

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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**HOUSE BILL 1973
Committee Substitute Favorable 6/10/10**

Short Title: Extend Various Economic Incentives Sunsets.

(Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE COMPETITIVENESS OF THE CREDIT FOR PRODUCTION COMPANIES; TO ENACT TAX INCENTIVES FOR INTERACTIVE DIGITAL MEDIA COMPANIES; TO EXPAND THE TYPES OF DATACENTERS ELIGIBLE FOR PREFERENTIAL TAX TREATMENT; TO INCREASE THE NUMBER OF INDUSTRIES ELIGIBLE FOR SALES TAX REFUNDS ON BUILDING MATERIALS FOR MAJOR INDUSTRIAL FACILITIES; TO EXTEND AND EXPAND TAX CREDITS FOR GROWING BUSINESSES; TO EXTEND SUNSETS ON EXPIRING ECONOMIC DEVELOPMENT TAX BENEFITS; TO PROVIDE ECONOMIC DEVELOPMENT BENEFITS FOR PROJECTS LOCATED IN ECO-PARKS; TO PROVIDE A SALES TAX EXEMPTION FOR CERTAIN WOOD CHIPPERS; AND TO MAKE CHANGES TO PURCHASING AND CONTRACT LAWS.

The General Assembly of North Carolina enacts:

PART I: EXPAND TAX CREDITS FOR PRODUCTION COMPANIES

SECTION 1.1. G.S. 105-130.47 reads as rewritten:

"§ 105-130.47. Credit for qualifying expenses of a production company.

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

(1) ~~Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars (\$1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.~~

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the following amounts spent in this State by a production company in connection with a ~~production, less the amount in excess of one million dollars (\$1,000,000) paid to a highly compensated individual:~~production:



- 1 a. Goods and services leased or purchased. For goods with a purchase
2 price of twenty-five thousand dollars (\$25,000) or more, the amount
3 included in qualifying expenses is the purchase price less the fair
4 market value of the good at the time the production is completed.
- 5 b. Compensation and wages ~~on which withholding payments are~~
6 ~~remitted to the Department of Revenue under Article 4A of this~~
7 ~~Chapter for services performed in this State.~~
- 8 c. The cost of production-related insurance coverage obtained on the
9 production. Expenses for insurance coverage purchased from a
10 related member are not qualifying expenses.
- 11 d. Employee fringe contributions, including health, pension, and
12 welfare contributions.
- 13 e. Per diems, stipends, and living allowances paid for work being
14 performed in this State.

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

16 (b) Credit. – A taxpayer that is a production company and has qualifying expenses of at
17 least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a
18 credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~ twenty-five percent
19 (25%) of the production company's qualifying expenses. For the purposes of this section, in the
20 case of an episodic television series, an entire season of episodes is one production. The credit
21 is computed based on all of the taxpayer's qualifying expenses incurred with respect to the
22 production, not just the qualifying expenses incurred during the taxable year.

23 ~~(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this~~
24 ~~section, a taxpayer that is a production company and has qualifying expenses of at least two~~
25 ~~hundred fifty thousand dollars (\$250,000) with respect to a production may elect to take a~~
26 ~~credit against the taxes imposed by this Part equal to twenty five percent (25%) of the~~
27 ~~production company's qualifying expenses less the difference between the amount of tax paid~~
28 ~~on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that~~
29 ~~would have been due had the purchases been subject to the sales or use tax at the combined~~
30 ~~general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's~~
31 ~~qualifying expenses incurred with respect to the production, not just the qualifying expenses~~
32 ~~incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed~~
33 ~~under this subsection or the one allowed under subsection (b) of this section at the time the~~
34 ~~taxpayer files the return on which the credit is claimed. This election is binding.~~

35 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
36 G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does
37 not distribute the credit among any of its owners. The pass-through entity is considered the
38 taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a
39 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a
40 credit allowed under this section does not affect the entity's payment of tax on behalf of its
41 owners.

42 (d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for
43 the taxable year in which the production activities are completed. The return must state the
44 name of the production, a description of the production, and a detailed accounting of the
45 qualifying expenses with respect to which a credit is claimed.

46 (e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax
47 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the
48 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
49 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this
50 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable
51 credits are subtracted before refundable credits.

1 (f) Limitations. – The amount of credit allowed under this section with respect to a
2 production that is a feature film may not exceed ~~seven-twenty million five hundred thousand~~
3 ~~dollars (\$7,500,000).~~(\$20,000,000). No credit is allowed under this section for any production
4 that satisfies one of the following conditions:

- 5 (1) It is political advertising.
- 6 (2) It is a television production of a news program or live sporting event.
- 7 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 8 (4) It is a radio production.

9 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and
10 make available for inspection any information or records required by the Secretary of Revenue.
11 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The
12 Secretary may consult with the North Carolina Film Office of the Department of Commerce
13 and the regional film commissions in order to determine the amount of qualifying expenses.

14 (h) Report. – The Department of Revenue must publish by May 1 of each year the
15 following information, itemized by taxpayer for the 12-month period ending the preceding
16 December 31:

- 17 (1) The location of sites used in a production for which a credit was taken.
- 18 (2) The qualifying expenses for which a credit was taken, classified by whether
19 the expenses were for goods, services, or compensation paid by the
20 production company.
- 21 (3) The number of people employed in the State with respect to credits taken.
- 22 (4) The total cost to the General Fund of the credits taken.

23 (i) Repealed by Session Laws 2006-220, s. 2, effective for taxable years beginning on
24 or after January 1, 2007.

25 (j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the
26 Division of Tourism, Film, and Sports Development in the Department of Commerce of the
27 taxpayer's intent to claim the production tax credit. The notification must include the title of the
28 production, the name of the production company, a financial contact for the production
29 company, the proposed dates on which the production company plans to begin filming the
30 production, and any other information required by the Division. For productions that have
31 production credits, a taxpayer claiming a credit under this section must acknowledge in the
32 production credits both the North Carolina Film Office and the regional film office responsible
33 for the geographic area in which the filming of the production occurred.

34 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
35 January 1, 2014."

