7.** G.S. 105-129.9(e) reads as rewritten:

7 "(e) **Planned Expansion.** – A taxpayer that signs a letter of commitment with the
8 Department of Commerce to place specific eligible machinery and equipment in service
9 in an area within two years after the date the letter is signed may, in the year the eligible
10 machinery and equipment are placed in service in that area, calculate the credit for
11 which the taxpayer qualifies based on the area's enterprise tier and development zone
12 designation for the year the letter was signed. In the case of an interstate air courier that
13 has or is constructing a hub in this ~~State~~,State and in the case of an eligible major
14 industry, the applicable time period is seven years. All other conditions apply to the
15 credit, but if the area has been redesignated to a higher-numbered enterprise tier or has
16 lost its development zone designation after the year the letter of commitment was
17 signed, the credit is allowed based on the area's enterprise tier and development zone
18 designation for the year the letter was signed. If the taxpayer does not place part or all of
19 the specified eligible machinery and equipment in service within the applicable period,
20 the taxpayer does not qualify for the benefit of this subsection with respect to the
21 machinery and equipment not placed in service within the applicable period. However,
22 if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are
23 placed in service, the taxpayer may take the credit for that year as if no letter of
24 commitment had been signed pursuant to this subsection."

25 **SECTION 3.8.** It is the intent of the General Assembly that the provisions of
26 this part not be expanded. If a court of competent jurisdiction holds any provision of this
27 part invalid, the section containing that provision is repealed. The repeal of a section of
28 this part under this section does not affect other provisions of this part that may be given
29 affect without the invalid provision.

30 **SECTION 3.9.** This part becomes effective for taxable years beginning on
31 or after January 1, 2004.

32 **PART 4. MAJOR INDUSTRIAL FACILITY SALES TAX REFUNDS**

33 **SECTION 4.1.** G.S. 105-164.14 is amended by adding a new subsection to
34 read:

35 "(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an
36 annual refund of sales and use taxes as provided in this subsection.

37 (1) Refund. – The owner of an eligible facility is allowed an annual refund
38 of sales and use taxes paid by it under this Article on building
39 materials, building supplies, fixtures, and equipment that become a
40 part of the real property of the eligible facility. Liability incurred
41 indirectly by the owner for sales and use taxes on these items is
42 considered tax paid by the owner. A request for a refund must be in
43 writing and must include any information and documentation required
44 by the Secretary. A request for a refund is due within six months after

- 1 the end of the State's fiscal year. Refunds applied for after the due date
2 are barred.
- 3 (2) Eligibility. – A facility is eligible under this subsection if it meets both
4 of the following conditions:
- 5 a. It is primarily engaged in one of the industries listed in this
6 subsection.
- 7 b. The Secretary of Commerce has certified that the owner of the
8 facility will invest at least one hundred million dollars
9 (\$100,000,000) of private funds to acquire, construct, and equip
10 the facility in this State.
- 11 (3) Industries. – This subsection applies to the following industries:
- 12 a. Bioprocessing. Bioprocessing means biomanufacturing or
13 processing that includes the culture of cells to make commercial
14 products, the purification of biomolecules from cells, or the use
15 of these molecules in manufacturing.
- 16 b. Pharmaceutical and medicine manufacturing and distribution.
17 Pharmaceutical and medicine manufacturing means any of the
18 following:
- 19 1. Manufacturing biological and medicinal products. For
20 the purpose of this sub-subdivision, a biological product
21 is a preparation that is synthesized from living organisms
22 or their products and used medically as a diagnostic,
23 preventive, or therapeutic agent. For the purpose of this
24 sub-subdivision, bacteria, viruses, and their parts are
25 considered living organisms.
- 26 2. Processing botanical drugs and herbs by grading,
27 grinding, and milling.
- 28 3. Isolating active medicinal principals from botanical
29 drugs and herbs.
- 30 4. Manufacturing pharmaceutical products intended for
31 internal and external consumption in forms such as
32 ampoules, tablets, capsules, vials, ointments, powders,
33 solutions, and suspensions.
- 34 (4) Forfeiture. – If the owner of an eligible facility does not make the
35 required minimum investment within five years after the first refund
36 under this subsection with respect to the facility, the facility loses its
37 eligibility and the owner forfeits all refunds already received under this
38 subsection. Upon forfeiture, the owner is liable for tax under this
39 Article equal to the amount of all past taxes refunded under this
40 subsection, plus interest at the rate established in G.S. 105-241.1(i),
41 computed from the date each refund was issued. The tax and interest
42 are due 30 days after the date of the forfeiture. A person that fails to
43 pay the tax and interest is subject to the penalties provided in
44 G.S. 105-236."

