

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 89

Short Title: Omnibus Economic Development Improvements. (Public)

Sponsors: Representatives Hamilton, R. Moore, and Hanes (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Commerce and Job Development, if favorable, Finance, if favorable, Appropriations.

February 16, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE VARIOUS TAX CREDITS AND INCENTIVES FOR ECONOMIC
3 DEVELOPMENT.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. JOB CATALYST FUND**

7 **SECTION 1.(a)** The title of Part 2G of Article 10 of Chapter 143B of the General
8 Statutes reads as rewritten:

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

10 **SECTION 1.(b)** G.S. 143B-437.51 reads as rewritten:

11 "**§ 143B-437.51. Definitions.**

12 The following definitions apply in this Part:

13 ...

14 (6) Full-time employee. – A person who is employed for consideration for at
15 least 35 hours a week, whose wages are subject to withholding under Article
16 4A of Chapter 105 of the General Statutes, and who is determined by the
17 Committee to be employed in a permanent position according to criteria it
18 develops in consultation with the Attorney General. The term does not
19 include any person who works as an independent contractor or on a
20 consulting basis for the business.

21 (6a) Full-time worker. – A person who is employed for consideration for at least
22 35 hours a week, whose wages are subject to withholding under Article 4A
23 of Chapter 105 of the General Statutes, and who is determined by the
24 Department to be employed in a permanent position. The term does not
25 include any person who works as an independent contractor or on a
26 consulting basis for the business.

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

30"

31 **SECTION 1.(c)** G.S. 143B-437.52 reads as rewritten:

32 "Subpart A. Job Development Investment Grant Program.

33 "**§ 143B-437.52. Job Development Investment Grant Program.**



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

9"

10 **SECTION 1.(d)** The Revisor of Statutes is authorized to change references of "this
11 Part" in Subpart A of Part 2G of Article 10 of Chapter 143B of the General Statutes to "this
12 Subpart" as appropriate.

13 **SECTION 1.(e)** Part 2G of Article 10 of Chapter 143B of the General Statutes is
14 amended by adding a new Subpart to read:

15 "Subpart B. Job Catalyst Fund.

16 **"§ 143B-437.67. Job Catalyst Fund.**

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

23 (1) The funds are reserved for a project for which a business agrees to create and
24 maintain, for the greater of 10 years or a time period not less than the sum of
25 the full term of the grant plus five years, the number of new worker positions
26 at the project as follows:

27 a. For development tier one areas, 500 full-time workers.

28 b. For development tier two areas, 800 full-time workers.

29 c. For development tier three areas, 1,200 full-time workers.

30 (2) The funds are reserved for a project for which a business agrees to make an
31 investment at the project as provided in this subdivision. The investment
32 required by this subdivision must be private funds in improvements to real
33 property and additions to tangible personal property located at the project for
34 the greater of 10 years or a time period not less than the sum of the full term
35 of the grant plus five years. The investment must be commenced no later
36 than the time when the first disbursement is made to the business and must
37 be completed no later than five years from the time the first disbursement is
38 made to the business. Tangible personal property transferred by the business
39 or from a related member of the business from one area in the State to the
40 project is not considered an investment in tangible personal property located
41 at the project for purposes of this section. The Department shall certify the
42 amount of the investment made by the business at the project. The minimum
43 investment at the project the business agrees to make is as follows:

44 a. For development tier one areas, twenty million dollars (\$20,000,000).

45 b. For development tier two areas, thirty-five million dollars
46 (\$35,000,000).

47 c. For development tier three areas, fifty million dollars (\$50,000,000).

48 (3) The funds are (i) used to acquire or improve land or infrastructure, for
49 facility development, or for capital investment and (ii) used for
50 manufacturing projects. For purposes of this subdivision, "manufacturing" is
51 defined in G.S. 143B-437.01.

- 1 (4) The funds are provided to a local governmental unit, and the local
2 governmental unit matches a portion of the funds allocated by the
3 Department as provided in this subdivision. A local match may include cash,
4 fee waivers, in-kind services, the donation of assets, the provision of
5 infrastructure, or a combination of these. The local match requirement is as
6 follows:
- 7 a. For development tier one areas, a local match of at least three dollars
8 (\$3.00) for every one hundred dollars (\$100.00) from the State is
9 required.
- 10 b. For development tier two areas, a local match of at least six dollars
11 (\$6.00) for every one hundred dollars (\$100.00) from the State is
12 required.
- 13 c. For development tier three areas, a local match of at least nine dollars
14 (\$9.00) for every one hundred dollars (\$100.00) from the State is
15 required.
- 16 (5) The funds are reserved for a project for which a business agrees to meet, for
17 the greater of 10 years or a time period not less than the sum of the full term
18 of the grant plus five years, the wage standard provided in this subdivision
19 for all full-time workers at the project. In making the wage calculation, all
20 full-time position jobs filled during the year for at least 1,600 hours are
21 included. The required wage standard is as follows:
- 22 a. For development tier one and two areas, an average weekly wage that
23 is at least equal to one hundred percent (100%) of the average wage
24 for all insured private employers in the county.
- 25 b. For development tier three areas, an average weekly wage that is at
26 least equal to one hundred ten percent (110%) of the average wage
27 for all insured private employers in the county.
- 28 (6) The funds are reserved for projects for which a business agrees to meet, for
29 the greater of 10 years or a time period not less than the sum of the full term
30 of the grant plus five years, a requirement to provide health insurance for all
31 full-time workers at the project. For purposes of this subdivision, a business
32 provides health insurance if it pays at least fifty percent (50%) of the
33 premiums for health care coverage that equals or exceeds the minimum
34 provisions of the basic health care plan of coverage recommended by the
35 Small Employer Carrier Committee pursuant to G.S. 58-50-125. A business
36 shall provide a certification that it continues to provide health insurance as
37 required by this subdivision.
- 38 (7) The funds are not used for a project at which is located, during the greater of
39 10 years or a time period not less than the sum of the full term of the grant
40 plus five years, a business that has received a notice of an overdue tax debt
41 and that overdue tax debt has not been satisfied or otherwise resolved.
- 42 (8) The funds are not used in favor of jobs created or property investments made
43 for which a business receives a tax credit under Article 3J of Chapter 105 of
44 the General Statutes.
- 45 (9) The funds are reserved for projects for a business that has no citations under
46 the Occupational Safety and Health Act that have become a final order
47 within the past three years for willful serious violations or for failing to abate
48 serious violations. In addition, the business must, for the greater of 10 years
49 or a time period not less than the sum of the full term of the grant plus five
50 years, have no citations under the Occupational Safety and Health Act that
51 have become a final order within the past three years for willful serious

1 violations or for failing to abate serious violations with respect to the project.
2 For purposes of this subsection, "serious violation" has the same meaning as
3 in G.S. 95-127.

4 (10) The funds are not used for a project that consists of a professional or
5 semiprofessional sports team or club or a project that consists solely of retail
6 facilities. If a project consists of both retail facilities and nonretail facilities,
7 only the portion of the project consisting of nonretail facilities is eligible for
8 a grant, and only full-time workers employed exclusively in the portion of
9 the project that represents nonretail facilities may be counted for purposes of
10 fulfilling the new worker position requirement. If a warehouse facility is part
11 of a retail facility and supplies only that retail facility, the warehouse facility
12 investment and full-time workers are not counted for purposes of the
13 requirements of this section. For the purposes of this Subpart, catalog
14 distribution centers are not retail facilities.

15 (b) Forfeiture. – If the business at the project fails to timely create and maintain the
16 required new jobs, to timely make the required level of investment, or to otherwise meet the
17 requirements of this section, the local governmental unit shall provide a means to recapture
18 from the business at the project an amount equal to the amount disbursed from the Fund for the
19 project, and the local governmental unit must reimburse the Fund for that disbursement.

20 (c) Records. – A business located at a project for which a grant was made from the
21 Fund shall maintain records and make available for inspection by the Secretary of Commerce
22 any records the Secretary considers necessary to determine and verify the business has met the
23 requirements of this section.

24 (d) Report. – The Department shall publish a report on the Job Catalyst Fund on or
25 before April 30 of each year. The Department shall submit the report electronically to the
26 House of Representatives Finance Committee, the Senate Finance Committee, the House of
27 Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate
28 Appropriations Committee on Natural and Economic Resources, and the Fiscal Research
29 Division. The report shall include the following:

30 (1) A listing of each grant awarded during the preceding calendar year,
31 including the name of the business locating at the project, a description of
32 the project, the term of the grant, and the liability under the grant.

33 (2) An update on the status of projects under grants awarded before the
34 preceding calendar year.

35 (3) The number and development tier area of new worker positions to be created
36 by projects with respect to which grants have been awarded.

37 (4) A listing of the employment level for all businesses located at projects with
38 respect to which grants have been awarded and any changes in those levels
39 from the level of the next preceding year.

40 (5) The wage levels of all new worker positions to be created at projects with
41 respect to which grants have been awarded, aggregated, and listed in
42 increments of ten thousand dollars (\$10,000) or other appropriate
43 increments.

44 (6) The number of awards made for projects for new businesses and the number
45 of awards made for projects for existing, expanding businesses in the
46 preceding calendar year.

47 (7) The environmental impact of businesses at projects with respect to which
48 grants have been awarded.

49 (8) The geographic distribution of grants, by number and amount, awarded
50 under the program.

(9) For the first annual report after adoption of the guidelines developed by the Department to implement this Subpart, a copy of such guidelines, and, for subsequent reports, identification of any changes in those guidelines from the previous calendar year."

SECTION 1.(f) The Secretary of Commerce shall develop guidelines related to the administration of the Jobs Catalyst Fund, as authorized by this section, and to the selection of projects. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the proposed guidelines must be published on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department of Commerce shall accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day the notice requirement of this subsection have been completed. For purposes of this subsection, a technical amendment is one that corrects a spelling or grammatical error or that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

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

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

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

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

...."

SECTION 1.(h) G.S. 143B-437.07(c) reads as rewritten:

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

SECTION 1.(i) The unencumbered cash balance of the Job Catalyst Fund (Budget Code 14600-1912) may be used for the purposes Job Catalyst Fund, as created by this Part.

SECTION 1.(j) This Part is effective when it becomes law.

PART II. NEW MARKETS JOBS ACT OF 2015

SECTION 2.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3L.

"North Carolina New Markets Jobs Act of 2015.

"§ 105-129.100. Short title.

The provisions of this Article shall be known and may be cited as the "North Carolina New Markets Jobs Act of 2015."

"§ 105-129.101. Definitions.

The following definitions apply in this Article:

(1) Affiliate. – An entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the entity specified.

- 1 (2) Applicable percentage. – Zero percent (0%) for the first two reduction
2 allowance dates, twelve percent (12%) for the next three reduction
3 allowance dates, and eleven percent (11%) for the following two reduction
4 allowance dates.
- 5 (3) Below the line reduction of tax or "reduction." – A subtraction from the total
6 amount of State premium tax liability made after all additions and
7 deductions have been made to the gross premium amount and after the
8 appropriate rates of tax have been applied; for the purposes of constitutional,
9 statutory, and common law interpretation and enforcement, the reduction
10 shall be afforded the same property and contractual protections as a credit.
- 11 (4) Department. – The Department of Commerce.
- 12 (5) Long-term debt security. – Any debt instrument issued by a qualified
13 community development entity, at par value or a premium, with an original
14 maturity date of at least seven years from the date of its issuance, with no
15 acceleration of repayment, amortization, or prepayment features prior to its
16 original maturity date. The qualified community development entity that
17 issues the debt instrument may not make cash interest payments on the debt
18 instrument during the period beginning on the date of issuance and ending
19 on the final reduction allowance date in an amount that exceeds the
20 cumulative operating income, as defined by regulations adopted under
21 section 45D of the Internal Revenue Code of 1986, as amended, of the
22 qualified community development entity for that period prior to giving effect
23 to the interest expense of such long-term debt security. The foregoing shall
24 in no way limit the holder's ability to accelerate payments on the debt
25 instrument in situations where the qualified community development entity
26 has defaulted on covenants designed to ensure compliance with this section
27 or section 45D of the Internal Revenue Code of 1986, as amended.
- 28 (6) Purchase price. – The amount paid to the qualified community development
29 entity upon the issuance of a qualified equity investment.
- 30 (7) Qualified active low-income community business. – The meaning given
31 such term in section 45D of the Internal Revenue Code of 1986, as amended,
32 and 26 C.F.R. § 1.45D-1 but limited to those businesses meeting the SBA
33 size eligibility standards established in 13 C.F.R. § 121.101-201 at the time
34 the qualified low-income community investment is made. A business shall
35 be considered a qualified active low-income community business for the
36 duration of the qualified community development entity's investment in or
37 loan to the business if the entity reasonably expects, at the time it makes the
38 investment or loan, that the business will continue to satisfy the requirements
39 for being a qualified active low-income community business, other than the
40 SBA size standards, throughout the entire period of the investment or loan.
41 The term excludes any business that derives or projects to derive fifteen
42 percent (15%) or more of its annual revenue from the rental or sale of real
43 estate. This exclusion does not apply to a business that is controlled by or
44 under common control with another business if the second business (i) does
45 not derive or project to derive fifteen percent (15%) or more of its annual
46 revenue from the rental or sale of real estate and (ii) is the primary tenant of
47 the real estate leased from the first business.
- 48 (8) Qualified community development entity. – The meaning given such term in
49 section 45D of the Internal Revenue Code of 1986, as amended; provided
50 that such entity has entered into, for the current year or any prior year, an
51 allocation agreement with the Community Development Financial

1 Institutions Fund of the U.S. Treasury Department with respect to credits
2 authorized by section 45D of the Internal Revenue Code of 1986, as
3 amended, which includes the State of North Carolina within the service area
4 set forth in the allocation agreement. The term shall include qualified
5 community development entities that are controlled by or are under common
6 control with the qualified community development entity.

7 (9) Qualified equity investment. – Any equity investment in or long-term debt
8 security issued by a qualified community development entity that meets each
9 of the following requirements:

10 a. Is acquired after the effective date of this act at its original issuance
11 solely in exchange for cash.

12 b. Has at least eighty-five percent (85%) of its cash purchase price used
13 by the qualified community development entity to make qualified
14 low-income community investments in qualified active low-income
15 community businesses located in this State by the first anniversary of
16 the initial reduction allowance date.

17 c. Is designated by the qualified community development entity as a
18 qualified equity investment under this subdivision and is certified by
19 the Department as not exceeding the limitation contained in
20 G.S. 105-129.102(d)(5). This term shall include any qualified equity
21 investment that does not meet the provisions of sub-subdivision a. of
22 this subdivision if such investment was a qualified equity investment
23 in the hands of a prior holder.

24 (10) Qualified low-income community investment. – Any capital or equity
25 investment in or loan to any qualified active low-income community
26 business. With respect to any one qualified active low-income community
27 business, the maximum amount of qualified low-income community
28 investments made in such business, on a collective basis with all of the
29 businesses' affiliates, with the proceeds of qualified equity investments
30 certified under G.S. 105-129.102(d) that shall count toward satisfaction of
31 the requirements of sub-subdivision b. of G.S. 105-129.101(9) and
32 sub-subdivision c. of G.S. 105-129.102(e)(1) shall be seven million dollars
33 (\$7,000,000), exclusive of qualified low-income community investments
34 made with repaid or redeemed qualified low-income community investments
35 or interest or profits realized thereon.

36 (11) Reduction allowance date. – With respect to any qualified equity investment,
37 the date on which the investment is initially made and each of the six
38 anniversary dates thereafter.

39 (12) Rural census tracts. – Any census tract in which a qualified active
40 low-income community business is located that also is located in a county
41 designated as Tier 1 or Tier 2 by the North Carolina Department of
42 Commerce as of or after 2015.

43 (13) Secretary. – The Secretary of Commerce.

44 (14) State premium tax liability. – Any liability incurred by any entity under the
45 gross premiums tax or the retaliatory premium tax levied in Article 8B of
46 this Chapter, or, if the tax liability under the gross premiums tax or the
47 retaliatory premium tax levied in Article 8B of this Chapter is eliminated or
48 reduced, the term shall also mean any tax liability imposed on an insurance
49 company or other person that had premium tax liability under the laws of
50 this State.

51 **§ 105-129.102. Reduction for qualified equity investment.**

1 (a) Reduction Established. – An entity that makes a qualified equity investment earns a
2 vested contractual right to a below-the-line reduction of tax applicable to the entity's State
3 premium tax liability on future premium tax reports filed under Article 8B of Chapter 105 of
4 the General Statutes. On or after each reduction allowance date of the qualified equity
5 investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a
6 portion of the tax reduction during the taxable year, including the reduction allowance date.
7 The tax reduction amount is equal to the applicable percentage for the reduction allowance date
8 multiplied by the purchase price paid to the qualified community development entity. The
9 amount of the tax reduction claimed in that taxable year by a taxpayer shall not exceed the
10 amount of such taxpayer's State tax liability for the tax year for which the tax reduction is
11 claimed. Any amount of tax reduction that the taxpayer is prohibited from claiming in a taxable
12 year as a result of this section may be carried forward for use in any subsequent taxable year.

13 (b) Transferability. – A tax reduction claimed pursuant to this Article is not refundable
14 or saleable on the open market. Tax reductions earned by or allocated to a partnership, limited
15 liability company, or S Corporation may be allocated to the partners, members, or shareholders
16 of such entity for their use in accordance with the provisions of any agreement among such
17 partners, members, or shareholders. These allocations are not considered a sale for purposes of
18 this section. The Department shall issue a certificate to each entity allocated a tax reduction
19 under this Article.

20 (c) Certification of Qualified Equity Investments. – A qualified community
21 development entity that seeks to have an equity investment or long-term debt security
22 designated as a qualified equity investment and eligible for tax reductions under this section
23 shall apply to the Department, which shall begin accepting applications on July 1, 2015. The
24 qualified community development entity must submit an application on a form that the
25 Department provides that includes each of the following:

- 26 (1) Evidence of the entity's certification as a qualified community development
27 entity, including evidence of the service area of the entity that includes this
28 State.
- 29 (2) A copy of an allocation agreement executed by the entity or its controlling
30 entity and the Community Development Financial Institutions Fund.
- 31 (3) A certificate executed by an executive officer of the entity attesting that the
32 allocation agreement remains in effect and has not been revoked or cancelled
33 by the Community Development Financial Institutions Fund.
- 34 (4) A description of the proposed amount, structure, and purchaser of the
35 qualified equity investment.
- 36 (5) If known, identifying information for any taxpayer eligible to utilize tax
37 reductions earned as a result of the issuance of the qualified equity
38 investment.
- 39 (6) Examples of the types of qualified active low-income businesses in which
40 the applicant, its controlling entity, or affiliates of its controlling entity have
41 invested under the Federal New Markets Tax Credit Program. Applications
42 are not required to identify qualified active low-income community
43 businesses in which they will invest when submitting an application.
- 44 (7) A nonrefundable application fee of five thousand dollars (\$5,000).
- 45 (8) The refundable performance deposit required by G.S. 105-129.104.
- 46 (9) Whether the application is for the Rural Reserve under G.S. 105-129.109.