36 **SECTION 1.2.** G.S. 105-151.29 reads as rewritten:

37 "**§ 105-151.29. Credit for qualifying expenses of a production company.**

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

- 39 (1) ~~Highly compensated individual. – An individual who directly or indirectly~~
40 ~~receives compensation in excess of one million dollars (\$1,000,000) for~~
41 ~~personal services with respect to a single production. An individual receives~~
42 ~~compensation indirectly when a production company pays a personal service~~
43 ~~company or an employee leasing company that pays the individual.~~
- 44 (2) Live sporting event. – A scheduled sporting competition, game, or race that
45 is not originated by a production company, but originated solely by an
46 amateur, collegiate, or professional organization, institution, or association
47 for live or tape-delayed television or satellite broadcast. A live sporting
48 event does not include commercial advertising, an episodic television series,
49 a television pilot, a music video, a motion picture, or a documentary
50 production in which sporting events are presented through archived
51 historical footage or similar footage taken at least 30 days before it is used.

- 1 (3) Production company. – Defined in G.S. 105-164.3.
- 2 (4) Qualifying expenses. – The sum of the following amounts spent in this State
- 3 by a production company in connection with a production, ~~less the amount~~
- 4 ~~paid in excess of one million dollars (\$1,000,000) to a highly compensated~~
- 5 ~~individual:~~production:
- 6 a. Goods and services leased or purchased. For goods with a purchase
- 7 price of twenty-five thousand dollars (\$25,000) or more, the amount
- 8 included in qualifying expenses is the purchase price less the fair
- 9 market value of the good at the time the production is completed.
- 10 b. Compensation and wages ~~on which withholding payments are~~
- 11 ~~remitted to the Department of Revenue under Article 4A of this~~
- 12 ~~Chapter.~~for services performed in this State.
- 13 c. The cost of production-related insurance coverage obtained on the
- 14 production. Expenses for insurance coverage purchased from a
- 15 related member are not qualifying expenses.
- 16 d. Employee fringe contributions, including health, pension, and
- 17 welfare contributions.
- 18 e. Per diems, stipends, and living allowances paid for work being
- 19 performed in this State.
- 20 (5) Related member. – Defined in G.S. 105-130.7A.
- 21 (b) Credit. – A taxpayer that is a production company and has qualifying expenses of at
- 22 least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a
- 23 credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~twenty-five percent
- 24 (25%) of the production company's qualifying expenses. For the purposes of this section, in the
- 25 case of an episodic television series, an entire season of episodes is one production. The credit
- 26 is computed based on all of the taxpayer's qualifying expenses incurred with respect to the
- 27 production, not just the qualifying expenses incurred during the taxable year.
- 28 ~~(b1) Alternative Credit. In lieu of the credit allowed under subsection (b) of this~~
- 29 ~~section, a taxpayer that is a production company and has qualifying expenses of at least two~~
- 30 ~~hundred fifty thousand dollars (\$250,000) with respect to a production may elect to take a~~
- 31 ~~credit against the taxes imposed by this Part equal to twenty five percent (25%) of the~~
- 32 ~~production company's qualifying expenses less the difference between the amount of tax paid~~
- 33 ~~on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that~~
- 34 ~~would have been due had the purchases been subject to the sales or use tax at the combined~~
- 35 ~~general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's~~
- 36 ~~qualifying expenses incurred with respect to the production, not just the qualifying expenses~~
- 37 ~~incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed~~
- 38 ~~under this subsection or the one allowed under subsection (b) of this section at the time the~~
- 39 ~~taxpayer files the return on which the credit is claimed. This election is binding.~~
- 40 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
- 41 G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does
- 42 not distribute the credit among any of its owners. The pass-through entity is considered the
- 43 taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a
- 44 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a
- 45 credit allowed under this section does not affect the entity's payment of tax on behalf of its
- 46 owners.
- 47 (d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for
- 48 the taxable year in which the production activities are completed. The return must state the
- 49 name of the production, a description of the production, and a detailed accounting of the
- 50 qualifying expenses with respect to which a credit is claimed.

1 (e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax
2 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the
3 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
4 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this
5 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable
6 credits are subtracted before refundable credits.

7 (f) Limitations. – The amount of credit allowed under this section with respect to a
8 production that is a feature film may not exceed ~~seven-twenty million five hundred thousand~~
9 dollars ~~(\$7,500,000).~~(\$20,000,000). No credit is allowed under this section for any production
10 that satisfies one of the following conditions:

- 11 (1) It is political advertising.
- 12 (2) It is a television production of a news program or live sporting event.
- 13 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 14 (4) It is a radio production.

15 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and
16 make available for inspection any information or records required by the Secretary of Revenue.
17 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The
18 Secretary may consult with the North Carolina Film Office of the Department of Commerce
19 and the regional film commissions in order to determine the amount of qualifying expenses.

20 (h) Report. – The Department of Revenue must publish by May 1 of each year the
21 following information, itemized by taxpayer for the 12-month period ending the preceding
22 December 31:

- 23 (1) The location of sites used in a production for which a credit was taken.
- 24 (2) The qualifying expenses for which a credit was taken, classified by whether
25 the expenses were for goods, services, or compensation paid by the
26 production company.
- 27 (3) The number of people employed in the State with respect to credits taken.
- 28 (4) The total cost to the General Fund of the credits taken.

29 (i) Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on
30 and after January 1, 2007.

31 (j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the
32 Division of Tourism, Film, and Sports Development in the Department of Commerce of the
33 taxpayer's intent to claim the production tax credit. The notification must include the title of the
34 production, the name of the production company, a financial contact for the production
35 company, the proposed dates on which the production company plans to begin filming the
36 production, and any other information required by the Division. For productions that have
37 production credits, a taxpayer claiming a credit under this section must acknowledge in the
38 production credits both the North Carolina Film Office and the regional film office responsible
39 for the geographic area in which the filming of the production occurred.

40 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
41 January 1, 2014."

42 **SECTION 1.3.** The General Assembly finds that cameras, film, and props or
43 building materials used in the construction of sets which are used in the actual filming of
44 movies for sale, lease, or rental and chemicals and equipment used to develop and edit film
45 which is used to produce release prints are not taxable under Article 5F of Chapter 105 of the
46 General Statutes and are therefore subject to sales and use tax under Article 5 of Chapter 105 of
47 the General Statutes unless another exemption applies.

48 **SECTION 1.4.** Section 1.3 of this act becomes effective July 1, 2010. The
49 remainder of this part is effective for taxable years beginning on or after January 1, 2010.

