

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

3

SENATE BILL 575
Finance Committee Substitute Adopted 5/6/09
House Committee Substitute Favorable 5/21/09

Short Title: Modify Corporate Apportionment Formula.

(Public)

Sponsors:

Referred to:

March 12, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE THE LOCATION AND EXPANSION OF CAPITAL
3 INTENSIVE COMPANIES IN THIS STATE BY PROVIDING FOR APPORTIONMENT
4 OF CORPORATE INCOME BASED SOLELY ON THE SALES FACTOR FOR
5 COMPANIES THAT MEET CERTAIN INVESTMENT AND QUALITY JOBS
6 CRITERIA.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 105-130.4 is amended by adding a new subsection to read:

9 "(s1) All apportionable income of a qualified capital intensive corporation shall be
10 apportioned by multiplying the income by the sales factor as determined under subsection (1) of
11 this section. A 'qualified capital intensive corporation' is a corporation that satisfies all of the
12 conditions of this subsection. A corporation that is subject to this subsection must list on its
13 return the property, payroll, and sales factors it used in determining whether it is a qualified
14 capital intensive corporation. If the corporation fails to invest one billion dollars
15 (\$1,000,000,000) in private funds within nine years as required by subdivision (2) of this
16 subsection, the benefit of this subsection expires and the corporation must apportion income as
17 it would otherwise be required to do under this section absent this subsection. The conditions
18 are:

19 (1) The corporation's property factor as a percentage of the sum of the factors in
20 the formula set out in subsection (i) of this section, including the doubling of
21 the sales factor, exceeds seventy-five percent (75%) or the corporation's
22 average property factor for the preceding three years as a percentage of the
23 average sum of the factors in the formula set out in subsection (i) of this
24 section, including the doubling of the sales factors, for the preceding three
25 years exceeds seventy-five percent (75%).

26 (2) The Secretary of Commerce makes a written determination that the
27 corporation has invested or is expected to invest at least one billion dollars
28 (\$1,000,000,000) in private funds to construct a facility in this State within
29 nine years after the time that construction begins. For the purposes of this
30 subsection, costs of construction include costs of acquiring and improving
31 land for the facility, costs for renovations or repairs to existing buildings,
32 and costs of equipping or reequipping the facility.

33 (3) The corporation maintains the average number of employees it has at the
34 facility during the first two years after the facility is placed in service for the
35 remainder of time in which the corporation must complete the investment
36 required under subdivision (2) of this subsection.



- 1 (4) The facility that satisfies the condition of subdivision (2) of this subsection is
2 located in a county that was designated as a development tier one or two area
3 at the time construction of the facility began.
- 4 (5) The corporation satisfies a wage standard at the facility that satisfies the
5 condition of subdivision (2) of this subsection. For the purposes of this
6 subdivision, the wage standard that must be satisfied is the one established
7 under G.S. 105-129.83(c).
- 8 (6) The corporation provides health insurance for all of its full-time employees
9 at the facility that satisfies the condition of subdivision (2) of this subsection.
10 For the purposes of this subdivision, a company provides health insurance if
11 it satisfies the provisions of G.S. 105-129.83(d)."

12 **SECTION 2.** G.S. 105-130.4(i) reads as rewritten:

13 "(i) All apportionable income of corporations other than public ~~utilities and excluded~~
14 ~~corporations~~ utilities, excluded corporations, and qualified capital intensive corporations shall
15 be apportioned to this State by multiplying the income by a fraction, the numerator of which is
16 the property factor plus the payroll factor plus twice the sales factor, and the denominator of
17 which is four. ~~Provided, that where~~ If the sales factor does not exist, the denominator of the
18 fraction ~~shall be~~ is the number of existing factors and ~~where~~ if the sales factor exists but the
19 payroll factor or the property factor does not exist, the denominator of the fraction ~~shall be~~ is
20 the number of existing factors plus one."

21 **SECTION 3.** G.S. 105-129.83 is amended by adding a new subsection to read:

22 "(m) Qualified Capital Intensive Corporations. – A corporation that is a qualified capital
23 intensive corporation under G.S. 105-130.4(s1) is not eligible for any credit under this Article
24 with respect to the facility that satisfies the condition of subdivision (2) of that subsection."

25 **SECTION 4.** A corporation that is a qualified capital intensive corporation under
26 G.S. 105-130.4(s1) is not eligible for a grant under the Job Development Investment Grant
27 Program established under Part 2G of Article 10 of Chapter 143B of the General Statutes or the
28 One North Carolina Fund established under Part 2H of Article 10 of Chapter 143B of the
29 General Statutes with respect to the facility that satisfies the condition of
30 G.S. 105-130.4(s1)(2).

31 **SECTION 5.** The General Assembly encourages qualified capital intensive
32 corporations that locate in this State to enter into a first source hiring agreement to utilize the
33 State Employment Security Commission and any cooperating local agency as a first source for
34 recruitment and referral of applicants for new and replacement employment associated with the
35 applicable facility.

36 **SECTION 6.** This act is effective for taxable years beginning on or after January 1,
37 2010. If no corporation has qualified as a qualified capital intensive corporation under
38 G.S. 105-130.4(s1) prior to January 1, 2019, then G.S. 105-130.4(s1) is repealed for taxable
39 years beginning on or after January 1, 2019.