

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 2744*

Short Title: Economic Development Program Modifications. (Public)

Sponsors: Representatives Owens, Daughtridge (Primary Sponsors); Faison and Wray.

Referred to: Finance.

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO EXTEND CERTAIN SALES AND USE TAX REFUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.51 reads as rewritten:

"§ 143B-437.51. Definitions.

The following definitions apply in this Part:

- (1) Agreement. – A community economic development agreement under G.S. 143B-437.57.
- (2) Base ~~years-period.~~ – ~~The first 24 months following the date set by the Committee for performance to begin under the agreement-period of time set by the Committee during which new employees are to be hired for the positions on which the grant shall be based.~~
- (3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.
- (4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.
- (5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base ~~years-or-in~~ subsequent years-of-a grant-period.
- (5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.

- 1 (6) Full-time employee. – A person who is employed for consideration for
2 at least 35 hours a week, whose wages are subject to withholding
3 under Article 4A of Chapter 105 of the General Statutes, and who is
4 determined by the Committee to be employed in a permanent position
5 according to criteria it develops in consultation with the Attorney
6 General. The term does not include any person who works as an
7 independent contractor or on a consulting basis for the business.
- 8 (7) New employee. – A full-time employee who represents a net increase
9 in the number of the business's employees statewide. ~~The term~~
10 ~~includes an employee who previously filled an eligible position who is~~
11 ~~rehired or called back from a layoff that occurs during or following the~~
12 ~~base years to a vacant position previously held by that employee or to~~
13 ~~a new position established during or following the base years.~~
- 14 (8) Overdue tax debt. – Defined in G.S. 105-243.1.
- 15 (9) Related member. – Defined in G.S. 105-130.7A.
- 16 (10) Withholdings. – The amount withheld by a business from the wages of
17 employees in eligible positions under Article 4A of Chapter 105 of the
18 General Statutes."

19 **SECTION 2.** G.S. 143B-437.52 reads as rewritten:

20 **"§ 143B-437.52. Job Development Investment Grant Program.**

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

- 30 (1) The project proposed by the business will create, during the term of the
31 agreement, a net increase in employment in this State by the business.
- 32 (2) The project will benefit the people of this State by increasing
33 opportunities for employment and by strengthening this State's
34 economy by, for example, providing worker training opportunities,
35 constructing and enhancing critical infrastructure, increasing
36 development in strategically important industries, or increasing the
37 State and local tax base.
- 38 (3) The project is consistent with economic development goals for the
39 State and for the area where it will be located.
- 40 (4) A grant under this Part is necessary for the completion of the project in
41 this State.
- 42 (5) The total benefits of the project to the State outweigh its costs and
43 render the grant appropriate for the project.

1 (b) Cap. – The maximum number of agreements the Committee may enter into
2 each calendar year is 25.

3 (c) Ceiling. – ~~The~~ Except as provided in this section, the maximum amount of
4 total annual liability for grants for agreements entered into in any single calendar year
5 year, including amounts transferred to the Utility Account pursuant to
6 G.S. 143B-437.61, may not exceed fifteen million dollars (\$15,000,000). The maximum
7 amount of total annual liability for grants for agreements entered into in 2006, including
8 amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not
9 exceed thirty million dollars (\$30,000,000). No agreement may be entered into that,
10 when considered together with other existing agreements entered into during that
11 calendar year, could cause the State's potential total annual liability for grants entered
12 into in that calendar year to exceed this amount.

13 (d) Measuring Employment. – For the purposes of subdivision (a)(1) of this
14 section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the
15 Committee may designate that the increase or maintenance of employment is measured
16 at the level of a division or another operating unit of a business, rather than at the
17 business level, if both of the following conditions are met:

- 18 (1) The Committee makes an explicit finding that the designation is
19 necessary to secure the project in this State.
- 20 (2) The ~~designation-agreement~~ contains terms to ensure that the business
21 does not create eligible positions by transferring or shifting to the
22 project existing positions from another project of the business or a
23 related member of the business."

