

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**SESSION LAW 2002-172  
HOUSE BILL 1734**

AN ACT TO ESTABLISH AND MODIFY VARIOUS ECONOMIC INCENTIVE PROGRAMS FOR BUSINESS AND INDUSTRY; TO AMEND PROVISIONS RELATING TO INDUSTRIAL AND POLLUTION CONTROL FACILITIES FINANCING; TO AUTHORIZE PLANNING AND DEVELOPMENT FOR A BIOPHARMACEUTICAL TRAINING CENTER AND A CANCER REHABILITATION TREATMENT CENTER; AND TO MAKE TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

**PART 1. BILL LEE ACT**

**SECTION 1.1.** G.S. 105-129.9(a) and (c) read as rewritten:

"(a) General Credit. – If a taxpayer that has purchased or leased eligible machinery and equipment places them in service in this State during the taxable year, the taxpayer is allowed a credit equal to ~~seven percent (7%)~~ the applicable percentage of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment are eligible if they are capitalized by the taxpayer for tax purposes under the Code and not leased to another party. In addition, in the case of a large investment, machinery and equipment that are not capitalized by the taxpayer are eligible if the taxpayer leases them from another party. The credit may not be taken for the taxable year in which the machinery and equipment are placed in service but shall be taken in equal installments over the seven years following the taxable year in which they are placed in service. The applicable percentage is as follows:

<u>Area Enterprise Tier</u>	<u>Applicable Percentage</u>
<u>Tier One</u>	<u>7%</u>
<u>Tier Two</u>	<u>7%</u>
<u>Tier Three</u>	<u>6%</u>
<u>Tier Four</u>	<u>5%</u>
<u>Tier Five</u>	<u>4%</u>

..  
(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service at more than one establishment in an enterprise tier during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service at each establishment. If the taxpayer places eligible machinery and equipment in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

<u>Area Enterprise Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>\$ -0-</u>
<u>Tier Two</u>	<u>100,000</u>
<u>Tier Three</u>	<u>200,000</u>
<u>Tier Four</u>	<u>500,000</u> <u>1,000,000</u>

**SECTION 1.2.** G.S. 105-129.4 is amended by adding a new subsection to read:

"(b6) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims an installment or carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved."

**SECTION 1.3.(a)** If House Bill 1665, 2001 General Assembly, does not become law, then G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs ~~or the credit for worker training in an enterprise tier three, four, or five area~~ if, for the calendar year the jobs are ~~created or the worker training is provided~~, created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft facility, or the credit for substantial investment in other property facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to ~~the applicable percentage times one hundred ten percent (110%)~~ of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. ~~The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%).~~ The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

**SECTION 1.3.(b)** If House Bill 1665, 2001 General Assembly, becomes law, then G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs ~~or the credit for worker training in an enterprise tier three, four, or five area~~ if, for the calendar year the jobs are ~~created or the worker training is provided~~, created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office

or aircraft facility, or the credit for substantial investment in other property facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area.

Part-time jobs for which the taxpayer provides health insurance as provided in subsection (b2) of this section are considered to have an average weekly wage at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located. There may be a period of up to 100 days between the time at which an employee begins a part-time job and the time at which the taxpayer begins to provide health insurance for that employee.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to ~~the applicable percentage times one hundred ten percent (110%)~~ of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. ~~The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%).~~ The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

**SECTION 1.4.** G.S. 105-129.3A is amended by adding a new subsection to read:

"(d) Parcel of Property Partially in a Development Zone. – For the purposes of this section, a parcel of property that is located partially within a development zone is considered entirely within the development zone if all of the following conditions are satisfied:

- (1) At least fifty percent (50%) of the parcel is located within the development zone.
- (2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
- (3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

**SECTION 1.5.** 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:

... (17a) Overdue tax debt. – Defined in G.S. 105-243.1."

**SECTION 1.6.** In addition to heightening the incentive effect of the William S. Lee Quality Jobs and Business Expansion Act in lower-tiered counties, the changes

in Section 1.1 of this act are intended to reduce the cost of the Act and make more revenues available to the State of North Carolina in future years. It is the intent of the General Assembly in making these changes to provide a source of funds that could be used in future years to support other, more targeted economic development programs aimed at helping create new jobs in North Carolina.

