

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

3

SENATE BILL 91*
Second Edition Engrossed 7/30/07
Third Edition Engrossed 7/30/07

Short Title: Endangered Manufacturing and Jobs Act. (Public)

Sponsors: Senators Jacumin; Bingham, Allran, Apodaca, Berger of Rockingham,
 Blake, Brock, Brown, Brunstetter, Cowell, Dalton, East, Forrester, Garrou,
 Hagan, Hunt, Jones, Preston, Queen, Snow, Stevens, Tillman, and
 Weinstein.

Referred to: Finance.

February 12, 2007

1 A BILL TO BE ENTITLED
 2 AN ACT TO PROVIDE ENHANCED ECONOMIC DEVELOPMENT INCENTIVES
 3 TO ENDANGERED MANUFACTURERS, TO PROVIDE PROPERTY TAX
 4 EXCLUSIONS FOR ENDANGERED MANUFACTURERS, TO CLARIFY THAT
 5 A LOW-PROFIT LIMITED LIABILITY COMPANY IS A LIMITED LIABILITY
 6 COMPANY UNDER STATE LAW, TO ESTABLISH THE NORTH CAROLINA
 7 FURNITURE FUND TO RECEIVE STATE AND FEDERAL FUNDING FOR
 8 THE FURNITURE INDUSTRY, TO ESTABLISH THE NORTH CAROLINA
 9 FURNITURE COUNCIL TO ADMINISTER THE FUND.

10 Whereas, the State of North Carolina is and should be actively engaged in
 11 economic development efforts to attract and stimulate private sector job creation and
 12 capital investors; and

13 Whereas, the furniture industry in North Carolina has been damaged by
 14 overseas competition and has now become an endangered industry in North Carolina;
 15 and

16 Whereas, economically distressed areas could utilize grant funds to revitalize
 17 the furniture industry and furniture manufacturing, in particular, to provide jobs to the
 18 unemployed; and

19 Whereas, economic development grant funds could enable North Carolina to
 20 be more nationally or internationally competitive in developing the furniture industry;
 21 and

22 Whereas, additional furniture industry jobs would strengthen the economy of
 23 North Carolina as a whole; Now, therefore,
 24 The General Assembly of North Carolina enacts:

25 **PART I. ECONOMIC DEVELOPMENT INCENTIVES**

1 **SECTION 1.1.** G.S. 105-129.83 is amended by adding a new subsection to
2 read:

3 "(m) Endangered Manufacturer Enhancements. – Any establishment whose
4 primary activity is in one of the following subsectors shall be treated as if it were
5 located in a development tier one area for all purposes under this Article:

6 (1) Apparel manufacturing subsector 315 as defined by NAICS.

7 (2) Furniture and related product manufacturing subsector 337 as defined
8 by NAICS.

9 (3) Textile mills subsector 313 as defined by NAICS.

10 (4) Textile product mills subsector 314 as defined by NAICS."

11 **SECTION 1.2.** G.S. 105-164.14(h) reads as rewritten:

12 "(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are
13 allowed an annual refund of sales and use taxes paid under this Article as provided in
14 this subsection.

15 (1) Refunds. – An eligible person is allowed an annual refund of sales and
16 use taxes paid by it under this Article at the general rate of tax on
17 eligible machinery and equipment it purchases for use in an enterprise
18 tier one area or an enterprise tier two area, as defined in
19 G.S. 105-129.3 or a development tier one area, as defined in
20 G.S. ~~143B-437.08~~ 143B-437.08 or in an industry listed in
21 G.S. 105-129.83(m) regardless of where the machinery and equipment
22 is located in this State. Liability incurred indirectly by the taxpayer for
23 sales and use taxes on these items is considered tax paid by the
24 taxpayer. A request for a refund must be in writing and must include
25 any information and documentation required by the Secretary. A
26 request for a refund is due within six months after the end of the State's
27 fiscal year. Refunds applied for after the due date are barred.

28 (2) Eligibility. – A person is eligible for the refund provided in this
29 subsection if it is engaged primarily in one of the businesses listed in
30 G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier
31 two area, as defined in G.S. ~~105-129.3~~ or 105-129.3, if it is engaged
32 primarily in one of the businesses listed in G.S. 105-129.83(a) in a
33 development tier one area, as defined in
34 G.S. ~~143B-437.08~~ 143B-437.08, or if it is engaged primarily in one of
35 the businesses listed in G.S. 105-129.83(m) anywhere in the State.

36 (3) Machinery and equipment. – For the purpose of this subsection, the
37 term "machinery and equipment" means engines, machinery,
38 equipment, tools, and implements used or designed to be used in one
39 of the businesses listed in G.S. 105-129.4(a) or G.S. 105-129.83(a).
40 Machinery and equipment are eligible for the refund provided in this
41 subsection if the taxpayer places them in service in an ~~enterprise tier~~
42 ~~one area or an enterprise tier two area, as defined in G.S. 105-129.3, or~~
43 ~~a development tier one area, as defined in~~

G.S. 143B-437.08, applicable area, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 1.3. G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one development tier area, the location with the highest development tier area designation determines the minimum number of eligible positions that must be created. If the primary activity of the project is in an industry listed in G.S. 105-129.83(m), the minimum job creation number applicable to development tier one applies regardless of the tier designation of the location of the project.

Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	20
Tier Three	20"

SECTION 1.4. G.S. 143B-437.56(d) reads as rewritten:

"(d) For any eligible position that is located in a development tier three area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For any eligible position that is located in a development tier two area, eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the business, and fifteen percent (15%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For a project that is primarily engaged in one of the industries listed in G.S. 105-129.83(m), one hundred percent (100%) of the annual grant approved for disbursement shall be payable to the business regardless of the development tier designation of the location. A position is located in the development tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee."

SECTION 1.5. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. Section 1.2 of this part becomes effective January 1, 2007, and applies to purchases made on or after that date. The remainder of this part is effective when it becomes law.

PART II. PROPERTY TAX EXCLUSION

SECTION 2.1. G.S. 105-275 is amended by adding a new subdivision to read:

"§ 105-275. **Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

- ...
- (43) Real and personal property that is located at an establishment whose primary activity is in one of the subsectors listed in this subdivision.

1 For the purposes of this subdivision, the terms 'establishment' and
2 'NAICS' have the same meaning as in G.S. 105-129.81.

3 a. Apparel manufacturing subsector 315 as defined by NAICS.

4 b. Furniture and related product manufacturing subsector 337 as
5 defined by NAICS

6 c. Textile mills subsector 313 as defined by NAICS.

7 d. Textile product mills subsector 314 as defined by NAICS."

8 **SECTION 2.2.** This part is effective for taxes imposed for taxable years
9 beginning on or after July 1, 2008.

10 **PART III. LOW-PROFIT LIMITED LIABILITY COMPANIES**

11 **SECTION 3.1.** G.S. 57C-1-03 reads as rewritten:

12 **"§ 57C-1-03. Definitions.**

13 The following definitions apply in this Chapter, unless otherwise specifically
14 provided:

15 ...

16
17 (11) Limited liability company or domestic limited liability company. – An
18 entity formed and existing under this Chapter. The term "limited
19 liability company" or "domestic limited liability company" includes
20 low-profit limited liability companies and companies designated as
21 "L3C."

22 (12) Limited partnership or domestic limited partnership. – Has the same
23 meaning as in G.S. 59-102(8).

24 (12a) Low-profit limited liability company or "L3C." – An entity formed and
25 existing under this Chapter that is organized for a business purpose
26 that satisfies and is at all times operated to satisfy each of the
27 following requirements:

28 a. The entity (i) significantly furthers the accomplishment of one
29 or more charitable or educational purposes within the meaning
30 of section 170(c)(2)(B) of the Internal Revenue Code of 1986,
31 as amended, and (ii) would not have been formed but for the
32 entity's relationship to the accomplishment of charitable or
33 educational purposes;

34 b. No significant purpose of the entity is the production of income
35 or the appreciation of property; provided, however, that the fact
36 that an entity produces significant income or capital
37 appreciation shall not, in the absence of other factors, be
38 conclusive evidence of a significant purpose involving the
39 production of income or the appreciation of property; and

40 c. No purpose of the entity is to accomplish one or more political
41 or legislative purposes within the meaning of section
42 170(c)(2)(D) of the Code, as amended.

43 If an entity that met this definition at its formation at any time
44 ceases to satisfy any one of the foregoing requirements, it shall

1 immediately cease to be a low-profit limited liability company but will
2 continue to exist as a limited liability company.

3 All references in this subdivision to sections of the Code shall be to
4 sections of the Internal Revenue Code of 1986, as amended from time
5 to time, or to corresponding provisions of subsequent internal revenue
6 laws of the United States.

7 ~~(12a)~~(12b) Management of the affairs. – In respect of an entity, unless
8 the context indicates otherwise, the authority to direct and participate
9 in the management of the entity.

10"

11 **SECTION 3.2.** G.S. 55D-20(a) is amended by adding the following
12 subdivision to read:

13 "(6) The name of a low-profit limited liability company, as defined in
14 G.S. 57C-1-03(12a), must contain the abbreviation "L3C" or "l3c.""

15 **SECTION 3.3** This part is effective when it becomes law.

16 17 **PART IV. NORTH CAROLINA FURNITURE FUND AND COUNCIL**

18 **SECTION 4.1.** Article 10 of Chapter 143B of the General Statutes is
19 amended by adding a new Part to read:

20 "Part 2K. North Carolina Furniture Council.

