

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 2744*
Committee Substitute Favorable 6/27/06
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Short Title: Economic Development Program Modifications.

(Public)

Sponsors:

Referred to:

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:

PART I. JDIG CHANGES

SECTION 1.1. 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 is 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.

- 1 (5a) Enterprise tier. – The classification assigned to an area pursuant to
2 G.S. 105-129.3.
- 3 (6) Full-time employee. – A person who is employed for consideration for
4 at least 35 hours a week, whose wages are subject to withholding
5 under Article 4A of Chapter 105 of the General Statutes, and who is
6 determined by the Committee to be employed in a permanent position
7 according to criteria it develops in consultation with the Attorney
8 General. The term does not include any person who works as an
9 independent contractor or on a consulting basis for the business.
- 10 (7) New employee. – A full-time employee who represents a net increase
11 in the number of the business's employees statewide. ~~The term~~
12 ~~includes an employee who previously filled an eligible position who is~~
13 ~~rehired or called back from a layoff that occurs during or following the~~
14 ~~base years to a vacant position previously held by that employee or to~~
15 ~~a new position established during or following the base years.~~
- 16 (8) Overdue tax debt. – Defined in G.S. 105-243.1.
- 17 (9) Related member. – Defined in G.S. 105-130.7A.
- 18 (10) Withholdings. – The amount withheld by a business from the wages of
19 employees in eligible positions under Article 4A of Chapter 105 of the
20 General Statutes."

21 **SECTION 1.2.** G.S. 143B-437.52 reads as rewritten:

22 **"§ 143B-437.52. Job Development Investment Grant Program.**

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

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

1 (5) The total benefits of the project to the State outweigh its costs and
2 render the grant appropriate for the project.

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

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

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

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

22 (2) ~~The designation agreement~~ contains terms to ensure that the business
23 does not create eligible positions by transferring or shifting to the
24 project existing positions from another project of the business or a
25 related member of the business."

26 **SECTION 1.3.** G.S. 143B-437.53(b) reads as rewritten:

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

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

39 **SECTION 1.4.** G.S. 143B-437.55 reads as rewritten:

40 "**§ 143B-437.55. Applications; fees; reports; study.**

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

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

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

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

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

1 apportioned to the related members in a manner determined by the business. In order for
2 an agreement to be executed, each related member included in the application must sign
3 the agreement and agree to abide by its terms.

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

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

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

1 (11) A listing of all businesses making an application under this Part and an
2 explanation of whether each business ultimately located the project in
3 this State regardless of whether the business was awarded a grant for
4 the project under this Part.

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

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

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

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

23 **SECTION 1.5.** G.S. 143B-437.56 reads as rewritten:

24 **"§ 143B-437.56. Calculation of minimum and maximum grants; factors**
25 **considered.**

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

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

34 (2) The expected duration of those positions.

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

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

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

40 (6) Whether the project utilizes existing infrastructure and resources in the
41 community.

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

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

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

3 (b) The term of the grant shall not exceed 12 years starting with the first year a
4 grant payment is made. The first grant payment must be made within six years after the
5 date on which the grant was awarded. The number of years in the base period for which
6 grant payments may be made shall not exceed five years.

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

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

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

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

26 **SECTION 1.6.** G.S. 143B-437.57(a) reads as rewritten:

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

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

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

- 1 (20) A provision describing the manner in which the amount of a grant will
2 be measured and administered to ensure compliance with the
3 provisions of G.S. 143B-437.52(c).
- 4 (21) A provision stating that any recapture of a grant and any amendment to
5 an agreement reducing the amount of the grant or the term of the
6 agreement must, at a minimum, be proportional to the failure to
7 comply measured relative to the condition or criterion with respect to
8 which the failure occurred.
- 9 (22) A provision stating that any disputes over interpretation of the
10 agreement shall be submitted to binding arbitration.
- 11 (23) A provision stating that the amount of a grant associated with any
12 specific eligible ~~position-position~~, including any amount transferred to
13 the Utility Account pursuant to G.S. 143B-437.61, may not exceed six
14 thousand five hundred dollars (\$6,500) in any year.
- 15 (24) A provision stating that the business agrees to submit to an audit at any
16 time that the Committee requires one.
- 17 (25) A provision encouraging the business to contract with small businesses
18 headquartered in the State for goods and services."

