

GENERAL ASSEMBLY OF NORTH CAROLINA  
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HOUSE BILL 1224  
Senate Finance Committee Substitute Adopted 7/16/14  
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Short Title: Local Sales Tax Options/Econ. Devpt. Changes.

(Public)

Sponsors:

Referred to:

May 28, 2014

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE TOTAL LOCAL GOVERNMENT SALES AND USE TAX RATE TO TWO AND ONE-HALF PERCENT; TO GIVE COUNTIES THE FLEXIBILITY TO USE UP TO ONE-HALF PERCENT OF THE LOCAL SALES AND USE TAX FOR PUBLIC TRANSPORTATION, FOR PUBLIC EDUCATION, FOR GENERAL PURPOSES, OR FOR A COMBINATION THEREOF; AND TO MAKE VARIOUS CHANGES TO TAX AND ECONOMIC DEVELOPMENT LAWS.

The General Assembly of North Carolina enacts:

**PART I. LOCAL OPTION SALES TAX OPTIONS**

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

"Article 43A.

"County Sales and Use Tax for Public Education.

**"§ 105-513.1. Short title; purpose.**

This Article is the County Sales and Use Tax for Public Education. Article 43 of this Chapter, Article 46 of this Chapter, and this Article give the counties of this State an opportunity to obtain an additional source of revenue with which to meet their needs. A county may choose to use this source of revenue to finance local public transportation systems, as provided in Article 43 of this Chapter, for public education needs, as provided in this Article, or for general purposes, as provided in Article 46 of this Chapter.

**"§ 105-513.2. Levy.**

(a) Referendum. – A tax levied under this Article must be approved in a referendum. The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local sales and use tax in the county at a rate of up to one-half percent (1/2%). The applicable rate must meet all of the conditions listed in this subsection. The election shall be held in accordance with the procedures of G.S. 163-287. The conditions are:

(1) It must be in an increment of one-quarter percent (1/4%).

(2) It must be at a rate that, if levied, would not result in a total local sales and use tax rate in the county in excess of two and one-half percent (2 1/2%).

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article shall be:

"[ ] FOR [ ] AGAINST



\* H 1 2 2 4 - V - 4 \*

1 Local sales and use tax at the [applicable rate stated in both words and as a percentage] in  
2 addition to the current local sales and use taxes, to be used only for public education."

3 (c) Authority. – If the majority of those voting in a referendum held pursuant to this  
4 Article vote for the levy of the tax, the board of commissioners of the county may, by  
5 resolution and after 10 days' public notice, levy a local sales and use tax at the rate specified in  
6 the ballot.

7 **"§ 105-513.3. Administration.**

8 Except as provided in this Article, the adoption, levy, collection, administration, and repeal  
9 of these additional taxes must be in accordance with Article 39 of this Chapter. In applying the  
10 provisions of Article 39 of this Chapter to this Article, references to "this Article" mean  
11 "Article 43A of Chapter 105 of the General Statutes." G.S. 105-468.1 is an administrative  
12 provision that applies to this Article. A tax levied under this Article does not apply to the sales  
13 price of food that is exempt from tax pursuant to G.S. 105-164.13B or to the sales price of a  
14 bundled transaction taxable pursuant to G.S. 105-467(a)(5a). The Secretary shall not divide the  
15 amount allocated to a county between the county and the municipalities within the county.

16 **"§ 105-513.4. Use.**

17 A county may use the proceeds of a tax levied under this Article only for the following  
18 purposes:

- 19 (1) Public school capital outlay purposes, as defined in G.S. 115C-426(f), or to  
20 retire any indebtedness incurred by the county for these purposes.
- 21 (2) Salaries of classroom teachers, salaries of classroom teacher assistants, and  
22 supplements of classroom teacher salaries. For the purposes of this section, a  
23 classroom teacher is an employee of a local board of education employed as  
24 a teacher who spends at least seventy percent (70%) of his or her work time  
25 in classroom instruction, and a classroom teacher assistant is an employee of  
26 a local board of education employed as a teacher assistant who spends at  
27 least seventy percent (70%) of his or her work time assisting in a classroom.
- 28 (3) Financial support of community colleges, including funds to supplement  
29 State financial support of community colleges."

30 **SECTION 1.2.(a)** G.S. 115C-429(b) reads as rewritten:

31 "(b) The board of county commissioners shall complete its action on the school budget  
32 on or before July 1, or such later date as may be agreeable to the board of education. The  
33 commissioners shall determine the amount of county revenues to be appropriated in the county  
34 budget ordinance to the local school administrative unit for the budget year. The board of  
35 county commissioners may, in its discretion, allocate part or all of its appropriation by purpose,  
36 function, or project as defined in the uniform budget format. For allocations made by the board  
37 of county commissioners for the purpose of or for a function related to instructional services,  
38 the board of county commissioners may direct the amount of funds to be used for salaries of  
39 classroom teachers, salaries of classroom teacher assistants, and supplements of classroom  
40 teacher salaries. For the purposes of this section, a classroom teacher is an employee of a local  
41 board of education employed as a teacher who spends at least seventy percent (70%) of his or  
42 her work time in classroom instruction, and a classroom teacher assistant is an employee of a  
43 local board of education employed as a teacher assistant who spends at least seventy percent  
44 (70%) of his or her work time assisting in a classroom."

45 **SECTION 1.2.(b)** G.S. 115C-433(b) reads as rewritten:

46 "(b) If the board of county commissioners allocates part or all of its appropriations  
47 pursuant to G.S. 115C-429(b), the board of education must obtain the approval of the board of  
48 county commissioners for an amendment to the budget that does any of the following:

- 49 (1)(i) ~~increases~~ Increases or decreases expenditures from the capital outlay fund  
50 for projects listed in G.S. 115C-426(f)(1) or ~~(2), or (ii)-(2).~~

1           (2) ~~increases—Increases~~ or decreases the amount of county appropriation  
2 allocated to a purpose or function by twenty-five percent (25%) or more  
3 from the amount contained in the budget ordinance adopted by the board of  
4 county commissioners: ~~Provided, provided,~~ that at its discretion, the board  
5 may in its budget ordinance specify a lesser percentage, so long as such  
6 percentage is not less than ten ~~percent, percent~~ (10%).

7           (3) Decreases the amount of funds allocated for salaries of classroom teachers,  
8 salaries of classroom teacher assistants, and supplements of classroom  
9 teacher salaries. For the purposes of this section, a classroom teacher is an  
10 employee of a local board of education employed as a teacher who spends at  
11 least seventy percent (70%) of his or her work time in classroom instruction,  
12 and a classroom teacher assistant is an employee of a local board of  
13 education employed as a teacher assistant who spends at least seventy  
14 percent (70%) of his or her work time assisting in a classroom."

15           **SECTION 1.3.(a)** G.S. 115D-55(a) reads as rewritten:

16           "(a) Approval of Budget by Local Tax-Levying Authority. – By a date fixed by the local  
17 tax-levying authority, the budget shall be submitted to the local tax-levying authority for  
18 approval of that portion within its authority as stated in G.S. 115D-54(b). On or before July 1,  
19 or such later date as may be agreeable to the board of trustees, but in no instance later than  
20 September 1, the local tax-levying authority shall determine the amount of county revenue to  
21 be appropriated to an institution for the budget year. The local tax-levying authority may  
22 allocate part or all of an appropriation by purpose, function, or project as defined in the budget  
23 manual as adopted by the State Board of Community Colleges. The local tax-levying authority  
24 may direct the use of funds appropriated to the institution derived from a tax levied under  
25 Article 43A of Chapter 105 of the General Statutes.

