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Short Title: Bill Lee Changes. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT.

The General Assembly of North Carolina enacts:

PART I. REPLACEMENT OF BILL LEE ACT

SECTION 1.1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"<u>Article 3I.</u>

"<u>Tax Credits for Growing Businesses.</u>

"**<u>§ 105-129.80. Legislative findings.</u>**

<u>The General Assembly finds that:</u>

<u>(1)</u> <u>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.</u>

<u>(2)</u> <u>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</u>

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 Article that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina; and this Article 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 Article is to stimulate economic activity and to create new jobs within the State.

(6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.

(7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry.

"**§ 105-129.81. Definitions.**

The following definitions apply in this Article:

(1) Agrarian growth zone. – Defined in G.S. 143B-437.10.

(2) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.

(3) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

(4) Business property. – Tangible personal property that is used in a business and capitalized under the Code.

(5) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate regional basis.

(6) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(7) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to

support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.

(8) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

(9) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.

(10) Establishment. – Defined in 29 C.F.R. § 1904.46, as it existed on January 1, 2002.

(11) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(12) Hub. – Defined in G.S. 105-164.3.

(13) Information technology and services. – An industry in one of the following:

a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.

b. Software publishers industry group 5112 as defined by NAICS.

c. Computer systems design and related services industry group 5415 as defined by NAICS.

(14) Long-term unemployed worker. – An individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Employment Security Commission.

(15) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.

(16) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.

(17) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.

(18) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.

(19) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.

(20) Overdue tax debt. – Defined in G.S. 105-243.1.

(21) Purchase. – Defined in section 179 of the Code.

(22) Related member. – Defined in G.S. 105-130.7A.

(23) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.

(24) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.

(25) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.

(26) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.

"**§ 105-129.82. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, 2011.

(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. 143B-437.08 used to define development 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.

(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) Studying the distribution of tax incentives across new and expanding businesses and industries.

(2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009.

"**§ 105-129.83. Eligibility; forfeiture.**

(a) Eligible Business. – A taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is listed in this subsection. The primary activity of an establishment is determined based on the establishment's principal product or group of products produced or distributed, or services rendered.

(1) Aircraft maintenance and repair.
(2) Air courier services hub.
(3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
(4) Customer service call centers.
(5) Electronic shopping and mail order houses.
(6) Information technology and services.
(7) Manufacturing.
(8) Motorsports facility.
(9) Motorsports racing team.
(10) Research and development.
(11) Warehousing.
(12) Wholesale trade.

(b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 24-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs 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 jobs 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 shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

(d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer 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 taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has 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. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

(g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the credit or 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.

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section at the establishment for which the credit was claimed, the credit expires. If, during the period that installments of a credit under this Article accrue, the number of jobs of an eligible company headquarters falls below the minimum number required under subsection (b) of this section, any credit associated with that company headquarters expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.89 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment under G.S. 105-129.89(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(j) Change in Ownership of Business. – As used in this subsection, the term 'business' means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any credit or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if either of the following conditions is met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, before it was acquired.

(3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, 'acquired' means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars ($100,000,000) and has the majority of its operations located in a development tier one area.

(k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit under this Article. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit under this Article.

(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone or agrarian growth zone designations in effect at that time.

"**§ 105-129.84. Tax election; cap; carryforwards; limitations.**

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the five-year carryforward period rather than the 20-year carryforward period.

(d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer shall claim a credit under this Article within six months after the date set by statute for the filing of the return, including any extensions of that date.

"**§ 105-129.85. Fees and reports.**

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars ($500.00) for each type of credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

(b) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

(1) The number and amount of credits generated and taken for each credit allowed in this Article.
(2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.
(3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.
(4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken.

"**§ 105-129.86. Substantiation.**

(a) Records. – To claim a credit allowed by this Article, the taxpayer shall provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the establishment.

(2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.

(3) Any other qualifying information related to a specific credit allowed under this Article.

"**§ 105-129.87. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone or an agrarian growth zone, the amount of the credit is increased by one thousand dollars ($1,000) per job. In addition, if a job located in an urban progress zone or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars ($2,000) per job.

Area Development Tier	Amount of Credit
Tier One	$12,500
Tier Two	5,000
Tier Three	750

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

(c) Calculation. – A job is located in a county, an urban progress zone, or an agrarian growth zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires, and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit, the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

"**§ 105-129.88. Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	**Applicable Percentage**

Tier One	7%
Tier Two	5%
Tier Three	3.5%

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. 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.

Area Development Tier	**Threshold**
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires, and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to business property for which the taxpayer claims a credit under G.S. 105-129.9 or G.S. 105-129.9A.