19 **SECTION 1.7.** G.S. 143B-437.58 reads as rewritten:

20 **"§ 143B-437.58. Grant recipient to submit records.**

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

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

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

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

5 **SECTION 1.8.** G.S. 143B-437.59 reads as rewritten:

6 **"§ 143B-437.59. Failure to comply with agreement.**

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

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

19 (1) If the business is still within the base period established by the
20 Committee, the Committee shall withhold the grant payment for any
21 consecutive year remaining in the base period in which the business
22 fails to comply with any condition of the agreement, and the
23 Committee may extend the base period for up to 24 additional months.
24 Under no circumstances may the Committee extend the base period by
25 more than a total of 24 months. In no event shall the term of the grant
26 be extended beyond the date set by the Committee at the time the
27 Committee awarded the grant.

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

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

37 **SECTION 1.9.** G.S. 143B-437.60 reads as rewritten:

38 **"§ 143B-437.60. Disbursement of grant.**

39 A business may not receive an annual disbursement of a grant if, at the time of
40 disbursement, the business has received a notice of an overdue tax debt and that overdue
41 tax debt has not been satisfied or otherwise resolved. A business may receive an annual
42 disbursement of a grant only after the Committee has certified ~~to the State Controller~~
43 that there are no outstanding overdue tax debts and that the business has met the terms
44 and conditions of the agreement. No amount shall be disbursed to a business as a grant

1 under this Part in any year until the Secretary of Revenue has certified to the Committee
2 (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of
3 withholdings received in that year by the Department of Revenue from the business. A
4 business that has met the terms of the agreement shall make an annual certification of
5 this to the Committee. The Committee shall require the business to provide any
6 necessary evidence of compliance to verify this information and certify to the State
7 ~~Controller~~ that the terms of the agreement have been met. The Committee shall ~~further~~
8 certify ~~to the State Controller~~ the grant amount ~~of a grant~~ for which the business is
9 eligible under the agreement and the grant amount ~~of a grant~~ for which the business
10 would be eligible under the agreement without regard to G.S. 143B-437.56(d). The
11 ~~State Controller~~ Department of Commerce shall remit a check to the business in the
12 amount of the certified grant amount within 90 days of receiving the certification of the
13 Committee."

14 **SECTION 1.10.** G.S. 143B-437.61 reads as rewritten:

15 "**§ 143B-437.61. Transfer to Industrial Development Fund.**

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

22 **SECTION 1.11.** G.S. 143B-437.62 reads as rewritten:

23 "**§ 143B-437.62. Expiration.**

24 The authority of the Committee to enter into new agreements expires January 1,
25 ~~2008~~ 2010."

26 **SECTION 1.13.** The Department of Commerce shall conduct a
27 comprehensive, systematic study of the Job Development Investment Grant Program.
28 The study shall be completed and submitted to the Chairs of the House of
29 Representatives and Senate Finance Committees and the House of Representatives and
30 Senate Appropriations Committees no later than February 1, 2007. The study shall
31 include an examination of the following:

- 32 (1) The costs of the program on an aggregate basis, an enterprise tier area
33 basis, and a project basis. This study shall include an examination of
34 the amount spent per job on an aggregate basis, an enterprise tier area
35 basis, and a project basis.
- 36 (2) The costs of the program in relation to other State economic
37 development incentive programs.
- 38 (3) The costs of the program in relation to economic development
39 programs located in nearby states and other states with which the State
40 frequently competes for jobs.
- 41 (4) The extent to which the program has been utilized in geographically
42 diverse parts of the State and the extent to which the program has been
43 utilized in urban, suburban, and rural settings.

44 **SECTION 1.14.** This part is effective when it becomes law.

PART II. BILL LEE ACT CHANGES

SECTION 2.1. G.S. 105-129.2A(a2) reads as rewritten:

"(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, ~~2006,2008~~, this Article is repealed effective for business activities that occur on or after January 1, 2010."

SECTION 2.2. This part is effective when it becomes law.

PART III. SALES TAX REFUND CHANGES

SECTION 3.1. G.S. 105-164.14(j) 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.

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

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 facility is eligible under this subsection if it meets ~~both~~ all 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 area as defined in G.S. 105-129.3, 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,~~ For the purpose of this subsection, the term 'facility' has the same meaning as under G.S. 105-129.61.