26           The local tax-levying authority shall have full authority to call for all books, records, audit  
27 reports, and other information bearing on the financial operation of the institution except  
28 records dealing with specific persons for which the persons' rights of privacy are protected by  
29 either federal or State law.

30           Nothing in this Article shall be construed to place a duty on the local tax-levying authority  
31 to fund a deficit incurred by an institution through failure of the institution to comply with the  
32 provisions of this Article or rules and regulations issued pursuant hereto."

33           **SECTION 1.3.(b)** G.S. 115D-58(b) reads as rewritten:

34           "(b) If the local tax-levying authority allocates part or all of an appropriation pursuant to  
35 G.S. 115D-55, the board of trustees must obtain approval of the local tax-levying authority for  
36 an amendment to the budget which does any of the following:

37           (1) ~~increases—Increases~~ or decreases the amount of that appropriation allocated to  
38 a purpose, function, or project by twenty-five percent (25%) or more from  
39 the amount contained in the budget ordinance adopted by the local  
40 tax-levying authority or such lesser percentage as specified by the local  
41 tax-levying authority in the original budget ordinance, so long as such  
42 percentage is not less than ten percent (10%).

43           (2) Decreases the amount of the appropriation directed by the tax-levying  
44 authority for a specific use from funds appropriated to the institution derived  
45 from a tax levied under Article 43A of Chapter 105 of the General Statutes."

46           **SECTION 1.4.(a)** G.S. 105-506 reads as rewritten:

47           "**§ 105-506. Short title; purpose.**

48           This Article is the Local Government Public Transportation Sales Tax Act and may be cited  
49 by that name. This ~~Article gives—Article, Article 43A of this Chapter, and Article 46 of this~~  
50 Chapter give the counties and transportation authorities of this State an opportunity to obtain an  
51 additional source of revenue with which to meet their ~~needs for financing—needs.~~ Counties and

1 transportation authorities may choose to use this source of revenue to finance local public  
2 transportation systems.~~systems~~ under this Article, counties may choose to use this source of  
3 revenue to finance public education needs, as provided in Article 43A of this Chapter, or  
4 counties may choose to use this source of revenue for general purposes, as provided in Article  
5 46 of this Chapter. It provides them with authority to levy sales and use taxes. All such taxes~~A~~  
6 tax levied under this Article must be approved in a referendum."

7 **SECTION 1.4.(b)** Part 1 of Article 43 of Chapter 105 of the General Statutes is  
8 amended by adding a new section to read:

9 **"§ 105-506.4. Tax rate.**

10 (a) Rate. – The applicable rate of local sales and use tax that may be levied under this  
11 Article must meet all of the following conditions:

12 (1) It must be in an increment of one-quarter percent (1/4%).

13 (2) It must be at a rate that, if levied, would not result in a total local sales and  
14 use tax rate in the county in excess of two and one-half percent (2 1/2%).

15 (b) Cap. – Except as provided in this subsection, a county's local sales and use tax rate  
16 may not exceed two and one-half percent (2 1/2%). A county's local sales and use tax rate may  
17 exceed two and one-half percent (2 1/2%) if the county conducted one or more advisory  
18 referendums on or before December 31, 2012, in which a majority of the voters approved the  
19 levy of a local sales and use tax resulting in a total local sales and use tax rate in the county of  
20 two and three-quarters percent (2 3/4%). In no event may a county's local sales and use tax rate  
21 exceed two and three-quarters percent (2 3/4%). If a county's local sales and use tax rate is two  
22 and three-quarters percent (2 3/4%) on April 1, 2013, and the county repeals the levy of a tax  
23 authorized under Subchapter VIII of this Chapter so that the county's local sales and use tax  
24 rate falls below two and three-quarters percent (2 3/4%), the county may not enact a local sales  
25 and use tax under this Subchapter that results in a county local sales and use tax rate that  
26 exceeds two and one-half percent (2 1/2%)."

27 **SECTION 1.4.(c)** G.S. 105-507.1 reads as rewritten:

28 **"§ 105-507.1. Local election on adoption of sales and use tax.**

29 (a) Resolution. – The board of commissioners of a county may direct the county board  
30 of elections to conduct an advisory referendum within the county on the question of whether a  
31 local sales and use tax at the rate of up to one-half percent (1/2%) may be levied in accordance  
32 with this Part. The applicable rate must be in accordance with G.S. 105-506.4. The election  
33 shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners  
34 shall hold a public hearing on the question at least 30 days before the date the election is to be  
35 held.

36 (b) Ballot Question. – The form of the question to be presented on a ballot for a special  
37 election concerning the levy of a tax authorized by this Article shall be:

38 "[ ] FOR [ ] AGAINST

39 One-half percent (1/2%) [The applicable rate stated in both words and as a percentage] local  
40 sales and use taxes, in addition to the current local sales and use taxes, to be used only for  
41 public transportation systems."

42 **SECTION 1.4.(d)** G.S. 105-507.2 reads as rewritten:

43 **"§ 105-507.2. Levy and collection of sales and use tax.**

44 If the majority of those voting in a referendum held pursuant to G.S. 105-507.1 vote for the  
45 levy of the tax, the board of commissioners of the county may, by resolution, levy ~~one-half~~  
46 percent (1/2%) local sales and use taxes~~a local sales and use tax at the rate specified in the~~  
47 ballot in addition to any other State and local sales and use taxes levied pursuant to law. Except  
48 as provided in this Part, the adoption, levy, collection, administration, and repeal of these  
49 additional taxes shall be in accordance with Article 39 of this Chapter. In applying the  
50 provisions of Article 39 of this Chapter to this Part, references to "this Article" mean "Part 1 of  
51 Article 43 of Chapter 105 of the General Statutes"."

1           **SECTION 1.4.(e)** G.S. 105-509 reads as rewritten:

2   "**§ 105-509. Local election on adoption of sales and use tax – regional public**  
3   **transportation authority.**

4    ...

5    (b)   Resolution. – The board of trustees of the regional public transportation authority  
6    may, if all of the conditions listed in this subsection have been met, direct the respective county  
7    board or boards of elections to conduct an advisory referendum within the special district on  
8    the question of whether a local sales and use tax at the rate of up to one-half percent (1/2%)  
9    may be levied within the district in accordance with this Part. The applicable rate must be in  
10 accordance with G.S. 105-506.4. The tax may not be levied without voter approval. The  
11 election shall be held on a date jointly agreed upon by the authority, the county board or boards  
12 of commissioners, and the county board or boards of elections and shall be held on a date  
13 permitted by and in accordance with the procedures of G.S. 163-287. The conditions are as  
14 follows:

15           (1)   The board of trustees has obtained approval to conduct a referendum by a  
16           vote of the following:

17           a.    A majority vote of each of the county boards of commissioners  
18           within the special district, if it is a multicounty special district.

19           b.    A majority of the county board of commissioners within the special  
20           district, if it is a single-county special district.

21           (2)   A public hearing is held on the question by the board or boards of  
22           commissioners at least 30 days before the date the election is to be held.

23    (c)   Ballot Question. – The form of the question to be presented on a ballot for a special  
24    election concerning the levy of a tax authorized by this Article shall be:

25   " FOR        AGAINST

26           ~~One-half percent (1/2%)~~ The applicable rate stated in both words and as a percentage  
27    local sales and use taxes, in addition to the current local sales and use taxes, to be used only for  
28    public transportation systems."  
29    ...."