**SECTION 1.7.** Section 1.1 of this act is effective for taxable years beginning on or after January 1, 2003, and applies to business activities that occur on or after January 1, 2003, but does not apply to business activities that occur on or after January 1, 2003, that are subject to a letter of commitment signed under G.S. 105-129.9 before January 1, 2003. Sections 1.2 through 1.5 of this act are effective for taxable years beginning on or after January 1, 2003. The remainder of this part is effective when it becomes law.

## **PART 2. JOB DEVELOPMENT INVESTMENT GRANT PROGRAM**

**SECTION 2.1.(a)** Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2F.

"Job Development Investment Grant Program.

### **"§ 143B-437.44. Legislative findings and purpose.**

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 industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.
- (3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Part that are designed to stimulate new economic activity and to create new jobs within the State.
- (4) The enactment of this Part is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina; and this Part will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.
- (5) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.
- (6) It is not the intent of the General Assembly that grants provided through this Part be used as venture capital funds, business incubator funds, or business start-up funds or to otherwise fund the initial capitalization needs of new businesses.

- (7) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged.

**"§ 143B-437.45. Definitions.**

The following definitions apply in this Part:

- (1) Agreement. – A community economic development agreement under G.S. 143B-437.51.
- (2) Base years. – The first two complete calendar years following the effective date of an agreement.
- (3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.
- (4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.48.
- (5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base years or in subsequent years of a grant.
- (6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.
- (7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide. The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.
- (8) Overdue tax debt. – Defined in G.S. 105-243.1.
- (9) Related member. – Defined in G.S. 105-130.7A.
- (10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes.

**"§ 143B-437.46. Job Development Investment Grant Program.**

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

- (1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.
- (2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

- (3) The project is consistent with economic development goals for the State and for the area where it will be located.
- (4) A grant under this Part is necessary for the completion of the project in this State.
- (5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of agreements the Committee may enter into each calendar year is 15.

(c) Ceiling. – The maximum amount of total annual liability for grants for agreements entered into in any single calendar year may not exceed ten million dollars (\$10,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

**"§ 143B-437.47. Eligible projects.**

(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 enterprise tier area, the location with the highest enterprise tier area designation determines the minimum number of eligible positions that must be created.

<u>Enterprise Tier Area</u>	<u>Number of Eligible Positions</u>
<u>Tier One</u>	<u>10</u>
<u>Tier Two</u>	<u>10</u>
<u>Tier Three</u>	<u>10</u>
<u>Tier Four</u>	<u>20</u>
<u>Tier Five</u>	<u>20</u>

(b) Ineligible Businesses. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or club is not eligible for a grant under this Part.

(c) Health Insurance. – A business is eligible for a grant under this Part only if the business provides health insurance for all of the full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.52 a certification that the business continues to provide health insurance for all full-time employees of the project with respect to which the grant is made. If the business ceases to provide health insurance to all full-time employees of the project with respect to which a grant is made, the Committee shall amend or terminate the agreement as provided in G.S. 143B-437.53.

(d) Wage Standard. – In order for a business to be eligible for a grant under this Part, the average wage of all jobs at the location with respect to which a grant is made must meet the wage standard set out in G.S. 105-129.4(b). If a project is to be located at more than one location, the average wage of all jobs at a location must meet the wage

standard set out in G.S. 105-129.4(b) in order for that location to be included in the agreement.

(e) Safety and Health Programs. – In order for a business to be eligible for a grant under this Part, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

**"§ 143B-437.48. Economic Investment Committee established.**

(a) Membership. – The Economic Investment Committee is established. The Committee consists of the following members:

- (1) The Secretary of Commerce.
- (2) The Secretary of Revenue.
- (3) The Director of the Office of State Budget and Management.
- (4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
- (5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The members of the Committee appointed by the General Assembly may not be members of the General Assembly. The members of the Committee appointed by the General Assembly serve two-year terms that begin upon appointment.

(b) Decision Required. – The Committee may act only upon a decision of three of its five members.

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

If a person is convicted under this section, the person shall not provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that was awarded a grant under this Part while the former member was serving on the Committee until two years after the person's conviction under this section.