1 (6) A Life Sciences Revenue Bond Authority to help finance
2 bioprocessing development facilities and bioprocessing manufacturing
3 facilities addresses a critical need for companies that are formulating
4 products, conducting field and clinical trials, and engaging in the
5 production of new products.

6 (7) It is in the interest of the people of North Carolina that the State take
7 steps to encourage the development of these facilities in the State and
8 that the State seek to achieve a position of national leadership and
9 innovation in the field of bioprocess manufacturing by facilitating the
10 construction of economically sound and sustainable facilities in the
11 State.

12 **"§ 159D-66. Definitions.**

13 The following definitions apply in this Article:

14 (1) Authority. – The Life Sciences Revenue Bond Authority.

15 (2) Board. – The Board of Directors of the Authority.

16 **"§ 159D-67. Creation and purposes of Life Sciences Revenue Bond Authority.**

17 (a) Creation. – The Life Sciences Revenue Bond Authority is created within the
18 Department of State Treasurer for organizational and budgetary purposes only. The
19 Authority shall be governed by a Board of Directors. The Board of Directors is
20 authorized to administer the Authority independently in accordance with the
21 requirements of this Article.

22 (b) Purposes. – The Authority has the following purposes:

23 (1) To examine alternatives for enhancing North Carolina's construction
24 financing infrastructure for life sciences manufacturing facilities by
25 credit enhancement vehicles such as revenue bonds.

26 (2) To establish proposed guidelines for the deployment, oversight,
27 promotion, monitoring, and management of these credit enhancement
28 vehicles.

29 (3) To identify prospective life sciences enterprises that might benefit
30 from the establishment of credit enhancement vehicles.

31 (4) To advise and make recommendations to the General Assembly
32 regarding further legislation to achieve the goals of the Authority.

33 (5) To serve as the central life sciences revenue bond policy planning
34 body in the State through collaboration and coordination with State,
35 regional, local agencies, The University of North Carolina System, the
36 North Carolina Biotechnology Center, the State Treasurer, and private
37 entities in order to develop and foster a life sciences credit
38 enhancement infrastructure for the benefit of the citizens of North
39 Carolina.

40 **"§ 159D-68. Board of Directors.**

41 (a) Members. – The Board of Directors consists of seven voting members, as
42 follows:

43 (1) Two members appointed by the Governor.

1 (2) Two members appointed by the General Assembly upon the
2 recommendation of the President Pro Tempore of the Senate in
3 accordance with G.S. 120-121.

4 (3) Two members appointed by the General Assembly upon the
5 recommendation of the Speaker of the House of Representatives in
6 accordance with G.S. 120-121.

7 (4) The State Treasurer of North Carolina or the Treasurer's designee.

8 (b) Terms. – The initial terms of office begin on the date of appointment and
9 expire on June 30, 2005. Board members appointed for subsequent terms shall serve
10 terms of three years. Board members may serve up to two full consecutive three-year
11 terms. All members of the Board shall remain in office until their successors are
12 appointed and qualify.

13 (c) Vacancies. – A vacancy in an appointment made by the Governor shall be
14 filled by the Governor for the remainder of the term. A vacancy in an appointment made
15 by the General Assembly shall be filled in accordance with G.S. 120-122 for the
16 remainder of the term. A person appointed to fill a vacancy must qualify in the same
17 manner as a person appointed for a full term.

18 (d) Chair. – The members of the Board shall elect a Chair from among their
19 members. The Chair shall serve in that position at the pleasure of the Board.

20 **"§ 159D-69. Powers and duties of Authority.**

21 (a) Powers. – The Authority has all of the powers necessary or convenient to
22 carry out this Article, including the following powers:

23 (1) To adopt bylaws for the regulation of its affairs and the conduct of its
24 business and to prescribe rules and policies in connection with the
25 performance of its functions and duties.

26 (2) To adopt and modify an official seal.

27 (3) To maintain an office at any place within the State as it may
28 determine.

29 (4) To apply for, accept, and utilize grants, contributions, and
30 appropriations in order to carry out its duties as provided in this
31 Article.

32 (5) To employ, contract with, direct, and supervise all personnel and
33 consultants and to enter into other contracts as necessary to accomplish
34 the purposes of this Article, within the resources available to the
35 Authority for that purpose.