30           **SECTION 1.4.(f)** G.S. 105-509.1 reads as rewritten:

31   "**§ 105-509.1. Levy and collection of sales and use tax – regional public transportation**  
32   **authority.**

33    If the majority of those voting in a referendum held pursuant to G.S. 105-509 vote for the  
34    levy of the tax, the transportation authority may, by resolution, levy ~~one-half percent (1/2%)~~  
35    ~~local sales and use taxes~~ a local sales and use tax at the rate specified in the ballot within the  
36    special district, in addition to any other State and local sales and use taxes levied pursuant to  
37    law. In determining the results of the election in a multicounty district, all the counties of the  
38    district shall be considered to be one unit but also must receive a majority vote in each county,  
39    except that if the referendum is passed in one or more but not all of the counties, the counties in  
40    which the referendum was not approved are removed from the special district upon certification  
41    of the election result and the county or counties that approved the referendum shall remain in  
42    the special district. Except as provided in this Part, the adoption, levy, collection,  
43    administration, and repeal of these additional taxes shall be in accordance with Article 39 of  
44    this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references  
45    to "this Article" mean "Part 4 of Article 43 of Chapter 105 of the General Statutes." Any repeal  
46    of the tax shall be done by the same procedure as its enactment under this section, and in a  
47    multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes  
48    in all the counties in the district."

49           **SECTION 1.4.(g)** G.S. 105-510 reads as rewritten:

50   "**§ 105-510. Local election on adoption of sales and use tax – regional transportation**  
51   **authority.**

1 ...  
2 (b) Resolution. – The board of trustees of the regional transportation authority may, if  
3 all of the conditions listed in this subsection have been met, direct the respective county board  
4 or boards of elections to conduct an advisory referendum within the special district on the  
5 question of whether a local sales and use tax at the rate of up to one-half percent (1/2%) may be  
6 levied within the district in accordance with this Part. The applicable rate must be in  
7 accordance with G.S. 105-506.4. The tax may not be levied without voter approval. The  
8 election shall be held on a date jointly agreed upon by the authority, the county board or boards  
9 of commissioners, and the county board or boards of elections and shall be held on a date  
10 permitted by and in accordance with the procedures of G.S. 163-287. The conditions are as  
11 follows:

12 (1) The board of trustees has obtained approval to conduct a referendum by a  
13 vote of the following:

14 a. A majority vote of both of the county boards of commissioners  
15 within the special district, if it is a multicounty special district.

16 b. A majority of the county board of commissioners within the special  
17 district, if it is a single-county special district.

18 (2) A public hearing is held on the question by the board or boards of  
19 commissioners at least 30 days before the date the election is to be held.

20 (c) Ballot Question. – The form of the question to be presented on a ballot for a special  
21 election concerning the levy of a tax authorized by this Article shall be:

22 "[ ] FOR [ ] AGAINST

23 ~~One-half percent (1/2%)~~ [The applicable rate stated in both words and as a percentage]  
24 local sales and use taxes, in addition to the current local sales and use taxes, to be used only for  
25 public transportation systems."  
26 ....."

27 **SECTION 1.4.(h)** G.S. 105-510.1 reads as rewritten:

28 **"§ 105-510.1. Levy and collection of sales and use tax – regional transportation authority.**

29 If the majority of those voting in a referendum held pursuant to G.S. 105-510 vote for the  
30 levy of the tax, the transportation authority may, by resolution, levy ~~one-half percent (1/2%)~~  
31 ~~local sales and use taxes~~ a local sales and use tax at the rate specified in the ballot within the  
32 special district, in addition to any other State and local sales and use taxes levied pursuant to  
33 law. In determining the results of the election in a multicounty district, all the counties of the  
34 district shall be considered to be one unit but also must receive a majority vote in each county,  
35 except that if the referendum is passed in one but not both of the counties, the county in which  
36 the referendum was not approved is removed from the special district upon certification of the  
37 election result and the county that approved the referendum shall remain in the special district.  
38 Except as provided in this Part, the adoption, levy, collection, administration, and repeal of  
39 these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the  
40 provisions of Article 39 of this Chapter to this Article, references to "this Article" mean "Part 5  
41 of Article 43 of Chapter 105 of the General Statutes." Any repeal of the tax shall be done by the  
42 same procedure as its enactment under this section, and in a multicounty district a petition for  
43 repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district."

44 **SECTION 1.4.(i)** G.S. 105-511.2 reads as rewritten:

45 **"§ 105-511.2. Local election on adoption of sales and use tax.**

46 (a) Resolution. – The board of commissioners of a county may direct the county board  
47 of elections to conduct an advisory referendum within the county on the question of whether a  
48 local sales and use tax at ~~the rate of one-quarter percent (1/4%)~~ a rate of up to one-half percent  
49 (1/2%) may be levied in accordance with this Part. The applicable rate must be in accordance  
50 with G.S. 105-506.4. The election shall be held on a date jointly agreed upon by the boards and  
51 shall be held on a date permitted by and in accordance with the procedures of G.S. 163-287.

1 The board of commissioners shall hold a public hearing on the question at least 30 days before  
2 the date the election is to be held.

3 (b) Ballot Question. – The form of the question to be presented on a ballot for a special  
4 election concerning the levy of a tax authorized by this Article shall be:

5 "[ ] FOR [ ] AGAINST

6 ~~One-quarter percent (1/4%)~~ [The applicable rate stated in both words and as a percentage]  
7 local sales and use taxes, in addition to the current local sales and use taxes, to be used only for  
8 public transportation systems."

9 **SECTION 1.4.(j)** G.S. 105-511.3 reads as rewritten:

10 **"§ 105-511.3. Levy and collection of sales and use tax.**

11 (a) Authority to Levy. – If the majority of those voting in a referendum held pursuant to  
12 this Part vote for the levy of the tax, the board of commissioners of the county may, by  
13 resolution, levy ~~one-quarter percent (1/4%) local sales and use taxes~~ a local sales and use tax  
14 at the rate specified in the ballot in addition to any other State and local sales and use taxes levied  
15 pursuant to law.

16 (b) Administration. – Except as provided in this Part, the adoption, levy, collection,  
17 administration, and repeal of these additional taxes shall be in accordance with Article 39 of  
18 this Chapter. In applying the provisions of Article 39 of this Chapter to this Part, references to  
19 "this Article" mean "Part 6 of Article 43 of Chapter 105 of the General Statutes."

20 **SECTION 1.4.(k)** This section is effective when it becomes law.

21 **SECTION 1.5.(a)** Part 1 of Article 43 of Chapter 105 of the General Statutes, as  
22 amended by Section 1.4 of this act, is amended by adding a new section to read:

23 **"§ 105-506.3. Applicability.**

24 A tax levied under Part 4 of this Article may not be in effect in a county at the same time as  
25 a tax levied by that county under Part 6 of this Article."

26 **SECTION 1.5.(b)** G.S. 105-511 reads as rewritten:

27 **"§ 105-511. Applicability.**

28 This Part applies only in counties other than Durham, Forsyth, Guilford, Mecklenburg,  
29 ~~Orange, or Wake, or Orange."~~

30 **SECTION 1.5.(c)** This section is effective when it becomes law.

31 **SECTION 1.6.(a)** Article 46 of Chapter 105 of the General Statutes reads as  
32 rewritten:

33 "Article 46.

