

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 308
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Short Title: Endangered Manufacturing and Jobs Act. (Public)

Sponsors: Senators Jacumin; Albertson, Allran, Atwater, Berger of Rockingham, Blake, Brock, Brown, Foriest, Forrester, Garrou, Goss, Hunt, Jenkins, Jones, McKissick, Preston, Rucho, Snow, Swindell, and Tillman.

Referred to: Finance.

February 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE ENHANCED ECONOMIC DEVELOPMENT INCENTIVES TO
3 ENDANGERED MANUFACTURERS AND TO CLARIFY THAT A LOW-PROFIT
4 LIMITED LIABILITY COMPANY IS A LIMITED LIABILITY COMPANY UNDER
5 STATE LAW.

6 Whereas, the State of North Carolina is and should be actively engaged in economic
7 development efforts to attract and stimulate private sector job creation and capital investors;
8 and

9 Whereas, the furniture industry in North Carolina has been damaged by overseas
10 competition and has now become an endangered industry in North Carolina; and

11 Whereas, additional furniture industry jobs would strengthen the economy of North
12 Carolina as a whole; Now, therefore,
13 The General Assembly of North Carolina enacts:

14 **PART I. ECONOMIC DEVELOPMENT INCENTIVES**

15 **SECTION 1.1.** G.S. 105-129.83 is amended by adding a new subsection to read:

16 "(m) Endangered Manufacturer Enhancements. – Any establishment whose primary
17 activity is in one of the following subsectors shall be treated as if it were located in a
18 development tier one area for all purposes under this Article:

19 (1) Apparel manufacturing subsector 315 as defined by NAICS.

20 (2) Furniture and related product manufacturing subsector 337 as defined by
21 NAICS.

22 (3) Textile mills subsector 313 as defined by NAICS.

23 (4) Textile product mills subsector 314 as defined by NAICS."

24 **SECTION 1.2.** G.S. 105-164.14(h) reads as rewritten:

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

27 (1) Refunds. – An eligible person is allowed an annual refund of sales and use
28 taxes paid by it under this Article at the general rate of tax on eligible
29 machinery and equipment it purchases for use in an enterprise tier one area
30 or an enterprise tier two area, as defined in ~~G.S. 105-129.3~~ or G.S. 105-129.3,
31 a development tier one area, as defined in
32 ~~G.S. 143B-437.08~~ G.S. 143B-437.08, or in an industry listed in
33 G.S. 105-129.83(m) regardless of where the machinery and equipment is
34 located in this State. Liability incurred indirectly by the taxpayer for sales



and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

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

(3) Machinery and equipment. – For the purpose of this subsection, the term "machinery and equipment" means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.4(a) or G.S. 105-129.83(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an ~~enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3, or a development tier one area, as defined in G.S. 143B-437.08~~ applicable area, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 1.3. G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one development tier area, the location with the highest development tier area designation determines the minimum number of eligible positions that must be created. If the primary activity of the project is in an industry listed in G.S. 105-129.83(m), the minimum job creation number applicable to development tier one applies regardless of the tier designation of the location of the project.

Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	20
Tier Three	20"

SECTION 1.4. G.S. 143B-437.56(d) reads as rewritten:

"(d) For any eligible position that is located in a development tier three area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For any eligible position that is located in a development tier two area, eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the business, and fifteen percent (15%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For a project that is primarily engaged in one of the industries listed in G.S. 105-129.83(m), one hundred percent (100%) of the annual grant approved for disbursement shall be payable to the business regardless of the development tier designation of the location. A position is located in the development tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee."

SECTION 1.5. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2009. Section 1.2 of this part becomes effective January 1, 2009, and applies to purchases made on or after that date. The remainder of this part is effective when it becomes law.

PART II. LOW-PROFIT LIMITED LIABILITY COMPANIES

1 **SECTION 2.1.** G.S. 57C-1-03 reads as rewritten:

2 "**§ 57C-1-03. Definitions.**

3 The following definitions apply in this Chapter, unless otherwise specifically provided:

4 ...

5 (11) Limited liability company or domestic limited liability company. – An entity
6 formed and existing under this Chapter. The term "limited liability
7 company" or "domestic limited liability company" includes low-profit
8 limited liability companies and companies designated as "L3C."

9 (12) Limited partnership or domestic limited partnership. – Has the same
10 meaning as in G.S. 59-102(8).

11 (12a) Low-profit limited liability company or "L3C." – An entity formed and
12 existing under this Chapter that is organized for a business purpose that
13 satisfies and is at all times operated to satisfy each of the following
14 requirements:

15 a. The entity (i) significantly furthers the accomplishment of one or
16 more charitable or educational purposes within the meaning of
17 section 170(c)(2)(B) of the Internal Revenue Code of 1986, as
18 amended, and (ii) would not have been formed but for the entity's
19 relationship to the accomplishment of charitable or educational
20 purposes;

21 b. No significant purpose of the entity is the production of income or
22 the appreciation of property; provided, however, that the fact that an
23 entity produces significant income or capital appreciation shall not,
24 in the absence of other factors, be conclusive evidence of a
25 significant purpose involving the production of income or the
26 appreciation of property; and

27 c. No purpose of the entity is to accomplish one or more political or
28 legislative purposes within the meaning of section 170(c)(2)(D) of
29 the Code, as amended.

30 If an entity that met this definition at its formation at any time ceases to
31 satisfy any one of the foregoing requirements, it shall immediately cease to
32 be a low-profit limited liability company but will continue to exist as a
33 limited liability company.

34 All references in this subdivision to sections of the Code shall be to
35 sections of the Internal Revenue Code of 1986, as amended from time to
36 time, or to corresponding provisions of subsequent internal revenue laws of
37 the United States.

38 ~~(12a)~~(12b) Management of the affairs. – In respect of an entity, unless the context
39 indicates otherwise, the authority to direct and participate in the management
40 of the entity.

41 "

42 **SECTION 2.2.** G.S. 55D-20(a) is amended by adding the following subdivision to

43 read:

44 "(6) The name of a low-profit limited liability company, as defined in
45 G.S. 57C-1-03(12a), must contain the abbreviation "L3C" or "l3c.""

46 **SECTION 2.3.** This part is effective when it becomes law.

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48 **PART III. EFFECTIVE DATE**

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