36 (6) To review and recommend changes in laws, rules, programs, and
37 policies of the State and its agencies and subdivisions to further the
38 enhancement of the life sciences construction financing infrastructure
39 within the State.

40 (b) Duties. – The Authority has the following duties:

41 (1) To establish an organizational structure and operational procedures to
42 administer the Authority's programs.

- 1 (2) To examine various alternatives for encouraging the expansion of
2 North Carolina's life sciences manufacturing industry by the use of
3 credit enhancement vehicles such as revenue bonds and otherwise.
- 4 (3) To establish proposed guidelines for the deployment, oversight,
5 promotion, monitoring, and management of these credit enhancement
6 vehicles.
- 7 (4) To collaborate and coordinate with State, regional, and local agencies,
8 The University of North Carolina System, the North Carolina
9 Biotechnology Center, the State Treasurer, and private entities in order
10 to develop and foster a life sciences credit enhancement infrastructure
11 for the benefit of the citizens of North Carolina.
- 12 (5) To develop the detailed procedures that could be employed to identify
13 and qualify applicants for credit enhancement programs, including
14 procedures to evaluate the scientific, business, and financial
15 qualifications of these applicants.
- 16 (6) To receive and process test or pro forma applications from potential
17 applicants for credit enhancement programs to demonstrate the need
18 for the programs and to assess and collect fees from the potential
19 applicants to cover the costs of processing and reviewing the
20 applications."

21 **SECTION 5.2.** The Life Sciences Revenue Bond Authority created in this
22 part shall provide a written report to the General Assembly by May 1, 2004, setting
23 forth its findings regarding the steps required to encourage and foster the expansion of
24 the North Carolina life sciences manufacturing industry, including proposed legislation
25 if considered appropriate by the Authority.

26 **SECTION 5.3.** Nothing in this part requires the General Assembly to
27 appropriate funds to implement it.

28 **SECTION 5.4.** This part is effective when it becomes law.

29 **PART 6. ENHANCED CIGARETTE EXPORTATION TAX CREDIT**

30 **SECTION 6.1.** Part 1 of Article 4 of Chapter 105 of the General Statutes is
31 amended by adding a new section to read:

32 **"§ 105-130.46. Credit for manufacturing cigarettes for exportation while**
33 **increasing employment and utilizing State Ports.**

34 (a) Purpose. – The credit authorized by this section is intended to enhance the
35 economy of this State by encouraging qualifying cigarette manufacturers to increase
36 employment in this State with the purpose of expanding this State's economy, the use of
37 the North Carolina State Ports, and the use of other State goods and services, including
38 tobacco.

39 (b) Definitions. – The following definitions apply in this section:

- 40 (1) Employment level. – The total number of full-time jobs and part-time
41 jobs converted into full-time equivalences.
- 42 (2) Exportation. – The shipment of cigarettes manufactured in the United
43 States to a foreign country sufficient to relieve the cigarettes in the
44 shipment of the federal excise tax on cigarettes.

1 percent (50%) of the amount of tax against which the credit is taken for the taxable year
2 reduced by the sum of all other credits allowable, except tax payments made by or on
3 behalf of the taxpayer. This limitation applies to the cumulative amount of the credit
4 allowed in any tax year, including carryforwards claimed by the taxpayer under this
5 section or G.S. 105-130.45 for previous tax years.

6 (h) Carryforward. – Any unused portion of a credit allowed in this section may
7 be carried forward for the next succeeding 10 years. All carryforwards of a credit must
8 be taken against the tax against which the credit was originally claimed. A successor in
9 business may take the carryforwards of a predecessor corporation as if they were
10 carryforwards of a credit allowed to the successor in business.

11 (i) Documentation of Credit. – A corporation that claims the credit under this
12 section must include the following with its tax return:

13 (1) A statement of the exportation volume on which the credit is based.

14 (2) A list of the corporation's export volumes shown on its monthly
15 reports to the Alcohol and Tobacco Tax and Trade Bureau of the
16 United States Treasury for the months in the tax year for which the
17 credit is claimed.

18 (3) Any other information required by the Department of Revenue.