24 **SECTION 3.** G.S. 143B-437.53(b) reads as rewritten:

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

34 A project that consists of a professional or semiprofessional sports team or ~~club-club,~~
35 other than a professional motorsports racing team, is not eligible for a grant under this
36 Part."

37 **SECTION 4.** G.S. 143B-437.55 reads as rewritten:

38 "**§ 143B-437.55. Applications; fees; reports; study.**

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

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

- 1 (2) The names and addresses of the principals or management of the
2 business, the nature of the business, and the form of business
3 organization under which it is operated.
- 4 (3) The financial statements of the business prepared by a certified public
5 accountant and any other financial information the Committee
6 considers necessary.
- 7 (4) The number of eligible positions proposed to be created ~~during the~~
8 ~~base years and thereafter~~for the project and the salaries for these
9 positions.
- 10 (5) An estimate of the total withholdings.
- 11 (6) Certification that the business will provide health insurance to ~~all~~
12 full-time employees of the ~~project~~project as required by
13 G.S. 143B-437.53(c).
- 14 (7) Information concerning other locations, including locations in other
15 states and countries, being considered for the project and the nature of
16 any benefits that would accrue to the business if the project were to be
17 located in one of those locations.
- 18 (8) Information concerning any other State or local government incentives
19 for which the business is applying or that it has an expectation of
20 receiving.
- 21 (9) Any other information necessary for the Committee to evaluate the
22 application.

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

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

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

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

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

- 11 (1) A listing of each community economic development agreement
12 negotiated and entered into during the preceding calendar year,
13 including the name of the business, the cost/benefit analysis conducted
14 by the Committee during the application process, a description of the
15 project, the term of the agreement, the percentage used to determine
16 the amount of the grant, and the amount of the grant made under the
17 agreement during that year.
- 18 (2) An update on the status of projects under agreements entered into
19 before the preceding calendar year.
- 20 (3) The number and enterprise tier area of eligible positions created by
21 projects with respect to which grants were awarded.
- 22 (3a) A listing of the employment level for all businesses receiving a grant
23 and any changes in those levels from the level of the next preceding
24 year.
- 25 (4) The wage levels of all eligible positions created by projects with
26 respect to which grants are awarded, aggregated and listed in
27 increments of five thousand dollars (\$5,000).
- 28 (5) The amount of new income tax revenue received from withholdings
29 related to the projects for which grants were awarded.
- 30 (6) The criteria developed by the Committee, in consultation with the
31 Attorney General, to implement this Part and any changes in those
32 criteria from the previous calendar year.
- 33 (7) The effectiveness of the program in recruiting new and expanding
34 businesses.
- 35 (8) The environmental impact of businesses that have received grants
36 under the program.
- 37 (9) The geographic distribution of grants, by number and amount, awarded
38 under the program.
- 39 (10) An explanation of whether the projects with respect to which
40 agreements are entered into involve new businesses in the State or
41 expanding existing businesses in the State.
- 42 (11) A listing of all businesses making an application under this Part and an
43 explanation of whether each business ultimately located the project in

1 this State regardless of whether the business was awarded a grant for
2 the project under this Part.

3 ~~(12) The division and use of fees collected by the Committee under this~~
4 ~~section and under G.S. 143B-437.58.~~

5 (13) The total amount transferred to the Utility Account of the Industrial
6 Development Fund under this Part during the preceding year.

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

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

21 **SECTION 5.** G.S. 143B-437.56 reads as rewritten:

22 **"§ 143B-437.56. Calculation of minimum and maximum grants; factors**
23 **considered.**

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

31 (1) The number of eligible positions to be created.

32 (2) The expected duration of those positions.

33 (3) The type of contribution the business can make to the long-term
34 growth of the State's economy.

35 (4) The amount of other financial assistance the project will receive from
36 the State or local governments.

37 (5) The total dollar investment the business is making in the project.

38 (6) Whether the project utilizes existing infrastructure and resources in the
39 community.

40 (7) Whether the project is located in a development zone.