47 (d) (1) Within 30 days after receipt of a completed application containing the
48 information set forth in subsection (c) of this section, including the payment
49 of the application fee and the performance deposit, the Department shall
50 grant or deny the application in full or in part. If the Department denies any
51 part of the application, it shall inform the qualified community development

1 entity of the grounds for the denial. If the qualified community development
2 entity provides any additional information required by the Department or
3 otherwise completes its application within 15 days of the notice of denial,
4 the application shall be considered completed as of the original date of
5 submission. If the qualified community development entity fails to provide
6 the information or complete its application within the 15-day period, the
7 application is denied and must be resubmitted in full with a new submission
8 date.

9 (2) If the application is deemed complete, the Department shall certify the
10 proposed equity investment or long-term debt security as a qualified equity
11 investment that is eligible for a reduction under this section, subject to the
12 limitations contained in subdivision (5) of this subsection; provided that the
13 Department shall not certify qualified equity investments for any applicant,
14 on a combined basis with all of its affiliates, in excess of sixty million
15 dollars (\$60,000,000) unless such applicant has (i) already had qualified
16 equity investments certified under this section, (ii) satisfied the requirements
17 of subdivision (6) of this subsection with respect to such qualified equity
18 investments, and (iii) filed a new application after satisfying the
19 requirements of (i) and (ii) of this subdivision. The Department shall provide
20 written notice of the certification to the qualified community development
21 entity. The notice shall include the names of those taxpayers who are eligible
22 to utilize the reductions and their respective reduction amounts. If the names
23 of the taxpayers who are eligible to utilize the reductions change due to a
24 transfer of a qualified equity investment or a change in an allocation
25 pursuant to subsection (b) of this section, the qualified community
26 development entity shall notify the Department of such change.

27 (3) Once the Department has certified a qualified equity investment, the
28 qualified community development entity may suballocate all or any portion
29 of the amount of the certified qualified equity investment to one or more
30 qualified community development entities with the same controlling entity
31 as the applicant qualified community development entity, provided that the
32 applicant qualified community development entity files a notice of such
33 suballocation with the Department and the recipient of the suballocation
34 meets all the requirements of a qualified community development entity
35 under this section. The notice of suballocation shall include the information
36 required in the application for all suballocates.

37 (4) The Department shall certify qualified equity investments in the order
38 applications are received by the Department. Applications received on the
39 same day shall be deemed to have been received simultaneously. For
40 applications received on the same day and deemed complete, the Department
41 shall certify, consistent with remaining tax reduction capacity, qualified
42 equity investments in proportionate percentages based upon the ratio of the
43 amount of qualified equity investment requested in an application to the total
44 amount of qualified equity investments requested in all applications received
45 on the same day.

46 (5) The Department shall certify two hundred eight million three hundred
47 thirty-three thousand three hundred thirty-three dollars (\$208,333,333) in
48 qualified equity investment authority pursuant to two allocations, one for the
49 Rural Reserve and one for the Statewide Reserve, each as described in
50 G.S. 105-129.109(a). If a pending request cannot be fully certified due to
51 this limit, the Department shall certify the portion that may be certified

1 unless the qualified community development entity elects to withdraw its
2 request rather than receive partial certification.

3 (6) Within 45 days after receiving notice of certification, the qualified
4 community development entity or any transferee under this section shall
5 issue the qualified equity investment and receive cash in the amount of the
6 certified amount. The qualified community development entity or transferee
7 must provide the Department with evidence of the receipt of the cash
8 investment within 50 days of the applicant receiving notice of certification.
9 If the qualified community development entity or transferee does not receive
10 the cash investment and issue the qualified equity investment within 45 days
11 following receipt of the certification notice, the certification shall lapse and
12 the entity may not issue the qualified equity investment without reapplying
13 to the Department for certification. A certification that lapses reverts back to
14 the Department and shall be reissued pro rata to other applicants whose
15 qualified equity investment allocations were reduced under this section and
16 thereafter in accordance with the application process.

17 (e) Disallowance. –

18 (1) The Department may determine that reductions previously claimed or to be
19 claimed by a taxpayer under this Article should be disallowed. Notice that a
20 reduction shall be disallowed shall be transmitted in writing to the taxpayer
21 and the Department of Revenue. Disallowance may be determined if any of
22 the following occurs:

23 a. Any amount of the federal tax credit available with respect to a
24 qualified equity investment that is eligible for a tax reduction under
25 this section is recaptured under section 45D of the Internal Revenue
26 Code of 1986, as amended. In such case, the Department's
27 disallowance shall be proportionate to the federal recapture with
28 respect to such qualified equity investment.

29 b. The qualified community development entity redeems or makes
30 principal repayment with respect to a qualified equity investment
31 prior to the seventh anniversary of the issuance of such qualified
32 equity investment. In such case, the Department's disallowance shall
33 be proportionate to the amount of the redemption or repayment with
34 respect to such qualified equity investment.

35 c. The qualified community development entity fails to (i) invest at
36 least eighty-five percent (85%) of the purchase price of the qualified
37 equity investment in qualified low-income investments in the State
38 within 12 months of the issuance of the qualified equity investment
39 and (ii) maintain such level of investment in qualified low-income
40 community investments in the State until the last reduction allowance
41 date for the qualified equity investment. For qualified equity
42 investments made under the Rural Reserve, all qualified low-income
43 community investments required to meet the requirements of this
44 subsection must be made in qualified active low-income community
45 businesses located in rural census tracts within this State.

46 d. Any distribution or debt payment in violation of
47 G.S. 105-129.107(a).

48 e. Failure to comply with G.S. 105-129.108, 105-129.109, or
49 105-129.110.

50 (2) For purposes of this section, an investment shall be considered held by a
51 qualified community development entity even if the investment has been

1 sold or repaid if the qualified community development entity reinvests an
2 amount equal to the capital returned to or recovered by the qualified
3 community development entity from the original investment, exclusive of
4 any profits realized, in another qualified low-income community investment
5 within 12 months of the receipt of such capital. Periodic amounts received as
6 repayment of principal on a loan that is a qualified low-income community
7 investment shall be treated as continuously invested in a qualified
8 low-income community investment if the amounts are reinvested in one or
9 more qualified low-income community investments by the end of the
10 following calendar year. A qualified community development entity shall
11 not be required to reinvest capital returned from qualified low-income
12 community investments after the sixth anniversary of the issuance of the
13 qualified equity investment, and the qualified low-income community
14 investment shall be considered held by the qualified community
15 development entity through the seventh anniversary of the issuance of the
16 qualified equity investment.

- 17 (3) A recaptured reduction and the related qualified equity investment authority
18 under the Rural Reserve or the Statewide Reserve, as applicable, reverts
19 back to the Department and shall be reissued pro rata to other applicants
20 whose qualified equity investment allocations were reduced under this
21 section and thereafter in accordance with the application process.

22 **"§ 105-129.103. Notice of noncompliance.**

23 Enforcement of the disallowance under this Article shall not occur until the qualified
24 community development entity shall have been given notice of noncompliance and afforded six
25 months from the date of such notice to cure the noncompliance.

26 **"§ 105-129.104. Refundable performance deposit.**

27 (a) For each application submitted, a qualified community development entity that
28 seeks to have an equity investment or long-term debt security designated as a qualified equity
29 investment and eligible for a reduction under this Article shall make a performance deposit in
30 the amount of the greater of one-quarter of one percent (1/4 of 1%) of the amount of the equity
31 investment or long-term debt security requested to be designated as a qualified equity
32 investment or five hundred thousand dollars (\$500,000) to the Department for deposit in the
33 New Markets performance guarantee account, which is hereby established. The entity shall
34 forfeit the amount deposited if (i) the qualified community development entity together with
35 any qualified community development entities to which it has suballocated qualified equity
36 investment authority pursuant to G.S. 105-129.102(d), if any, fail to issue the total amount of
37 qualified equity investments certified by the Department and receive cash in the total amount
38 certified under G.S. 105-129.102 within 45 days after receiving notice of certification, or (ii)
39 the qualified community development entity or any qualified community development entity
40 that issues suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d)
41 certified under this Article fails to invest at least eighty-five percent (85%) of the purchase
42 price of any qualified equity investment issued in qualified low-income community
43 investments within 12 months of the issuance of the qualified equity investment; provided that
44 forfeiture for the failure under clauses (i) and (ii) of this subsection is not subject to the cure
45 period established in G.S. 105-129.103.

46 (b) The performance deposit required under this section shall be paid to the Department
47 and held in the New Markets performance guarantee account without any portion being repaid
48 until such time as compliance with clause (ii) of subsection (a) of this section has been
49 established. The qualified community development entity may request a refund of the
50 performance deposit from the Department no sooner than 30 days after having met the

1 requirements of clause (ii) of subsection (a) of this section. The State Treasurer shall have 30
2 days to comply with the request or give notice of noncompliance.

3 **"§ 105-129.105. Letter rulings.**

4 (a) The Secretary shall issue letter rulings regarding the tax reduction program
5 authorized under this Article, subject to the terms and conditions set forth in this section. For
6 the purposes of this Article, the term "letter ruling" means a written interpretation of law to a
7 specific set of facts provided by the applicant requesting a letter ruling.

8 (b) The Secretary shall respond to a request for a letter ruling within 60 days of receipt
9 of such request. The applicant may provide a draft letter ruling for the Secretary's
10 consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the
11 issuance of the letter ruling. The Secretary may refuse to issue a letter ruling for good cause but
12 must list the specific reasons for refusing to issue the letter ruling. Good cause includes any of
13 the following:

- 14 (1) The applicant requests the director to determine whether a statute is
15 constitutional or a regulation is lawful.
- 16 (2) The request involves a hypothetical situation or alternative plan.
- 17 (3) The facts or issues presented in the request are unclear, overbroad,
18 insufficient, or otherwise inappropriate as a basis upon which to issue a letter
19 ruling.
- 20 (4) The issue is currently being considered in a rule-making procedure,
21 contested case, or other agency or judicial proceeding that may definitely
22 resolve the issue.

23 (c) Letter rulings shall bind the Secretary and the Secretary's agents and their successors
24 and all other State agencies until such time as the entity or its shareholders, members, or
25 partners, as applicable, claim all of the reductions on a North Carolina tax return or report,
26 subject to the terms and conditions set forth in properly published regulations. The letter ruling
27 shall apply only to the applicant.

28 (d) In rendering letter rulings and making other determinations under this Article, to the
29 extent applicable, the Department and the Department of Revenue shall look for guidance to
30 section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations
31 issued thereunder.

32 **"§ 105-129.106. Retaliatory tax.**

33 An entity claiming a reduction under this Article is not required to pay any additional
34 retaliatory tax levied under G.S. 105-228.8 as a result of claiming the reduction. It is the intent
35 of the General Assembly that an entity claiming a reduction under this Article is not required to
36 pay any additional tax that may arise as a result of claiming that reduction.

37 **"§ 105-129.107. Decertification.**

38 (a) Once certified under this Article, a qualified equity investment may not be
39 decertified unless all of the requirements of this section have been met. Until all qualified
40 equity investments issued by a qualified community development entity or any transferee
41 qualified community development entity under G.S. 105-129.102(d) are decertified under this
42 section, the qualified community development entity or any transferee qualified community
43 development entity under G.S. 105-129.102(d) shall not be entitled to distribute to its equity
44 holders or make cash payments on long-term debt securities that have been designated as
45 qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating
46 income, as defined by regulations adopted under section 45D of the Internal Revenue Code of
47 1986, as amended, earned by the qualified community development entity since issuance of the
48 qualified equity investment, prior to giving effect to any interest expense of long-term debt
49 securities designated as qualified equity investments and (ii) fifty percent (50%) of the
50 purchase price of the qualified equity investments issued by the qualified community
51 development entity.

1 (b) To be decertified, all of the following conditions must be met:

2 (1) The qualified equity investment is beyond its seventh reduction allowance
3 date.

4 (2) The qualified equity investment was in compliance with the requirements of
5 this Article through its seventh reduction allowance date, including any
6 cures.

7 (3) The qualified equity investment has its proceeds invested in qualified active
8 low-income community investments such that the total qualified active
9 low-income community investments made, cumulatively including
10 reinvestments, exceeds one hundred fifty percent (150%) of its qualified
11 equity investment. For purposes of making this calculation, qualified
12 low-income community investments to any one qualified active low-income
13 community business, on a collective basis with affiliates, in excess of seven
14 million dollars (\$7,000,000) are not included unless the investments are
15 made with capital returned or repaid from qualified low-income community
16 investments made by the qualified community development entity in other
17 qualified active low-income community businesses or interest earned on or
18 profits realized from any qualified low-income community investments.

19 (c) A qualified community development entity that seeks to have a qualified equity
20 investment decertified under this section shall send notice to the Department of its request for
21 decertification along with evidence supporting the request. The provisions of subdivision (2) of
22 subsection (b) of this section are met if no disallowance action has been commenced by the
23 Department as of the seventh reduction allowance date. A request under this section shall not
24 be unreasonably denied and shall be responded to within 30 days of receiving the request. If the
25 request is denied for any reason, the burden of proof shall be on the Department in any
26 administrative or legal proceeding that follows.

27 **"§ 105-129.108. Limitation on fees.**

28 No qualified community development entity shall be entitled to pay any affiliate of such
29 qualified community development entity any fees in connection with any activity under this
30 Article prior to decertification under G.S. 105-129.107 of all qualified equity investments
31 issued by the qualified community development entity. The foregoing shall not prohibit a
32 qualified community development entity from allocating or distributing income earned by it to
33 the affiliates or paying reasonable interest on amounts lent to the qualified community
34 development entity by such affiliates.

35 **"§ 105-129.109. Rural Investment Reserve.**

36 (a) Of the maximum total two hundred eight million three hundred thirty-three
37 thousand three hundred thirty-three dollars (\$208,333,333) of qualified equity investments
38 eligible for certification by the Department under G.S. 105-129.102, one hundred fifty-six
39 million two hundred fifty thousand dollars (\$156,250,000) of the total shall be reserved for
40 applications submitted for a portion of the New Markets Jobs Act of 2015 hereby designated
41 the "Rural Reserve." The fifty-two million eighty-three thousand three hundred thirty-three
42 dollars (\$52,083,333) not in the Rural Reserve shall be designated the "Statewide Reserve."

43 (b) A qualified community development entity may apply for both the Rural Reserve
44 and the Statewide Reserve, provided it does so in separate applications.

45 (c) All qualified low-income community investments made under the Rural Reserve of
46 qualified equity investment authority shall only be made in qualified active low-income
47 community businesses located in rural census tracts in the State, including those necessary to
48 meet the standards for decertification contained in G.S. 105-129.107.

49 (d) Qualified low-income community investments made under the Statewide Reserve of
50 qualified equity investment authority shall not be geographically restricted so long as the
51 qualified active low-income community business is located in the State.

1 **"§ 105-129.110. New capital requirement.**

2 No qualified active low-income community business that receives a qualified low-income
3 community investment from a qualified community development entity that issues qualified
4 equity investments under this Article, or any affiliates of such a qualified active low-income
5 community business, may directly or indirectly (i) own or have the right to acquire an
6 ownership interest in a qualified community development entity or member or affiliate of a
7 qualified community development entity, including, but not limited to, a holder of a qualified
8 equity investment issued by the qualified community development entity, or (ii) loan to or
9 invest in a qualified community development entity or member or affiliate of a qualified
10 community development entity, including, but not limited to, a holder of a qualified equity
11 investment issued by a qualified community development entity, where the proceeds of such
12 loan or investment are directly or indirectly used to fund or refinance the purchase of a
13 qualified equity investment hereunder. For purposes of this section, a qualified community
14 development entity shall not be considered an affiliate of a qualified active low-income
15 community business solely as a result of its qualified low-income community investment in
16 such business.

17 **"§ 105-129.111. Reporting.**

18 (a) A qualified community development entity that issues qualified equity investments
19 shall submit a report to the Department within the first five business days after the first
20 anniversary of the initial reduction allowance that provides documentation as to the investment
21 of eighty-five percent (85%) of the purchase price in qualified low-income community
22 investments in qualified active low-income community businesses located in the State. The
23 report shall include the following:

- 24 (1) A bank statement of the qualified community development entity evidencing
25 each qualified low-income community investment.
26 (2) Evidence that the business was a qualified active low-income community
27 business at the time of the qualified low-income community investment.
28 (3) Evidence that the qualified active low-income community business was
29 located in a rural census tract at the time of the qualified low-income
30 community investment, if applicable under the Rural Reserve.

31 (b) After the initial report under subsection (a) of this section, a qualified community
32 development entity shall submit an annual report to the Department on or before April 1 of the
33 calendar year during the compliance period. An annual report is not due before the first
34 anniversary of the initial reduction allowance date. The annual report shall include the
35 following:

- 36 (1) The number of employment positions created and retained as a result of
37 qualified low-income community investments.
38 (2) The average annual salary of positions described in subdivision (1) of this
39 subsection.
40 (3) Certification from the qualified community development entity that the
41 grounds for disallowance under G.S. 105-129.102(e) have not occurred."

42 **SECTION 2.(b)** This Part becomes effective July 1, 2015, and applies to qualified
43 equity investments made on or after that date.

44
45 **PART III. MILL REHABILITATION TAX CREDIT**

46 **SECTION 3.(a)** Article 3H of Subchapter I of Chapter 105 of the General Statutes
47 is reenacted as it existed immediately before its repeal and reads as rewritten:

48 "Article 3H.

49 "Mill Rehabilitation Tax Credit.

50 **"§ 105-129.70. Definitions.**

51 The following definitions apply in this Article:

- 1 (1) Certified historic structure. – Defined in section 47 of the Code.
- 2 (2) Certified rehabilitation. – Defined in G.S. 105-129.36.
- 3 (3) Cost certification. – The certification obtained by the State Historic
4 Preservation Officer from the taxpayer of the amount of the qualified
5 rehabilitation expenditures or the rehabilitation expenses incurred with
6 respect to a certified rehabilitation of an eligible site.
- 7 (3a) Development tier area. – Defined in G.S. 143B-437.08.
- 8 (4) Eligibility certification. – The certification obtained from the State Historic
9 Preservation Officer that the applicable facility comprises an eligible site.
- 10 (5) Eligible site. – A site located in this State that satisfies all of the following
11 conditions:
 - 12 a. It was used as a manufacturing facility or for purposes ancillary to
13 manufacturing, as a warehouse for selling agricultural products, or as
14 a public or private utility.
 - 15 b. It is a certified historic structure or a State-certified historic structure.
 - 16 c. It has been at least eighty percent (80%) vacant for a period of at
17 least two years immediately preceding the date the eligibility
18 certification is made.
 - 19 d. Repealed by Session Laws 2008-107, s. 28.4(a), effective for taxable
20 years beginning on or after January 1, 2008.
- 21 (6) Repealed by Session Laws 2006-252, s. 2.22, effective January 1, 2007.
- 22 (7) Pass-through entity. – Defined in G.S. 105-228.90.
- 23 (8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.
- 24 (9) Rehabilitation expenses. – Defined in G.S. 105-129.36.
- 25 (10) State-certified historic structure. – Defined in G.S. 105-129.36.
- 26 (11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

27 **"§ 105-129.71. Credit for income-producing rehabilitated mill property.**

28 (a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for
29 making qualified rehabilitation expenditures of at least three million dollars (\$3,000,000) with
30 respect to a certified rehabilitation of an eligible site is allowed a credit equal to a percentage of
31 the expenditures that qualify for the federal credit. The credit may be claimed in the year in
32 which the eligible site is placed into service. When the eligible site is placed into service in two
33 or more phases in different years, the amount of credit that may be claimed in a year is the
34 amount based on the qualified rehabilitation expenditures associated with the phase placed into
35 service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer
36 must provide to the Secretary a copy of the eligibility certification and the cost certification.
37 The amount of the credit is as follows:

- 38 (1) For an eligible site located in a development tier one or two area, determined
39 as of the date of the eligibility certification, the amount of the credit is equal
40 to forty percent (40%) of the qualified rehabilitation expenditures.
- 41 (2) For an eligible site located in a development tier three area, determined as of
42 the date of the eligibility certification, the amount of the credit is equal to
43 thirty percent (30%) of the qualified rehabilitation expenditures.