19 (j) Reports. – Any corporation that takes a credit under this section must submit
20 an annual report by May 1 of each year to the Senate Finance Committee, the House of
21 Representatives Finance Committee, the Senate Appropriations Committee, the House
22 of Representatives Appropriations Committee, and the Fiscal Research Division of the
23 General Assembly. The report must state the amount of credit earned by the corporation
24 during the previous year, the amount of credit including carryforwards claimed by the
25 corporation during the previous year, and the percentage of domestic leaf content in
26 cigarettes produced by the corporation during the previous year. The first reports
27 required under this section are due by May 1, 2006.

28 (k) No Double Credit. – A taxpayer may not claim this credit and the credit
29 allowed under G.S. 105-130.45 for the same activity."

30 **SECTION 6.2.** This part is effective for taxable years beginning on or after
31 January 1, 2006, and expires for exports occurring on or after January 1, 2018.

32 **PART 7. EXTEND SUNSET ON CURRENT CIGARETTE EXPORTATION** 33 **TAX CREDIT**

34 **SECTION 7.1.** Section 10 of S.L. 1999-333 reads as rewritten:

35 "Section 10. Sections 2, 3, and 4 of this act are effective for taxable years beginning
36 on or after January 1, 1999. Sections 5 through 8 of this act become effective December
37 1, 1999, and apply to offenses committed on or after that date. The remainder of this act
38 is effective when it becomes law. Section 4 of this act is repealed effective for cigarettes
39 exported on or after January 1, ~~2005~~2018."

40 **SECTION 7.2.** G.S. 105-130.45 reads as rewritten:

41 "**§ 105-130.45. Credit for manufacturing cigarettes for exportation.**

42 (a) **Definitions.** – The following definitions apply in this section:

- 1 (1) Base year exportation volume. – The number of cigarettes
2 manufactured and exported by a corporation during the calendar year
3 1998-2003.
- 4 (2) Exportation. – The shipment of cigarettes manufactured in the United
5 States to a foreign country sufficient to relieve the cigarettes in the
6 shipment of the federal excise tax on cigarettes.
- 7 (3) Successor in business. – A corporation that through amalgamation,
8 merger, acquisition, consolidation, or other legal succession becomes
9 invested with the rights and assumes the burdens of the predecessor
10 corporation and continues the cigarette exportation business.

11 (b) Credit. – A corporation engaged in the business of manufacturing cigarettes
12 for exportation to a foreign country is allowed a credit against the taxes levied by this
13 Part. The amount of credit allowed under this section is determined by comparing the
14 exportation volume of the corporation in the year for which the credit is claimed with
15 the corporation's base year exportation volume, rounded to the nearest whole
16 percentage. In the case of a successor in business, the amount of credit allowed under
17 this section is determined by comparing the exportation volume of the corporation in the
18 year for which the credit is claimed with all of the corporation's predecessor
19 corporations' combined base year exportation volume, rounded to the nearest whole
20 percentage. The amount of credit allowed may not exceed six million dollars
21 (\$6,000,000) and is computed as follows:

Current Year's Exportation Volume Compared to its Base Year's Exportation Volume	Amount of Credit per Thousand Cigarettes Exported
120% or more	40¢
119% – 100%	35¢
99% – 80%	30¢
79% – 60%	25¢
59% – 50%	20¢
Less than 50%	None

31 (c) Cap. – The credit allowed under this section may not exceed the lesser of six
32 million dollars (\$6,000,000) or fifty percent (50%) of the amount of tax imposed by this
33 Part for the taxable year reduced by the sum of all other credits allowable, except tax
34 payments made by or on behalf of the taxpayer. This limitation applies to the
35 cumulative amount of the credit allowed in any tax year, including carryforwards
36 claimed by the taxpayer under this section for previous tax years. Any unused portion of
37 a credit allowed in this section may be carried forward for the next succeeding ~~five~~ten
38 years.

39 (d) Documentation of Credit. – A corporation that claims the credit under this
40 section must include the following with its tax return:

- 41 (1) A statement of the base year exportation volume.
- 42 (2) A statement of the exportation volume on which the credit is based.
- 43 (3) A list of the corporation's export volumes shown on its monthly
44 reports to the Alcohol and Tobacco Tax and Trade Bureau Bureau of

1 ~~Alcohol, Tobacco, and Firearms~~ of the United States Treasury for the
2 months in the tax year for which the credit is claimed.

3 (e) No Double Credit. – A taxpayer may not claim this credit and the credit
4 allowed under G.S. 105-130.46 for the same activity."

5 **SECTION 7.3.** Section 7.2 of this act is effective for taxable years beginning
6 on or after January 1, 2005. The remainder of this part is effective when it becomes
7 law.