41 (8) The number of eligible positions that would be filled by residents of a
42 development zone.

43 (9) The extent to which the project will mitigate unemployment in the
44 State and locality.

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

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

8 (d) ~~The percentage established in the agreement shall be reduced by one-fourth~~
9 ~~for~~ For any eligible position that is located in an enterprise tier four or five area-area,
10 seventy-five percent (75%) of the annual grant approved for disbursement shall be
11 payable to the business, and twenty-five percent (25%) shall be payable to the Utility
12 Account pursuant to G.S. 143B-437.61. A position is located in the enterprise tier area
13 that has been assigned to the county in which the project is located, at the time the
14 application is filed with the Committee, or at the time the grant is awarded, in
15 whichever period the enterprise tier designation is lower.

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

21 (f) The amount of a grant associated with any specific eligible ~~position-position,~~
22 including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61,
23 may not exceed six thousand five hundred dollars (\$6,500) in any year."

24 **SECTION 6.** G.S. 143B-437.57(a) reads as rewritten:

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

- 27 (1) A detailed description of the proposed project that will result in job
28 creation and the number of new employees to be hired ~~in~~ during the
29 base years and later years period.
- 30 (2) The term of the grant and the criteria used to determine the first year
31 for which the grant may be claimed.
- 32 (3) The number of eligible positions that are subjects of the grant and a
33 description of those positions and the location of those positions.
- 34 (4) The amount of the grant based on a percentage of withholdings.
- 35 (5) A method for determining the number of new employees hired during
36 a grant year.
- 37 (6) A method for the business to report annually to the Committee the
38 number of eligible positions for which the grant is to be made.
- 39 (7) A requirement that the business report to the Committee annually the
40 aggregate amount of withholdings during the grant year.
- 41 (8) A provision permitting an audit of the payroll records of the business
42 by the Committee from time to time as the Committee considers
43 necessary.

- 1 (9) A provision that requires the Committee to amend an agreement
2 pursuant to G.S. 143B-437.59.
- 3 (10) A provision that requires the business to maintain operations at the
4 project location or another location approved by the Committee for at
5 least one hundred fifty percent (150%) of the term of the grant and a
6 provision to permit the Committee to recapture all or part of the grant
7 at its discretion if the business does not remain at the site for the
8 required term.
- 9 (11) A provision that requires the business to maintain employment levels
10 in this State at the level of the year immediately preceding the base
11 years-period.
- 12 (12) A provision establishing the conditions under which the grant
13 agreement may be terminated, in addition to those under
14 G.S. 143B-437.59, and under which grant funds may be recaptured by
15 the Committee.
- 16 (13) A provision stating that unless the agreement is amended or terminated
17 pursuant to G.S. 143B-437.59, the agreement is binding and
18 constitutes a continuing contractual obligation of the State and the
19 business.
- 20 (14) A provision setting out any allowed variation in the terms of the
21 agreement that will not subject the business to amendment or
22 termination of the agreement under G.S. 143B-437.59.
- 23 (15) A provision that prohibits the business from manipulating or
24 attempting to manipulate employee withholdings with the purpose of
25 increasing the amount of the grant and that requires the Committee to
26 terminate the agreement and take action to recapture grant funds if the
27 Committee finds that the business has manipulated or attempted to
28 manipulate withholdings with the purpose of increasing the amount of
29 the grant.
- 30 (16) A provision requiring that the business engage in fair employment
31 practices as required by State and federal law and a provision
32 encouraging the business to use small contractors, minority
33 contractors, physically handicapped contractors, and women
34 contractors whenever practicable in the conduct of its business.
- 35 (17) A provision encouraging the business to hire North Carolina residents.
- 36 (18) A provision encouraging the business to use the North Carolina State
37 Ports.
- 38 (19) A provision stating that the State is not obligated to make any annual
39 grant payment unless and until the State has received withholdings
40 from the business in an amount that exceeds the amount of the grant
41 payment.
- 42 (20) A provision describing the manner in which the amount of a grant will
43 be measured and administered to ensure compliance with the
44 provisions of G.S. 143B-437.52(c).