44 (b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and
45 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may
46 allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis
47 in the pass-through entity, as determined under the Code, at the end of the taxable year in
48 which the eligible site is placed in service, is at least forty percent (40%) of the amount of
49 credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if
50 they had qualified for the credit directly. A pass-through entity and its owners must include
51 with their tax returns for every taxable year in which an allocated credit is claimed a statement

1 of the allocation made by the pass-through entity and the allocation that would have been
2 required under G.S. 105-131.8 or G.S. 105-269.15.

3 (c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has
4 qualified for the credit allowed under this section disposes of all or a portion of the owner's
5 interest in the pass-through entity within five years from the date the eligible site is placed in
6 service and the owner's interest in the pass-through entity is reduced to less than two-thirds of
7 the owner's interest in the pass-through entity at the time the eligible site was placed in service,
8 the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the
9 amount of credit by the percentage reduction in ownership and then multiplying that product by
10 the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the
11 table in section 50(a)(1)(B) of the Code.

12 (d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is
13 not required if the change in ownership is the result of any of the following:

14 (1) The death of the owner.

15 (2) A merger, consolidation, or similar transaction requiring approval by the
16 shareholders, partners, or members of the taxpayer under applicable State
17 law, to the extent the taxpayer does not receive cash or tangible property in
18 the merger, consolidation, or other similar transaction.

19 (e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that
20 forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus
21 interest at the rate established under G.S. 105-241.21, computed from the date the taxes would
22 have been due if the credit had not been allowed. The past taxes and interest are due 30 days
23 after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to
24 pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

25 **"§ 105-129.72. Credit for nonincome-producing rehabilitated mill property.**

26 (a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47
27 of the Code and who makes rehabilitation expenses of at least three million dollars
28 (\$3,000,000) with respect to a certified rehabilitation of an eligible site is allowed a credit equal
29 to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable
30 year in which the property is placed in service, but must be taken in five equal installments
31 beginning with the taxable year in which the property is placed in service. When the eligible
32 site is placed into service in two or more phases in different years, the amount of credit that
33 may be claimed in a year is the amount based on the rehabilitation expenses associated with the
34 phase placed into service during that year. In order to be eligible for a credit allowed by this
35 Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the
36 cost certification. For an eligible site located in a development tier one or two area, determined
37 as of the date of the eligibility certification, the amount of the credit is equal to forty percent
38 (40%) of the rehabilitation expenses. No credit is allowed for a site located in a development
39 tier three area.

40 (b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and
41 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may
42 allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis
43 in the pass-through entity, as determined under the Code, at the end of the taxable year in
44 which the eligible site is placed in service, is at least forty percent (40%) of the amount of
45 credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if
46 they had qualified for the credit directly. A pass-through entity and its owners must include
47 with their tax returns for every taxable year in which an allocated credit is claimed a statement
48 of the allocation made by the pass-through entity and the allocation that would have been
49 required under G.S. 105-131.8 or G.S. 105-269.15.

50 (c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has
51 qualified for the credit allowed under this section disposes of all or a portion of the owner's

1 interest in the pass-through entity within five years from the date the eligible site is placed in
2 service and the owner's interest in the pass-through entity is reduced to less than two-thirds of
3 the owner's interest in the pass-through entity at the time the eligible site was placed in service,
4 the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the
5 amount of credit by the percentage reduction in ownership and then multiplying that product by
6 the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the
7 table in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally
8 among the five years in which the credit is claimed.

9 (d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is
10 not required if the change in ownership is the result of any of the following:

11 (1) The death of the owner.

12 (2) A merger, consolidation, or similar transaction requiring approval by the
13 shareholders, partners, or members of the taxpayer under applicable State
14 law, to the extent the taxpayer does not receive cash or tangible property in
15 the merger, consolidation, or other similar transaction.

16 (e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that
17 forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus
18 interest at the rate established under G.S. 105-241.21, computed from the date the taxes would
19 have been due if the credit had not been allowed. The past taxes and interest are due 30 days
20 after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to
21 pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

22 **"§ 105-129.73. Tax credited; cap.**

23 (a) Taxes Credited. – The credits allowed by this Article may be claimed against the
24 franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article
25 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The
26 taxpayer may take the credits allowed by this Article against only one of the taxes against
27 which it is allowed. The taxpayer must elect the tax against which a credit will be claimed
28 when filing the return on which it is claimed. This election is binding. Any carryforwards of the
29 credit must be claimed against the same tax.

30 (b) Cap. – A credit allowed under this Article may not exceed the amount of the tax
31 against which it is claimed for the taxable year reduced by the sum of all credits allowed,
32 except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit
33 may be carried forward for the succeeding nine years.

34 **"§ 105-129.74. Coordination with Article 3D of this Chapter.**

35 A taxpayer that claims a credit under this Article may not also claim a credit under Article
36 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under
37 G.S. 105-129.36A apply to this Article.

38 **"§ 105-129.75. Sunset.**

39 This Article expires January 1, ~~2015~~2020, for rehabilitation projects for which an
40 application for an eligibility certification is submitted on or after that date.

41 **"§ 105-129.75A. Report.**

42 The Department must include in the economic incentives report required by G.S. 105-256
43 the following information itemized by taxpayer:

44 (1) The number of taxpayers that took the credits allowed in this Article.

45 (2) The amount of rehabilitation expenses and qualified rehabilitation
46 expenditures with respect to which credits were taken.

47 (3) The total cost to the General Fund of the credits taken."

48 **SECTION 3.(b)** This act is effective when it becomes law, and applies to
49 rehabilitation projects for which an application for eligibility certification is submitted on or
50 after that date.

51

PART IV. HISTORIC REHABILITATION TAX CREDITS

SECTION 4.(a) Article 3H of Subchapter I of Chapter 105 of the General Statutes is reenacted as it existed immediately before its repeal and reads as rewritten:

"Article 3D.

"Historic Rehabilitation Tax Credits.

"§ 105-129.35. Credit for rehabilitating income-producing historic structure.

(a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to twenty percent (20%) of the expenditures that qualify for the federal credit. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

(b) Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the certified historic structure is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

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

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) Pass-through entity. – Defined in G.S. 105-228.90.

(3) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(4) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"§ 105-129.36. Credit for rehabilitating nonincome-producing historic structure.

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a State-certified historic structure located in this State is allowed a credit equal to thirty percent (30%) of the rehabilitation expenses. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars (\$25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

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

(1) Certified rehabilitation. – Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer.

(2) Rehabilitation expenses. – Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's ~~basis-basis~~, if the expense is incurred for any of the following of the historic structure: (i) the exterior, (ii) the interior of a window sash if work is done to the exterior of the same window sash, (iii) structural elements, (iv) heating or ventilation systems, (v) electrical or plumbing systems, other than fixtures, or (vi)

1 insulation. The term does not include the cost of acquiring the property, the
2 cost attributable to the enlargement of an existing building, the cost of
3 sitework expenditures, ~~or the cost of personal property, property, or the cost~~
4 of any interior repair not specifically listed in this subdivision.

5 (3) State-certified historic structure. – A structure that is individually listed in
6 the National Register of Historic Places or is certified by the State Historic
7 Preservation Officer as contributing to the historic significance of a National
8 Register Historic District or a locally designated historic district certified by
9 the United States Department of the Interior.

10 (4) State Historic Preservation Officer. – The Deputy Secretary of Archives and
11 History or the Deputy Secretary's designee who acts to administer the
12 historic preservation programs within the State.

13 (c) Recodified as G.S. 105-129.36A by Session Laws 2003-284, s. 35A.2, effective July
14 15, 2003.

15 **"§ 105-129.36A. Rules; fees.**

16 (a) Rules. – The North Carolina Historical Commission, in consultation with the State
17 Historic Preservation Officer, may adopt rules needed to administer the certification process
18 required by this section.

19 (b) Fees. – The North Carolina Historical Commission, in consultation with the State
20 Historic Preservation Officer, may adopt a schedule of fees for providing certifications required
21 by this Article. In establishing the fee schedule, the Commission shall consider the
22 administrative and personnel costs incurred by the Department of Cultural Resources. An
23 application fee may not exceed one percent (1%) of the completed qualifying rehabilitation
24 expenditures. The proceeds of the fees are receipts of the Department of Cultural Resources
25 and must be used for performing its duties under this Article.

26 **"§ 105-129.37. Tax credited; credit limitations.**

27 (a) Tax Credited. – The credits provided in this Article are allowed against the income
28 taxes levied in Article 4 of this Chapter.

29 (b) Credit Limitations. – The entire credit may not be taken for the taxable year in
30 which the property is placed in service but must be taken in five equal installments beginning
31 with the taxable year in which the property is placed in service. Any unused portion of the
32 credit may be carried forward for the succeeding five years. A credit allowed under this Article
33 may not exceed the amount of the tax against which it is claimed for the taxable year reduced
34 by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

35 (c) Forfeiture for Disposition. – A taxpayer who is required under section 50 of the
36 Code to recapture all or part of the federal credit for rehabilitating an income-producing historic
37 structure located in this State forfeits the corresponding part of the State credit allowed under
38 G.S. 105-129.35 with respect to that historic structure. If the credit was allocated among the
39 owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that
40 the credit was allocated.

41 (d) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has
42 qualified for the credit allowed under G.S. 105-129.35 disposes of all or a portion of the
43 owner's interest in the pass-through entity within five years from the date the rehabilitated
44 historic structure is placed in service and the owner's interest in the pass-through entity is
45 reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the
46 historic structure was placed in service, the owner forfeits a portion of the credit. The amount
47 forfeited is determined by multiplying the amount of credit by the percentage reduction in
48 ownership and then multiplying that product by the forfeiture percentage. The forfeiture
49 percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the
50 Code. The remaining allowable credit is allocated equally among the five years in which the
51 credit is claimed.

1 (e) Exceptions to Forfeiture. – Forfeiture as provided in subsection (d) of this section is
2 not required if the change in ownership is the result of any of the following:

3 (1) The death of the owner.

4 (2) A merger, consolidation, or similar transaction requiring approval by the
5 shareholders, partners, or members of the taxpayer under applicable State
6 law, to the extent the taxpayer does not receive cash or tangible property in
7 the merger, consolidation, or other similar transaction.

8 (f) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that
9 forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus
10 interest at the rate established under G.S. 105-241.21, computed from the date the taxes would
11 have been due if the credit had not been allowed. The past taxes and interest are due 30 days
12 after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to
13 pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

14 **"§ 105-129.38. Report.**

15 The Department must include in the economic incentives report required by G.S. 105-256
16 the following information itemized by taxpayer:

17 (1) The number of taxpayers that took the credits allowed in this Article.

18 (2) The amount of rehabilitation expenses and qualified rehabilitation
19 expenditures with respect to which credits were taken.

20 (3) The total cost to the General Fund of the credits taken.

21 **"§ 105-129.39. Sunset.**

22 This Article expires for qualified rehabilitation expenditures and rehabilitation expenses
23 incurred on or after January 1, ~~2015-2020~~."

24 **SECTION 4.(b)** This Part is effective when it becomes law and applies to qualified
25 rehabilitation expenditures and rehabilitation expenses incurred on or after that date.

26
27 **PART V. FILM CREDIT**

28 **SECTION 5.(a)** G.S. 105-151.29 is reenacted as it existed immediately before its
29 repeal and reads as rewritten:

30 **"§ 105-151.29. Credit for qualifying expenses of a production company.**

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

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

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

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

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

50 a. Goods and services leased or purchased. For goods with a purchase
51 price of twenty-five thousand dollars (\$25,000) or more, the amount

1 included in qualifying expenses is the purchase price less the fair
2 market value of the good at the time the production is completed.

3 b. Compensation and wages on which withholding payments are
4 remitted to the Department of Revenue under Article 4A of this
5 Chapter.

6 c. The cost of production-related insurance coverage obtained on the
7 production. Expenses for insurance coverage purchased from a
8 related member are not qualifying expenses.

9 d. Employee fringe contributions, including health, pension, and
10 welfare contributions.

11 e. Per diems, stipends, and living allowances paid for work being
12 performed in this State.

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

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

21 (b1) Repealed by Session Laws 2009-529, s. 2, effective January 1, 2011.

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

29 (d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for
30 the taxable year in which the production activities are completed. The return must state the
31 name of the production, a description of the production, and a detailed accounting of the
32 qualifying expenses with respect to which a credit is claimed. The qualifying expenses are
33 subject to audit by the Secretary before the credit is allowed.

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

40 (f) Limitations. – The amount of credit allowed under this section with respect to a
41 production that is a feature film may not exceed twenty million dollars (\$20,000,000). No
42 credit is allowed under this section for any production that satisfies one of the following
43 conditions:

44 (1) It is political advertising.

45 (2) It is a television production of a news program or live sporting event.

46 (3) It contains material that is obscene, as defined in G.S. 14-190.1.

47 (4) It is a radio production.

48 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and
49 make available for inspection any information or records required by the Secretary of Revenue.
50 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The

1 Secretary may consult with the North Carolina Film Office of the Department of Commerce
2 and the regional film commissions in order to determine the amount of qualifying expenses.

3 (h) Report. – The Department must include in the economic incentives report required
4 by G.S. 105-256 the following information itemized by taxpayer:

5 (1) The location of sites used in a production for which a credit was taken.

6 (2) The qualifying expenses for which a credit was taken, classified by whether
7 the expenses were for goods, services, or compensation paid by the
8 production company.

9 (3) The number of people employed in the State with respect to credits taken.

10 (4) The total cost to the General Fund of the credits taken.

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

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

22 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
23 January 1, ~~2015-2020~~.

24 **SECTION 5.(b)** G.S. 105-130.47 is reenacted as it existed immediately before its
25 repeal and reads as rewritten:

26 "**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

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

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

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

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

46 a. Goods and services leased or purchased. For goods with a purchase
47 price of twenty-five thousand dollars (\$25,000) or more, the amount
48 included in qualifying expenses is the purchase price less the fair
49 market value of the good at the time the production is completed.

- 1 b. Compensation and wages on which withholding payments are
2 remitted to the Department of Revenue under Article 4A of this
3 Chapter.
- 4 c. The cost of production-related insurance coverage obtained on the
5 production. Expenses for insurance coverage purchased from a
6 related member are not qualifying expenses.
- 7 d. Employee fringe contributions, including health, pension, and
8 welfare contributions.
- 9 e. Per diems, stipends, and living allowances paid for work being
10 performed in this State.
- 11 (5) Related member. – Defined in G.S. 105-130.7A.
- 12 (b) Credit. – A taxpayer that is a production company and has qualifying expenses of at
13 least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a
14 credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the
15 production company's qualifying expenses. For the purposes of this section, in the case of an
16 episodic television series, an entire season of episodes is one production. The credit is
17 computed based on all of the taxpayer's qualifying expenses incurred with respect to the
18 production, not just the qualifying expenses incurred during the taxable year.
- 19 (b1) Repealed by Session Laws 2009-529, s. 1, effective January 1, 2011.
- 20 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
21 G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does
22 not distribute the credit among any of its owners. The pass-through entity is considered the
23 taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a
24 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a
25 credit allowed under this section does not affect the entity's payment of tax on behalf of its
26 owners.
- 27 (d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for
28 the taxable year in which the production activities are completed. The return must state the
29 name of the production, a description of the production, and a detailed accounting of the
30 qualifying expenses with respect to which a credit is claimed. The qualifying expenses are
31 subject to audit by the Secretary before the credit is allowed.
- 32 (e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax
33 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the
34 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
35 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this
36 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable
37 credits are subtracted before refundable credits.
- 38 (f) Limitations. – The amount of credit allowed under this section with respect to a
39 production that is a feature film may not exceed twenty million dollars (\$20,000,000). No
40 credit is allowed under this section for any production that satisfies one of the following
41 conditions:
- 42 (1) It is political advertising.
- 43 (2) It is a television production of a news program or live sporting event.
- 44 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 45 (4) It is a radio production.
- 46 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and
47 make available for inspection any information or records required by the Secretary of Revenue.
48 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The
49 Secretary may consult with the North Carolina Film Office of the Department of Commerce
50 and the regional film commissions in order to determine the amount of qualifying expenses.

1 (h) Report. – The Department must include in the economic incentives report required
2 by G.S. 105-256 the following information, itemized by taxpayer:

3 (1) The location of sites used in a production for which a credit was taken.

4 (2) The qualifying expenses for which a credit was taken, classified by whether
5 the expenses were for goods, services, or compensation paid by the
6 production company.

7 (3) The number of people employed in the State with respect to credits taken.

8 (4) The total cost to the General Fund of the credits taken.

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

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

20 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
21 January 1, ~~2015-2020~~."

22 **SECTION 5.(c)** This Part is effective for taxable years beginning on or after
23 January 1, 2015, and applies to qualifying expenses occurring on or after that date.

24 25 **PART VI. LOW-INCOME HOUSING TAX CREDITS**

26 **SECTION 6.(a)** Article 3H of Subchapter I of Chapter 105 of the General Statutes
27 is reenacted as it existed immediately before its repeal and reads as rewritten:

28 "Article 3E.

29 "Low-Income Housing Tax Credits.

30 **"§ 105-129.40. Scope and definitions.**

31 (a) Scope. – G.S. 105-129.41 applies to buildings that are awarded a federal credit
32 allocation before January 1, 2003. G.S. 105-129.42 applies to buildings that are awarded a
33 federal credit allocation on or after January 1, 2003.

34 (b) Definitions. – The definitions in section 42 of the Code and the following
35 definitions apply in this Article:

36 (1) Housing Finance Agency. – The North Carolina Housing Finance Agency
37 established in G.S. 122A-4.

38 (2) Pass-through entity. – Defined in G.S. 105-228.90.

39 ... 40 **"§ 105-129.42. Credit for low-income housing awarded a federal credit allocation on or 41 after January 1, 2003.**

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

43 (1) Qualified Allocation Plan. – The plan governing the allocation of federal
44 low-income housing tax credits for a particular year, as approved by the
45 Governor after a public hearing and publication in the North Carolina
46 Register.