50

1 **PART II: CREATE TAX CREDITS FOR PRODUCERS OF INTERACTIVE DIGITAL**
2 **MEDIA**

3
4 **SECTION 2.1.** Chapter 105 of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 3L.
7 "Interactive Digital Media.

8 **"§ 105-129.105. Definitions.**

9 The following definitions apply in this Article:

- 10 (1) Company headquarters. – Defined in G.S. 105-129.81.
- 11 (2) Full-time job. – A position that requires at least 1,600 hours of work per year
12 and is intended to be held by one employee during the entire year. A
13 full-time employee is an employee who holds a full-time job.
- 14 (3) Gold master. – The version of interactive digital media released to a
15 manufacturer.
- 16 (4) Interactive digital media. – Products that are intended for commercial use or
17 distribution and that satisfy each of the conditions listed in this subdivision.
18 The term also includes interactive digital platforms and engines. The term
19 does not include products that are interpersonal communications services
20 such as videoconferencing, wireless communications, text-based channels,
21 or chat rooms.
22 a. The product is produced for distribution on electronic media,
23 including file downloads over the Internet.
24 b. The product contains a computer-controlled virtual universe with
25 which users may interact in order to achieve a goal.
26 c. The product contains an appreciable amount of at least three of the
27 five following types of data: text, sound, fixed images, animated
28 images, and 3D geometry.
- 29 (5) Qualifying expenses. – The sum of the total amount spent in this State for
30 the following by a producer of interactive digital media in connection with
31 the production of interactive digital media:
32 a. Production property purchased or leased.
33 b. Compensation and wages for services performed in this State.
34 c. Employee fringe contributions, including health, pension, and
35 welfare contributions.
36 d. Per diems, stipends, and living allowances paid for work being
37 performed in this State.
- 38 (6) Production. – A project to create interactive digital media from the time of
39 preproduction to the creation of a gold master or the completion of the
40 interactive digital media. The development of an interactive digital platform
41 or engine is a separate, single production.
- 42 (7) Production property. – Tangible personal property and intangible property
43 that is directly used in the production of interactive digital media. The term
44 includes such items as software, computer code, image files, music files,
45 scripts and plays, concept mock-ups, software tools, and testing procedures.

46 **"§ 105-129.106. Administration; limitations; sunset.**

47 (a) Minimum Standards. – A taxpayer is eligible for the credits allowed in this Article if
48 it satisfies the requirements of G.S. 105-129.83(c), (d), (e), (f), and (g) relating to wage
49 standard, health insurance, environmental impact, safety and health programs, and overdue tax
50 debts, respectively.

1 **(b) Allocation.** – A credit allowed under this Article may be taken against the franchise
2 tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter.
3 The taxpayer must elect the tax against which a credit will be claimed when filing the return on
4 which the credit is first claimed. This election is binding. Any carryforwards of a credit must be
5 claimed against the same tax.

6 **(c) Cap.** – A credit allowed under this Article may not exceed fifty percent (50%) of the
7 amount of tax against which it is claimed for the taxable year, reduced by the sum of all other
8 credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This
9 limitation applies to the cumulative amount of credit, including carryforwards, claimed by the
10 taxpayer under this Article against the tax for the taxable year. Any unused portion of a credit
11 allowed in this Article may be carried forward for the succeeding eight years.

12 **(d) Limitations.** – A taxpayer that claims or has claimed a credit under this Article with
13 respect to a facility is not eligible to receive a grant under Part 2G of Article 10 of Chapter
14 143B of the General Statutes (Job Development Investment Grant Program) or Part 2H of
15 Article 10 of Chapter 143B of the General Statutes (One North Carolina Fund).

16 **(e) Sunset.** – This Article is repealed for taxable years beginning on or after January 1,
17 2014.

18 **"§ 105-129.108. Substantiation.**

19 To claim a credit allowed by this Article, the taxpayer must provide any information
20 required by the Secretary. Every taxpayer claiming a credit under this Article must maintain
21 and make available for inspection by the Secretary any records the Secretary considers
22 necessary to determine and verify the amount of the credit to which the taxpayer is entitled.
23 The burden of proving eligibility for a credit and the amount of the credit rests upon the
24 taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or
25 to make them available for inspection.

26 **"§ 105-129.109. Reports.**

27 The Department must publish by May 1 of each year the following information, itemized
28 by credit and taxpayer, for the 12-month period ending the preceding December 31:

- 29 (1) The qualifying expenses for which a credit was claimed, classified by
30 whether the expenses were production property or compensation or wages.
- 31 (2) The number of people employed in the State with respect to credits claimed.
- 32 (3) The total cost to the General Fund of the credits claimed.

33 **"§ 105-129.110. Production credit.**

34 **(a) Credit.** – A taxpayer that has qualifying expenses of at least one hundred thousand
35 dollars (\$100,000) with respect to an interactive digital media production is allowed a credit
36 equal to fifteen percent (15%) of all qualifying expenses of the taxpayer for which the taxpayer
37 has not already claimed a credit under this Article. The credit is computed based on all of the
38 taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying
39 expenses incurred during the taxable year.

40 **(b) Limitations.** – The amount of credit allowed under this section with respect to a
41 production may not exceed seven million five hundred thousand dollars (\$7,500,000). No credit
42 is allowed under this section for any production that satisfies one of the following conditions:

- 43 (1) It is gambling or casino games.
- 44 (2) It is a project done for academic credit.
- 45 (3) It is a production that is developed internally by the taxpayer for internal use.
- 46 (4) It is political advertising.
- 47 (5) It contains material that is obscene, as defined in G.S. 14-190.1.
- 48 (6) It is an Internet site that is primarily static and primarily designed to provide
49 information about one or more persons, businesses, companies, or firms.

50 **(c) No Double Credit.** – A taxpayer that claims a credit under this section may not also
51 claim a credit under Article 3J of this Chapter with respect to jobs whose compensation or

wages are included in the calculation of the credit under this section or with respect to business property, the cost of which is included in the calculation of the credit under this section.

"§ 105-129.111. Headquarters credit.