34 "One-Quarter Cent (1/4¢) or One-Half Cent (1/2¢) County Sales and Use Tax.

35 **"§ 105-535. Short title.**

36 This Article is the One-Quarter Cent (1/4¢) or One-Half Cent (1/2¢) County Sales and Use  
37 Tax Act.

38 **"§ 105-536. Limitations.**

39 This Article applies only to counties that levy the first one-cent (1¢) sales and use tax under  
40 Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half  
41 cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half  
42 cent (1/2¢) local sales and use tax under Article 42 of this Chapter.

43 **"§ 105-537. Levy.**

44 (a) Authority. – A tax levied under this Article must be approved in a referendum. If the  
45 majority of those voting in a referendum held pursuant to this Article vote for the levy of the  
46 tax, the board of county commissioners may, by resolution and after 10 days' public notice,  
47 levy a local sales and use tax at ~~a rate of one-quarter percent (0.25%)~~ the applicable rate. The  
48 applicable rate must meet all of the following conditions:

49 (1) It must be in an increment of one-quarter percent (1/4%).

50 (2) It must be at a rate that, if levied, would not result in a total local sales and  
51 use tax rate in the county in excess of two and one-half percent (2 1/2%).

1 (b) Vote. – The board of county commissioners may direct the county board of  
2 elections to conduct an advisory referendum on the question of whether to levy a local sales  
3 and use tax in the county as provided in this Article. The election shall be held in accordance  
4 with the procedures of G.S. 163-287.

5 (c) Ballot Question. – The form of the question to be presented on a ballot for a special  
6 election concerning the levy of the tax authorized by this Article shall be:

7 "[ ] FOR [ ] AGAINST

8 Local sales and use tax at the rate of ~~one-quarter percent (0.25%)~~ [The applicable rate stated  
9 in both words and as a percentage] in addition to all other State and local sales and use taxes."

10 ...  
11 **"§ 105-538. Administration of taxes.**

12 Except as provided in this Article, the adoption, levy, collection, administration, and repeal  
13 of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1  
14 is an administrative provision that applies to this Article. A tax levied under this Article does  
15 not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B or to  
16 the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a). The Secretary  
17 shall not divide the amount allocated to a county between the county and the municipalities  
18 within the county.

19 **"§ 105-539. Use.**

20 (a) Referenda Held On or Before January 1, 2015. – A county that approves the levy of  
21 a tax under this Article in a referendum held on or before January 1, 2015, must use the  
22 proceeds of the tax levied under this Article for any lawful public purpose.

23 (b) Referenda Held After January 1, 2015. – A county that approves the levy of a tax  
24 under this Article in a referendum held after January 1, 2015, must use the proceeds of a tax  
25 levied under this Article for any lawful public purpose, except that the proceeds may not be  
26 used for a purpose for which a tax levied under Article 43 of this Chapter must be used."

27 **SECTION 1.6.(b)** G.S. 105-164.3(4a) reads as rewritten:

28 "(4a) Combined general rate. – The sum of all of the following:

- 29 a. The State's general rate of tax set in G.S. ~~105-164.4(a)~~ 105-164.4(a).  
30 b. plus the sum of the rates of the local sales and use taxes  
31 authorized for every county in this State by ~~Subchapter VIII~~ Article  
32 39 of this Chapter or Chapter 1096 of the 1967 Session Laws, Article  
33 40 of this Chapter, and Article 42 of this Chapter for every county in  
34 this State. Chapter.  
35 c. One-half of the maximum rate of tax authorized by Article 46 of this  
36 Chapter."

37 **SECTION 1.6.(c)** This section is effective when it becomes law.

38 **SECTION 1.7.** Except as otherwise provided, this Part is effective when it  
39 becomes law.

40  
41 **PART II. JMAC MODIFICATIONS**

42 **SECTION 2.(a)** G.S. 143B-437.012 reads as rewritten:

43 **"§ 143B-437.012. Job Maintenance and Capital Development Fund.**

44 ...  
45 (d) Eligibility. – A business is eligible for consideration for a grant under this section if  
46 it satisfies the conditions of either subdivision (1) or (2) of this subsection and satisfies ~~the~~  
47 ~~conditions of both subdivisions (3) and~~ subdivision (4) of this subsection:

48 (1) The business is a major employer. A business is a major employer if the  
49 business meets the following requirements:

- 50 a. The Department certifies that the business has invested or intends to  
51 invest at least two hundred million dollars (\$200,000,000) of private



- 1 funds in improvements to real property and additions to tangible  
2 personal property in the project within a six-year period beginning  
3 with the time the investment commences.
- 4 b. The business employs at least 2,000 full-time employees or  
5 equivalent full-time contract employees at the project that is the  
6 subject of the grant at the time the application is made, and the  
7 business agrees to maintain at least 2,000 full-time employees or  
8 equivalent full-time contract employees at the project for the full  
9 term of the grant agreement.
- 10 c. The project is located in a development tier one area at the time the  
11 business applies for a grant.
- 12 (2) The business is a large manufacturing employer. A business is a large  
13 manufacturing employer if the business meets the following requirements:
- 14 a. The business is in manufacturing, as defined in G.S. 143B-437.01,  
15 and is converting its manufacturing process to change the product it  
16 ~~manufactures~~ manufactures or is investing in its manufacturing  
17 process by enhancing pollution controls or transitioning the  
18 manufacturing process from using coal to using natural gas for the  
19 purpose of becoming more energy efficient or reducing emissions.
- 20 b. The Department certifies that the business has invested or intends to  
21 invest at least ~~sixty-five~~fifty million dollars  
22 ~~(\$65,000,000)~~(\$50,000,000) of private funds in improvements to real  
23 property and additions to tangible personal property in the project  
24 within a ~~three-year~~five-year period beginning with the time the  
25 investment commences.
- 26 c. The business meets one of the following employment requirements:
- 27 1. If in a development tier one area, the business employs at  
28 least 320 full-time employees at the project that is the subject  
29 of the grant at the time the application is made, and the  
30 business agrees to maintain at least 320 full-time employees  
31 at the project for the full term of the grant.
- 32 2. If in a development tier two area with a population of less  
33 than 60,000 as of July 1, 2013, the business employs at least  
34 800 full-time employees or equivalent full-time contract  
35 employees at the project that is the subject of the grant at the  
36 time the application is made, and the business agrees to  
37 maintain at least 800 full-time employees or equivalent  
38 full-time contract employees at the project for the full term of  
39 the grant.
- 40 ~~(3) The project is located in a development tier one area at the time the business~~  
41 ~~applies for a grant.~~
- 42 (4) All newly hired employees of the business must be citizens of the United  
43 ~~States,~~States or have proper identification and documentation of their  
44 authorization to reside and work in the United States.
- 45 ...
- 46 (n) Limitations. – The Department may enter into no more than five agreements under  
47 this section. The total aggregate cost of all agreements entered into under this section may not  
48 exceed ~~sixty-nine million dollars (\$69,000,000)~~seventy-nine million dollars (\$79,000,000).  
49 The total annual cost of an agreement entered into under this section may not exceed six  
50 million dollars (\$6,000,000)."

51 **SECTION 2.(b)** This section becomes effective July 1, 2014.

**PART III. JOB CATALYST FUND**

**SECTION 3.(a)** The title of Part 2G of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2G. ~~Job Development Investment Grant Program.~~Development."

**SECTION 3.(b)** G.S. 143B-437.51 reads as rewritten:

**"§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

...