47 (2) Qualified North Carolina low-income housing development. – A qualified
48 low-income project or building that is allocated a federal tax credit under
49 section 42(h)(1) of the Code and is described in subsection (c) of this
50 section.

(3) Qualified residential unit. – A housing unit that meets the requirements of section 42 of the Code.

(b) Credit. – A taxpayer who is allocated a federal low-income housing tax credit under section 42 of the Code to construct or substantially rehabilitate a qualified North Carolina low-income housing development is allowed a credit equal to a percentage of the development's qualified basis, as determined pursuant to section 42 of the Code. For the purpose of this section, qualified basis is calculated based on the information contained in the carryover allocation and is not recalculated to reflect subsequent increases or decreases. No credit is allowed for a development that uses tax-exempt bond financing.

(c) Developments and Amounts. – The following table sets out the housing developments that are qualified North Carolina low-income housing developments and are allowed a credit under this section. The table also sets out the percentage of the development's qualified basis for which a credit is allowed. The designation of a county or city as Low Income, Moderate Income, or High Income and determinations of affordability are made by the Housing Finance Agency in accordance with the Qualified Allocation Plan in effect as of the time the federal credit is allocated. A change in the income designation of a county or city after a federal credit is allocated does not affect the percentage of the developer's qualified basis for which a credit is allowed. The affordability requirements set out in the chart apply for the duration of the federal tax credit compliance period. If in any year a taxpayer fails to meet these affordability requirements, the credit is forfeited under subsection (h) of this section.

Type of Development	Percentage of Basis for Which Credit is Allowed
Forty percent (40%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of area median income and the units are in a Low-Income county or city.	Thirty percent (30%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of the area median income and the units are in a Moderate-Income county or city.	Twenty percent (20%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is forty percent (40%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)
Twenty-five percent (25%) of the qualified residential units are affordable to households whose income is thirty percent (30%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)

(d) Election. – When a taxpayer to whom a federal low-income housing credit is allocated submits to the Housing Finance Agency a request to receive a carryover allocation for that credit, the taxpayer must elect a method for receiving the tax credit allowed by this section. A taxpayer may elect to receive the credit in the form of either a direct tax refund or a loan generated by transferring the credit to the Housing Finance Agency. Neither a direct tax refund nor a loan received as the result of the transfer of the credit is considered taxable income under this Chapter.

1 Under the direct tax refund method, a taxpayer elects to apply the credit allowed by this
2 section to the taxpayer's liability under Article 4 of this Chapter. If the credit allowed by this
3 section exceeds the amount of tax imposed by Article 4 for the taxable year, reduced by the
4 sum of all other credits allowable, the Secretary must refund the excess. In computing the
5 amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted
6 before this credit. The provisions that apply to an overpayment of tax apply to the refundable
7 excess of a credit allowed under this section.

8 Under the loan method, a taxpayer elects to transfer the credit allowed by this section to the
9 Housing Finance Agency and receive a loan from that Agency for the amount of the credit. The
10 terms of the loan are specified by the Housing Finance Agency in accordance with the
11 Qualified Allocation Plan.

12 (e) Exception When No Carryover. – If a taxpayer does not submit to the Housing
13 Finance Agency a request to receive a carryover allocation, the taxpayer must elect the method
14 for receiving the credit allowed by this section when the taxpayer submits to the Agency
15 federal Form 8609. A taxpayer to whom this subsection applies claims the credit for the taxable
16 year in which the taxpayer submits federal Form 8609.

17 (f) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
18 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does
19 not distribute the credit among any of its owners. The pass-through entity is considered the
20 taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a
21 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity,
22 the credit allowed under this Article does not affect the entity's payment of tax on behalf of its
23 owners.

24 (g) Return and Payment. – A taxpayer may claim the credit allowed by this section on a
25 return filed for the taxable year in which the taxpayer receives a carryover allocation of a
26 federal low-income housing credit. The return must state the name and location of the qualified
27 low-income housing development for which the credit is claimed.

28 If a taxpayer chooses the loan method for receiving the credit allowed under this section,
29 the Secretary must transfer to the Housing Finance Agency the amount of credit allowed the
30 taxpayer. The Agency must loan the taxpayer the amount of the credit on terms consistent with
31 the Qualified Allocation Plan. The Housing Finance Agency is not required to make a loan to a
32 qualified North Carolina low-income housing development until the Secretary transfers the
33 credit amount to the Agency.

34 If the taxpayer chooses the direct tax refund method for receiving the credit allowed under
35 this section, the Secretary must transfer to the Housing Finance Agency the refundable excess
36 of the credit allowed the taxpayer. The Agency holds the refund due the taxpayer in escrow,
37 with no interest accruing to the taxpayer during the escrow period. The Agency must release
38 the refund to the taxpayer upon the occurrence of the earlier of the following:

39 (1) The Agency determines that the taxpayer has complied with the Qualified
40 Allocation Plan and has completed at least fifty percent (50%) of the
41 activities included in the development's qualified basis.

42 (2) Within 30 days after the date the development is placed in service.

43 (h) Forfeiture. – A taxpayer that receives a credit under this section must immediately
44 report any recapture event under section 42 of the Code to the Housing Finance Agency. If the
45 taxpayer or any of its owners are required under section 42(j) of the Code to recapture all or
46 part of a federal credit with respect to a qualified North Carolina low-income development, the
47 taxpayer forfeits the corresponding part of the credit allowed under this section. This
48 requirement does not apply in the following circumstances:

49 (1) When the recapture of part or all of the federal credit is the result of an event
50 that occurs in the sixth or a subsequent calendar year after the calendar year
51 in which the development was awarded a federal credit allocation.

1 (2) The taxpayer elected to transfer the credit allowed by this section to the
2 Housing Finance Agency.

3 (i) Liability From Forfeiture. – A taxpayer that forfeits all or part of the credit allowed
4 under this section is liable for all past taxes avoided and any refund claimed as a result of the
5 credit plus interest at the rate established under G.S. 105-241.21. The interest is computed from
6 the date the Secretary transferred the credit amount to the Housing Finance Agency. The past
7 taxes, refund, and interest are due 30 days after the date the credit is forfeited. A taxpayer that
8 fails to pay the taxes, refund, and interest by the due date is subject to the penalties provided in
9 G.S. 105-236.

10 **"§ 105-129.43. Substantiation.**

11 A taxpayer allowed a credit under this Article must maintain and make available for
12 inspection any information or records required by the Secretary of Revenue or the Housing
13 Finance Agency. The burden of proving eligibility for a credit and the amount of the credit
14 rests upon the taxpayer.

15 **"§ 105-129.44. Report.**

16 The Department must include in the economic incentives report required by G.S. 105-256
17 the following information itemized by taxpayer:

18 (1) The number of taxpayers that took the credit allowed in this Article.

19 (2) The location of each qualified North Carolina low-income building or
20 housing development for which a credit was taken.

21 (3) The total cost to the General Fund of the credits taken.

22 **"§ 105-129.45. Sunset.**

23 This Article is repealed effective January 1, ~~2015-2020~~. The repeal applies to developments
24 to which federal credits are allocated on or after January 1, ~~2015-2020~~."

25 **SECTION 6.(b)** This Part is effective when it becomes law and applies to
26 developments to which federal credits are allocated on or after that date.

27
28 **PART VII. RENEWABLE ENERGY PROPERTY**

29 **SECTION 7.(a)** G.S. 105-129.16A reads as rewritten:

30 **"§ 105-129.16A. Credit for investing in renewable energy property.**

31 (a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy
32 property places it in service in this State during the taxable year, the taxpayer is allowed a
33 credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable
34 energy property that serves a nonbusiness purpose, the credit must be taken for the taxable year
35 in which the property is placed in service. For all other renewable energy property, the entire
36 credit may not be taken for the taxable year in which the property is placed in service but must
37 be taken in five equal installments beginning with the taxable year in which the property is
38 placed in service. Upon request of a taxpayer that leases renewable energy property, the lessor
39 of the property must give the taxpayer a statement that describes the renewable energy property
40 and states the cost of the property. No credit is allowed under this section to the extent the cost
41 of the renewable energy property was provided by public funds. For the purposes of this
42 section, "public funds" does not include grants made under section 1603 of the American
43 Recovery and Reinvestment Tax Act of 2009.

44 (b) Expiration. – If, in one of the years in which the installment of a credit accrues, the
45 renewable energy property with respect to which the credit was claimed is disposed of, taken
46 out of service, or moved out of State, the credit expires and the taxpayer may not take any
47 remaining installment of the credit. The taxpayer may, however, take the portion of an
48 installment that accrued in a previous year and was carried forward to the extent permitted
49 under G.S. 105-129.17.

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

- 1 (1) Business. – A ceiling of two million five hundred thousand dollars
2 (\$2,500,000) applies to each installation of renewable energy property
3 placed in service for a business purpose. Renewable energy property is
4 placed in service for a business purpose if the useful energy generated by the
5 property is offered for sale or is used on-site for a purpose other than
6 providing energy to a residence.
- 7 (2) Nonbusiness. – The following ceilings apply to renewable energy property
8 placed in service for a nonbusiness purpose:
- 9 a. One thousand four hundred dollars (\$1,400) per dwelling unit for
10 solar energy equipment for domestic water heating, including pool
11 heating.
- 12 b. Three thousand five hundred dollars (\$3,500) per dwelling unit for
13 solar energy equipment for active space heating, combined active
14 space and domestic hot water systems, and passive space heating.
- 15 c. Eight thousand four hundred dollars (\$8,400) for each installation of
16 geothermal equipment.
- 17 d. Ten thousand five hundred dollars (\$10,500) for each installation of
18 any other renewable energy property.
- 19 (3) Eco-Industrial Park. – A ceiling of five million dollars (\$5,000,000) applies
20 to each installation of renewable energy property placed in service at an
21 Eco-Industrial Park certified under G.S. 143B-437.08 for a business purpose
22 described in subdivision (1) of this subsection.
- 23 (d) No Double Credit. – A taxpayer that claims any other credit allowed under this
24 Chapter with respect to renewable energy property may not take the credit allowed in this
25 section with respect to the same property. A taxpayer may not take the credit allowed in this
26 section for renewable energy property the taxpayer leases from another unless the taxpayer
27 obtains the lessor's written certification that the lessor will not claim a credit under this Chapter
28 with respect to the property.
- 29 (e) Sunset. – This section is repealed effective for renewable energy property placed
30 into service on or after January 1, ~~2016~~2020."

31 **SECTION 7.(b)** This Part is effective when it becomes law.
32

33 **PART VIII. USE OF NORTH CAROLINA PORTS CREDIT**

34 **SECTION 8.(a)** G.S. 105-130.41 is reenacted as it existed immediately before its
35 repeal and reads as rewritten:

36 **"§ 105-130.41. Credit for North Carolina State Ports Authority wharfage, handling, and 37 throughput charges.**

38 (a) Credit. – A taxpayer whose waterborne cargo is loaded onto or unloaded from an
39 ocean carrier calling at the State-owned port terminal at Wilmington or Morehead City, without
40 consideration of the terms under which the cargo is moved, is allowed a credit against the tax
41 imposed by this Part. The amount of credit allowed is equal to the excess of the wharfage,
42 handling (in or out), and throughput charges assessed on the cargo for the current taxable year
43 over an amount equal to the average of the charges for the current taxable year and the two
44 preceding taxable years. The credit applies to forest products, break-bulk cargo and container
45 cargo, including less-than-container-load cargo, that is loaded onto or unloaded from an ocean
46 carrier calling at either the Wilmington or Morehead City port terminal and to bulk cargo that is
47 loaded onto or unloaded from an ocean carrier calling at the Morehead City port terminal. To
48 obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports
49 Authority certifying the amount of charges for which a credit is claimed and any other
50 information required by the Secretary.

1 (b) Limitations. – This credit may not exceed fifty percent (50%) of the amount of tax
2 imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax
3 payments made by or on behalf of the corporation. Any unused portion of the credit may be
4 carried forward for the succeeding five years. The maximum cumulative credit that may be
5 claimed by a corporation under this section is two million dollars (\$2,000,000).

6 (c) Definitions. – For purposes of this section, the terms "handling" (in or out) and
7 "wharfage" have the meanings provided in the State Ports Tariff Publications, "Wilmington
8 Tariff, Terminal Tariff #6," and "Morehead City Tariff, Terminal Tariff #1." For purposes of
9 this section, the term "throughput" has the same meaning as "wharfage" but applies only to
10 bulk products, both dry and liquid.

11 (c1) Report. – The Department must include in the economic incentives report required
12 by G.S. 105-256 the following information itemized by taxpayer:

13 (1) The number of taxpayers taking a credit allowed in this section.

14 (2) The total amount of charges assessed for the taxable year.

15 (2a) The amount of the charges attributable to imports.

16 (2b) The amount of the charges attributable to exports.

17 (3) The total cost to the General Fund of the credits taken.

18 (d) Sunset. – This section is repealed effective for taxable years beginning on or after
19 January 1, ~~2014~~2020.

20 **SECTION 8.(b)** This Part is effective for taxable years beginning on or after
21 January 1, 2015.

22 23 **PART IX. QUALIFIED BUSINESS INVESTMENTS**

24 **SECTION 9.(a)** Part 5 of Article 4 of Subchapter I of Chapter 105 of the General
25 Statutes is reenacted as it existed immediately before its repeal and reads as rewritten:

26 "Part 5. Tax Credits for Qualified Business Investments.

27 **"§ 105-163.010. Definitions.**

28 The following definitions apply in this Part:

29 (1) Affiliate. – An individual or business that controls, is controlled by, or is
30 under common control with another individual or business.

31 (2) Business. – A corporation, partnership, limited liability company,
32 association, or sole proprietorship operated for profit.

33 (3) Control. – A person controls an entity if the person owns, directly or
34 indirectly, more than ten percent (10%) of the voting securities of that entity.
35 As used in this subdivision, the term "voting security" means a security that
36 (i) confers upon the holder the right to vote for the election of members of
37 the board of directors or similar governing body of the business or (ii) is
38 convertible into, or entitles the holder to receive upon its exercise, a security
39 that confers such a right to vote. A general partnership interest is a voting
40 security.

41 (4) Equity security. – Common stock, preferred stock, or an interest in a
42 partnership, or subordinated debt that is convertible into, or entitles the
43 holder to receive upon its exercise, common stock, preferred stock, or an
44 interest in a partnership.

45 (5) Financial institution. – A business that is (i) a bank holding company, as
46 defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841, et
47 seq., or its wholly owned subsidiary, (ii) registered as a broker-dealer under
48 the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a, et seq., or its wholly
49 owned subsidiary, (iii) an investment company as defined in the Investment
50 Company Act of 1940, 15 U.S.C. §§ 80a-1, et seq., whether or not it is
51 required to register under that act, (iv) a small business investment company

1 as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661,
2 et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings
3 institution, trust company, financial services company, or insurance
4 company. The term does not include, however, a business, other than a small
5 business investment company, whose net worth, when added to the net
6 worth of all of its affiliates, is less than ten million dollars (\$10,000,000).
7 The term also does not include a business that does not generally market its
8 services to the public and is controlled by a business that is not a financial
9 institution.

10 (5a) Granting entity. – Any of the following:

11 a. A domestic or foreign corporation that (i) is tax-exempt pursuant to
12 section 501(c)(3) of the Code, (ii) has as its principal purpose the
13 stimulation of the development of the biotechnology industry, and
14 (iii) in furtherance of that purpose has received, or is a successor in
15 interest to an organization that has received, direct appropriations
16 from the State in at least three fiscal years.

17 b. A domestic or foreign corporation that meets the following three
18 conditions:

19 1. It is tax-exempt pursuant to section 501(c)(3) of the Code, is a
20 private foundation pursuant to section 509 of the Code, or is
21 an affiliate of either of the foregoing.

22 2. It has as its principal purpose one of the following:
23 conducting research and development in, or stimulating the
24 development of, electronic, photonic, information, or other
25 technologies, which may include investing in companies that
26 provide research, development, products, or services in these
27 technologies.

28 3. It meets one of the following conditions:

29 I. It received direct appropriations in furtherance of one
30 of these purposes from the State in at least three fiscal
31 years.

32 II. It was organized to perform one of these purposes for
33 an organization that meets condition I of this
34 sub-subdivision.

35 III. It is an affiliate of an entity that meets condition II of
36 this sub-subdivision.

37 c. An institute that (i) is administratively located within a constituent
38 institution of The University of North Carolina, (ii) is financed in
39 part by a domestic or foreign corporation that is tax-exempt pursuant
40 to section 501(c)(3) of the Code, (iii) has as a principal purpose the
41 stimulation of economic development based on the advancement of
42 science, engineering, and technology, and (iv) funds, either directly
43 or in collaboration with other entities, small businesses engaging in
44 developing technology.

45 (6) North Carolina Enterprise Corporation. – A corporation established in
46 accordance with Article 3 of Chapter 53A of the General Statutes or a
47 limited partnership in which a North Carolina Enterprise Corporation is the
48 only general partner.

49 (7) Pass-through entity. – Defined in G.S. 105-228.90.

50 (7b) Qualified business. – A qualified business venture, a qualified grantee
51 business, or a qualified licensee business.

- 1 (8) Qualified business venture. – A business that (i) engages primarily in
2 manufacturing, processing, warehousing, wholesaling, research and
3 development, or a service-related industry, and (ii) is registered with the
4 Secretary of State under G.S. 105-163.013.
- 5 (9) Qualified grantee business. – A business that (i) is registered with the
6 Secretary of State under G.S. 105-163.013, and (ii) has received during the
7 current year or any of the preceding three years a grant, an investment, or
8 other funding from a federal agency under the Small Business Innovation
9 Research Program administered by the United States Small Business
10 Administration or from a granting entity as defined in this section.
- 11 (9a) Qualified licensee business. – A business that meets all of the following
12 conditions:
- 13 a. It is registered with the Secretary of State under G.S. 105-163.013.
- 14 b. During its most recent fiscal year before filing an application for
15 registration under G.S. 105-163.013, it had gross revenues, as
16 determined in accordance with generally accepted accounting
17 principles, of one million dollars (\$1,000,000) or less on a
18 consolidated basis.
- 19 c. It has been certified by a constituent institution of The University of
20 North Carolina or a research university as currently performing under
21 a licensing agreement with the institution or university for the
22 purpose of commercializing technology developed at the institution
23 or university. For the purpose of this section, a research university is
24 an institution of higher education classified as a Doctoral/Research
25 University, Extensive or Intensive, in the most recent edition of "A
26 Classification of Institutions of Higher Education", the official report
27 of The Carnegie Foundation for the Advancement of Teaching.
- 28 (10) Real estate-related business. – A business that is involved in or related to the
29 brokerage, selling, purchasing, leasing, operating, or managing of hotels,
30 motels, nursing homes or other lodging facilities, golf courses, sports or
31 social clubs, restaurants, storage facilities, or commercial or residential lots
32 or buildings is a real estate-related business, except that a real estate-related
33 business does not include (i) a business that purchases or leases real estate
34 from others for the purpose of providing itself with facilities from which to
35 conduct a business that is not itself a real estate-related business or (ii) a
36 business that is not otherwise a real estate-related business but that leases,
37 subleases, or otherwise provides to one or more other persons a number of
38 square feet of space which in the aggregate does not exceed fifty percent
39 (50%) of the number of square feet of space occupied by the business for its
40 other activities.
- 41 (10a) Related person. – A person described in one of the relationships set forth in
42 section 267(b) or 707(b) of the Code.
- 43 (11) Security. – A security as defined in Section 2(1) of the Securities Act of
44 1933, 15 U.S.C. § 77b(1).
- 45 (12) Selling or leasing at retail. – A business is selling or leasing at retail if the
46 business either (i) sells or leases any product or service of any nature from a
47 store or other location open to the public generally or (ii) sells or leases
48 products or services of any nature by means other than to or through one or
49 more other businesses.
- 50 (13) Service-related industry. – A business is engaged in a service-related
51 industry, whether or not it also sells a product, if it provides services to

1 customers or clients and does not as a substantial part of its business engage
2 in a business described in G.S. 105-163.013(b)(4). A business is engaged as
3 a substantial part of its business in an activity described in
4 G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all activities
5 described in that subdivision exceed twenty-five percent (25%) of its gross
6 revenues in any fiscal year or (ii) it is established as one of its primary
7 purposes to engage in any activities described in that subdivision, whether or
8 not its purposes were stated in its articles of incorporation or similar
9 organization documents.