(a) Eligibility. – A taxpayer that is primarily engaged in the production of interactive digital media is eligible for a credit under this section with respect to a company headquarters if the taxpayer creates at least 20 new full-time jobs at the company headquarters within a 24-month period and maintains those jobs for at least three years. A taxpayer that meets this job creation requirement is eligible for credits under this section with respect to jobs created during the three taxable years beginning with the year in which the 24-month period in which the job creation requirement is satisfied begins. A taxpayer that creates an additional 20 new full-time 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 20 new full-time 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. A job that is a transferred job, as defined in G.S. 105-129.87(e), is not a new job for purposes of this Article.

(b) Credit. – A taxpayer that satisfies the eligibility requirement of subsection (a) of this section and has qualifying expenditures related to the production of interactive digital media in this State during the taxable year is eligible for a credit for each new full-time job created at the company headquarters. The credit is equal to five thousand dollars (\$5,000) for each new full-time job. The entire credit is taken in the taxable year in which the job is created.

(c) Calculation. – The number of new jobs a taxpayer creates or maintains during the taxable year is determined by subtracting the average number of full-time jobs 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 jobs the taxpayer has in this State during the taxable year.

(d) Forfeiture. – A taxpayer forfeits a credit allowed under this section if the taxpayer fails to maintain the job for at least three years. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, 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.

(e) Limitations. – The maximum cumulative credit that may be claimed by a taxpayer under this section is five hundred thousand dollars (\$500,000).

(f) No Double Credit. – A taxpayer that claims a credit under this section may not also claim a job creation credit under Article 3J of this Chapter with respect to the same job."

SECTION 2.2. If House Bill 1880, 2009 General Assembly, becomes law, then G.S. 105-129.109, as enacted by this act, reads as rewritten:

"§ 105-129.109. Reports.

The Department ~~must publish by May 1 of each year~~ must include in the economic incentives report required by G.S. 105-256 the following information, itemized by credit and taxpayer, for the 12-month period ending the preceding December 31: taxpayer:

- (1) The qualifying expenses for which a credit was claimed, classified by whether the expenses were production property or compensation or wages.
- (2) The number of people employed in the State with respect to credits claimed.
- (3) The total cost to the General Fund of the credits claimed."

SECTION 2.3. This part is effective for taxable years beginning on or after January 1, 2011, and applies to productions commenced on or after that date.

1 **PART III: ENHANCE SALES TAX BENEFITS FOR DATACENTERS AND MAJOR**
2 **INDUSTRIAL FACILITIES**

3
4 **SECTION 3.1.** G.S. 105-164.3 reads as rewritten:

5 "The following definitions apply in this Article:

6 ...

7 (5c) Datacenter. – A facility that provides infrastructure for hosting or data
8 processing services and that has power and cooling systems that are created
9 and maintained to be concurrently maintainable and to include redundant
10 capacity components and multiple distribution paths serving the computer
11 equipment at the facility. Although the facility must have multiple
12 distribution paths serving the computer equipment, a single distribution path
13 may serve the computer equipment at any one time. The facility may be
14 comprised of a structure or series of structures located or to be located (i) on
15 a single parcel of land, (ii) on contiguous parcels of land that are commonly
16 owned or owned by affiliation with the operator of that facility, or (iii) on
17 noncontiguous parcels of land that are commonly owned or owned by
18 affiliation with the operator of that facility but only if the structures located
19 thereon are linked through fiber optic or similar connection and form part of
20 the same operating unit of a company. The following definitions apply in
21 this subdivision:

- 22 a. Concurrently maintainable. – Capable of having any capacity
23 component or distribution element serviced or repaired on a planned
24 basis without interrupting or impeding the performance of the
25 computer equipment.
- 26 b. Multiple distribution paths. – A series of distribution paths
27 configured to ensure that failure on one distribution path does not
28 interrupt or impede other distribution paths.
- 29 c. Redundant capacity components. – Components beyond those
30 required to support the computer equipment.

31 ...

32 (8e) Eligible Internet datacenter. – A datacenter that satisfies each of the
33 following conditions:

- 34 a. The facility is used primarily or is to be used primarily by a business
35 engaged in ~~"Internet service providers and Web search portals"~~
36 ~~industry 51811, as defined by NAICS.~~ one or more of the following:
- 37 1. Providing clients access to the Internet and related services.
38 Related services may include Web hosting, Web page
39 designing, and hardware or software consulting related to
40 Internet connectivity. The business may provide local,
41 regional, or national coverage for clients or provide backbone
42 services, other than telecommunications carriers, for other
43 Internet service providers. The business must have the
44 equipment and telecommunication network access required
45 for a point-of-presence on the Internet.
- 46 2. Publishing or communicating or both of one or more of
47 textual, audio, or video content of general or specific interest
48 to or within a Web-based community found on the Internet
49 exclusively and not in a traditional, non-Internet version.
- 50 3. Operating Web sites that use a search engine to generate and
51 maintain extensive databases of Internet addresses and

- 1 content in an easily searchable format. The business may
 2 provide additional Internet services, including e-mail,
 3 connections to other Web sites, auctions, news, or other
 4 content, or may serve as a home base for Internet users.
 5 b. ~~The facility is comprised of a structure or series of structures located~~
 6 ~~or to be located on a single parcel of land or on contiguous parcels of~~
 7 ~~land that are commonly owned or owned by affiliation with the~~
 8 ~~operator of that facility.~~
 9 c. The facility is located or to be located in a county that was
 10 designated, at the time of application for the written determination
 11 required under sub-subdivision d. of this subdivision, either an
 12 enterprise tier one, two, or three area or a development tier one or
 13 two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless
 14 of any subsequent change in county enterprise or development tier
 15 status.
 16 d. The Secretary of Commerce has made a written determination that at
 17 least two hundred fifty million dollars (\$250,000,000) in private
 18 funds has been or will be invested in real property or eligible
 19 business property, or a combination of both, at the facility within five
 20 years after the commencement of construction of the facility.

21"

22 **SECTION 3.2.** G.S. 105-164.14(j) reads as rewritten:

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

25 ...

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

28 ...

29 e. If the facility is primarily engaged in paper-from-pulp
 30 manufacturing, the owner of the facility creates at least 200
 31 additional jobs, and the business pays an average weekly wage at the
 32 facility equal to or greater than the average wage of the county. In
 33 making the wage calculation, the business must include any jobs that
 34 were filled for at least 1,600 hours during the calendar year.

35 (3) Industries. – This subsection applies to the following industries:

36 ...