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(6a) Full-time worker. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Department to be employed in a permanent position. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full-time employee or a full-time worker who represents a net increase in the number of the business's employees or workers statewide.

...."

**SECTION 3.(c)** G.S. 143B-437.52 reads as rewritten:

"Subpart A. Job Development Investment Grant Program.

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

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

...."

**SECTION 3.(d)** The Revisor of Statutes is authorized to change references of "this Part" in Subpart A of Part 2G of Article 10 of Chapter 143B of the General Statutes to "this Subpart" as appropriate.

**SECTION 3.(e)** Part 2G of Article 10 of Chapter 143B of the General Statutes is amended by adding a new Subpart to read:

"Subpart B. Job Catalyst Fund.

**"§ 143B-437.67. Job Catalyst Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce a special, nonreverting account to be known as the Job Catalyst Fund to provide funds to a local governmental unit for projects that result in the creation of jobs. The Secretary of Commerce is solely responsible for the administration of the program and shall adopt guidelines applicable to program administration. The guidelines shall include the following provisions, which shall apply to each grant from the account:

- 1           (1)   The funds are reserved for a project for which a business agrees to create and  
2           maintain, for the greater of 10 years or a time period not less than the sum of  
3           the full term of the grant plus five years, the number of new worker positions  
4           at the project as follows:  
5           a.       For development tier one areas, 500 full-time workers.  
6           b.       For development tier two areas, 800 full-time workers.  
7           c.       For development tier three areas, 1,200 full-time workers.  
8           (2)   The funds are reserved for a project for which a business agrees to make an  
9           investment at the project as provided in this subdivision. The investment  
10          required by this subdivision must be private funds in improvements to real  
11          property and additions to tangible personal property located at the project for  
12          the greater of 10 years or a time period not less than the sum of the full term  
13          of the grant plus five years. The investment must be commenced no later  
14          than the time when the first disbursement is made to the business and must  
15          be completed no later than five years from the time the first disbursement is  
16          made to the business. Tangible personal property transferred by the business  
17          or from a related member of the business from one area in the State to the  
18          project is not considered an investment in tangible personal property located  
19          at the project for purposes of this section. The Department shall certify the  
20          amount of the investment made by the business at the project. The minimum  
21          investment at the project the business agrees to make is as follows:  
22          a.       For development tier one areas, twenty million dollars (\$20,000,000).  
23          b.       For development tier two areas, thirty-five million dollars  
24          (\$35,000,000).  
25          c.       For development tier three areas, fifty million dollars (\$50,000,000).  
26          (3)   The funds are (i) used to acquire or improve land or infrastructure, for  
27          facility development, or for capital investment and (ii) used for  
28          manufacturing projects. For purposes of this subdivision, "manufacturing" is  
29          defined in G.S. 143B-437.01.  
30          (4)   The funds are provided to a local governmental unit, and the local  
31          governmental unit matches a portion of the funds allocated by the  
32          Department as provided in this subdivision. A local match may include cash,  
33          fee waivers, in-kind services, the donation of assets, the provision of  
34          infrastructure, or a combination. The local match requirement is as follows:  
35          a.       For development tier one areas, a local match of at least three dollars  
36          (\$3.00) for every one hundred dollars (\$100.00) from the State is  
37          required.  
38          b.       For development tier two areas, a local match of at least six dollars  
39          (\$6.00) for every one hundred dollars (\$100.00) from the State is  
40          required.  
41          c.       For development tier three areas, a local match of at least nine dollars  
42          (\$9.00) for every one hundred dollars (\$100.00) from the State is  
43          required.  
44          (5)   The funds are reserved for a project for which a business agrees to meet, for  
45          the greater of 10 years or a time period not less than the sum of the full term  
46          of the grant plus five years, the wage standard provided in this subdivision  
47          for all full-time workers at the project. In making the wage calculation, all  
48          full-time position jobs filled during the year for at least 1,600 hours are  
49          included. The required wage standard is as follows:

- 1                   a.       For development tier one and two areas, an average weekly wage that  
2                   is at least equal to one hundred percent (100%) of the average wage  
3                   for all insured private employers in the county.
- 4                   b.       For development tier three areas, an average weekly wage that is at  
5                   least equal to one hundred ten percent (110%) of the average wage  
6                   for all insured private employers in the county.
- 7                   (6)      The funds are reserved for projects for which a business agrees to meet, for  
8                   the greater of 10 years or a time period not less than the sum of the full term  
9                   of the grant plus five years, a requirement to provide health insurance for all  
10                  full-time workers at the project. For purposes of this subdivision, a business  
11                  provides health insurance if it pays at least fifty percent (50%) of the  
12                  premiums for health care coverage that equals or exceeds the minimum  
13                  provisions of the basic health care plan of coverage recommended by the  
14                  Small Employer Carrier Committee pursuant to G.S. 58-50-125. A business  
15                  shall provide a certification that it continues to provide health insurance as  
16                  required by this subdivision.
- 17                  (7)      The funds are not used for a project at which is located, during the greater of  
18                  10 years or a time period not less than the sum of the full term of the grant  
19                  plus five years, a business that has received a notice of an overdue tax debt  
20                  and that overdue tax debt has not been satisfied or otherwise resolved.
- 21                  (8)      The funds are not used in favor of jobs created or property investments made  
22                  for which a business receives a tax credit under Article 3J of Chapter 105 of  
23                  the General Statutes.
- 24                  (9)      The funds are reserved for projects for a business that has no citations under  
25                  the Occupational Safety and Health Act that have become a final order  
26                  within the past three years for willful serious violations or for failing to abate  
27                  serious violations. In addition, the business must, for the greater of 10 years  
28                  or a time period not less than the sum of the full term of the grant plus five  
29                  years, have no citations under the Occupational Safety and Health Act that  
30                  have become a final order within the past three years for willful serious  
31                  violations or for failing to abate serious violations with respect to the project.  
32                  For purposes of this subsection, "serious violation" has the same meaning as  
33                  in G.S. 95-127.
- 34                  (10)     The funds are not used for a project that consists of a professional or  
35                  semiprofessional sports team or club or a project that consists solely of retail  
36                  facilities. If a project consists of both retail facilities and nonretail facilities,  
37                  only the portion of the project consisting of nonretail facilities is eligible for  
38                  a grant, and only full-time workers employed exclusively in the portion of  
39                  the project that represents nonretail facilities may be counted for purposes of  
40                  fulfilling the new worker position requirement. If a warehouse facility is part  
41                  of a retail facility and supplies only that retail facility, the warehouse facility  
42                  investment and full-time workers are not counted for purposes of the  
43                  requirements of this section. For the purposes of this Subpart, catalog  
44                  distribution centers are not retail facilities.
- 45                  (b)      Forfeiture. – If the business at the project fails to timely create and maintain the  
46                  required new jobs, to timely make the required level of investment, or to otherwise meet the  
47                  requirements of this section, the local governmental unit shall provide a means to recapture  
48                  from the business at the project an amount equal to the amount disbursed from the Fund for the  
49                  project, and the local governmental unit must reimburse the Fund for that disbursement.
- 50                  (c)      Records. – A business located at a project for which a grant was made from the  
51                  Fund shall maintain records and make available for inspection by the Secretary of Commerce

1 any records the Secretary considers necessary to determine and verify the business has met the  
2 requirements of this section.