"**§ 105-129.89. Credit for investment in real property.**

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.83 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.81 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars ($10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.83.

(c) Mixed Use Property. – If the taxpayer uses only part of the property in an eligible business, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property used in an eligible business and the denominator of which is the total square footage of the property.

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires, and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (c) of this section. If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, the credit expires, and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) No Double Credit. – A taxpayer may not claim a credit under this section with respect to real property for which a credit is claimed under G.S. 105-129.12 or G.S. 105-129.12A."

SECTION 1.2. Part 2 of Article 10 of Chapter 143B is amended by adding three new sections to read:

"**§ 143B-437.08. Development tier designation.**

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring assessed property value, the Secretary shall use the tax records prepared in each county. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, and any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties.

(f) Adjustment for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.

(2) At least one of the counties in which the industrial park is located is a development tier one area.

(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 250 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

"**§ 143B-437.09. Urban progress zone designation.**

(a) Urban Progress Zone Defined. – An urban progress zone is an area comprised of one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

(1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than

10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:

a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. At least fifty percent (50%) of the area of the portion that is within the primary corporate limits of the municipality is zoned as nonresidential and the census tract or census block group is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level.

(3) The area of the zone zoned as nonresidential does not exceed thirty-five percent (35%) of the total area of the zone.

(b) Limitations. – No census tract or block group may be located in more than one urban progress zone. The total area of all zones within a municipality may not exceed fifteen percent (15%) of the total area of the municipality unless the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality. In the case of a municipality where the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality, the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section may be designated as an urban poverty zone.

(c) Designation. – Upon application of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that satisfies the conditions and limitations of subsections (a) and (b) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.

(2) A detailed description of the boundaries of the area that would comprise the zone.

(3) A zoning map for the municipality with the proposed zone clearly delineated upon it.

(4) A certification regarding the size of the proposed zone and the areas within the proposed zone zoned as nonresidential.

(5) Detailed census information on the municipality and the proposed zone.

(6) A resolution of the governing body of the municipality requesting the designation of the area as an urban progress zone.

(7) Any other material required by the Secretary of Commerce.

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

(1) At least fifty percent (50%) of the parcel is located within the 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.

"**§ 143B-437.10. Agrarian growth zone designation.**

(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census that meets all conditions in this subsection. A county may have no more than one agrarian growth zone.

(1) All land within the zone is located in whole within a county that has no municipality with a population in excess of 10,000.

(2) Every census tract and census block group that composes part of the zone has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(3) The area of the zone less the smallest census tract included in the zone does not exceed five percent (5%) of the total area of the county in which the zone is located.

(b) Designation. – Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that satisfies the conditions and limitations of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.

(2) A detailed description of the boundaries of the area that would comprise the zone.

(3) A certification regarding the size of the proposed zone.

(4) Detailed census information on the county and the proposed zone.

(5) A resolution of the board of county commissioners requesting the designation of the area as an agrarian growth zone.

(6) Any other material required by the Secretary of Commerce.

(c) Parcel of Property Partially in Agrarian Growth Zone. – For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the 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 1.3. 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, ~~2008.~~2007.

(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.

(a3) Sunset for Certain Taxpayers Located in Development Zones. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that satisfies all of the conditions of this subsection, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(1) Before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce describing a proposed new or expanding project and specifying the amount to be invested in real property and machinery and equipment, the number of new jobs to be created, and a proposed timetable for making the investment and creating the jobs.

(2) Before January 1, 2006, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase, lease, or construct and place in service in an eligible business at a location within a development zone within a three-year period at least ten million dollars ($10,000,000) of real property and machinery and equipment and that the taxpayer will create at least 300 new jobs at the location within a three-year period beginning when the property is first placed in service in an eligible business.

(3) Before January 1, 2006, the taxpayer places at least four million dollars ($4,000,000) of real property and machinery and equipment in service at the location and creates at least 20 new jobs at the location.

(a4) Sunset for Taxpayers That Sign a Letter of Commitment. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that signs a letter of commitment with the Department of Commerce on or before December 31, 2006, stating the taxpayer's intent to create new jobs or make new investments with respect to machinery and equipment, central office or aircraft facility property, or substantial investments in other real property at a specific site in this State, this Article is repealed effective for business activities that occur on or after January 1, 2008. If a taxpayer elects to take any credit under the provisions of this subsection for activities occurring in the 2007 taxable year, the taxpayer may not take any credit under Article 3I of this Chapter with respect to the same establishment for activities occurring in the 2007 taxable year.

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

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

SECTION 1.4. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. The remainder of this part is effective when it becomes law.