37 i. Paper-from-pulp manufacturing. – Paper-from-pulp manufacturing
 38 means an industry primarily engaged in manufacturing or converting
 39 paper, other than newsprint or uncoated groundwood paper, from
 40 pulp or pulp products, or in converting purchased sanitary paper
 41 stock or wadding into sanitary paper products.

42 ...

43 o. Turbine and turbine generator set units manufacturing. – Turbine and
 44 turbine generator set units manufacturing means an industry
 45 primarily engaged in manufacturing turbines (except aircraft) or
 46 complete turbine generator set units, such as steam, hydraulic, gas,
 47 and wind.

48 (4) Forfeiture. – If the owner of an eligible facility does not make the required
 49 minimum investment within five years after the first refund under this
 50 subsection with respect to the facility or fails to maintain the minimum
 51 number of jobs created with respect to the facility, the facility loses its

1 eligibility and the owner forfeits all refunds already received under this
2 subsection. Upon forfeiture, the owner is liable for tax under this Article
3 equal to the amount of all past taxes refunded under this subsection, plus
4 interest at the rate established in G.S. 105-241.21, computed from the date
5 each refund was issued. The tax and interest are due 30 days after the date of
6 the forfeiture. A person that fails to pay the tax and interest is subject to the
7 penalties provided in G.S. 105-236.

8"

9 **SECTION 3.3.** G.S. 105-187.50(2) reads as rewritten:

10 **"§ 105-187.50. Definitions.**

11 The definitions in G.S. 105-164.3 apply in this Article. In addition, the following
12 definitions apply in this Article:

- 13 (1) Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.
14 (2) Eligible datacenter. – A datacenter that satisfies each of the following
15 conditions:
16 a. Repealed by Session Laws 2009-451, s. 27A.3(v), effective August
17 7, 2009.
18 b. The Secretary of Commerce has made a written determination of the
19 following:
20 1. For ~~facilities~~datacenters that are located entirely in a
21 development tier one area at the time of application for the
22 written determination, that at least one hundred fifty million
23 dollars (\$150,000,000) in private funds has been or will be
24 invested in improvements to real property or installed
25 datacenter machinery and equipment, or a combination
26 thereof, within five years of the date on which the first
27 qualifying improvement is made, regardless of any
28 subsequent change in county development tier status.
29 2. For ~~facilities~~datacenters that are not located entirely in a
30 development tier one area at the time of application for the
31 written determination, that at least three hundred million
32 dollars (\$300,000,000) in private funds has been or will be
33 invested in improvements to real property or installed
34 datacenter machinery and equipment, or a combination
35 thereof, within five years of the date on which the first
36 qualifying improvement is made, regardless of any
37 subsequent change in county development tier status.
38 c. The ~~facility~~datacenter satisfies the wage standard and health
39 insurance requirements of G.S. 105-129.83."

40 **SECTION 3.4.** G.S. 105-187.51C(d) reads as rewritten:

41 "(d) Sunset. – This section expires for sales occurring on or after July 1, ~~2013~~2015."

42 **SECTION 3.5.** This part becomes effective July 1, 2010, and applies to sales and
43 purchases made on or after that date.
44

45 **PART IV: EXTEND AND REVISE TAX CREDITS FOR GROWING BUSINESSES**

46 **SECTION 4.1.** G.S. 105-129.82(a) reads as rewritten:

47 "(a) Sunset. – This Article is repealed effective for business activities that occur on or
48 after January 1, ~~2011~~2014."
49

50 **SECTION 4.2.** G.S. 143B-437.010(a) reads as rewritten:

1 "(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area that meets all
2 of the following conditions:

- 3 (1) It is comprised of one or more contiguous census tracts, census block
4 groups, or both, in the most recent federal decennial census.
5 (2) All of the area is located in whole within a county that has no municipality
6 with a population in excess of 10,000.
7 (3) Every census tract and census block group that comprises the area either has
8 more than twenty percent (20%) of its population below the poverty level or
9 is adjacent to another census tract or census block group in the zone that has
10 more than twenty percent (20%) of its population below the poverty level
11 according to the most recent federal decennial census.
12 (4) The zone as a whole has more than twenty percent (20%) of its population
13 below the poverty level according to the most recent federal decennial
14 census."

15 **SECTION 4.3.** G.S. 105-129.81 is amended by adding a new subdivision to read:

16 **"(9a) Environmental disqualifying event. – Any of the following occurrences:**

- 17 a. During the tax year in which the activity occurred for which a credit
18 is being claimed, a civil penalty was assessed against the taxpayer by
19 the Department of Environment and Natural Resources for a failure
20 to abate or remediate a violation of any program administered by the
21 Department.
22 b. During the tax year in which the activity occurred for which a credit
23 is being claimed or in the prior two tax years, any of the following:
24 1. A finding was made by the Department of Environment and
25 Natural Resources that the taxpayer knowingly and willfully,
26 as defined in G.S. 143-215.6B, including all limitations
27 thereto, committed a violation of any program implemented
28 by an agency of the Department.
29 2. An assessment for damages to fish or wildlife pursuant to
30 G.S. 143-215.3(a)(7) was made against the taxpayer.
31 3. A judicial order for injunctive relief was issued against the
32 taxpayer in connection with a violation of any program
33 implemented by an agency of the Department of Environment
34 and Natural Resources.
35 c. During the tax year in which the activity occurred for which the
36 credit is being claimed or in the prior four tax years, a criminal
37 penalty was imposed on the taxpayer in connection with a violation
38 of any program implemented by an agency of the Department of
39 Environment and Natural Resources."

40 **SECTION 4.4.** G.S. 105-129.83(e) and (i) read as rewritten:

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

1 years.there has not been a final determination unfavorable to the taxpayer with respect to an
2 environmental disqualifying event. For the purposes of this section, a 'final determination
3 unfavorable to the taxpayer' occurs when there is no further opportunity for the taxpayer to seek
4 administrative or judicial appeal, review, certiorari, or rehearing of the environmental
5 disqualifying event and the disqualifying event has not been reversed or withdrawn. No later
6 than January 31 of each year, the Secretary of Environment and Natural Resources shall
7 provide an annual report to the Department listing all environmental disqualifying events for
8 which a final determination unfavorable to the taxpayer was made in the prior calendar year
9 and shall provide the name of the taxpayer involved and the date that the disqualifying event
10 occurred.

11 ...