(d) Public Notice. – The Committee shall do all of the following at least 15 business days prior to the adoption of or amendment to any proposed criteria:

- (1) Publish the proposed criteria on the Department of Commerce's web site.
- (2) Provide notice to persons who have requested notice of proposed criteria.
- (3) Accept oral and written comments on the proposed criteria.

(e) Sunshine. – Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information.

**"§ 143B-437.49. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

- (1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.

- (2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
- (3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
- (4) The number of eligible positions proposed to be created during the base years and thereafter and the salaries for these positions.
- (5) An estimate of the total withholdings.
- (6) Certification that the business will provide health insurance to all full-time employees of the project.
- (7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
- (8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
- (9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars (\$5,000). The fee is due at the time the application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

- (1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the



project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.

- (2) An update on the status of projects under agreements entered into before the preceding calendar year.
- (3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.
- (4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars (\$5,000).
- (5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.
- (6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.
- (7) The effectiveness of the program in recruiting new and expanding businesses.
- (8) The environmental impact of businesses that have received grants under the program.
- (9) The geographic distribution of grants, by number and amount, awarded under the program.
- (10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.
- (11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.
- (12) The division and use of fees collected by the Committee under this section and under G.S. 143B-437.52.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year.

**"§ 143B-437.50. Calculation of minimum and maximum grants; factors considered.**

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

- (1) The number of eligible positions to be created.
- (2) The expected duration of those positions.

- (3) The type of contribution the business can make to the long-term growth of the State's economy.
- (4) The amount of other financial assistance the project will receive from the State or local governments.
- (5) The total dollar investment the business is making in the project.
- (6) Whether the project utilizes existing infrastructure and resources in the community.
- (7) Whether the project is located in a development zone.
- (8) The number of eligible positions that would be filled by residents of a development zone.
- (9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant is made.

(c) The grant may be based only on eligible positions created during the base years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.

(d) The percentage established in the agreement shall be reduced by one-fourth for any eligible position that is located in an enterprise tier four or five area.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible position may not exceed six thousand five hundred dollars (\$6,500) in any year.

**"§ 143B-437.51. Community economic development agreement.**

(a) Terms. – Each community economic development agreement shall include at least the following:

- (1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired in the base years and later years.
- (2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
- (3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
- (4) The amount of the grant based on a percentage of withholdings.
- (5) A method for determining the number of new employees hired during a grant year.
- (6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
- (7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
- (8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
- (9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.53.
- (10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

- (11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base years.
- (12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.53, and under which grant funds may be recaptured by the Committee.
- (13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.53, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.
- (14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.53.
- (15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.
- (16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.
- (17) A provision encouraging the business to hire North Carolina residents.
- (18) A provision encouraging the business to use the North Carolina State Ports.
- (19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.
- (20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.46(c).
- (21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
- (22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.
- (23) A provision stating that the amount of a grant associated with any specific eligible position may not exceed six thousand five hundred dollars (\$6,500) in any year.
- (24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(b) Approval of Attorney General. – The Attorney General shall review the terms of all proposed agreements entered into by the Committee. To be effective against the State, an agreement entered into under this Part must be signed personally by the Attorney General.

**"§ 143B-437.52. Grant recipient to submit records.**

(a) No later than February 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a copy of

its State and federal tax returns showing business and nonbusiness income and a report showing withholdings as a condition of its continuation in the grant program. In addition, the business shall submit to the Committee an annual payroll report showing the eligible positions that are created during the base years and the new eligible positions created during each subsequent year of the grant. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars (\$1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

**"§ 143B-437.53. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the Committee amends the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant.

**"§ 143B-437.54. Disbursement of grant.**

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified to the State Controller that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall verify this information and certify to the State Controller that the terms of the agreement have been met. The Committee shall further certify to the State Controller the amount of a grant for which the business is eligible under the agreement and the amount of a grant for which the business would be eligible under the agreement without regard to G.S. 143B-437.50(d). The State Controller shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee.

**"§ 143B-437.55. Transfer to Industrial Development Fund.**

At the time the State Controller remits a check to a business under G.S. 143B-437.54, the State Controller shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.50(d).

**"§ 143B-437.56. Authority.**

The authority of the Committee to enter into new agreements begins January 1, 2003, and expires January 1, 2005."