PART II. CONFORMING CHANGES

SECTION 2.1. G.S. 105-129.55(a) reads as rewritten:

"(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this subsection. Only one credit is allowed under this subsection with respect to the same expenses. If more than one subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of this subsection and the remainder qualifies under subdivision (3) of this subsection, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three percent (3%).

(2) Low-tier research. – For expenses with respect to research performed in ~~an enterprise tier one, two, or three~~<u>a development tier one</u> area, the applicable percentage is three percent (3%).

(3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	**Up To**	**Rate**
-0-	$50 million	1%
$50 million	$200 million	2%
$200 million	–	3%"

SECTION 2.2. G.S. 105-164.14(h) reads as rewritten:

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

(1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~<u>105-129.3 or a development tier one area, as defined in G.S. 143B-437.08.</u> Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~<u>105-129.3 or if it is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area, as defined in G.S. 143B-437.08.</u>

(3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. ~~105-129.4(a).~~<u>105-129.4(a) or 105-129.83(a).</u> Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in

G.S. ~~105-129.3,~~105-129.3, or a development tier one area, as defined in G.S. 143B-437.08, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 2.3. G.S. 105-164.14(j)(2) reads as rewritten:

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

…

(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in ~~an enterprise tier one, two, or three~~ a development tier one area as defined in ~~G.S. 105-129.3,~~G.S. 143B-437.08 the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61."

SECTION 2.4. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(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, electrical utility distribution lines or equipment, or transportation infrastructure 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, electrical

utility lines or facilities, or transportation infrastructure 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.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000) per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in ~~an enterprise tier one area as defined in G.S. 105-129.3.~~<u>a county that has one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.</u>

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.

(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b).

(a1) Definitions. – The following definitions apply in this section:

(1) Air courier services. – ~~A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service.~~<u>Defined in G.S. 105-129.81.</u>

~~(2) Central administrative office. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

<u>(2a) Company headquarters. – Defined in G.S. 105-129.81.</u>

~~(3) Data processing. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(4) Economically distressed county. – A county that has one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.~~designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.~~

(5) Eligible industry. – A ~~central administrative office~~company headquarters or a person engaged in the business of air courier services, ~~data processing,~~information technology and services, manufacturing, or warehousing and wholesale trade.

(6) Information technology and services. – Defined in G.S. 105-129.81.

(7) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. – Defined in ~~the North American Industry Classification System adopted by the United States Office of Budget and Management.~~G.S. 105-129.81.

(9) Reserved.

(10) ~~Warehousing and wholesale trade. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~Warehousing. – Defined in G.S. 105-129.81.

(11) Wholesale trade. – Defined in G.S. 105-129.81.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(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, two, and three areas, as defined in G.S. 105-129.3,~~the counties that have one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied 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, electrical utility distribution lines or equipment, or transportation infrastructure 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, electrical utility lines or facilities, or transportation infrastructure 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.

(c) Reports. – The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

SECTION 2.5. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

(1) No local match is required for grants awarded for projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3.~~counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(2) To the extent practicable, priority consideration for grants is given to projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3~~counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied or in ~~development~~ urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated ~~a development~~an urban progress zone under G.S. ~~105-129.3A,~~143B-437.09, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish ~~a development~~an urban progress zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

SECTION 2.6. G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a) and reads as rewritten:

"(4a) ~~Enterprise~~ Development tier. – The classification assigned to an area pursuant to G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.7. 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 ~~enterprise~~ development tier area, the location with the highest ~~enterprise~~ development tier area designation determines the minimum number of eligible positions that must be created.

~~Enterprise~~ Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	~~10~~20
Tier Three	~~10~~20
~~Tier Four~~	~~20~~
~~Tier Five~~	~~20~~"

SECTION 2.8. G.S. 143B-437.55(c)(3) reads as rewritten:

"(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:

…

(3) The number and ~~enterprise~~ development tier area of eligible positions created by projects with respect to which grants were awarded."

SECTION 2.9. G.S. 143B-437.56(d) reads as rewritten:

"(d) The percentage established in the agreement shall be reduced by ~~one-fourth~~fifteen percent (15%) for any eligible position that is located in a development tier two area and twenty-five percent (25%) for any eligible position that is located in ~~an enterprise~~ a development tier ~~four or five~~three area."

SECTION 2.10. G.S. 158-7.3(a) reads as rewritten:

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

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in ~~an enterprise~~ a development tier one area, as defined in G.S. ~~105-129.3,~~143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. – A county, city, town, or incorporated village."