10 (14) Subordinated debt. – Indebtedness that is not secured and is subordinated to
11 all other indebtedness of the issuer issued or to be issued to a financial
12 institution other than a financial institution described in subdivisions (5)(ii)
13 through (5)(v) of this section. Except as provided in G.S. 105-163.014(d1),
14 any portion of indebtedness that matures earlier than five years after its
15 issuance is not subordinated debt.

16 **"§ 105-163.011. Tax credits allowed.**

17 (a) No Credit for Brokered Investments. – No credit is allowed under this section for a
18 purchase of equity securities or subordinated debt if a broker's fee or commission or other
19 similar remuneration is paid or given directly or indirectly for soliciting the purchase.

20 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
21 individual who purchases the equity securities or subordinated debt of a qualified business
22 directly from that business is allowed as a credit against the tax imposed by Part 2 of this
23 Article for the taxable year an amount equal to twenty-five percent (25%) of the amount
24 invested. The aggregate amount of credit allowed an individual for one or more investments
25 made in a single taxable year under this Part, whether directly or indirectly as owner of a
26 pass-through entity, may not exceed fifty thousand dollars (\$50,000). The credit may not be
27 taken for the year in which the investment is made but may be taken for the taxable year
28 beginning during the calendar year in which the application for the credit becomes effective as
29 provided in subsection (c) of this section.

30 (b1) Pass-Through Entities. – This subsection does not apply to a pass-through entity that
31 has committed capital under management in excess of five million dollars (\$5,000,000) or to a
32 pass-through entity that is a qualified business or a North Carolina Enterprise Corporation.
33 Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases
34 the equity securities or subordinated debt of a qualified business directly from the business is
35 eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The
36 aggregate amount of credit allowed a pass-through entity for one or more investments made in
37 a single taxable year under this Part, whether directly or indirectly as owner of another
38 pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The
39 pass-through entity is not eligible for the credit for the year in which the investment by the
40 pass-through entity is made but is eligible for the credit for the taxable year beginning during
41 the calendar year in which the application for the credit becomes effective as provided in
42 subsection (c) of this section.

43 Each individual who is an owner of a pass-through entity is allowed as a credit against the
44 tax imposed by Part 2 of this Article for the taxable year an amount equal to the owner's
45 allocated share of the credits for which the pass-through entity is eligible under this subsection.
46 The aggregate amount of credit allowed an individual for one or more investments made in a
47 single taxable year under this Part, whether directly or indirectly as owner of a pass-through
48 entity, may not exceed fifty thousand dollars (\$50,000).

49 If an owner's share of the pass-through entity's credit is limited due to the maximum
50 allowable credit under this section for a taxable year, the pass-through entity and its owners
51 may not reallocate the unused credit among the other owners.

1 (c) Application. – To be eligible for the tax credit provided in this section, the taxpayer
2 must file an application for the credit with the Secretary. The application should be filed on or
3 before April 15 of the year following the calendar year in which the investment was made. The
4 Secretary may not accept an application filed after October 15 of the year following the
5 calendar year in which the investment was made. An application is effective for the year in
6 which it is timely filed. The application must be on a form prescribed by the Secretary and must
7 include any supporting documentation that the Secretary may require. If an investment for
8 which a credit is applied for was paid for other than in money, the taxpayer must include with
9 the application a certified appraisal of the value of the property used to pay for the investment.
10 The application for a credit for an investment made by a pass-through entity must be filed by
11 the pass-through entity.

12 (d) Penalties. – The penalties provided in G.S. 105-236 apply in this Part.

13 **"§ 105-163.012. Limit; carry-over; ceiling; reduction in basis.**

14 (a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount
15 of income tax imposed by Part 2 of this Article for the taxable year reduced by the sum of all
16 other credits allowable except tax payments made by or on behalf of the taxpayer. The amount
17 of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five
18 succeeding years.

19 (b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for
20 investments made in a calendar year may not exceed seven million five hundred thousand
21 dollars (\$7,500,000). The Secretary of Revenue shall calculate the total amount of tax credits
22 claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax
23 credits claimed for investments made in a calendar year exceeds this maximum amount, the
24 Secretary shall allow a portion of the credits claimed by allocating the maximum amount in tax
25 credits in proportion to the size of the credit claimed by each taxpayer.

26 (c) If a credit claimed under G.S. 105-163.011 is reduced as provided in this section,
27 the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before
28 December 31 of the year following the calendar year in which the investment was made. The
29 Secretary's allocations based on applications filed pursuant to G.S. 105-163.011(c) are final and
30 shall not be adjusted to account for credits applied for but not claimed.

31 (d) The taxpayer's basis in the equity securities or subordinated debt acquired as a result
32 of an investment in a qualified business shall be reduced for the purposes of this Article by the
33 amount of allowable credit. "Allowable credit" means the amount of credit allowed under
34 G.S. 105-163.011 reduced as provided in subsection (c) of this section.

35 **"§ 105-163.013. Registration.**

36 (a) Repealed by Session Laws 1993, c. 443, s. 4.

37 (b) Qualified Business Ventures. – In order to qualify as a qualified business venture
38 under this Part, a business must be registered with the Securities Division of the Department of
39 the Secretary of State. To register, the business must file with the Secretary of State an
40 application and any supporting documents the Secretary of State may require from time to time
41 to determine that the business meets the requirements for registration as a qualified business
42 venture. A business meets the requirements for registration as a qualified business venture if all
43 of the following are true as of the date the business files the required application:

44 (1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

45 (1a) Reserved for future codification purposes.

46 (1b) Either (i) it was organized after January 1 of the calendar year in which its
47 application is filed or (ii) during its most recent fiscal year before filing the
48 application, it had gross revenues, as determined in accordance with
49 generally accepted accounting principles, of five million dollars
50 (\$5,000,000) or less on a consolidated basis.

51 (2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

- 1 (3) It is organized to engage primarily in manufacturing, processing,
2 warehousing, wholesaling, research and development, or a service-related
3 industry.
- 4 (4) It does not engage as a substantial part of its business in any of the
5 following:
- 6 a. Providing a professional service as defined in Chapter 55B of the
7 General Statutes.
- 8 b. Construction or contracting.
- 9 c. Selling or leasing at retail.
- 10 d. The purchase, sale, or development, or purchasing, selling, or
11 holding for investment of commercial paper, notes, other
12 indebtedness, financial instruments, securities, or real property, or
13 otherwise make investments.
- 14 e. Providing personal grooming or cosmetics services.
- 15 f. Offering any form of entertainment, amusement, recreation, or
16 athletic or fitness activity for which an admission or a membership is
17 charged.
- 18 (5) It was not formed for the primary purpose of acquiring all or part of the
19 stock or assets of one or more existing businesses.
- 20 (6) It is not a real estate-related business.

21 The effective date of registration for a qualified business venture whose application is
22 accepted for registration is 60 days before the date its application is filed. No credit is allowed
23 under this Part for an investment made before the effective date of the registration or after the
24 registration is revoked. For the purpose of this Article, if a taxpayer's investment is placed
25 initially in escrow conditioned upon other investors' commitment of additional funds, the date
26 of the investment is the date escrowed funds are transferred to the qualified business venture
27 free of the condition.

28 To remain qualified as a qualified business venture, the business must renew its registration
29 annually as prescribed by rule by filing a financial statement for the most recent fiscal year
30 showing gross revenues, as determined in accordance with generally accepted accounting
31 principles, of five million dollars (\$5,000,000) or less on a consolidated basis and an
32 application for renewal in which the business certifies the facts required in the original
33 application.

34 Failure of a qualified business venture to renew its registration by the applicable deadline
35 shall result in revocation of its registration effective as of the next day after the renewal
36 deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who
37 invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall
38 send the qualified business venture notice of revocation within 60 days after the renewal
39 deadline. A qualified business venture may apply to have its registration reinstated by the
40 Secretary of State by filing an application for reinstatement, accompanied by the reinstatement
41 application fee and a late filing penalty of one thousand dollars (\$1,000), within 30 days after
42 receipt of the revocation notice from the Secretary of State. A business that seeks approval of a
43 new application for registration after its registration has been revoked must also pay a penalty
44 of one thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had
45 not been revoked.

46 If the gross revenues of a qualified business venture exceed five million dollars
47 (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this
48 fact by filing a financial statement showing the revenues of the business for that year.

49 (b1) Qualified Licensee Businesses. – In order to qualify as a qualified licensee business
50 under this Part, a business must be registered with the Securities Division of the Department of
51 the Secretary of State. To register, the business must file with the Secretary of State an

1 application and any supporting documents the Secretary of State may require from time to time
2 to determine that the business meets the requirements for registration as a qualified licensee
3 business. The requirements for registration as a qualified licensee business are set out in
4 G.S. 105-163.010.

5 The effective date of registration for a qualified licensee business whose application is
6 accepted for registration is the filing date of its application. No credit is allowed under this Part
7 for an investment made before the effective date of the registration or after the registration is
8 revoked.

9 To remain qualified as a qualified licensee business, the business must renew its registration
10 annually as prescribed by rule by filing a financial statement for the most recent fiscal year
11 showing gross revenues, as determined in accordance with generally accepted accounting
12 principles, of one million dollars (\$1,000,000) or less on a consolidated basis and an
13 application for renewal in which the business certifies the facts required in the original
14 application.

15 Failure of a qualified licensee venture to renew its registration by the applicable deadline
16 results in revocation of its registration effective as of the next day after the renewal deadline,
17 but does not result in forfeiture of tax credits previously allowed to taxpayers who invested in
18 the business except as provided in G.S. 105-163.014. The Secretary of State shall send the
19 qualified licensee business notice of revocation within 60 days after the renewal deadline. A
20 qualified licensee business may apply to have its registration reinstated by the Secretary of
21 State by filing an application for reinstatement, accompanied by the reinstatement application
22 fee and a late filing penalty of one thousand dollars (\$1,000), within 30 days after receipt of the
23 revocation notice from the Secretary of State. A business that seeks approval of a new
24 application for registration after its registration has been revoked must also pay a penalty of one
25 thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had not been
26 revoked.

27 If the gross revenues of a qualified business venture exceed one million dollars
28 (\$1,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this
29 fact by filing a financial statement showing the revenues of the business for that year.

30 (c) Qualified Grantee Businesses. – In order to qualify as a qualified grantee business
31 under this Part, a business must be registered with the Securities Division of the Department of
32 the Secretary of State. To register, the business must file with the Secretary of State an
33 application and any supporting documents the Secretary of State may require from time to time
34 to determine that the business meets the requirements for registration as a qualified grantee
35 business. The requirements for registration as a qualified grantee business are set out in
36 G.S. 105-163.010.

37 The effective date of registration for a qualified grantee business whose application is
38 accepted for registration is the filing date of its application. No credit is allowed under this Part
39 for an investment made before the effective date of the registration or after the registration is
40 revoked.

41 To remain qualified as a qualified grantee business, the business must renew its registration
42 annually as prescribed by rule by filing an application for renewal in which the business
43 certifies the facts demonstrating that it continues to meet the applicable requirements for
44 qualification.

45 (d) Application Forms; Rules; Fees. – Applications for registration, renewal of
46 registration, and reinstatement of registration under this section shall be in the form required by
47 the Secretary of State. The Secretary of State may, by rule, require applicants to furnish
48 supporting information in addition to the information required by subsections (b), (b1), and (c)
49 of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the
50 General Statutes that are needed to carry out the Secretary's responsibilities under this Part. The
51 Secretary of State shall prepare blank forms for the applications and shall distribute them

1 throughout the State and furnish them on request. Each application shall be signed by the
2 owners of the business or, in the case of a corporation, by its president, vice-president,
3 treasurer, or secretary. There shall be annexed to the application the affirmation of the person
4 making the application in the following form: "Under penalties prescribed by law, I certify and
5 affirm that to the best of my knowledge and belief this application is true and complete." A
6 person who submits a false application is guilty of a Class 1 misdemeanor.

7 The fee for filing an application for registration under this section is one hundred dollars
8 (\$100.00). The fee for filing an application for renewal of registration under this section is fifty
9 dollars (\$50.00). The fee for filing an application for reinstatement of registration under this
10 section is fifty dollars (\$50.00).

11 An application for renewal of registration under this section must indicate whether the
12 applicant is a minority business, as defined in G.S. 143-128, and include a report of the number
13 of jobs the business created during the preceding year that are attributable to investments that
14 qualify under this section for a tax credit and the average wages paid by each job. An
15 application that does not contain this information is incomplete and the applicant's registration
16 may not be renewed until the information is provided.

17 (e) Revocation of Registration. – If the Securities Division of the Department of the
18 Secretary of State finds that any of the information contained in an application of a business
19 registered under this section is false, it shall revoke the registration of the business. The
20 Secretary of State shall not revoke the registration of a business solely because it ceases
21 business operations for an indefinite period of time, as long as the business renews its
22 registration each year as required under this section.

23 (f) Transfer of Registration. – A registration as a qualified business may not be sold or
24 otherwise transferred, except that if a qualified business enters into a merger, conversion,
25 consolidation, or other similar transaction with another business and the surviving company
26 would otherwise meet the criteria for being a qualified business, the surviving company retains
27 the registration without further application to the Secretary of State. In such a case, the
28 qualified business must provide the Secretary of State with written notice of the merger,
29 conversion, consolidation, or similar transaction and the name, address, and jurisdiction of
30 incorporation or organization of the surviving company.

31 (g) Report by Secretary of State. – The Secretary of State shall report to the Revenue
32 Laws Study Committee by October 1 of each year all of the businesses that have registered
33 with the Secretary of State as qualified business ventures, qualified licensee businesses, and
34 qualified grantee businesses. The report shall include the name and address of each business,
35 the location of its headquarters and principal place of business, a detailed description of the
36 types of business in which it engages, whether the business is a minority business as defined in
37 G.S. 143-128, the number of jobs created by the business during the period covered by the
38 report, and the average wages paid by these jobs.

39 **"§ 105-163.014. Forfeiture of credit.**

40 (a) Participation in Business. – A taxpayer who has received a credit under this Part for
41 an investment in a qualified business forfeits the credit if, within three years after the
42 investment was made, the taxpayer participates in the operation of the qualified business. For
43 the purpose of this section, a taxpayer participates in the operation of a qualified business if the
44 taxpayer, the taxpayer's spouse, parent, sibling, or child, or an employee of any of these
45 individuals or of a business controlled by any of these individuals, provides services of any
46 nature to the qualified business for compensation, whether as an employee, a contractor, or
47 otherwise. However, a person who provides services to a qualified business, whether as an
48 officer, a member of the board of directors, or otherwise does not participate in its operation if
49 the person receives as compensation only reasonable reimbursement of expenses incurred in
50 providing the services, participation in a stock option or stock bonus plan, or both.

1 (b) False Application. – A taxpayer who has received a credit under this Part for an
2 investment in a qualified business forfeits the credit if the registration of the qualified business
3 is revoked because information in the registration application was false at the time the
4 application was filed with the Secretary of State.

5 (c) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

6 (d) Transfer or Redemption of Investment. – A taxpayer who has received a credit
7 under this Part for an investment in a qualified business forfeits the credit in the following
8 cases:

9 (1) Within one year after the investment was made, the taxpayer transfers any of
10 the securities received in the investment that qualified for the tax credit to
11 another person or entity, other than in a transfer resulting from one of the
12 following:

13 a. The death of the taxpayer.

14 b. A final distribution in liquidation to the owners of a taxpayer that is a
15 corporation or other entity.

16 c. A merger, conversion, consolidation, or similar transaction requiring
17 approval by the owners of the qualified business under applicable
18 State law, to the extent the taxpayer does not receive cash or tangible
19 property in the merger, conversion, consolidation, or other similar
20 transaction.

21 (2) Except as provided in subsection (d1) of this section, within five years after
22 the investment was made, the qualified business in which the investment was
23 made makes a redemption with respect to the securities received in the
24 investment.

25 In the event the taxpayer transfers fewer than all the securities in a manner that would result
26 in a forfeiture, the amount of the credit that is forfeited is the product obtained by multiplying
27 the aggregate credit attributable to the investment by a fraction whose numerator equals the
28 number of securities transferred and whose denominator equals the number of securities
29 received on account of the investment to which the credit was attributable. In addition, if the
30 redemption amount is less than the amount invested by the taxpayer in the securities to which
31 the redemption is attributable, the amount of the credit that is forfeited is further reduced by
32 multiplying it by a fraction whose numerator equals the redemption amount and whose
33 denominator equals the aggregate amount invested by the taxpayer in the securities involved in
34 the redemption. The term "redemption amount" means all amounts paid that are treated as a
35 distribution in part or full payment in exchange for securities under section 302(a) of the Code.

36 (d1) Certain Redemptions Allowed. – Forfeiture of a credit does not occur under this
37 section if a qualified business venture that engages primarily in motion picture film production
38 makes a redemption with respect to securities received in an investment and the following
39 conditions are met:

40 (1) The redemption occurred because the qualified business venture completed
41 production of a film, sold the film, and was liquidated.

42 (2) Neither the qualified business venture nor a related person continues to
43 engage in business with respect to the film produced by the qualified
44 business venture.

45 (e) Effect of Forfeiture. – A taxpayer who forfeits a credit under this section is liable for
46 all past taxes avoided as a result of the credit plus interest at the rate established under
47 G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not
48 been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a
49 taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties
50 provided in G.S. 105-236.

51 "§ 105-163.015. Sunset.

1 This Part is repealed effective for investments made on or after January 1, ~~2014~~2020."

2 **SECTION 9.(b)** This Part is effective for taxable years beginning on or after
3 January 1, 2015.