- 1 (21) A provision stating that any recapture of a grant and any amendment to
2 an agreement reducing the amount of the grant or the term of the
3 agreement must, at a minimum, be proportional to the failure to
4 comply measured relative to the condition or criterion with respect to
5 which the failure occurred.
- 6 (22) A provision stating that any disputes over interpretation of the
7 agreement shall be submitted to binding arbitration.
- 8 (23) A provision stating that the amount of a grant associated with any
9 specific eligible ~~position~~ position, including any amount transferred to
10 the Utility Account pursuant to G.S. 143B-437.61, may not exceed six
11 thousand five hundred dollars (\$6,500) in any year.
- 12 (24) A provision stating that the business agrees to submit to an audit at any
13 time that the Committee requires one.
- 14 (25) A provision encouraging the business to contract with small businesses
15 headquartered in the State for goods and services."

16 **SECTION 7.** G.S. 143B-437.58 reads as rewritten:

17 **"§ 143B-437.58. Grant recipient to submit records.**

18 (a) No later than March 1 of each year, for the preceding grant year, every
19 business that is awarded a grant under this Part shall submit to the Committee a report
20 showing withholdings as a condition of its continuation in the grant program. In
21 addition, during the base period, the business shall submit to the Committee an annual
22 payroll report showing the eligible positions that ~~are~~ have been created during the ~~base~~
23 years and the new eligible positions created during each subsequent ~~preceding calendar~~
24 year and, subsequent to the base period, the business shall submit to the Committee an
25 annual report showing the eligible positions that remain filled at the end of each year of
26 the grant. Upon request of the Committee, the business shall also submit a copy of its
27 State and federal tax returns. Payroll and tax information and State and federal tax
28 returns submitted under this subsection is ~~are~~ tax information subject to G.S. 105-259.
29 Aggregated payroll or withholding tax information submitted or derived under this
30 subsection is not tax information subject to G.S. 105-259. When making a submission
31 under this section, the business must pay the Committee a fee of one thousand five
32 hundred dollars (\$1,500). The fee is due at the time the submission is made. ~~The~~
33 Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of
34 State Budget and Management shall determine the allocation of the fee imposed by this
35 section among their agencies. ~~The proceeds of the fee are receipts of the agency to~~
36 which they are credited. ~~shall be credited to the General Fund.~~

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

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

41 (d) The reporting procedures of this section are in lieu of any other general
42 reporting requirements relating to private entities that receive State funds."

43 **SECTION 8.** G.S. 143B-437.59 reads as rewritten:

44 **"§ 143B-437.59. Failure to comply with agreement.**

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

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

13 (1) If the business is still within the base period established by the
14 Committee, the Committee shall withhold the grant for any
15 consecutive year remaining in the base period in which the business
16 fails to comply with any condition of the agreement, and the
17 Committee may decide to extend the base period for up to 24
18 additional months.

19 (2) If the business is no longer within the base period established by the
20 Committee, the Committee shall terminate the agreement.

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

28 **SECTION 9.** G.S. 143B-437.60 reads as rewritten:

29 **"§ 143B-437.60. Disbursement of grant.**

30 A business may not receive an annual disbursement of a grant if, at the time of
31 disbursement, the business has received a notice of an overdue tax debt and that overdue
32 tax debt has not been satisfied or otherwise resolved. A business may receive an annual
33 disbursement of a grant only after the Committee has certified ~~to the State Controller~~
34 that there are no outstanding overdue tax debts and that the business has met the terms
35 and conditions of the agreement. No amount shall be disbursed to a business as a grant
36 under this Part in any year until the Secretary of Revenue has certified to the Committee
37 (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of
38 withholdings received in that year by the Department of Revenue from the business. A
39 business that has met the terms of the agreement shall make an annual certification of
40 this to the Committee. The Committee shall require the business to provide any
41 necessary evidence of compliance to verify this information and certify to the State
42 Controller ~~that the terms of the agreement have been met. The Committee shall further~~
43 ~~certify to the State Controller~~ the grant amount of a grant ~~for which the business is~~
44 ~~eligible under the agreement and the grant amount of a grant~~ for which the business

1 would be eligible under the agreement without regard to G.S. 143B-437.56(d). The
2 ~~State Controller~~Department of Commerce shall remit a check to the business in the
3 amount of the certified grant amount within 90 days of receiving the certification of the
4 Committee."