**SECTION 2.1.(b)** In developing criteria under G.S. 143B-437.46 for the awarding of grants under Part 2F of Article 10 of Chapter 143B of the General Statutes and under G.S. 143B-437.50 for determining the percentage upon which the amount of a grant is based, the Economic Investment Committee, in consultation with the Attorney General, may consider criteria that address the following:

- (1) Factors related to the economic impact of the project, such as the following:
  - a. Impact on gross regional product and gross State product.
  - b. Costs and benefits of the project to the State, including the expected return on investment made in the project by the State.
  - c. Number of direct jobs that will be created by the project, the wages of those jobs, and the total payroll for the project.
  - d. Number of induced short-term, project-related jobs expected to be generated by the project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the project.
  - e. Dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.
  - f. Economic circumstances of the county and region, including the extent to which the project will serve to mitigate unemployment.
  - g. The expected time frame during which the project is expected to pay back in State tax revenues the amount of any grants to be paid out.
  - h. The economic demands the project is expected to place upon the community or communities in which it will locate.
  - i. The number of eligible positions that would be filled by residents of development zones.
- (2) Factors related to the strategic importance of the project to the State, region, or locality, such as the following:
  - a. The extent to which the project builds or enhances an industrial cluster.
  - b. The extent to which the project falls within a classification of business and industry that the Department of Commerce regards as a target for growth and expansion in the State.
  - c. The ability of the project to attract follow-on investment in the State by suppliers and vendors.
  - d. The extent to which the project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process.
  - e. The extent to which the project can be expected to contribute significantly to and support the local community.
- (3) Factors related to the quality of jobs, such as the following:
  - a. The wage level and status of the jobs to be created.
  - b. The quality and value of benefits offered by the company.
  - c. The potential for employee advancement.

- d. The extent of training programs offered by the company.
- e. The sustainability of the jobs in the future.
- f. The workplace safety record of the company.
- (4) Factors related to the quality of the industry and the project, such as the following:
  - a. The nature of the project and the project's relationship to the larger business of the company.
  - b. The nature of the industrial classification of the project and the nature of the business of the company undertaking it.
  - c. The long-term prospects for growth at the project site or sites.
  - d. The long-term prospects for growth of the company and the industry within the United States.
  - e. The financial stability of the company associated with the project.
- (5) Factors related to the environmental impact of the project, such as the following:
  - a. The nature of the business to be conducted.
  - b. The ability of the project to satisfy State, federal, and local environmental law and regulations.
- (6) The degree to which use of the program has been geographically dispersed among the various regions of the State and between rural and urban areas.
- (7) Other factors that the Economic Investment Committee considers relevant that are not inconsistent with this section and that the Committee determines will further the purposes of Part 2F of Article 10 of Chapter 143B of the General Statutes.

**SECTION 2.2.(a)** G.S. 143B-437.01(a)(1) reads as rewritten:

"(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity."

**SECTION 2.2.(b)** G.S. 143B-437.01(b1) reads as rewritten:

"(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier ~~one and tier two~~ one, two, and three areas, as defined in G.S. 105-129.3, in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project."

**SECTION 2.3.** G.S. 105-259(b), as amended by S.L. 2002-87, is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

.. (29) To provide to the Economic Investment Committee established pursuant to G.S. 143B-437.48 information necessary to implement Part 2F of Article 10 of Chapter 143B of the General Statutes."

**SECTION 2.4.(a)** G.S. 153A-149(c)(10b) reads as rewritten:

"(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars (\$100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

.. (10b) Economic Development. – To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12."

**SECTION 2.4.(b)** G.S. 160A-209(c)(10b) reads as rewritten:

"(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

.. (10b) Economic Development. – To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12."

**SECTION 2.5.** G.S. 120-123 is amended by adding a new subdivision to read:

**"§ 120-123. Service by members of the General Assembly on certain boards and commissions.**

No member of the General Assembly may serve on any of the following boards or commissions:

.. (75) The Economic Investment Committee established under G.S. 143B-437.48."

**SECTION 2.6.** G.S. 150B-1(d) is amended by adding a new subdivision to read:

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

.. (10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes."

**SECTION 2.7.** The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study the use, the effectiveness, and the cost versus benefits of the Job Development Investment Grant Program created in this act, the Bill Lee Act credits in Chapter 105 of the General Statutes, and the Industrial Recruitment Competitive Fund. The Study Committee may report the results of its study and any recommendations to the 2004 Regular Session of the 2003 General Assembly and shall make a final report by March 15, 2005, to the 2005 General Assembly.