4
5 **PART X. JOB DEVELOPMENT INVESTMENT GRANT PROGRAM**

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

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

9 **"§ 143B-437.50. Legislative findings and purpose.**

10 The General Assembly finds that:

- 11 (1) It is the policy of the State of North Carolina to stimulate economic activity
12 and to create new jobs for the citizens of the State by encouraging and
13 promoting the expansion of existing business and industry within the State
14 and by recruiting and attracting new business and industry to the State.
- 15 (2) Both short-term and long-term economic trends at the State, national, and
16 international levels have made the successful implementation of the State's
17 economic development policy and programs both more critical and more
18 challenging; and the decline in the State's traditional industries, and the
19 resulting adverse impact upon the State and its citizens, have been
20 exacerbated in recent years by adverse national and State economic trends
21 that contribute to the reduction in the State's industrial base and that inhibit
22 the State's ability to sustain or attract new and expanding businesses.
- 23 (3) The economic condition of the State is not static and recent changes in the
24 State's economic condition have created economic distress that requires a
25 reevaluation of certain existing State programs and the enactment of a new
26 program as provided in this Part that are designed to stimulate new economic
27 activity and to create new jobs within the State.
- 28 (4) The enactment of this Part is necessary to stimulate the economy, facilitate
29 economic recovery, and create new jobs in North Carolina; and this Part will
30 promote the general welfare and confer, as its primary purpose and effect,
31 benefits on citizens throughout the State through the creation of new jobs, an
32 enlargement of the overall tax base, an expansion and diversification of the
33 State's industrial base, and an increase in revenue to the State and its political
34 subdivisions.
- 35 (5) The purpose of this Part is to stimulate economic activity and to create new
36 jobs within the State.
- 37 (6) It is not the intent of the General Assembly that grants provided through this
38 Part be used as venture capital funds, business incubator funds, or business
39 start-up funds or to otherwise fund the initial capitalization needs of new
40 businesses.
- 41 (7) Nothing in this Part shall be construed to constitute a guarantee or
42 assumption by the State of any debt of any business or to authorize the
43 taxing power or the full faith and credit of the State to be pledged.

44 **"§ 143B-437.51. Definitions.**

45 The following definitions apply in this Part:

- 46 (1) Agreement. – A community economic development agreement under
47 G.S. 143B-437.57.
- 48 (2) Base period. – The period of time set by the Committee during which new
49 employees are to be hired for the positions on which the grant is based.
- 50 (3) Business. – A corporation, sole proprietorship, cooperative association,
51 partnership, S corporation, limited liability company, nonprofit corporation,

1 or other form of business organization, located either within or outside this
2 State.

3 (4) Committee. – The Economic Investment Committee established pursuant to
4 G.S. 143B-437.54.

5 (4a) Development tier. – The classification assigned to an area pursuant to
6 G.S. 143B-437.08.

7 (5) Eligible position. – A position created by a business and filled by a new
8 full-time employee in this State during the base period.

9 (6) Full-time employee. – A person who is employed for consideration for at
10 least 35 hours a week, whose wages are subject to withholding under Article
11 4A of Chapter 105 of the General Statutes, and who is determined by the
12 Committee to be employed in a permanent position according to criteria it
13 develops in consultation with the Attorney General. The term does not
14 include any person who works as an independent contractor or on a
15 consulting basis for the business.

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

18 (8) Overdue tax debt. – Defined in G.S. 105-243.1.

19 (9) Related member. – Defined in G.S. 105-130.7A.

20 (10) Withholdings. – The amount withheld by a business from the wages of
21 employees in eligible positions under Article 4A of Chapter 105 of the
22 General Statutes.

23 **"§ 143B-437.52. Job Development Investment Grant Program.**

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

32 (1) The project proposed by the business will create, during the term of the
33 agreement, a net increase in employment in this State by the business.

34 (2) The project will benefit the people of this State by increasing opportunities
35 for employment and by strengthening this State's economy by, for example,
36 providing worker training opportunities, constructing and enhancing critical
37 infrastructure, increasing development in strategically important industries,
38 or increasing the State and local tax base.

39 (3) The project is consistent with economic development goals for the State and
40 for the area where it will be located.

41 (4) A grant under this Part is necessary for the completion of the project in this
42 State.

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

45 (b) Priority. – In selecting between applicants, a project that is located in an
46 Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project
47 that is not located in a certified Eco-Industrial Park.

48 (c) Awards. – The maximum amount of total annual liability for grants awarded in any
49 single calendar year under this Part, including amounts transferred to the Utility Account
50 pursuant to G.S. 143B-437.61, is fifteen million dollars (\$15,000,000). No agreement may be
51 entered into that, when considered together with other existing agreements governing grants

1 awarded during a single calendar year, could cause the State's potential total annual liability for
 2 grants awarded in a single calendar year to exceed this amount. The Department shall make
 3 every effort to ensure that the average percentage of withholdings of eligible positions for
 4 grants awarded under this Part does not exceed the average of the range provided in
 5 G.S. 143B-437.56(a).

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

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

13 (2) The agreement contains terms to ensure that the business does not create
 14 eligible positions by transferring or shifting to the project existing positions
 15 from another project of the business or a related member of the business.

16 **"§ 143B-437.53. Eligible projects.**

17 (a) Minimum Number of Eligible Positions. – A business may apply to the Committee
 18 for a grant for any project that creates the minimum number of eligible positions as set out in
 19 the table below. If the project will be located in more than one development tier area, the
 20 location with the highest development tier area designation determines the minimum number of
 21 eligible positions that must be created.

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

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

34 A project that consists of a professional or semiprofessional sports team or club, other than
 35 a professional motorsports racing team, is not eligible for a grant under this Part.

36 (c) Health Insurance. – A business is eligible for a grant under this Part only if the
 37 business provides health insurance for all of the applicable full-time employees of the project
 38 with respect to which the grant is made. For the purposes of this subsection, an applicable
 39 full-time employee is one who earns from the business less than one hundred fifty thousand
 40 dollars (\$150,000) in taxable compensation on an annualized basis or three and one-half times
 41 the annualized average State wage for all insured private employers in the State employing
 42 between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a
 43 business provides health insurance if it pays at least fifty percent (50%) of the premiums for
 44 health care coverage that equals or exceeds the minimum provisions of the basic health care
 45 plan of coverage recommended by the Small Employer Carrier Committee pursuant to
 46 G.S. 58-50-125.

47 Each year that a business receives a grant under this Part, the business must provide with
 48 the submission required under G.S. 143B-437.58 a certification that the business continues to
 49 provide health insurance, as required by this subsection, for all applicable full-time employees
 50 of the project with respect to which the grant is made. If the business ceases to provide the

1 required health insurance, the Committee shall amend or terminate the agreement as provided
2 in G.S. 143B-437.59.

3 (d) Repealed by Session Laws 2003-435, 2nd Ex. Sess., s. 2.3, effective December 16,
4 2003.

5 (e) Safety and Health Programs. – In order for a business to be eligible for a grant under
6 this Part, the business must have no citations under the Occupational Safety and Health Act that
7 have become a final order within the past three years for willful serious violations or for failing
8 to abate serious violations with respect to the location for which the grant is made. For the
9 purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

10 **"§ 143B-437.54. Economic Investment Committee established.**

11 (a) Membership. – The Economic Investment Committee is established. The
12 Committee consists of the following members:

13 (1) The Secretary of Commerce.

14 (2) The Secretary of Revenue.

15 (3) The Director of the Office of State Budget and Management.

16 (4) One member appointed by the General Assembly upon the recommendation
17 of the Speaker of the House of Representatives.

18 (5) One member appointed by the General Assembly upon the recommendation
19 of the President Pro Tempore of the Senate.

20 The members of the Committee appointed by the General Assembly may not be members
21 of the General Assembly. The members of the Committee appointed by the General Assembly
22 serve two-year terms that begin upon appointment.

23 (b) Decision Required. – The Committee may act only upon a decision of three of its
24 five members.

25 (c) Conflict of Interest. – It is unlawful for a current or former member of the
26 Committee to, while serving on the Committee or within two years after the end of service on
27 the Committee, provide services for compensation, as an employee, consultant, or otherwise, to
28 any business or a related member of the business that is awarded a grant under this Part or
29 under G.S. 143B-437.02 while the member is serving on the Committee. Violation of this
30 subsection is a Class 1 misdemeanor. In addition to the penalties imposed under
31 G.S. 15A-1340.23, the court shall also make a finding as to what compensation was received
32 by the defendant for services in violation of this section and shall order the defendant to forfeit
33 that compensation.

34 If a person is convicted under this section, the person shall not provide services for
35 compensation, as an employee, consultant, or otherwise, to any business or a related member of
36 the business that was awarded a grant under this Part or under G.S. 143B-437.02 while the
37 member was serving on the Committee until two years after the person's conviction under this
38 section.

39 (d) Public Notice. – At least 20 days before the effective date of any criteria or
40 nontechnical amendments to criteria, the Committee must publish the proposed criteria on the
41 Department of Commerce's web site and provide notice to persons who have requested notice
42 of proposed criteria. In addition, the Committee must accept oral and written comments on the
43 proposed criteria during the 15 business days beginning on the first day that the Committee has
44 completed these notifications. For the purpose of this subsection, a technical amendment is
45 either of the following:

46 (1) An amendment that corrects a spelling or grammatical error.

47 (2) An amendment that makes a clarification based on public comment and
48 could have been anticipated by the public notice that immediately preceded
49 the public comment.

50 (e) Sunshine. – Meetings of the Committee are subject to the open meetings
51 requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the

1 Committee, including applications for grants, are public records governed by Chapter 132 of
2 the General Statutes and any applicable provisions of the General Statutes protecting
3 confidential information.

4 **"§ 143B-437.55. Applications; fees; reports; study.**

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

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

28 A business may apply, in one consolidated application in a form and manner determined by
29 the Committee, for a grant that may include performance by related members of the business
30 who may qualify under this Part.

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

39 If a business applies for a grant that includes performance by its related members, the
40 related members included in the application may be permitted to meet the qualifications for a
41 grant collectively by participating in a project that meets the requirements of this Part. The
42 amount of a grant may be calculated under the terms of this Part as if the related members were
43 all collectively one business entity. Any conditions for a grant, other than the number of
44 eligible positions created, apply to each related member who is listed in the application as
45 participating in the project. The grant awarded shall be paid to the approved grantee business
46 only. A grant received under this Part by a business may be apportioned to the related members
47 in a manner determined by the business. In order for an agreement to be executed, each related
48 member included in the application must sign the agreement and agree to abide by its terms.

49 (b) Application Fee. – When filing an application under this section, the business must
50 pay the Committee a fee of ten thousand dollars (\$10,000). The fee is due at the time the
51 application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of

1 the Office of State Budget and Management shall determine the allocation of the fee imposed
2 by this section among their agencies. The proceeds of the fee are receipts of the agency to
3 which they are credited. Within 30 days of receipt of an application under this section but prior
4 to any award being made, the Department of Commerce shall notify each governing body of an
5 area where a submitted application proposes locating a project of the information listed in this
6 subsection, provided that the governing body agrees, in writing, to any confidentiality
7 requirements imposed by the Department under G.S. 132-6(d). The information required by
8 this subsection includes all of the following:

9 (1) The estimated amount of the grant anticipated to be awarded to the applicant
10 for the project.

11 (2) Any economic impact data submitted with the application or prepared by the
12 Department.

13 (3) Any economic impact estimated by the Department to result from the
14 project.

15 (c) Annual Reports. – The Committee shall publish a report on the Job Development
16 Investment Grant Program on or before April 30 of each year. The Committee shall submit the
17 report electronically to the House of Representatives Finance Committee, the Senate Finance
18 Committee, the House of Representatives Appropriations Subcommittee on Natural and
19 Economic Resources, the Senate Appropriations Committee on Natural and Economic
20 Resources, and the Fiscal Research Division. The report shall include the following:

21 (1) A listing of each grant awarded during the preceding calendar year,
22 including the name of the business, the cost/benefit analysis conducted by
23 the Committee during the application process, a description of the project,
24 the term of the grant, the percentage of withholdings used to determine the
25 amount of the grant, the annual maximum State liability under the grant, and
26 the maximum total lifetime State liability under the grant.

27 (2) An update on the status of projects under grants awarded before the
28 preceding calendar year.

29 (3) The number and development tier area of eligible positions to be created by
30 projects with respect to which grants have been awarded.

31 (3a) A listing of the employment level for all businesses receiving a grant and
32 any changes in those levels from the level of the next preceding year.

33 (4) The wage levels of all eligible positions to be created by projects with
34 respect to which grants have been awarded, aggregated and listed in
35 increments of ten thousand dollars (\$10,000) or other appropriate
36 increments.

37 (5) The amount of new income tax revenue received from withholdings related
38 to the projects for which grants have been awarded.

39 (6) For the first annual report after adoption of the criteria developed by the
40 Committee, in consultation with the Attorney General, to implement this
41 Part, a copy of such criteria, and, for subsequent reports, identification of
42 any changes in those criteria from the previous calendar year.

43 (7) The number of awards made to new businesses and the number of awards
44 made to existing, expanding businesses in the preceding calendar year.

45 (8) The environmental impact of businesses that have received grants under the
46 program.

47 (9) The geographic distribution of grants, by number and amount, awarded
48 under the program.

49 (10) Repealed by Session Laws 2009-394, s. 2, effective July 31, 2009.

50 (11) A listing of all businesses making an application under this Part and an
51 explanation of whether each business ultimately located the project in this

- 1 State regardless of whether the business was awarded a grant for the project
2 under this Part.
- 3 (12) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.
- 4 (13) The total amount transferred to the Utility Account under this Part during the
5 preceding year.
- 6 (d) Repealed by Session Laws 2012-142, s. 13.4(f), effective July 1, 2012.
- 7 (e) Study. – The Committee shall conduct a study to determine the minimum funding
8 level required to implement the Job Development Investment Grant Program successfully. The
9 Committee shall report the results of this study to the House of Representatives Finance
10 Committee, the Senate Finance Committee, the House of Representatives Appropriations
11 Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on
12 Natural and Economic Resources, and the Fiscal Research Division no later than April 1 of
13 each year.
- 14 **"§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.**
- 15 (a) Subject to the limitations of subsection (d) of this section, the amount of the grant
16 awarded in each case shall be a percentage of the withholdings of eligible positions. The
17 percentage shall be no less than ten percent (10%) and no more than seventy-five percent
18 (75%) of the withholdings of the eligible positions for a period of years. The percentage used to
19 determine the amount of the grant shall be based on criteria developed by the Committee, in
20 consultation with the Attorney General, after considering at least the following:
- 21 (1) The number of eligible positions to be created.
- 22 (2) The expected duration of those positions.
- 23 (3) The type of contribution the business can make to the long-term growth of
24 the State's economy.
- 25 (4) The amount of other financial assistance the project will receive from the
26 State or local governments.
- 27 (5) The total dollar investment the business is making in the project.
- 28 (6) Whether the project utilizes existing infrastructure and resources in the
29 community.
- 30 (7) Whether the project is located in a development zone.
- 31 (8) The number of eligible positions that would be filled by residents of a
32 development zone.
- 33 (9) The extent to which the project will mitigate unemployment in the State and
34 locality.
- 35 (b) The term of the grant shall not exceed 12 years starting with the first year a grant
36 payment is made. The first grant payment must be made within six years after the date on
37 which the grant was awarded. The number of years in the base period for which grant payments
38 may be made shall not exceed five years.
- 39 (c) The grant may be based only on eligible positions created during the base period.
- 40 (d) For any eligible position that is located in a development tier three area,
41 seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to
42 the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to
43 G.S. 143B-437.61. For any eligible position that is located in a development tier two area,
44 eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the
45 business, and fifteen percent (15%) shall be payable to the Utility Account pursuant to
46 G.S. 143B-437.61. A position is located in the development tier area that has been assigned to
47 the county in which the project is located at the time the application is filed with the
48 Committee.
- 49 (e) A business that is receiving any other grant by operation of State law may not
50 receive an amount as a grant pursuant to this Part that, when combined with any other grants,

1 exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee
2 makes an explicit finding that the additional grant is necessary to secure the project.

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

6 **"§ 143B-437.57. Community economic development agreement.**

7 (a) Terms. – Each community economic development agreement shall include at least
8 the following:

- 9 (1) A detailed description of the proposed project that will result in job creation
10 and the number of new employees to be hired during the base period.
- 11 (2) The term of the grant and the criteria used to determine the first year for
12 which the grant may be claimed.
- 13 (3) The number of eligible positions that are subjects of the grant and a
14 description of those positions and the location of those positions.
- 15 (4) The amount of the grant based on a percentage of withholdings.
- 16 (5) A method for determining the number of new employees hired during a
17 grant year.
- 18 (6) A method for the business to report annually to the Committee the number
19 of eligible positions for which the grant is to be made.
- 20 (7) A requirement that the business report to the Committee annually the
21 aggregate amount of withholdings during the grant year.
- 22 (8) A provision permitting an audit of the payroll records of the business by the
23 Committee from time to time as the Committee considers necessary.
- 24 (9) A provision that requires the Committee to reduce the amount or term of a
25 grant pursuant to G.S. 143B-437.59.
- 26 (10) A provision that requires the business to maintain operations at the project
27 location or another location approved by the Committee for at least one
28 hundred fifty percent (150%) of the term of the grant and a provision to
29 permit the Committee to recapture all or part of the grant at its discretion if
30 the business does not remain at the site for the required term.
- 31 (11) A provision that requires the business to maintain employment levels in this
32 State at the level of the year immediately preceding the base period.
- 33 (12) A provision establishing the conditions under which the grant agreement
34 may be terminated, in addition to those under G.S. 143B-437.59, and under
35 which grant funds may be recaptured by the Committee.
- 36 (13) A provision stating that unless the agreement is terminated pursuant to
37 G.S. 143B-437.59, the agreement, including any amendments pursuant to
38 G.S. 143B-437.59, is binding and constitutes a continuing contractual
39 obligation of the State and the business.
- 40 (14) A provision setting out any allowed variation in the terms of the agreement
41 that will not subject the business to grant reduction, amendment, or
42 termination of the agreement under G.S. 143B-437.59.
- 43 (15) A provision that prohibits the business from manipulating or attempting to
44 manipulate employee withholdings with the purpose of increasing the
45 amount of the grant and that requires the Committee to terminate the
46 agreement and take action to recapture grant funds if the Committee finds
47 that the business has manipulated or attempted to manipulate withholdings
48 with the purpose of increasing the amount of the grant.
- 49 (16) A provision requiring that the business engage in fair employment practices
50 as required by State and federal law and a provision encouraging the
51 business to use small contractors, minority contractors, physically

- 1 handicapped contractors, and women contractors whenever practicable in the
2 conduct of its business.
- 3 (17) A provision encouraging the business to hire North Carolina residents.
- 4 (18) A provision encouraging the business to use the North Carolina State Ports.
- 5 (19) A provision stating that the State is not obligated to make any annual grant
6 payment unless and until the State has received withholdings from the
7 business in an amount that exceeds the amount of the grant payment.
- 8 (20) A provision describing the manner in which the amount of a grant will be
9 measured and administered to ensure compliance with the provisions of
10 G.S. 143B-437.52(c).
- 11 (21) A provision stating that any recapture of a grant and any reduction in the
12 amount of the grant or the term of the agreement must, at a minimum, be
13 proportional to the failure to comply measured relative to the condition or
14 criterion with respect to which the failure occurred.
- 15 (22) A provision stating that any disputes over interpretation of the agreement
16 shall be submitted to binding arbitration.
- 17 (23) A provision stating that the amount of a grant associated with any specific
18 eligible position, including any amount transferred to the Utility Account
19 pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred
20 dollars (\$6,500) in any year.
- 21 (24) A provision stating that the business agrees to submit to an audit at any time
22 that the Committee requires one.
- 23 (25) A provision encouraging the business to contract with small businesses
24 headquartered in the State for goods and services.
- 25 (b) Approval of Attorney General. – The Attorney General shall review the terms of all
26 proposed agreements entered into by the Committee. To be effective against the State, an
27 agreement entered into under this Part must be signed personally by the Attorney General.
- 28 (c) Agreement Binding. – A community economic development agreement is a binding
29 obligation of the State and is not subject to State funds being appropriated by the General
30 Assembly.
- 31 **"§ 143B-437.58. Grant recipient to submit records.**
- 32 (a) No later than March 1 of each year, for the preceding grant year, every business that
33 is awarded a grant under this Part shall submit to the Committee an annual payroll report
34 showing withholdings as a condition of its continuation in the grant program and identifying
35 eligible positions that have been created during the base period that remain filled at the end of
36 each year of the grant. Annual reports submitted to the Committee shall include social security
37 numbers of individual employees identified in the reports. Upon request of the Committee, the
38 business shall also submit a copy of its State and federal tax returns. Payroll and tax
39 information, including social security numbers of individual employees and State and federal
40 tax returns, submitted under this subsection is tax information subject to G.S. 105-259.
41 Aggregated payroll or withholding tax information submitted or derived under this subsection
42 is not tax information subject to G.S. 105-259. When making a submission under this section,
43 the business must pay the Committee a fee of the greater of two thousand five hundred dollars
44 (\$2,500) or three one-hundredths of one percent (.03%) of an amount equal to the grant less the
45 maximum amount to be transferred pursuant to G.S. 143B-437.61. The fee is due at the time
46 the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the
47 Director of the Office of State Budget and Management shall determine the allocation of the
48 fee imposed by this section among their agencies. The proceeds of the fee are receipts of the
49 agency to which they are credited.
- 50 (b) The Committee may require any information that it considers necessary to
51 effectuate the provisions of this Part.