3 (d) Report. – The Department shall publish a report on the Job Catalyst Fund on or  
4 before April 30 of each year. The Department shall submit the report electronically to the  
5 House of Representatives Finance Committee, the Senate Finance Committee, the House of  
6 Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate  
7 Appropriations Committee on Natural and Economic Resources, and the Fiscal Research  
8 Division. The report shall include the following:

- 9 (1) A listing of each grant awarded during the preceding calendar year,  
10 including the name of the business locating at the project, a description of  
11 the project, the term of the grant, and the liability under the grant.
- 12 (2) An update on the status of projects under grants awarded before the  
13 preceding calendar year.
- 14 (3) The number and development tier area of new worker positions to be created  
15 by projects with respect to which grants have been awarded.
- 16 (4) A listing of the employment level for all businesses located at projects with  
17 respect to which grants have been awarded and any changes in those levels  
18 from the level of the next preceding year.
- 19 (5) The wage levels of all new worker positions to be created at projects with  
20 respect to which grants have been awarded, aggregated, and listed in  
21 increments of ten thousand dollars (\$10,000) or other appropriate  
22 increments.
- 23 (6) The number of awards made for projects for new businesses and the number  
24 of awards made for projects for existing, expanding businesses in the  
25 preceding calendar year.
- 26 (7) The environmental impact of businesses at projects with respect to which  
27 grants have been awarded.
- 28 (8) The geographic distribution of grants, by number and amount, awarded  
29 under the program.
- 30 (9) For the first annual report after adoption of the guidelines developed by the  
31 Department to implement this Subpart, a copy of such guidelines, and, for  
32 subsequent reports, identification of any changes in those guidelines from  
33 the previous calendar year."

34 **SECTION 3.(f)** The Secretary of Commerce shall develop guidelines related to the  
35 administration of the Jobs Catalyst Fund, as authorized by this section, and to the selection of  
36 projects. At least 20 days before the effective date of any guidelines or nontechnical  
37 amendments to guidelines, the proposed guidelines must be published on the Department's Web  
38 site and provide notice to persons who have requested notice of proposed guidelines. In  
39 addition, the Department of Commerce shall accept oral and written comments on the proposed  
40 guidelines during the 15 business days beginning on the first day the notice requirement of this  
41 subsection have been completed. For purposes of this subsection, a technical amendment is one  
42 that corrects a spelling or grammatical error or that makes a clarification based on public  
43 comment and could have been anticipated by the public notice that immediately preceded the  
44 public comment.

45 **SECTION 3.(g)** G.S. 150B-1(d) reads as rewritten:

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

48 ...

- 49 (10) The Economic Investment Committee in developing criteria for the Job  
50 Development Investment Grant Program under ~~Part 2F~~ Subpart A of Part 2G  
51 of Article 10 of Chapter 143B of the General Statutes.

1           (10a) The Secretary of Commerce in developing criteria for the Job Catalyst Fund  
2           under Subpart B of Part 2G of Article 10 of Chapter 143B of the General  
3           Statutes.

4           ...."

5           **SECTION 3.(h)** G.S. 143B-437.07(c) reads as rewritten:

6           "(c) Economic Development Incentive. – An economic development incentive includes  
7 any grant from the following programs: Job Development Investment Grant Program; the Job  
8 Catalyst Fund; the Job Maintenance and Capital Development Fund; One North Carolina Fund;  
9 and the Utility Account. The State also incents economic development through the use of tax  
10 expenditures in the form of tax credits and refunds. The Department of Revenue must report  
11 annually on these statutory economic development incentives, as required under G.S. 105-256."

12           **SECTION 3.(i)** This section is effective when it becomes law.

#### 13 14 **PART IV. JDIG MODIFICATIONS**

15           **SECTION 4.(a)** Section 15.19(a1) of S.L. 2013-360 reads as rewritten:

16           "**SECTION 15.19.(a1)** Notwithstanding G.S. 143B-437.52(c), for the 2013-2015 fiscal  
17 biennium, the maximum total liability for grants awarded, including amounts transferred to the  
18 Utility Account pursuant to G.S. 143B-437.61, is ~~twenty-two million five hundred thousand~~  
19 ~~dollars (\$22,500,000)~~thirty-six million five hundred thousand dollars (\$36,500,000) and, for the  
20 period from July 1, 2015, to December 31, 2015, the maximum total liability for grants  
21 awarded, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, is  
22 seven million five hundred thousand dollars (\$7,500,000). No agreement may be entered into  
23 that, when considered together with other existing agreements governing grants awarded during  
24 an applicable time period provided in this subsection, could cause the State's potential total  
25 ~~annual~~-liability for grants awarded in that time period to exceed the designated maximum  
26 amount."

27           **SECTION 4.(b)** G.S. 143B-437.52 reads as rewritten:

28           "**§ 143B-437.52. Job Development Investment Grant Program.**

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

38           ...

39           (5) The total benefits of the project to the State outweigh its costs and render the  
40 grant appropriate for the project. If the total costs of the project to the State  
41 outweigh the benefits as a result of an award from the Job Catalyst Fund  
42 under Subpart B of this Part, the Committee may disregard the Job Catalyst  
43 Fund award in determining whether a grant is appropriate for the project.

44           ...."

45           **SECTION 4.(c)** G.S. 143B-437.55 is amended by adding a new subsection to read:

46           "**(c1) Monthly Reports.** – The Committee shall, on the last day of each month other than  
47 the month of April, report electronically on the Job Development Investment Grant Program.  
48 The Committee shall submit the report, for months that, on the due date, the General Assembly  
49 is not in session, to the Revenue Laws Study Committee and the Fiscal Research Division and  
50 shall submit the report, for months that, on the due date, the General Assembly is in session, to

1 the House of Representatives Finance Committee, the Senate Finance Committee, and the  
2 Fiscal Research Division. The report shall include each of the following:

- 3 (1) The total liability for grants awarded in a period, the remaining amount of  
4 liability for grants that may be awarded in that period, and the maximum  
5 amount of total liability for which grants may be awarded in that period.  
6 (2) A listing of each grant awarded during the period, including, for each grant,  
7 the name of the business, the term of the grant, the percentage of  
8 withholdings used to determine the amount of the grant, the annual  
9 maximum State liability under the grant, and the maximum total lifetime  
10 State liability under the grant, jobs anticipated to be created at the project,  
11 average wage anticipated for jobs at the project, amount of money  
12 anticipated to be invested by the business at the project, and the total amount  
13 anticipated to be annually transferred to the Utility Account under this  
14 Subpart."

15 **SECTION 4.(d)** G.S. 143B-437.52(a), as rewritten by Section 4(b) of this act,  
16 reads as rewritten:

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

- 25 ...  
26 (5) The total benefits of the project to the State outweigh its costs and render the  
27 grant appropriate for the project. ~~If the total costs of the project to the State~~  
28 ~~outweigh the benefits as a result of an award from the Job Catalyst Fund~~  
29 ~~under Subpart B of this Part, the Committee may disregard the Job Catalyst~~  
30 ~~Fund award in determining whether a grant is appropriate for the project."~~

31 **SECTION 4.(e)** Section 4(d) of this act becomes effective July 1, 2015.  
32

## 33 **PART V. CROWD FUNDING**

34 **SECTION 5.(a)** G.S. 78A-17 is amended by adding a new subdivision to read:

35 "(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in  
36 accordance with G.S. 78A-17.1."