12 (i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer
13 was not eligible for the credit for the calendar year in which the taxpayer engaged in the
14 activity for which the credit was claimed. A taxpayer forfeits a credit previously allowed under
15 this Article if a final determination unfavorable to the taxpayer with respect to an
16 environmental disqualifying event is made that is applicable to the year in which the activity
17 occurred for which the credit was claimed. In addition, a taxpayer forfeits a credit for
18 investment in real property under G.S. 105-129.89 if the taxpayer fails to timely create the
19 number of required new jobs or to timely make the required level of investment under
20 G.S. 105-129.89(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes
21 avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21,
22 computed from the date the taxes would have been due if the credit had not been allowed. The
23 past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails
24 to pay the past taxes and interest by the due date is subject to the penalties provided in
25 G.S. 105-236."

26 **SECTION 4.5.** G.S. 143B-437.02(g) reads as rewritten:

27 "(g) Environmental Impact. – A business is eligible for consideration for site
28 development under this part only if the business certifies that, at the time of the application, the
29 business ~~has no pending administrative, civil, or criminal enforcement action based on alleged~~
30 ~~significant violations of any program implemented by an agency of the Department of~~
31 ~~Environment and Natural Resources, and has had no final determination of responsibility for~~
32 ~~any significant administrative, civil, or criminal violation of any program implemented by an~~
33 ~~agency of the Department of Environment and Natural Resources within the last five years. A~~
34 ~~significant violation is a violation or alleged violation that does not satisfy any of the conditions~~
35 ~~of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources must notify the~~
36 ~~Department of Commerce annually of every person that currently has any of these pending~~
37 ~~actions and every person that has had any of these final determinations within the last five~~
38 ~~years.~~satisfies the environmental impact standard under G.S. 105-129.83."

39 **SECTION 4.6.** G.S. 143B-437.012(h) reads as rewritten:

40 "(h) Environmental Impact. – A business is eligible for consideration for a grant under
41 this section only if the business ~~has no pending administrative, civil, or criminal enforcement~~
42 ~~action based on alleged significant violations of any program implemented by an agency of the~~
43 ~~Department of Environment and Natural Resources and has had no final determination of~~
44 ~~responsibility for any significant administrative, civil, or criminal violation of any program~~
45 ~~implemented by an agency of the Department of Environment and Natural Resources within~~
46 ~~the last three years with respect to the location for which the grant is made. For the purposes of~~
47 ~~this subsection, a significant violation is a violation or alleged violation that does not satisfy~~
48 ~~any of the conditions of G.S. 143-215.6B(d).~~certifies that, at the time of the application, the
49 business satisfies the environmental impact standard under G.S. 105-129.83."

50 **SECTION 4.7.** This part is effective January 1, 2011, and applies to taxable years
51 beginning on or after that date.

1
2 **PART V: EXTEND EXISTING TAX BENEFITS FOR ECONOMIC DEVELOPMENT**
3

4 **SECTION 5.1.** G.S. 105-129.16D(d) reads as rewritten:

5 "**§ 105-129.16D. Credit for constructing renewable fuel facilities.**

6 ...

7 (d) Sunset. – This section is repealed effective for facilities placed in service on or after
8 January 1, ~~2011~~2014."

9 **SECTION 5.2.** G.S. 105-129.16F(b) reads as rewritten:

10 "**§ 105-129.16F. Credit for biodiesel producers.**

11 ...

12 (b) Sunset. – This section is repealed for taxable years beginning on or after January 1,
13 ~~2010~~2014."

14 **SECTION 5.3.** G.S. 105-164.14 reads as rewritten:

15 "**§ 105-164.14. Certain refunds authorized.**

16 ...

17 (a1) Passenger Plane Maximum. – An interstate passenger air carrier is allowed a refund
18 of the net amount of sales and use tax paid by it in this State on fuel during a calendar year in
19 excess of two million five hundred thousand dollars (\$2,500,000). The "net amount of sales and
20 use tax paid" is the amount paid less the refund allowed under subsection (a) of this section. A
21 request for a refund must be in writing and must include any information and documentation
22 the Secretary requires. A request for a refund is due within six months after the end of the
23 calendar year for which the refund is claimed. The refund allowed by this subsection is in
24 addition to the refund allowed in subsection (a) of this section. This subsection is repealed for
25 purchases made on or after January 1, ~~2011~~2014.

26 ...

27 (l) Aviation Fuel for Motorsports Events. – A professional motorsports racing team or
28 a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this
29 State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel
30 to a motorsports event in another state from a location in this State, or to travel to this State
31 from a motorsports event in another state. For the purposes of this subsection, a "motorsports
32 event" includes a motorsports race, a motorsports sponsor event, and motor sports testing. A
33 request for a refund must be in writing and must include any information and documentation
34 the Secretary requires. A request for a refund is due within six months after the end of the
35 State's fiscal year. Refunds applied for after the due date are barred. This subsection is repealed
36 for purchases made on or after January 1, ~~2011~~2014.

37"

38 **SECTION 5.4.** This part is effective when it becomes law.
39

40 **PART VI: CREATE ECONOMIC DEVELOPMENT INCENTIVES FOR ECO-PARKS**
41

42 **SECTION 6.1.** G.S. 143B-437.08 is amended by adding a new subsection to read:

43 "(j) Exception for Eco-Industrial Park. – An Eco-Industrial Park has a development tier
44 one designation. An Eco-Industrial Park is an industrial park that the Secretary of Commerce
45 has certified meets the following requirements:

46 (1) It has at least 100 developable acres.

47 (2) It is located in a county that is not required under G.S. 143-215.107A to
48 perform motor vehicles emissions inspections.

49 (3) Each building located in the industrial park is constructed in accordance with
50 energy-efficiency and water-use standards established in G.S. 143-135.37
51 for construction of a major facility.

1 (4) Each business located in the park is in a clean-industry sector according to
2 the Toxic Release Inventory by the United States Environmental Protection
3 Agency."

4 **SECTION 6.2.** G.S. 143B-437.4 reads as rewritten:

5 "**§ 143B-437.4. NC Green Business Fund established as a special revenue fund and grant**
6 **program.**

7 (a) ~~Establishment.~~ Fund. – The NC Green Business Fund is established as a special
8 revenue fund in the Department of Commerce, and the Department shall be responsible for
9 administering the Fund.