21 **"§ 143B-437.95. North Carolina Furniture Council. – creation; powers; duties.**

22 There is established the North Carolina Furniture Council of the Department of
23 Commerce. The North Carolina Furniture Council shall have the following powers and
24 duties:

- 25 (1) To identify and implement methods for improving North Carolina's
26 furniture industry.
- 27 (2) To assure orderly growth and development of North Carolina's
28 furniture industry.
- 29 (3) To assist in the coordination of the activities of the various State
30 agencies and other organizations contributing to the development of
31 the furniture industry.
- 32 (4) To receive and disburse funds.
- 33 (5) To establish criteria for recipients of grants from the North Carolina
34 Furniture Fund and to make grants from the Fund.
- 35 (6) To enter into contracts for the purpose of developing new or improved
36 markets for and technological advances in the furniture industry.
- 37 (7) To enter into agreements with any local, state, or national
38 organizations or agencies engaged in education for the purpose of
39 disseminating information on furniture industry projects.
- 40 (8) To enter into contracts with commercial entities for the purpose of
41 developing marketing, advertising, and other promotional programs
42 designed to promote the orderly growth of the North Carolina furniture
43 industry.

1 (9) To acquire any licenses or permits necessary for performance of the
2 duties of the Council.

3 **"§ 143B-437.96. North Carolina Furniture Council. — composition; terms;**
4 **reimbursement.**

5 (a) The Council shall consist of 13 members. The following members or their
6 designees shall serve as ex officio members:

7 (1) The Secretary of the Department of Commerce.

8 (2) The President of the Community College System.

9 (3) The Chancellor of North Carolina State University.

10 The remaining members shall be appointed as follows:

11 (1) Three persons appointed by General Assembly, upon the
12 recommendation of the Speaker of the House of Representatives, one
13 of whom shall be a representative of the furniture manufacturing
14 industry.

15 (2) Three persons appointed by the General Assembly, upon the
16 recommendation of the President Pro Tempore of the Senate, one of
17 whom shall be a representative of the furniture upholstery industry.

18 (3) One representative of the furniture manufacturing industry, appointed
19 by the Governor.

20 (4) One representative of the furniture upholstery industry, appointed by
21 the Governor.

22 (5) One retailer of North Carolina furniture products, appointed by the
23 Governor.

24 (6) One member of the general public, appointed by the Governor.

25 (b) Other than the initial members of the Council and members of the Council
26 -serving ex officio, members of the Council shall serve three-year terms. Initial members
27 of the Council shall serve staggered terms as follows:

28 (1) The following initial members shall serve terms of three years:

29 a. The representative of the furniture manufacturing industry
30 appointed by the General Assembly upon the recommendation
31 of the President Pro Tempore of the Senate.

32 b. The representative of the furniture manufacturing industry
33 appointed by the General Assembly upon recommendation of
34 the Speaker of the House of Representatives.

35 c. The retailer of North Carolina furniture products appointed by
36 the Governor.

37 d. The member of the general public appointed by the Governor.

38 (2) The remaining members shall serve terms of two years.

39 (c) The Secretary of the Department of Commerce shall serve as chair of the
40 Council and shall call all meetings of the Council.

41 (d) The Governor may remove any member of the Council appointed by the
42 Governor for misconduct, incompetence, or neglect of duty. The General Assembly may
43 remove any member appointed by it for the same reasons. The appointing authority
44 making the original appointment shall appoint successors.

1 (e) All vacancies occurring on the Council shall be filled, for the unexpired term,
2 by the appointing authority making the original appointment. Vacancies in
3 appointments made by the General Assembly shall be filled in accordance with
4 G.S. 120-122.

5 (f) The Department of Commerce shall furnish the Council with meeting space
6 and clerical and other services required by the Council to conduct its business.

7 (g) The members of the Council shall not receive compensation or per diem for
8 their service on the Council.

9 (h) A majority of the Council shall constitute a quorum for the transaction of
10 business.

11 **"§ 143B-437.97. North Carolina Furniture Fund.**

12 The North Carolina Furniture Fund is hereby created as a special, interest-bearing,
13 and nonreverting fund in the Department of Commerce. The Fund shall be treated as a
14 special trust fund and shall be credited with interest by the State Treasurer pursuant to
15 G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be eligible to receive State and federal
16 funding.

17 The purpose of the North Carolina Furniture Fund is to develop and support the
18 furniture industry in North Carolina, thereby creating jobs for the citizens of the State,
19 encouraging the investment of private funds in North Carolina companies, and
20 promoting the economy of the State in general. Moneys from the Fund may be used for
21 the public purposes of developing the furniture industry workforce and promoting
22 economic development in the furniture industry through the awarding of grants to
23 organizations that support the furniture industry.

24 The North Carolina Furniture Council of the Department of Commerce shall
25 administer the Fund and shall make grants from the Fund based on criteria adopted by
26 the Council."

27
28 **PART V. ADDITIONAL PENALTY FOR MISAPPROPRIATION OF TRADE**
29 **SECRETS**

30 **SECTION 5.1.** G.S. 66-154 is amended by adding a new subsection to read:

31 "(e) Willful and malicious misappropriation of a trade secret is a Class 1
32 misdemeanor."

33 **SECTION 5.2.** This part becomes effective December 1, 2007, and applies
34 to acts committed on or after that date.

35
36 **PART VI. EFFECTIVE DATE**

37 **SECTION 6.** Except as otherwise provided, this act is effective when it
38 becomes law.