SECTION 2.11. G.S. 19A-64(c) reads as rewritten:

"(c) Distribution. – The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within ~~enterprise tier one, two, and three~~development tier one areas as defined in G.S. ~~105-129.3.~~143B-437.08. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in ~~enterprise tier four and five~~development tier two and three areas as defined in G.S. ~~105-129.3.~~143B-437.08.

(2) Among the eligible counties and cities in ~~enterprise tier one, two, and three~~development tier one areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier one, two, or three~~development tier one areas.

(3) Among the eligible counties and cities in ~~enterprise tier four and five~~development tier two and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~development tier two and three areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~development tier two and three areas."

SECTION 2.12. G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is ~~an enterprise tier four county or an enterprise tier five~~a development tier two or three county, as these tiers are defined in

~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is ~~an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are~~a development tier one county, as defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

SECTION 2.13. G.S. 113A-252 reads as rewritten:

"**§ 113A-252. Definitions.**

The following definitions apply in this Article:

(1) Council. – The advisory council for the Clean Water Management Trust Fund.

(2) Economically distressed local government unit. – An economically distressed county, as defined in ~~G.S. 105-129.3,~~G.S. 143B-437.01, or a local government unit located in that county.

(3) Fund. – The Clean Water Management Trust Fund created pursuant to this Article.

(4) Land. – Real property and any interest in, easement in, or restriction on real property.

(4a) Local government unit. – Defined in G.S. 159G-20.

(4b) Stormwater quality project. – Defined in G.S. 159G-20.

(5) Trustees. – The trustees of the Clean Water Management Trust Fund.

(6) Wastewater collection system. – Defined in G.S. 159G-20.

(7) Wastewater treatment works. – Defined in G.S. 159G-20."

SECTION 2.14. G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.15. G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.16. G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.17. G.S. 153A-15.1(e) reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.18. G.S. 160A-425.1(c) reads as rewritten:

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.19. G.S. 160A-426(c) reads as rewritten:

"(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.20. G.S. 105-129.51(a) reads as rewritten:

"(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~105-129.83(c), (d), (e), and (f) relating to wage standard, health insurance, environmental impact, and safety and health programs, respectively."

SECTION 2.21. G.S. 105-259(b) reads as rewritten:

"(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:

…

(24) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in G.S. ~~105-129.7(b).~~105-129.7(b) or G.S. 105-129.86(b).

…

(27) To publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-129.85, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

…

(36) To furnish the Department of Commerce with the information needed to complete the studies required under G.S. 105-129.2A and G.S. 105-129.82."

SECTION 2.22. G.S. 105-129.70, as enacted by S.L. 2006-40, reads as rewritten:

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(3a) Development tier area. – Defined in G.S. 143B-437.08.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed three million dollars ($3,000,000) for the site as a whole.

~~(6) Enterprise tier area. – Defined in G.S. 105-129.3.~~

(7) Pass-through entity. – Defined in G.S. 105-228.90.

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36."

SECTION 2.23. G.S. 105-129.171(a), as enacted by S.L. 2006-40, reads as rewritten:

"(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For an eligible site located in ~~an enterprise tier one, two, or three~~a development tier one or two area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For an eligible site located in ~~an enterprise tier four or five~~a development tier three area, determined as of the date of certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures."

SECTION 2.24. G.S. 105-129.72(a), as enacted by S.L. 2006-40, reads as rewritten:

"(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in ~~an enterprise tier one, two, or three~~a development tier one or two area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in ~~an enterprise tier four or five~~a development tier three area."

SECTION 2.25.(a) G.S. 105-164.3(8e), as enacted by S.L. 2006-66, reads as rewritten:

"(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in ~~Internet~~ "Internet service providers and Web search ~~portals~~ portals" industry 51811, as defined by NAICS.

b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three or a development tier one or two area pursuant to ~~G.S. 105-129.3,~~G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise <u>or development</u> tier status.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 2.25.(b) G.S. 105-164.13(55), as enacted by S.L. 2006-66, reads as rewritten:

"(55) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for ~~the~~ <u>such</u> eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet data center, then the exemption provided for ~~the~~ <u>such</u> electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 2.25.(c) Section 24.17(c) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.17.(c)** ~~This~~ Subsection (b) of this section becomes effective October 1, 2006, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law."

SECTION 2.26. G.S. 105-164.3(23a), as enacted by S.L. 2006-66, reads as rewritten:

"(23a) NAICS. – ~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.~~Defined in G.S. 105-129.81."

SECTION 2.27. Section 2.25(c) of this part and the changes made to G.S. 105-164.3(8e)a. by Section 2.25(a) of this part are effective when they become law. Subsection 2.25(b) of this part becomes effective October 1, 2006. The remainder of this part becomes effective January 1, 2007.

PART III. EFFECTIVE DATES.

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