10 (b) Purposes. – Moneys in the NC Green Business Fund shall be allocated pursuant to
11 this subsection. The Department of Commerce shall make grants from the Fund to private
12 businesses with less than 100 employees, nonprofit organizations, local governments, and State
13 agencies to encourage the expansion of small to medium size businesses with less than 100
14 employees to help grow a green economy in the State. Moneys in the NC Green Business Fund
15 shall be used for projects that will focus on the following three priority ~~areas:~~areas listed in this
16 subsection. In selecting between projects that are within a priority area, a project that is located
17 in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable
18 project that is not located in a certified Eco-Industrial Park. The priority areas are:

19 (1) To encourage the development of the biofuels industry in the State. The
20 Department of Commerce may make grants available to maximize
21 development, production, distribution, retail infrastructure, and consumer
22 purchase of biofuels in North Carolina, including grants to enhance biofuels
23 workforce development.

24 (2) To encourage the development of the green building industry in the State.
25 The Department of Commerce may make grants available to assist in the
26 development and growth of a market for environmentally conscious and
27 energy efficient green building processes. Grants may support the
28 installation, certification, or distribution of green building materials; energy
29 audits; and marketing and sales of green building technology in North
30 Carolina, including grants to enhance workforce development for green
31 building processes.

32 (3) To attract and leverage private-sector investments and entrepreneurial
33 growth in environmentally conscious clean technology and renewable
34 energy products and businesses, including grants to enhance workforce
35 development in such businesses.

36 (c) Cap and Matching Funds. – The Department of Commerce may set a cap on a grant
37 from the NC Green Business Fund and may require a private business to provide matching
38 funds for a grant from the Fund. A grant to a project located in an Eco-Industrial Park certified
39 under G.S. 143B-437.08 is not subject to a cap or a requirement to provide matching funds."

40 **SECTION 6.3.** G.S. 143B-437.52(b) reads as rewritten:

41 "(b) ~~Cap.~~ Cap and Priority. – The maximum number of grants the Committee may
42 award in each calendar year is 25. In selecting between applicants, a project that is located in an
43 Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project
44 that is not located in a certified Eco-Industrial Park."

45 **SECTION 6.4.** G.S. 105-129.16A(c)(1) reads as rewritten:

46 "(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings
47 provided in this subsection.

48 (1) Nonresidential Property. – A ceiling of two million five hundred thousand
49 dollars (\$2,500,000) per installation applies to renewable energy property
50 that is placed in service outside an Eco-Industrial Park certified under
51 G.S. 143B-437.08 and is for any purpose other than residential. A ceiling of

1 five million dollars (\$5,000,000) per installation applies to renewable energy
 2 property that is placed in service in a certified Eco-Industrial Park and is for
 3 any purpose other than residential."

4 **SECTION 6.5.** G.S. 105-129.55 reads as rewritten:

5 **"§ 105-129.55. Credit for North Carolina research and development.**

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

15 (1) Small business. – If the taxpayer was a small business as of the last day of
 16 the taxable year, the applicable percentage is three and one-quarter percent
 17 (3.25%).

18 (2) Low-tier research. – For expenses with respect to research performed in a
 19 development tier one area, the applicable percentage is three and one-quarter
 20 percent (3.25%).

21 (2a) University research. – For North Carolina university research expenses, the
 22 applicable percentage is twenty percent (20%).

23 (2b) Eco-Industrial Park. – For expenses with respect to research performed in an
 24 Eco-Industrial Park certified under G.S. 143B-437.08, the applicable
 25 percentage is thirty-five percent (35%).

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

Expenses Over	Up To	Rate
-0-	\$50 million	1.25%
\$50 million	\$200 million	2.25%
\$200 million	–	3.25%

34 (b) ~~North Carolina University Research Expenses. – A taxpayer that has North Carolina~~
 35 ~~university research expenses for the taxable year is allowed a credit equal to twenty percent~~
 36 ~~(20%) of the expenses."~~

37 **SECTION 6.6.** Sections 6.4 and 6.5 of this act are effective for taxable years
 38 beginning on or after January 1, 2011. The remainder of this part is effective when it becomes
 39 law. Sections 6.2 and 6.3 of this act apply to grant applications submitted on or after July 1,
 40 2010.

41
 42 **PART VII: TREAT WOOD CHIPPERS LIKE OTHER COMMERCIAL LOGGING**
 43 **EQUIPMENT**

44
 45 **SECTION 7.1.** G.S. 105-164.13 is amended by adding a new subdivision to read:
 46 **"§ 105-164.13. Retail sales and use tax.**

47 The sale at retail and the use, storage, or consumption in this State of the following tangible
 48 personal property, digital property, and services are specifically exempted from the tax imposed
 49 by this Article:

50 ...

1 (4g) Sales of wood chipping machinery to which is assigned a 17-digit vehicle
2 identification number specified by the National Highway Transportation
3 Safety Association. For the purpose of this section, "wood chipping
4 machinery" is machinery used to convert raw forest products into wood
5 chips.

6 "

7 **SECTION 7.2.** This part becomes effective July 1, 2010, and applies to sales made
8 on or after that date.

9
10 **PART VIII: PURCHASING AND CONTRACT CHANGES TO BENEFIT NORTH**
11 **CAROLINA BUSINESSES**

12
13 **SECTION 8.1.** G.S. 143-59 reads as rewritten:

14 "**§ 143-59. Preference given to North Carolina products and citizens, and articles**
15 **manufactured by State agencies; North Carolina businesses; reciprocal**
16 **preferences.**

17 (a) Preference. – The Secretary of Administration and any State agency authorized to
18 purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods,
19 supplies, materials, equipment, printing or services give preference as far as may be practicable
20 to such products or services manufactured or produced in North Carolina or furnished by or
21 through citizens of North Carolina: Provided, however, that in giving such preference no
22 sacrifice or loss in price or quality shall be permitted; and provided further, that preference in
23 all cases shall be given to surplus products or articles produced and manufactured by other
24 State departments, institutions, or agencies which are available for distribution.