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

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

5 **"§ 143B-437.59. Failure to comply with agreement.**

6 (a) If the business receiving a grant fails to meet or comply with any condition or
7 requirement set forth in an agreement or with criteria developed by the Committee in
8 consultation with the Attorney General, the Committee shall reduce the amount of the grant or
9 the term of the agreement, may terminate the agreement, or both. The reduction in the amount
10 or the term must, at a minimum, be proportional to the failure to comply measured relative to
11 the condition or criterion with respect to which the failure occurred. The Committee may
12 reduce the amount or term of a grant by formally approving a motion to reduce such grant in
13 accordance with program policies adopted by the Committee for the treatment of failures by
14 businesses to meet or comply with a condition or requirement set forth in the grant agreement,
15 and it shall not be necessary to execute an amendment to the applicable grant agreement. The
16 Committee shall notify any such affected business of the reduction to its grant payment,
17 reflected in any such motion.

18 (b) If a business fails to maintain employment at the levels stipulated in the agreement
19 or otherwise fails to comply with any condition of the agreement for any two consecutive
20 years:

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

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

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

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

39 A business may not receive an annual disbursement of a grant if, at the time of
40 disbursement, the business has received a notice of an overdue tax debt and that overdue tax
41 debt has not been satisfied or otherwise resolved. A business may receive an annual
42 disbursement of a grant only after the Committee has certified that there are no outstanding
43 overdue tax debts and that the business has met the terms and conditions of the agreement. No
44 amount shall be disbursed to a business as a grant under this Part in any year until the Secretary
45 of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of
46 the business and (ii) the amount of withholdings received in that year by the Department of
47 Revenue from the business. A business that has met the terms of the agreement shall make an
48 annual certification of this to the Committee. The Committee shall require the business to
49 provide any necessary evidence of compliance to verify that the terms of the agreement have
50 been met. The Committee shall certify the grant amount for which the business is eligible under
51 the agreement and the grant amount for which the business would be eligible under the

1 agreement without regard to G.S. 143B-437.56(d). The Department of Commerce shall remit a
2 check to the business in the amount of the certified grant amount within 90 days of receiving
3 the certification of the Committee.

4 **"§ 143B-437.61. Transfer to Industrial Development Fund Utility Account.**

5 At the time the Department of Commerce remits a check to a business under
6 G.S. 143B-437.60, the Department of Commerce shall transfer to the Utility Account an
7 amount equal to the amount certified by the Committee as the difference between the amount
8 of the grant and the amount of the grant for which the business would be eligible without
9 regard to G.S. 143B-437.56(d).

10 **"§ 143B-437.62. Expiration.**

11 The authority of the Committee to award new grants expires January 1, ~~2016~~2019.

12 **"§ 143B-437.63. JDIG Program cash flow requirements.**

13 Notwithstanding any other provision of law, grants made through the Job Development
14 Investment Grant Program, including amounts transferred pursuant to G.S. 143B-437.61, shall
15 be budgeted and funded on a cash flow basis. The Office of State Budget and Management
16 shall periodically transfer funds from the JDIG Reserve established pursuant to G.S. 143C-9-6
17 to the Department of Commerce in an amount sufficient to satisfy grant obligations and
18 amounts to be transferred pursuant to G.S. 143B-437.61 to be paid during the fiscal year.

19"

20 **SECTION 10.(b)** This Part is effective when it becomes law.

21
22 **PART XI. JUMP-START OUR BUSINESS START-UPS ACT**

23 **SECTION 11.(a)** G.S. 78A-17 is amended by adding a new subdivision to read:

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

26 **SECTION 11.(b)** Article 3 of Chapter 78A of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 78A-17.1. Invest NC exemption.**

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

32 (1) The issuer of the security is a business entity formed under the laws of the
33 State and registered with the Secretary of State.

34 (2) The transaction meets the requirements of the federal exemption for
35 intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15
36 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.

37 (3) The sum of all cash and other consideration to be received for all sales of the
38 security in reliance upon this exemption does not exceed the cap provided in
39 this subdivision.

40 a. One million dollars (\$1,000,000), less the aggregate amount received
41 for all sales of securities by the issuer within the 12 months before
42 the first offer or sale made in reliance upon this exemption, if the
43 issuer has not undergone and made available to each prospective
44 investor and the Administrator the documentation resulting from a
45 financial audit with respect to its most recently completed fiscal year
46 and meeting generally accepted accounting principles.

47 b. Two million dollars (\$2,000,000), less the aggregate amount received
48 for all sales of securities by the issuer within the 12 months before
49 the first offer or sale made in reliance upon this exemption, if the
50 issuer has undergone and made available to each prospective investor
51 and the Administrator the documentation resulting from a financial

1 audit with respect to its most recently completed fiscal year and
2 meeting generally accepted accounting principles.

3 (4) The issuer has not accepted more than two thousand dollars (\$2,000) from
4 any single purchaser unless the purchaser is an accredited investor as defined
5 by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.

6 (5) Not less than 10 days prior to the commencement of an offering of securities
7 in reliance on this exemption or the use of any publicly available Web site in
8 connection with any such offering, the issuer shall file a notice with the
9 Administrator, in writing or in electronic form as specified by the
10 Administrator, containing the following:

11 a. A notice of claim of exemption from registration, specifying that the
12 issuer will be conducting an offering in reliance upon this exemption,
13 accompanied by the filing fee as specified in this section.

14 b. A copy of the disclosure statement to be provided to prospective
15 investors in connection with the offering, containing the following:

16 1. A description of the company, its type of entity, the address
17 and telephone number of its principal office, its history, its
18 business plan, and the intended use of the offering proceeds,
19 including any amounts to be paid, as compensation or
20 otherwise, to any owner, executive officer, director,
21 managing member, or other person occupying a similar status
22 or performing similar functions on behalf of the issuer.

23 2. The identity of all persons owning more than ten percent
24 (10%) of the ownership interests of any class of securities of
25 the company.

26 3. The identity of the executive officers, directors, managing
27 members, and other persons occupying a similar status or
28 performing similar functions in the name of and on behalf of
29 the issuer, including their titles and their prior experience.

30 4. The terms and conditions of the securities being offered and
31 of any outstanding securities of the company, the minimum
32 and maximum amount of securities being offered, if any, and
33 either the percentage ownership of the company represented
34 by the offered securities or the valuation of the company
35 implied by the price of the offered securities.

36 5. The identity of any person who has been or will be retained
37 by the issuer to assist the issuer in conducting the offering
38 and sale of the securities, including any Web sites, but
39 excluding persons acting solely as accountants or attorneys
40 and employees whose primary job responsibilities involve the
41 operating business of the issuer rather than assisting the issuer
42 in raising capital, and for each person identified in response
43 to this paragraph, a description of the consideration being
44 paid to such person for such assistance.

45 6. A description of any litigation or legal proceedings involving
46 the company or its management.

47 7. The names and addresses, including URL, of any Web sites
48 that will be used in connection with the offering.

49 c. An escrow agreement with a bank or other depository institution
50 located within this State in which the investor funds will be
51 deposited, providing that all offering proceeds will be released to the

1 issuer only when the aggregate capital raised from all investors is
2 equal to or greater than the minimum target offering amount
3 specified in the business plan as necessary to implement the business
4 plan and that all investors may cancel their commitments to invest if
5 that target offering amount is not raised by the time stated in the
6 disclosure document.

7 (6) The issuer is not, either before or as a result of the offering, an investment
8 company, as defined in section 3 of the Investment Company Act of 1940,
9 15 U.S.C. § 8a-3, or an entity that would be an investment company but for
10 the exclusions provided in section 3(c) of the act, or subject to the reporting
11 requirements of section 13 or 15(d) of the Securities Exchange Act of 1934,
12 15 U.S.C. § 78m and 78o(d).

13 (7) The issuer shall inform all prospective purchasers under this section that the
14 securities have not been registered under federal or State securities law and
15 that the securities are subject to limitations on resale. The issuer shall display
16 the following legend conspicuously on the cover page of the disclosure
17 document:

18 "IN MAKING AN INVESTMENT DECISION, INVESTORS
19 MUST RELY ON THEIR OWN EXAMINATION OF THE
20 ISSUER AND THE TERMS OF THE OFFERING, INCLUDING
21 THE MERITS AND RISKS INVOLVED. THESE SECURITIES
22 HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR
23 STATE SECURITIES COMMISSION OR REGULATORY
24 AUTHORITY. FURTHERMORE, THE FOREGOING
25 AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR
26 DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY
27 REPRESENTATION TO THE CONTRARY IS A CRIMINAL
28 OFFENSE. THESE SECURITIES ARE SUBJECT TO
29 RESTRICTIONS ON TRANSFERABILITY AND RESALE AND
30 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS
31 PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R.
32 § 230.147(E) AS PROMULGATED UNDER THE SECURITIES
33 ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE
34 SECURITIES LAWS, PURSUANT TO REGISTRATION OR
35 EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE
36 THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL
37 RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD
38 OF TIME."

39 (8) The issuer shall require each purchaser to certify in writing "I understand
40 and acknowledge that:

41 a. I am investing in a high-risk, speculative business venture. I may lose
42 all of my investment, and I can afford the loss of my investment.

43 b. This offering has not been reviewed or approved by any state or
44 federal securities commission or other regulatory authority and that
45 no such person or authority has confirmed the accuracy or
46 determined the adequacy of any disclosure made to me relating to
47 this offering.

48 c. The securities I am acquiring in this offering are illiquid, that there is
49 no ready market for the sale of such securities, that it may be difficult
50 or impossible for me to sell or otherwise dispose of this investment,

- 1 and that, accordingly, I may be required to hold this investment
2 indefinitely.
- 3 d. I may be subject to tax on my share of the taxable income and losses
4 of the company, whether or not I have sold or otherwise disposed of
5 my investment or received any dividends or other distributions from
6 the company."
- 7 (9) If the offer and sale of securities is made through an Internet Web site, the
8 following requirements apply:
- 9 a. Prior to the offer of an investment opportunity to residents of this
10 State through a Web site, the issuer shall provide to the Web site and
11 to the Administrator evidence that the issuer is organized under
12 North Carolina law and that it is authorized to do business within the
13 State.
- 14 b. The issuer shall obtain from each purchaser of a security under this
15 section evidence that the purchaser is a resident of North Carolina
16 and, if applicable, an accredited investor.
- 17 c. The Web site operator shall register with the Administrator by filing
18 a statement that it is a business entity that is organized under North
19 Carolina law and that it is authorized to do business within the State
20 and that it is being utilized to offer and sell securities pursuant to this
21 exemption. As part of the registration, the Web site shall notify the
22 Administrator of its and the issuer's identity, location, and contact
23 information.
- 24 d. The issuer and the Web site must keep and maintain records of the
25 offers and sales of securities effected through the Web site and must
26 provide ready access to the records to the Administrator, upon
27 request. The Administrator may access, inspect, and review any Web
28 site and its records.
- 29 (10) All payments for purchase of securities must be directed to and held by the
30 bank or depository institution subject to the provisions of sub-subdivision
31 (a)(5)c. of this section. The bank or depository institution shall notify the
32 Administrator of the receipt of payments for securities and the identity and
33 residence of the investors. The information shall be confidential and
34 considered trade secrets within the scope of G.S. 132-1.2 while in the
35 possession of the Administrator.
- 36 (11) No offers or sales of a security shall be made through an Internet Web site
37 unless the Web site is registered with the Administrator pursuant to
38 sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to
39 the registration provisions of G.S. 78A-36 provided that all of the following
40 apply:
- 41 a. It does not offer investment advice or recommendations.
- 42 b. It does not solicit purchases, sales, or offers to buy the securities
43 offered or displayed on the Web site.
- 44 c. It does not compensate employees, agents, or other persons for the
45 solicitation or based on the sale of securities displayed or referenced
46 on the Web site.
- 47 d. It is not compensated based on the amount of securities sold, and it
48 does not hold, manage, possess, or otherwise handle investor funds
49 or securities.
- 50 e. It does not engage in such other activities as the Administrator, by
51 rule, determines appropriate.

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

7 (13) The issuer must provide a copy of the disclosure document provided to the
8 Administrator pursuant to sub-subdivision (a)(5)b. of this section to each
9 prospective investor at the time the offer of securities is made to the
10 prospective investor. In addition to the information described in
11 sub-subdivision (a)(5)b. of this section, the disclosure document provided to
12 the Administrator and to prospective investors should include additional
13 information material to the offering, including, where appropriate, a
14 discussion of significant factors that make the offering speculative or risky.
15 This discussion must be concise and organized logically and should not
16 present risks that could apply to any issuer or any offering.

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

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

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

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

36 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section
37 shall not be used in conjunction with any other exemption under this Chapter, except offers and
38 sales to controlling persons shall not count toward the limitation in subdivision (3) of
39 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or
40 individual occupying similar status or performing similar functions with respect to the issuer or
41 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes
42 of securities of the issuer.

43 (e) Disqualification. – The exemption allowed by this section shall not apply if an
44 issuer or person affiliated with the issuer or offering is subject to any disqualification contained
45 in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the
46 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply
47 if (i) upon a showing of good cause and without prejudice to any other action by the
48 Administrator, the Administrator determines that it is not necessary under the circumstances
49 that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into
50 whether any disqualification existed under this subsection but did not know, and in the exercise
51 of reasonable care could not have known, that a disqualification existed under this subsection.

1 The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer
2 and the other offering participants.

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

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

10 **SECTION 11.(c)** Notwithstanding any provision of Article 2A of Chapter 150B of
11 the General Statutes, within 12 months of the effective date of this act, the Secretary of State
12 shall adopt rules to implement the provisions of this act in accordance with the following
13 procedure:

- 14 (1) At least 15 business days prior to adopting a rule, submit the rule and a
15 notice of public hearing to the Codifier of Rules. The Codifier of Rules shall
16 publish the proposed rule and the notice of public hearing on the Internet
17 within five business days.
- 18 (2) At least 15 business days prior to adopting a rule, notify persons on the
19 mailing list maintained pursuant to G.S. 150B-21.2(d) and any other
20 interested parties of the Secretary's intent to adopt a rule and of the public
21 hearing.
- 22 (3) Accept written comments on the proposed rule for at least 15 business days
23 prior to adoption of the rule.
- 24 (4) Hold at least one public hearing on the proposed rule no less than five days
25 after the rule and notice have been published.

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

29 **SECTION 11.(d)** Any rule adopted more than 12 months after the effective date of
30 this act shall comply with the requirements of Article 2A of Chapter 150B of the General
31 Statutes.

32 **SECTION 11.(e)** Subsection (a) of Section 11 of this act is effective when it
33 becomes law and expires 12 months after the effective date of this act. Subsection (b) of
34 Section 11 of this act becomes effective 12 months after the effective date of this act and
35 expires on July 1, 2017. The remainder of this Part is effective when it becomes law and
36 expires on July 1, 2017.