5 **SECTION 10.** G.S. 143B-437.61 reads as rewritten:

6 "**§ 143B-437.61. Transfer to Industrial Development Fund.**

7 At the time the ~~State Controller~~Department of Commerce remits a check to a
8 business under G.S. 143B-437.60, the ~~State Controller~~Department of Commerce shall
9 transfer to the Utility Account of the Industrial Development Fund an amount equal to
10 the amount certified by the Committee as the difference between the amount of the
11 grant and the amount of the grant for which the business would be eligible without
12 regard to G.S. 143B-437.56(d)."

13 **SECTION 11.** G.S. 143B-437.62 reads as rewritten:

14 "**§ 143B-437.62. Expiration.**

15 The authority of the Committee to enter into new agreements expires January 1,
16 ~~2008, 2010.~~"

17 **SECTION 12.** There is appropriated from the General Fund to the
18 Department of Commerce the sum of five hundred thousand dollars (\$500,000) for the
19 2006-2007 fiscal year for the administration of the Job Development Investment Grant
20 Program and the monitoring of grants under the Program. It is the intent of the General
21 Assembly that this be a recurring appropriation.

22 **SECTION 13.** G.S. 105-129.2A(a2) reads as rewritten:

23 "(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this
24 section, in the case of a taxpayer that qualifies as an eligible major industry on or before
25 January 1, ~~2006, 2008,~~ this Article is repealed effective for business activities that occur
26 on or after January 1, 2010."

27 **SECTION 14.** G.S. 105-164.14(j) reads as rewritten:

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

30 (1) Refund. – The owner of an eligible facility is allowed an annual refund
31 of sales and use taxes paid by it under this Article on qualified building
32 materials, building supplies, fixtures, and equipment that become a
33 part of the real property of the eligible facility. Liability incurred
34 indirectly by the owner for sales and use taxes on these items is
35 considered tax paid by the owner. Building materials, building
36 supplies, fixtures, and equipment are qualified if they are installed in
37 the construction of the facility. Purchases for subsequent repair,
38 renovation, or equipment replacement are not qualified.

39 A request for a refund must be in writing and must include any
40 information and documentation required by the Secretary. A request
41 for a refund is due within six months after the end of the State's fiscal
42 year. Refunds applied for after the due date are barred.

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

- 1 a. It is primarily engaged in one of the industries listed in this
2 subsection.
- 3 b. The Secretary of Commerce has certified that the owner of the
4 facility will invest at least the required amount of private funds
5 to construct the facility in this State. For the purpose of this
6 subsection, costs of construction may include costs of acquiring
7 and improving land for the facility and costs of equipment for
8 the facility. If the facility is located in an enterprise tier one,
9 two, or three area as defined in G.S. 105-129.3, the required
10 amount is fifty million dollars (\$50,000,000). For all other
11 facilities, the required amount is one hundred million dollars
12 (\$100,000,000). In the case of a computer manufacturing
13 facility, the owner may invest these funds either directly or
14 indirectly through a related entity or strategic partner as those
15 terms are defined in G.S. 105-129.61. In the case of a computer
16 manufacturing facility, the term "facility" has the same meaning
17 as under G.S. 105-129.61.
- 18 (3) Industries. – This subsection applies to the following industries:
- 19 a. Air courier services. Air courier services has the same meaning
20 as in G.S. 105-129.2.
- 21 b. Aircraft manufacturing. Aircraft manufacturing means
22 manufacturing or assembling complete aircraft.
- 23 c. Bioprocessing. Bioprocessing means biomanufacturing or
24 processing that includes the culture of cells to make commercial
25 products, the purification of biomolecules from cells, or the use
26 of these molecules in manufacturing.
- 27 d. Computer manufacturing. Computer manufacturing means
28 manufacturing or assembling electronic computers, such as
29 personal computers, workstations, laptops, and computer
30 servers. The term includes the assembly or integration of
31 processors, coprocessors, memory, storage, and input/output
32 devices into a user-programmable final product. The term
33 includes manufacturing or assembling computer peripheral
34 equipment, such as storage devices, printers, monitors,
35 input/output devices, and terminals only if the manufacture or
36 assembly of this peripheral equipment occurs at a facility or
37 campus at which the taxpayer also manufactures or assembles
38 electronic computers.
- 39 e. Financial services and securities operations and systems
40 development. Financial services and securities operations and
41 systems development means the following, when performed at a
42 facility no part of which is leased to third-party tenants and that
43 is owned and operated by the business for which the services
44 are provided:

- 1 1. Performing operations functions for investment banking,
2 securities dealing and brokering, securities trading and
3 underwriting, or investment portfolio/mutual fund
4 management, and
- 5 2. Developing information technology systems, information
6 technology applications, and software to support
7 investment banking, securities dealing and brokering,
8 securities trading and underwriting, or investment
9 portfolio/mutual fund management.
- 10 f. Reserved for future codification purposes.
- 11 g. Motor vehicle manufacturing. Motor vehicle manufacturing
12 means any of the following:
 - 13 1. Manufacturing complete automobiles and light-duty
14 motor vehicles.
 - 15 2. Manufacturing heavy-duty truck chassis and assembling
16 complete heavy-duty trucks, buses, heavy-duty motor
17 homes, and other special purpose heavy-duty motor
18 vehicles for highway use.
 - 19 3. Manufacturing complete military armored vehicles,
20 nonarmored military universal carriers, combat tanks,
21 and specialized components for combat tanks.
- 22 h. Reserved for future codification purposes.
- 23 i. Reserved for future codification purposes.
- 24 j. Pharmaceutical and medicine manufacturing and distribution of
25 pharmaceuticals and medicines. Pharmaceutical and medicine
26 manufacturing means any of the following:
 - 27 1. Manufacturing biological and medicinal products. For
28 the purpose of this sub-subdivision, a biological product
29 is a preparation that is synthesized from living organisms
30 or their products and used medically as a diagnostic,
31 preventive, or therapeutic agent. For the purpose of this
32 sub-subdivision, bacteria, viruses, and their parts are
33 considered living organisms.
 - 34 2. Processing botanical drugs and herbs by grading,
35 grinding, and milling.
 - 36 3. Isolating active medicinal principals from botanical
37 drugs and herbs.
 - 38 4. Manufacturing pharmaceutical products intended for
39 internal and external consumption in forms such as
40 ampoules, tablets, capsules, vials, ointments, powders,
41 solutions, and suspensions.
- 42 k. Reserved for future codification purposes.
- 43 l. Reserved for future codification purposes.

1 m. Semiconductor manufacturing. Semiconductor manufacturing
2 means development and production of semiconductor material,
3 devices, or components.

4 (4) Forfeiture. – If the owner of an eligible facility does not make the
5 required minimum investment within five years after the first refund
6 under this subsection with respect to the facility, the facility loses its
7 eligibility and the owner forfeits all refunds already received under this
8 subsection. Upon forfeiture, the owner is liable for tax under this
9 Article equal to the amount of all past taxes refunded under this
10 subsection, plus interest at the rate established in G.S. 105-241.1(i),
11 computed from the date each refund was issued. The tax and interest
12 are due 30 days after the date of the forfeiture. A person that fails to
13 pay the tax and interest is subject to the penalties provided in
14 G.S. 105-236.

15 (5) Sunset. This subsection is repealed for sales made on or after January
16 1, ~~2010~~2013."

17 **SECTION 15.** Section 11 of this act becomes effective July 1, 2006. The
18 remainder of this act is effective when it becomes law.