- 1 c. If the facility is primarily engaged in financial services,
2 securities operations, and related systems development, it
3 satisfies all of the following conditions:
- 4 1. It is owned and operated by the business for which the
5 services are provided or by a related entity of that
6 business as defined in G.S. 105-130.7A.
- 7 2. No part of it is leased to a third-party tenant that is not a
8 related entity of the business.
- 9 (3) Industries. – This subsection applies to the following industries:
- 10 a. Air courier services. Air courier services has the same meaning
11 as in G.S. 105-129.2.
- 12 b. Aircraft manufacturing. Aircraft manufacturing means
13 manufacturing or assembling complete aircraft.
- 14 c. Bioprocessing. Bioprocessing means biomanufacturing or
15 processing that includes the culture of cells to make commercial
16 products, the purification of biomolecules from cells, or the use
17 of these molecules in manufacturing.
- 18 d. Computer manufacturing. Computer manufacturing means
19 manufacturing or assembling electronic computers, such as
20 personal computers, workstations, laptops, and computer
21 servers. The term includes the assembly or integration of
22 processors, coprocessors, memory, storage, and input/output
23 devices into a user-programmable final product. The term
24 includes manufacturing or assembling computer peripheral
25 equipment, such as storage devices, printers, monitors,
26 input/output devices, and terminals only if the manufacture or
27 assembly of this peripheral equipment occurs at a facility or
28 campus at which the taxpayer also manufactures or assembles
29 electronic computers.
- 30 e. Reserved for future codification purposes.
- 31 f. Financial services, securities operations, and related systems
32 development. Financial services, securities operations, and
33 related systems development means one or both of the
34 following functions:
- 35 1. Performing analysis, operations, trading, or sales
36 functions for investment banking, securities dealing and
37 brokering, securities trading and underwriting,
38 investment portfolio/mutual fund management,
39 retirement services, or employee benefit administration.
- 40 2. Developing information technology systems and
41 applications, managing and enhancing operating
42 applications and databases, or providing, operating, and
43 maintaining telecommunications networks and
44 distributed and mainframe computing resources for

- 1 investment banking, securities dealing and brokering,
2 securities trading and underwriting, investment
3 portfolio/mutual fund management, retirement services,
4 or employee benefit administration.
- 5 g. Motor vehicle manufacturing. Motor vehicle manufacturing
6 means any of the following:
- 7 1. Manufacturing complete automobiles and light-duty
8 motor vehicles.
- 9 2. Manufacturing heavy-duty truck chassis and assembling
10 complete heavy-duty trucks, buses, heavy-duty motor
11 homes, and other special purpose heavy-duty motor
12 vehicles for highway use.
- 13 3. Manufacturing complete military armored vehicles,
14 nonarmored military universal carriers, combat tanks,
15 and specialized components for combat tanks.
- 16 h. Reserved for future codification purposes.
- 17 i. Reserved for future codification purposes.
- 18 j. Pharmaceutical and medicine manufacturing and distribution of
19 pharmaceuticals and medicines. Pharmaceutical and medicine
20 manufacturing means any of the following:
- 21 1. Manufacturing biological and medicinal products. For
22 the purpose of this sub-subdivision, a biological product
23 is a preparation that is synthesized from living organisms
24 or their products and used medically as a diagnostic,
25 preventive, or therapeutic agent. For the purpose of this
26 sub-subdivision, bacteria, viruses, and their parts are
27 considered living organisms.
- 28 2. Processing botanical drugs and herbs by grading,
29 grinding, and milling.
- 30 3. Isolating active medicinal principals from botanical
31 drugs and herbs.
- 32 4. Manufacturing pharmaceutical products intended for
33 internal and external consumption in forms such as
34 ampoules, tablets, capsules, vials, ointments, powders,
35 solutions, and suspensions.
- 36 k. Reserved for future codification purposes.
- 37 l. Reserved for future codification purposes.
- 38 m. Semiconductor manufacturing. Semiconductor manufacturing
39 means development and production of semiconductor material,
40 devices, or components.
- 41 (4) Forfeiture. – If the owner of an eligible facility does not make the
42 required minimum investment within five years after the first refund
43 under this subsection with respect to the facility, the facility loses its
44 eligibility and the owner forfeits all refunds already received under this

1 subsection. Upon forfeiture, the owner is liable for tax under this
2 Article equal to the amount of all past taxes refunded under this
3 subsection, plus interest at the rate established in G.S. 105-241.1(i),
4 computed from the date each refund was issued. The tax and interest
5 are due 30 days after the date of the forfeiture. A person that fails to
6 pay the tax and interest is subject to the penalties provided in
7 G.S. 105-236.

8 (5) Sunset. This subsection is repealed for sales made on or after January
9 1, ~~2010~~2013."

10 **SECTION 3.2.** The changes made to G.S. 105-164.14(j)(2)b. by Section 3.1
11 of this act become effective January 1, 2005, and apply to sales made on or after that
12 date. The remainder of this part becomes effective July 1, 2006, and applies to
13 purchases made on or after that date.

14
15 **PART IV. EFFECTIVE DATE**

16 **SECTION 4.** Except as otherwise provided, this act is effective when it
17 becomes law.