37 **SECTION 5.(b)** Article 3 of Chapter 78A of the General Statutes is amended by  
38 adding a new section to read:

### 39 **"§ 78A-17.1. Invest NC exemption.**

40 (a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a  
41 security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is  
42 conducted in accordance with each of the following requirements:

- 43 (1) The issuer of the security is a business entity formed under the laws of the  
44 State and registered with the Secretary of State.  
45 (2) The transaction meets the requirements of the federal exemption for  
46 intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15  
47 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.  
48 (3) The sum of all cash and other consideration to be received for all sales of the  
49 security in reliance upon this exemption does not exceed the cap provided in  
50 this subdivision.

- 1           a.     One million dollars (\$1,000,000), less the aggregate amount received  
2           for all sales of securities by the issuer within the 12 months before  
3           the first offer or sale made in reliance upon this exemption, if the  
4           issuer has not undergone and made available to each prospective  
5           investor and the Administrator the documentation resulting from a  
6           financial audit with respect to its most recently completed fiscal year  
7           and meeting generally accepted accounting principles.
- 8           b.     Two million dollars (\$2,000,000), less the aggregate amount received  
9           for all sales of securities by the issuer within the 12 months before  
10          the first offer or sale made in reliance upon this exemption, if the  
11          issuer has undergone and made available to each prospective investor  
12          and the Administrator the documentation resulting from a financial  
13          audit with respect to its most recently completed fiscal year and  
14          meeting generally accepted accounting principles.
- 15          (4)    The issuer has not accepted more than two thousand dollars (\$2,000) from  
16          any single purchaser unless the purchaser is an accredited investor as defined  
17          by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.
- 18          (5)    Not less than 10 days prior to the commencement of an offering of securities  
19          in reliance on this exemption or the use of any publicly available Web site in  
20          connection with any such offering, the issuer shall file a notice with the  
21          Administrator, in writing or in electronic form as specified by the  
22          Administrator, containing the following:
- 23           a.     A notice of claim of exemption from registration, specifying that the  
24           issuer will be conducting an offering in reliance upon this exemption,  
25           accompanied by the filing fee as specified in this section.
- 26           b.     A copy of the disclosure statement to be provided to prospective  
27           investors in connection with the offering, containing the following:
- 28               1.     A description of the company, its type of entity, the address  
29               and telephone number of its principal office, its history, its  
30               business plan, and the intended use of the offering proceeds,  
31               including any amounts to be paid, as compensation or  
32               otherwise, to any owner, executive officer, director,  
33               managing member, or other person occupying a similar status  
34               or performing similar functions on behalf of the issuer.
- 35               2.     The identity of all persons owning more than ten percent  
36               (10%) of the ownership interests of any class of securities of  
37               the company.
- 38               3.     The identity of the executive officers, directors, managing  
39               members, and other persons occupying a similar status or  
40               performing similar functions in the name of and on behalf of  
41               the issuer, including their titles and their prior experience.
- 42               4.     The terms and conditions of the securities being offered and  
43               of any outstanding securities of the company, the minimum  
44               and maximum amount of securities being offered, if any, and  
45               either the percentage ownership of the company represented  
46               by the offered securities or the valuation of the company  
47               implied by the price of the offered securities.
- 48               5.     The identity of any person who has been or will be retained  
49               by the issuer to assist the issuer in conducting the offering  
50               and sale of the securities, including any Web sites, but  
51               excluding persons acting solely as accountants or attorneys



- 1                                   and employees whose primary job responsibilities involve the  
2                                   operating business of the issuer rather than assisting the issuer  
3                                   in raising capital, and for each person identified in response  
4                                   to this paragraph, a description of the consideration being  
5                                   paid to such person for such assistance.
- 6                                   6.    A description of any litigation or legal proceedings involving  
7                                   the company or its management.
- 8                                   7.    The names and addresses, including URL, of any Web sites  
9                                   that will be used in connection with the offering.
- 10                                  c.    An escrow agreement with a bank or other depository institution  
11                                  located within this State in which the investor funds will be  
12                                  deposited, providing that all offering proceeds will be released to the  
13                                  issuer only when the aggregate capital raised from all investors is  
14                                  equal to or greater than the minimum target offering amount  
15                                  specified in the business plan as necessary to implement the business  
16                                  plan and that all investors may cancel their commitments to invest if  
17                                  that target offering amount is not raised by the time stated in the  
18                                  disclosure document.
- 19                                  (6)   The issuer is not, either before or as a result of the offering, an investment  
20                                  company, as defined in section 3 of the Investment Company Act of 1940,  
21                                  15 U.S.C. § 8a-3, or an entity that would be an investment company but for  
22                                  the exclusions provided in section 3(c) of the act, or subject to the reporting  
23                                  requirements of section 13 or 15(d) of the Securities Exchange Act of 1934,  
24                                  15 U.S.C. § 78m and 78o(d).
- 25                                  (7)   The issuer shall inform all prospective purchasers under this section that the  
26                                  securities have not been registered under federal or State securities law and  
27                                  that the securities are subject to limitations on resale. The issuer shall display  
28                                  the following legend conspicuously on the cover page of the disclosure  
29                                  document:
- 30    "IN MAKING AN INVESTMENT DECISION, INVESTORS  
31    MUST RELY ON THEIR OWN EXAMINATION OF THE  
32    ISSUER AND THE TERMS OF THE OFFERING, INCLUDING  
33    THE MERITS AND RISKS INVOLVED. THESE SECURITIES  
34    HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR  
35    STATE SECURITIES COMMISSION OR REGULATORY  
36    AUTHORITY. FURTHERMORE, THE FOREGOING  
37    AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR  
38    DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY  
39    REPRESENTATION TO THE CONTRARY IS A CRIMINAL  
40    OFFENSE. THESE SECURITIES ARE SUBJECT TO  
41    RESTRICTIONS ON TRANSFERABILITY AND RESALE AND  
42    MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS  
43    PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R.  
44    § 230.147(E) AS PROMULGATED UNDER THE SECURITIES  
45    ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE  
46    SECURITIES LAWS, PURSUANT TO REGISTRATION OR  
47    EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE  
48    THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL  
49    RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD  
50    OF TIME."

- 1           (8)   The issuer shall require each purchaser to certify in writing "I understand  
2           and acknowledge that:  
3           a.       I am investing in a high-risk, speculative business venture. I may lose  
4           all of my investment, and I can afford the loss of my investment.  
5           b.       This offering has not been reviewed or approved by any state or  
6           federal securities commission or other regulatory authority and that  
7           no such person or authority has confirmed the accuracy or  
8           determined the adequacy of any disclosure made to me relating to  
9           this offering.  
10          c.       The securities I am acquiring in this offering are illiquid, that there is  
11          no ready market for the sale of such securities, that it may be difficult  
12          or impossible for me to sell or otherwise dispose of this investment,  
13          and that, accordingly, I may be required to hold this investment  
14          indefinitely.  
15          d.       I may be subject to tax on my share of the taxable income and losses  
16          of the company, whether or not I have sold or otherwise disposed of  
17          my investment or received any dividends or other distributions from  
18          the company."  
19          (9)   If the offer and sale of securities is made through an Internet Web site, the  
20          following requirements apply:  
21          a.       Prior to the offer of an investment opportunity to residents of this  
22          State through a Web site, the issuer shall provide to the Web site and  
23          to the Administrator evidence that the issuer is organized under  
24          North Carolina law and that it is authorized to do business within the  
25          State.  
26          b.       The issuer shall obtain from each purchaser of a security under this  
27          section evidence that the purchaser is a resident of North Carolina  
28          and, if applicable, an accredited investor.  
29          c.       The Web site operator shall register with the Administrator by filing  
30          a statement that it is a business entity that is organized under North  
31          Carolina law and that it is authorized to do business within the State  
32          and that it is being utilized to offer and sell securities pursuant to this  
33          exemption. As part of the registration, the Web site shall notify the  
34          Administrator of its and the issuer's identity, location, and contact  
35          information.  
36          d.       The issuer and the Web site must keep and maintain records of the  
37          offers and sales of securities effected through the Web site and must  
38          provide ready access to the records to the Administrator, upon  
39          request. The Administrator may access, inspect, and review any Web  
40          site and its records.  
41          (10) All payments for purchase of securities must be directed to and held by the  
42          bank or depository institution subject to the provisions of sub-subdivision  
43          (a)(5)c. of this section. The bank or depository institution shall notify the  
44          Administrator of the receipt of payments for securities and the identity and  
45          residence of the investors. The information shall be confidential and  
46          considered trade secrets within the scope of G.S. 132-1.2 while in the  
47          possession of the Administrator.  
48          (11) No offers or sales of a security shall be made through an Internet Web site  
49          unless the Web site is registered with the Administrator pursuant to  
50          sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to