**SECTION 2.8.** This part is effective when it becomes law.

### **PART 3. FILM INDUSTRY INCENTIVES**

**SECTION 3.1.** G.S. 143B-434.3(a) reads as rewritten:

"(a) Creation and Purpose of Account. – There is created in the Department of Commerce, Division of Tourism, Film, and Sports Development, the Film Industry Development Account to provide annual grants as incentives to production companies that engage in production activities in this State. The Division of Tourism, Film, and Sports Development shall administer this program in accordance with the following provisions:

- (1) To be eligible for a grant, a production company must engage in production activities in this ~~State~~. State with expenditures in this State of at least one million dollars (\$1,000,000). A grant may not be used for political or issue advertising.
- (2) A grant may not exceed fifteen percent (15%) of the amount the production company spends for goods and services in this State during the calendar year.
- (3) A grant may not exceed two hundred thousand dollars (\$200,000) per production."

**SECTION 3.2.** The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study options for additional economic incentives for the film industry and shall make a report to the 2003 General Assembly on its findings, including any recommendations for legislative action.

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

#### **PART 4. NORTH CAROLINA RAILROAD CONDEMNATION AUTHORITY**

**SECTION 4.1.** G.S. 40A-3(a)(4) reads as rewritten:

"(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

- ...
- (4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial ~~siding ordered by the Utilities Commission as provided in G.S. 62-232.~~ siding."

**SECTION 4.2.** This part is effective when it becomes law.

#### **PART 5. INDUSTRIAL AND POLLUTION CONTROL FACILITIES FINANCING**

**SECTION 5.1.** The General Assembly finds that there are small manufacturing companies in the State that are eligible for industrial development bond financing for capital improvements and expansions, but are not able to take advantage of that financing because of the administrative costs involved. This problem can be addressed by reviving the composite bond program under Chapter 159D of the General Statutes, under which the North Carolina Capital Facilities Finance Agency could combine several series of bonds into a single bond offering, thereby reducing transaction costs and permitting eligible small manufacturers to access tax exempt financing for capital investments. The composite bond program would be facilitated by the changes proposed to Chapter 159D in this part that will streamline the procedures for composite issues by requiring only one public hearing and align the review standard for bonds issued as part of a composite bond program with the standard for bonds issued by county industrial development projects.



**SECTION 5.2.** G.S. 159D-7(d) reads as rewritten:

"(d) Public Hearing. ~~Hearing, Generally.~~ – The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Article for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the agency intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d1) Public Hearing, Multiple Projects. – Notwithstanding subsection (d) of this section, in the event the bonds proposed to be issued are to finance more than one project, the public hearing shall be conducted by the agency or by a hearing officer designated by the agency to conduct public hearings. The public hearing may be held at any location designated by the agency. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in each county in which a proposed project is to be located not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and any proposed project in that county, including its general location, and any other information the agency considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. A copy of the notice of public hearing must be mailed to the board of county commissioners of any county in which a proposed project is to be located and to the governing body of any municipality in which a proposed project is to be located."

**SECTION 5.3.** G.S. 159D-8(b) reads as rewritten:

"(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

- (1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as credit enhancement, insurance, guaranties or property to be pledged or secure such bonds.
- (2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.
- (3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them."

**SECTION 5.4.** This part becomes effective January 1, 2003.

**PART 6. CAPITAL PLANNING COSTS FOR BIOPHARMACEUTICAL TRAINING CENTER AND CANCER REHABILITATION TREATMENT CENTER.**

**SECTION 6.** The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the North Carolina Biotechnology Center are authorized to initiate planning and development of a new biopharmaceutical/bioprocess manufacturing training center to be centrally located and related training facilities to be located at various community colleges. The Board of Directors of the University of North Carolina Health Care System is authorized to initiate planning and development of a new cancer rehabilitation and treatment center to be located at the University of North Carolina Hospitals at Chapel Hill.

**PART 7. GENERAL PROVISIONS**

**SECTION 7.1.** The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

**SECTION 7.2.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3<sup>rd</sup> day of October, 2002.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 11:55 a.m. this 31<sup>st</sup> day of October, 2002