37 38 **PART XII. ECONOMIC INCENTIVE REFUNDS**

39 **SECTION 12.(a)** G.S. 105-164.14A reads as rewritten:

40 **"§ 105-164.14A. Economic incentive refunds.**

41 (a) Refund. – The following taxpayers are allowed an annual refund of sales and use
42 taxes paid under this Article:

- 43 (1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund
44 of the sales and use tax paid by it on fuel in excess of two million five
45 hundred thousand dollars (\$2,500,000). The amount of sales and use tax paid
46 does not include a refund allowed to the interstate passenger air carrier under
47 G.S. 105-164.14(a). This subdivision is repealed for purchases made on or
48 after January 1, ~~2016~~2020.
- 49 (2) Major recycling facility. – An owner of a major recycling facility is allowed
50 a refund of the sales and use tax paid by it on building materials, building
51 supplies, fixtures, and equipment that become a part of the real property of

- 1 the recycling facility. Liability incurred indirectly by the owner for sales and
2 use taxes on these items is considered tax paid by the owner.
- 3 (3) Business in low-tier area. – A taxpayer that is engaged primarily in one of
4 the businesses listed in G.S. 105-129.83(a) in a development tier one area
5 and that places machinery and equipment in service in that area is allowed a
6 refund of the sales and use tax paid by it on the machinery and equipment.
7 For purposes of this subdivision, "machinery and equipment" includes
8 engines, machinery, equipment, tools, and implements used or designed to
9 be used in one of the businesses listed in G.S. 105-129.83, capitalized for tax
10 purposes under the Code, and not leased to another party. Liability incurred
11 indirectly by the taxpayer for sales and use taxes on these items is
12 considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105
13 of the General Statutes for development tier one areas applies to this
14 subdivision.
- 15 (4) Motorsports team or sanctioning body. – A professional motorsports racing
16 team, a motorsports sanctioning body, or a related member of such a team or
17 body is allowed a refund of the sales and use tax paid by it in this State on
18 aviation fuel that is used to travel to or from a motorsports event in this
19 State, to travel to a motorsports event in another state from a location in this
20 State, or to travel to this State from a motorsports event in another state. For
21 purposes of this subdivision, a "motorsports event" includes a motorsports
22 race, a motorsports sponsor event, and motorsports testing. This subdivision
23 is repealed for purchases made on or after January 1, ~~2016~~2020.
- 24 (5) Professional motorsports team. – A professional motorsports racing team or
25 a related member of a team is allowed a refund of fifty percent (50%) of the
26 sales and use tax paid by it in this State on tangible personal property, other
27 than tires or accessories, that comprises any part of a professional
28 motorsports vehicle. For purposes of this subdivision, "motorsports
29 accessories" includes instrumentation, telemetry, consumables, and paint.
30 This subdivision is repealed for purchases made on or after January 1,
31 ~~2016~~2020.
- 32 (6) Analytical services business. – A taxpayer engaged in analytical services in
33 this State is allowed a refund of sales and use tax paid by it. This subdivision
34 is repealed for purchases made on or after January 1, ~~2014~~2020. The
35 amount of the refund is the greater of the following:
- 36 a. Fifty percent (50%) of the eligible amount of sales and use tax paid
37 by it on tangible personal property that is consumed or transformed
38 in analytical service activities. The eligible amount of sales and use
39 tax paid by the taxpayer in this State is the amount by which sales
40 and use tax paid by the taxpayer in this State in the fiscal year exceed
41 the amount paid by the taxpayer in this State in the 2006-2007 State
42 fiscal year.
- 43 b. Fifty percent (50%) of the amount of sales and use tax paid by it in
44 the fiscal year on medical reagents.
- 45 (7) Railroad intermodal facility. – The owner or lessee of an eligible railroad
46 intermodal facility is allowed a refund of sales and use tax paid by it under
47 this Article on building materials, building supplies, fixtures, and equipment
48 that become a part of the real property of the facility. Liability incurred
49 indirectly by the owner or lessee of the facility for sales and use taxes on
50 these items is considered tax paid by the owner or lessee. This subdivision is
51 repealed for purchases made on or after January 1, 2038.

...."

SECTION 12.(b) This Part is effective when it becomes law. For purposes of analytical services business, this Part applies to purchases made on or after that date.

PART XIII. INTERACTIVE DIGITAL MEDIA

SECTION 13.(a) Article 3F of Subchapter I of Chapter 105 of the General Statutes is reenacted as it existed immediately before its repeal and reads as rewritten:

"Article 3F.

"Research and Development.

"§ 105-129.50. Definitions.

The definitions in section 41 of the Code apply in this Article. In addition, the following definitions apply in this Article:

- (1) Development tier one area. – Defined in G.S. 143B-437.08.
- (2) Full-time job. – Defined in G.S. 105-129.81.
- (3) Reserved.
- (4) North Carolina university research expenses. – Any amount the taxpayer paid or incurred to a research university for qualified research performed in this State or basic research performed in this State.
- (4a) Participating community college. – A community college, as defined in G.S. 115D-2, that offers an associate in applied science degree in simulation and game development.
- (5) Period of measurement. – Defined in the Small Business Size Regulations of the federal Small Business Administration.
- (6) Qualified North Carolina research expenses. – Qualified research expenses, other than North Carolina university research expenses, for research performed in this State.
- (7) Receipts. – Defined in the Small Business Size Regulations of the federal Small Business Administration.
- (8) Related person. – Defined in G.S. 105-163.010.
- (9) Research university. – An institution of higher education that meets one or both of the following conditions:
 - a. It is classified as one of the following in the most recent edition of "A Classification of Institutions of Higher Education", the official report of The Carnegie Foundation for the Advancement of Teaching:
 1. Doctoral/Research Universities, Extensive or Intensive.
 2. Masters Colleges and Universities, I or II.
 3. Baccalaureate Colleges, Liberal Arts or General.
 - b. It is a constituent institution of The University of North Carolina.
- (10) Small business. – A business whose annual receipts, combined with the annual receipts of all related persons, for the applicable period of measurement did not exceed one million dollars (\$1,000,000).

"§ 105-129.51. Taxpayer standards and sunset.

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

(b) This Article is repealed for taxable years beginning on or after January 1, ~~2016-2020.~~

(c) Repealed by Session Laws 2004-124, s. 32D.4, effective for taxable years beginning on or after January 1, 2006.

"§ 105-129.52. Tax election; cap.

(a) Tax Election. – A credit allowed in this Article is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the credit is first claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax.

(b) Cap. – A credit allowed in this Article may not exceed fifty percent (50%) of the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit allowed in this Article may be carried forward for the succeeding 15 years.

"§ 105-129.53. Substantiation.

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

"§ 105-129.54. Report.

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by taxpayer:

- (1) The number of taxpayers that took a credit allowed in this Article, itemized by the categories of small business, low-tier, university research, Eco-Industrial Park, and other.
- (2) The amount of each credit taken in each category.
- (3) The total cost to the General Fund of the credits taken.

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

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

- (1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three and one-quarter percent (3.25%).
- (2) Low-tier research. – For expenses with respect to research performed in a development tier one area, the applicable percentage is three and one-quarter percent (3.25%).
- (2a) University research. – For North Carolina university research expenses, the applicable percentage is twenty percent (20%).
- (2b) Eco-Industrial Park. – For expenses with respect to research performed in an Eco-Industrial Park certified under G.S. 143B-437.08, the applicable percentage is thirty-five percent (35%).
- (3) Other research. – For expenses not covered under another subdivision of this section, the percentages provided in the table below apply to the taxpayer's

1 qualified North Carolina research expenses during the taxable year at the
2 following levels:

3 Expenses Over	Up To	Rate
4 -0-	\$50 million	1.25%
5 \$50 million	\$200 million	2.25%
6 \$200 million	–	3.25%

7 (b) Repealed by Session Laws 2010-147, s. 5.5, effective January 1, 2011.

8 **"§ 105-129.56. Interactive digital media.**

9 (a) IDM Defined. – Interactive digital media is a product that meets all of the following
10 requirements:

- 11 (1) It is produced for distribution on electronic media, including distribution by
12 file download over the Internet.
- 13 (2) It contains a computer-controlled virtual universe with which an individual
14 who uses the program may interact in order to achieve a goal.
- 15 (3) It contains a significant amount of at least three of the following five types
16 of data: animated images, fixed images, sound, text, and 3D geometry.

17 (b) Credit. – A taxpayer that develops in this State interactive digital media or a digital
18 platform or engine for use in interactive digital media is allowed a credit equal to a percentage
19 of the taxpayer's expenses that exceed fifty thousand dollars (\$50,000) and that are paid during
20 the taxable year in developing the media, platform, or engine. The percentage that applies to the
21 expenses is determined under subsection (c) of this section. The expenses to which the credit
22 applies are as follows:

- 23 (1) Compensation and wages for a full-time job on which withholding payments
24 are remitted to the Department under Article 4A of this Chapter.
- 25 (2) Employee fringe contributions on compensation and wages included under
26 subdivision (1) of this subsection, including health, pension, and welfare
27 contributions.
- 28 (3) Amounts paid to a participating community college or a research university
29 for services performed in this State.

30 (c) Percentage. – The percentage of the credit allowed under this section is as follows:

- 31 (1) Higher education collaboration. – Twenty percent (20%) for allowable
32 expenses paid to a participating community college or a research university.
- 33 (2) Other. – Fifteen percent (15%) for allowable expenses not covered in
34 subdivision (1) of this subsection.

35 (d) Limitations. – The amount of credit allowed a taxpayer under this section may not
36 exceed seven million five hundred thousand dollars (\$7,500,000). The credit allowed by this
37 section does not apply to interactive digital media that meets any of the following descriptions:

- 38 (1) It is developed by the taxpayer for internal use.
- 39 (2) It is an interpersonal communications service, such as videoconferencing,
40 wireless telecommunications, a text-based channel, or a chat room.
- 41 (3) It is an Internet site that is primarily static and primarily designed to provide
42 information about one or more persons, businesses, companies, or firms.
- 43 (4) It is a gambling or casino game.
- 44 (5) It is political advertising.
- 45 (6) It contains material that is obscene, as defined in G.S. 14-190.1, or that is
46 harmful to minors, as defined in G.S. 14-190.13.

47 (e) No Double Benefit. – A taxpayer that claims a credit under this section may not
48 claim any of the following with respect to the expenses used to determine the credit under this
49 section:

- 50 (1) A credit allowed under any other section of this Chapter.

- (2) A grant from the Job Development Investment Grant Program, set out in Part 2G of Article 10 of Chapter 143B of the General Statutes.
- (3) A grant from the One North Carolina Fund, set out in Part 2H of Article 10 of Chapter 143B of the General Statutes.

(f) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, 2020.

"§ 105-129.57: Reserved for future codification purposes.
 "§ 105-129.58: Reserved for future codification purposes.
 "§ 105-129.59: Reserved for future codification purposes."

SECTION 13.(b) This Part is effective for taxable years beginning on or after January 1, 2015. For purposes of G.S. 105-129.56, as reenacted by this Part, the credit applies to expenses occurring on or after that date.

PART XIV. CREDIT FOR MANUFACTURING CIGARETTES FOR EXPORTATION

SECTION 14.(a) G.S. 105-130.45 reads as rewritten:

"§ 105-130.45. Credit for manufacturing cigarettes for exportation.

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

- (1) **Base year exportation volume.** – The number of cigarettes manufactured and exported by a corporation during the calendar year 2003.
- (2) **Exportation.** – The shipment of cigarettes manufactured in the United States to any of the following sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes:
 - a. A foreign country.
 - b. A possession of the United States.
 - c. A commonwealth of the United States that is not a state.
- (3) **Successor in business.** – A corporation that through amalgamation, merger, acquisition, consolidation, or other legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the cigarette exportation business.

(b) **Credit.** – A corporation engaged in the business of manufacturing cigarettes for exportation to a foreign country and that waterborne exports cigarettes and other tobacco products through the North Carolina State Ports during the taxable year is allowed a credit against the taxes levied by this Part. The amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation's base year exportation volume, rounded to the nearest whole percentage. In the case of a successor in business, the amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with all of the corporation's predecessor corporations' combined base year exportation volume, rounded to the nearest whole percentage. The amount of credit allowed may not exceed six million dollars (\$6,000,000) and is computed as follows:

Current Year's Exportation Volume Compared to its Base Year's Exportation Volume	Amount of Credit per Thousand Cigarettes Exported
120% or more	40¢
119% – 100%	35¢
99% – 80%	30¢
79% – 60%	25¢
59% – 50%	20¢
Less than 50%	None

1 (c) Cap. – The credit allowed under this section may not exceed the lesser of six million
2 dollars (\$6,000,000) or fifty percent (50%) of the amount of tax imposed by this Part for the
3 taxable year reduced by the sum of all other credits allowable, except tax payments made by or
4 on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit
5 allowed in any tax year, including carryforwards claimed by the taxpayer under this section for
6 previous tax years. Any unused portion of a credit allowed in this section may be carried
7 forward for the next succeeding ten years.

8 (d) Documentation of Credit. – A corporation that claims the credit under this section
9 must include the following with its tax return:

10 (1) A statement of the base year exportation volume.

11 (2) A statement of the exportation volume on which the credit is based.

12 (3) A list of the corporation's export volumes shown on its monthly reports to
13 the Alcohol and Tobacco Tax and Trade Bureau of the United States
14 Treasury for the months in the tax year for which the credit is claimed.

15 (e) No Double Credit. – A taxpayer may not claim this credit and the credit allowed
16 under G.S. 105-130.46 for the same activity.

17 (f) Report. – The Department must include in the economic incentives report required
18 by G.S. 105-256 the following information itemized by taxpayer:

19 (1) The number of taxpayers taking a credit allowed in this section.

20 (2) The total amount of exports with respect to which credits were taken.

21 (3) The total cost to the General Fund of the credits taken.

22 (g) Sunset. – This section is repealed effective for cigarettes exported on or after
23 January 1, 2020."

24 **SECTION 14.(b)** G.S. 105-130.46 reads as rewritten:

25 "**§ 105-130.46. Credit for manufacturing cigarettes for exportation while increasing**
26 **employment and utilizing State Ports.**

27 (a) Purpose. – The credit authorized by this section is intended to enhance the economy
28 of this State by encouraging qualifying cigarette manufacturers to increase employment in this
29 State with the purpose of expanding this State's economy, the use of the North Carolina State
30 Ports, and the use of other State goods and services, including tobacco.

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

32 (1) Employment level. – The total number of full-time jobs and part-time jobs
33 converted into full-time equivalences. A job is included in the employment
34 level for a year only if that job is located within the State for more than six
35 months of the year. A job is located in this State if more than fifty percent
36 (50%) of the employee's duties are performed in this State.

37 (2) Exportation. – The shipment of cigarettes manufactured in the United States
38 to a foreign country sufficient to relieve the cigarettes in the shipment of the
39 federal excise tax on cigarettes.

40 (3) Full-time job. – A position that requires at least 1,600 hours of work per year
41 and is intended to be held by one employee during the entire year.

42 (4) Successor in business. – A corporation that through amalgamation, merger,
43 acquisition, consolidation, or other legal succession becomes invested with
44 the rights and assumes the burdens of the predecessor corporation and
45 continues the cigarette exportation business.

46 (c) Employment Level. – In order to be eligible for a full credit allowed under this
47 section, the corporation must maintain an employment level in this State for the taxable year
48 that exceeds the corporation's employment level in this State at the end of the 2004 calendar
49 year by at least 800 full-time jobs. In the case of a successor in business, the corporation must
50 maintain an employment level in this State for the taxable year that exceeds all its predecessor

1 corporations' combined employment levels in this State at the end of the 2004 calendar year by
2 at least 800 full-time jobs.

3 (d) Credit. – A corporation that satisfies the employment level requirement under
4 subsection (c) of this section, is engaged in the business of manufacturing cigarettes for
5 exportation, and exports cigarettes and other tobacco products through the North Carolina State
6 Ports during the taxable year is allowed a credit as provided in this section. The amount of
7 credit allowed under this section is equal to forty cents (40¢) per one thousand cigarettes
8 exported. The amount of credit earned during the taxable year may not exceed ten million
9 dollars (\$10,000,000).

10 (e) Reduction of Credit. – A corporation that has previously satisfied the qualification
11 requirements of this section but that fails to satisfy the employment level requirement in a
12 succeeding year may still claim a partial credit for the year in which the employment level
13 requirement is not satisfied. The partial credit allowed is equal to the credit that would
14 otherwise be allowed under subsection (d) of this section multiplied by a fraction. The
15 numerator of the fraction is the number of full-time jobs by which the corporation's
16 employment level in this State for the taxable year exceeds the corporation's employment level
17 in this State at the end of the 2004 calendar year. The denominator of the fraction is 800. In the
18 case of a successor in business, the numerator of the fraction is the number of full-time jobs by
19 which the corporation's employment level in this State for the taxable year exceeds all its
20 predecessor corporations' combined employment levels in this State at the end of the 2004
21 calendar year.

22 (f) Allocation. – The credit allowed by this section may be taken against the income
23 taxes levied under this Part or the franchise taxes levied under Article 3 of this Chapter. When
24 the taxpayer claims a credit under this section, the taxpayer must elect the percentage of the
25 credit to be applied against the taxes levied under this Part with any remaining percentage to be
26 applied against the taxes levied under Article 3 of this Chapter. This election is binding for the
27 year in which it is made and for any carryforwards. A taxpayer may elect a different allocation
28 for each year in which the taxpayer qualifies for a credit.

29 (g) Ceiling. – The total amount of credit that may be taken in a taxable year under this
30 section may not exceed the lesser of the amount of credit which may be earned for that year
31 under subsection (d) of this section or fifty percent (50%) of the amount of tax against which
32 the credit is taken for the taxable year reduced by the sum of all other credits allowable, except
33 tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative
34 amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer
35 under this section or G.S. 105-130.45 for previous tax years.

36 (h) Carryforward. – Any unused portion of a credit allowed in this section may be
37 carried forward for the next succeeding 10 years. All carryforwards of a credit must be taken
38 against the tax against which the credit was originally claimed. A successor in business may
39 take the carryforwards of a predecessor corporation as if they were carryforwards of a credit
40 allowed to the successor in business.

41 (i) Documentation of Credit. – A corporation that claims the credit under this section
42 must include the following with its tax return:

43 (1) A statement of the exportation volume on which the credit is based.

44 (2) A list of the corporation's export volumes shown on its monthly reports to
45 the Alcohol and Tobacco Tax and Trade Bureau of the United States
46 Treasury for the months in the tax year for which the credit is claimed.

47 (3) Any other information required by the Department of Revenue.

48 (j) No Double Credit. – A taxpayer may not claim this credit and the credit allowed
49 under G.S. 105-130.45 for the same activity.

50 (k) Report. – The Department must include in the economic incentives report required
51 by G.S. 105-256 the following information itemized by taxpayer:

- 1 (1) The number of taxpayers that took the credit allowed in this section.
- 2 (2) The amount of cigarettes and other tobacco products exported through the
- 3 North Carolina State Ports with respect to which credits were taken.
- 4 (3) The percentage of domestic leaf content in cigarettes produced during the
- 5 previous year, as reported by the taxpayer.
- 6 (4) The total cost to the General Fund of the credits taken.
- 7 (l) Sunset. – This section expires for exports occurring on or after January 1, 2020."
- 8 **SECTION 14.(c)** This Part is effective when it becomes law.
- 9

10 **PART XV. EARNED INCOME TAX CREDIT**

11 **SECTION 15.(a)** G.S. 105-151.31 is reenacted as it existed immediately before its
12 expiration and reads as rewritten:

13 **"§ 105-151.31. Earned income tax credit.**

14 (a) Credit. – An individual who claims for the taxable year an earned income tax credit
15 under section 32 of the Code is allowed a credit against the tax imposed by this Part equal to a
16 percentage of the amount of credit the individual qualified for under section 32 of the Code. A
17 nonresident or part-year resident who claims the credit allowed by this section must reduce the
18 amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c),
19 as appropriate. The percentage is as follows:

- 20 (1) For taxable year ~~2013, four and one half percent (4.5%)-2015, two and~~
21 one-half percent (2.5%).
- 22 (2) For all other taxable years, five percent (5%).

23 (b) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax
24 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the
25 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
26 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this
27 Part. Section 3507 of the Code, Advance Payment of Earned Income Credit, does not apply to
28 the credit allowed by this section. In computing the amount of tax against which multiple
29 credits are allowed, nonrefundable credits are subtracted before refundable credits.

30 (c) Sunset. – This section is repealed effective for taxable years beginning on or after
31 January 1, ~~2014-2019.~~"

32 **SECTION 15.(b)** This Part is effective for taxable years beginning on or after
33 January 1, 2015.

35 **PART XVI. EFFECTIVE DATE**

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