1 the registration provisions of G.S. 78A-36, provided that all of the following  
2 apply:

- 3 a. It does not offer investment advice or recommendations.  
4 b. It does not solicit purchases, sales, or offers to buy the securities  
5 offered or displayed on the Web site.  
6 c. It does not compensate employees, agents, or other persons for the  
7 solicitation or based on the sale of securities displayed or referenced  
8 on the Web site.  
9 d. It is not compensated based on the amount of securities sold, and it  
10 does not hold, manage, possess, or otherwise handle investor funds  
11 or securities.  
12 e. It does not engage in such other activities as the Administrator, by  
13 rule, determines appropriate.

14 (12) An executive officer, director, managing member, or person occupying a  
15 similar status or performing similar functions in the name of and on behalf  
16 of the issuer shall be exempt from the registration provisions of  
17 G.S. 78A-36, provided that the person does not receive, directly or  
18 indirectly, any commission or remuneration for offering and selling  
19 securities of the issuer pursuant to this exemption.

20 (13) The issuer must provide a copy of the disclosure document provided to the  
21 Administrator pursuant to sub-subdivision (a)(5)b. of this section to each  
22 prospective investor at the time the offer of securities is made to the  
23 prospective investor. In addition to the information described in  
24 sub-subdivision (a)(5)b. of this section, the disclosure document provided to  
25 the Administrator and to prospective investors should include additional  
26 information material to the offering, including, where appropriate, a  
27 discussion of significant factors that make the offering speculative or risky.  
28 This discussion must be concise and organized logically and should not  
29 present risks that could apply to any issuer or any offering.

30 (b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall  
31 be cumulatively adjusted every fifth year by the Administrator to reflect the change in the  
32 Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics,  
33 setting each dollar limitation to the nearest fifty thousand dollars (\$50,000).

34 (c) Report. – An issuer of a security, the offer and sale of which is exempt under this  
35 section, shall provide a quarterly report to the issuer's investors until no securities issued under  
36 this section are outstanding. The report required by this subsection shall be free of charge. An  
37 issuer may satisfy the reporting requirement of this subsection by making the information  
38 available on an Internet Web site address if the information is made available within 45 days of  
39 the end of each fiscal quarter and remains available until the succeeding quarterly report is  
40 issued. An issuer shall file each such quarterly report with the Administrator and must provide  
41 a written copy of the report to any investor upon request. The report must contain each of the  
42 following:

43 (1) Compensation received by each director and executive officer, including  
44 cash compensation earned since the previous report and on an annual basis  
45 and any bonuses, stock options, other rights to receive securities of the issuer  
46 or any affiliate of the issuer, or other compensation received.

47 (2) An analysis by management of the issuer of the business operations and  
48 financial condition of the issuer.

49 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section  
50 shall not be used in conjunction with any other exemption under this Chapter, except offers and  
51 sales to controlling persons shall not count toward the limitation in subdivision (3) of

1 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or  
2 individual occupying similar status or performing similar functions with respect to the issuer or  
3 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes  
4 of securities of the issuer.

5 (e) Disqualification. – The exemption allowed by this section shall not apply if an  
6 issuer or person affiliated with the issuer or offering is subject to any disqualification contained  
7 in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the  
8 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply  
9 if (i) upon a showing of good cause and without prejudice to any other action by the  
10 Administrator, the Administrator determines that it is not necessary under the circumstances  
11 that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into  
12 whether any disqualification existed under this subsection but did not know, and in the exercise  
13 of reasonable care could not have known, that a disqualification existed under this subsection.  
14 The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer  
15 and the other offering participants.

16 (f) Rules. – The Administrator may adopt rules to implement the provisions of this  
17 section and to protect investors who purchase securities under this section.

18 (g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred  
19 fifty dollars (\$150.00) for filing an exemption notice required by subsection (a) of this section.  
20 The fees paid to the Administrator pursuant to this subsection shall be used to pay the costs  
21 incurred in administering and enforcing this Chapter. The revenue derived from the fee shall be  
22 credited to a nonreverting agency revenue account."

23 **SECTION 5.(c)** G.S. 78A-49(d) reads as rewritten:

24 "(d) The Administrator may by rule or order require the filing of any prospectus,  
25 pamphlet, circular, form letter, advertisement, or other sales literature or advertising  
26 communication addressed or intended for distribution to prospective investors, unless the  
27 security or transaction is exempted by ~~G.S. 78A-16 or 78A-17 (except 78A-17(9), (17), and~~  
28 ~~(19))~~G.S. 78A-16 and G.S. 78A-17 (except G.S. 78A-17(9), (17), (19), and (20)) and such  
29 exemption has not been denied or revoked under G.S. 78A-18 or the security is a security  
30 covered under federal law or the transaction is with respect to a security covered under federal  
31 law."

32 **SECTION 5.(d)** Notwithstanding any provision of Article 2A of Chapter 150B of  
33 the General Statutes, within 12 months of the effective date of this act, the Secretary of State  
34 shall adopt rules to implement the provisions of this act in accordance with the following  
35 procedure:

- 36 (1) At least 15 business days prior to adopting a rule, submit the rule and a  
37 notice of public hearing to the Codifier of Rules. The Codifier of Rules shall  
38 publish the proposed rule and the notice of public hearing on the Internet  
39 within five business days.
- 40 (2) At least 15 business days prior to adopting a rule, notify persons on the  
41 mailing list maintained pursuant to G.S. 150B-21.2(d) and any other  
42 interested parties of the Secretary's intent to adopt a rule and of the public  
43 hearing.
- 44 (3) Accept written comments on the proposed rule for at least 15 business days  
45 prior to adoption of the rule.
- 46 (4) Hold at least one public hearing on the proposed rule no less than five days  
47 after the rule and notice have been published.

48 A rule adopted in accordance with this section becomes effective on the first day of  
49 the month following the month the Secretary adopts the rule and submits the rule to the  
50 Codifier of Rules for entry into the North Carolina Administrative Code. Any rule adopted

1 more than 12 months after the effective date of this act shall comply with the requirement of  
2 Article 2A of Chapter 150B of the General Statutes.

3 **SECTION 5.(e)** Subsection (d) of this section is effective when it becomes law and  
4 expires 12 months after the effective date of this act. The remainder of this section is effective  
5 when it becomes law and expires on July 1, 2017.

6

7 **PART VI. EFFECTIVE DATE**

8 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes  
9 law.