25 (b) Reciprocal Preference. – For the purpose only of determining the low bidder on all
26 contracts for equipment, materials, supplies, and services valued over twenty-five thousand
27 dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is
28 equal to the percent of increase, if any, that the state in which the bidder is a resident adds to
29 bids from bidders who do not reside in that state. Any amount due under a contract awarded to
30 a nonresident bidder shall not be increased by the amount of the increase added by this
31 subsection. On or before January 1 of each year, the Secretary of Administration shall
32 electronically publish a list of states that give preference to in-State bidders and the amount of
33 the percent increase added to out-of-state bids. All departments, institutions, and agencies of
34 the State shall use this list when evaluating bids. If the reciprocal preference causes the
35 nonresident bidder to no longer be the lowest bidder, the Secretary of Administration may, after
36 consultation with the Board of Awards, waive the reciprocal preference. In determining
37 whether to waive the reciprocal preference, the Secretary of Administration and the Board of
38 Awards shall consider factors that include competition, price, product origination, and available
39 resources.

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

41 (1) Resident bidder. – A bidder that has paid unemployment taxes or income
42 taxes in this State and whose principal place of business is located in this
43 State.

44 (2) Nonresident bidder. – A bidder that is not a resident bidder as defined in
45 subdivision (1) of this subsection.

46 (3) Principal place of business. – The principal place from which the trade or
47 business of the bidder is directed or managed.

48 (d) Exemptions. – Subsection (b) of this section shall not apply to contracts entered into
49 under G.S. 143-53(a)(5) or G.S. 143-57.

1 (e) When a contract is awarded by the Secretary using the provisions of subsection (b)
2 of this section, a report of the nature of the contract, the bids received, and the award to the
3 successful bidder shall be posted on the Internet as soon as practicable.

4 (f) Resident Bidder Notification. – When the Secretary puts a contract up for
5 competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who
6 have expressed an interest in bidding on contracts of that nature. The Secretary may opt to
7 provide notice under this section by electronic means only.

8 (g) Low Bidder Matching. – Notwithstanding any other provision of law, when State
9 agencies, campuses of The University of North Carolina system and its General
10 Administration, and the Department of Community Colleges are procuring supplies, materials,
11 equipment, and other tangible personal property or construction or architectural services
12 through any procurement process in which award of the contract is to be made to the lowest
13 responsive and responsible bidder and the lowest bid is that of a responsible and responsive
14 nonresident bidder and the bid of a responsible and responsive resident bidder is within five
15 percent (5%) or within ten thousand dollars (\$10,000), whichever is less (the match zone), of
16 the nonresident bidder's bid, then the resident bidder shall be offered the option of matching the
17 nonresident bidder's bid, and, if otherwise qualified, being awarded the contract at the lower
18 price. If the lowest resident bidder declines to match the lower price, each responsible and
19 responsive resident bidder whose bid is within the match zone shall in turn be offered the
20 opportunity to match the lower price."

21 **SECTION 8.2.** G.S. 44A-26(a) reads as rewritten:

22 "(a) When the total amount of construction contracts awarded for any one project
23 exceeds ~~three~~five hundred thousand dollars (~~\$300,000~~),(\$500,000), a performance and
24 payment bond as set forth in (1) and (2) is required by the contracting body from any contractor
25 or construction manager at risk with a contract more than fifty thousand dollars (\$50,000). In
26 the discretion of the contracting body, a performance and payment bond may be required on
27 any construction contract as follows:

- 28 (1) A performance bond in the amount of one hundred percent (100%) of the
29 construction contract amount, conditioned upon the faithful performance of
30 the contract in accordance with the plans, specifications and conditions of
31 the contract. Such bond shall be solely for the protection of the contracting
32 body that is constructing the project.
- 33 (2) A payment bond in the amount of one hundred percent (100%) of the
34 construction contract amount, conditioned upon the prompt payment for all
35 labor or materials for which a contractor or subcontractor is liable. The
36 payment bond shall be solely for the protection of the persons furnishing
37 materials or performing labor for which a contractor, subcontractor, or
38 construction manager at risk is liable."

39 **SECTION 8.3.** Chapter 143 of the General Statutes is amended by adding a new
40 section to read:

41 "**§ 143-131.1. Small project bidding by State agencies, boards, commissions, and**
42 **institutions.**

43 (a) All contracts for construction or repair work involving the expenditure of public
44 money in the amount of thirty thousand dollars (\$30,000) or more, but less than the limits
45 prescribed in G.S. 143-129, made by State agencies, boards, commissions, and institutions shall
46 be made after informal bids have been secured. Informal solicitation for informal bids shall
47 include small resident bidders to the extent practicable. A 'small resident bidder' is a bidder that
48 meets the requirements for a resident bidder under G.S. 143-59(c) and that can certify that its
49 gross revenues for its last completed fiscal year did not exceed one million five hundred
50 thousand dollars (\$1,500,000).

1 **(b)** The Department of Administration may identify projects or classes of projects
2 within its control that are likely to attract substantial participation by small resident bidders and
3 to restrict solicitation and award of contracts on those projects to small resident bidders.

4 **(c)** All contracts let pursuant to this section shall be awarded to the lowest responsible,
5 responsive bidder, taking into consideration quality, performance, and the time specified in the
6 bids for the performance of the contract.

7 **(d)** The Department of Administration may waive any bonding requirements of Chapter
8 44A of the General Statutes for contracts let under this section."

9 **SECTION 8.4.(a)** The General Assembly makes the following findings:

10 (1) A multiple award schedule contract is one that allows multiple vendors to be
11 awarded a State contract for goods or services by providing their total
12 catalogue for lines of equipment and attachments to eligible purchasers,
13 including State agencies, departments, institutions, public school districts,
14 political subdivisions, and higher education facilities.

15 (2) A multiple award schedule contract allows multiple vendors to compete and
16 be awarded a contract based upon the value of their products or services.

17 (3) A properly administered multiple award schedule contract allows the State to
18 evaluate vendors based on a variety of factors, including discounts, total life
19 cycle costs, service, warranty, distribution channel, and past vendor
20 performance.

21 (4) Under appropriate circumstances, multiple award schedule contracts result in
22 competitive pricing, transparency, administrative savings, expedited
23 procurement, and flexibility for State purchasers.

24 **SECTION 8.4.(b)** The North Carolina Department of Administration is strongly
25 encouraged to consider the use of multiple award schedule contracts when issuing requests for
26 proposals for State term contracts.

27 **SECTION 8.5.** This part becomes effective July 1, 2010.

28
29 **PART IX: EFFECTIVE DATE**

30
31 **SECTION 9.1.** Except as otherwise provided, this act is effective when it becomes
32 law.