GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 316*

Short Title: Amend Bill Lee Act/AB. (Public)

Sponsors: Senators Kerr; Gulley, Hartsell, Hoyle, and Lucas.

Referred to: Finance.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES.

"§ 105-129.2. (Repealed effective January 1, 2002 – see note) Definitions.

The following definitions apply in this Article:

~~(1) Cost. – Defined in section 179 of the Code.~~

(2) Data processing. – Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(3) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(5) Machinery and equipment. – Engines, machinery, tools, and implements that are capitalized by the taxpayer ~~for tax purposes under the Code~~ and

are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing. Machinery and equipment purchased by the taxpayer must be capitalized for tax purposes under the Code; machinery and equipment leased by the taxpayer must be capitalized on the taxpayer's books and records in accordance with generally accepted accounting principles. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) Manufacturing and processing. – Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

~~(7) Purchase. – Defined in section 179 of the Code.~~

(8) Warehousing and distribution. – Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.

(a) Tiers Defined. – An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. – Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to ~~highest.~~ highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to ~~lowest.~~ lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. – Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. – A taxpayer is eligible for a credit allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business.

(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed are located in an enterprise tier one area or meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or the credit for research and development if the jobs at the location with respect to which the credit is claimed are located in an enterprise tier one area or meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ten percent (10%) above the ~~average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars ($100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available.~~ applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county per capita income ratio. The county per capita income ratio is average per capita income in the county for the preceding three years divided by average per capita income in the State for the preceding three years.

(c) Worker Training. – A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. – The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when ~~filing the application for the credit.~~ filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax elected in the application.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are 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 the credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. – To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of ~~Commerce, must specify the credit and the tax against which it will be claimed,~~ Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, ~~specifying the tax against which the credit will be claimed,~~ outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(b) Reports. – The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue 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 the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:

Area Enterprise Tier	Amount of Credit
Tier One	$12,500

Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. ~~– A~~ If a taxpayer that has purchased or leased machinery and equipment ~~and~~ places it in service in this State during the taxable ~~year~~ year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most machinery and equipment in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the machinery and equipment are placed in service during the taxable year. If the taxpayer places machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the machinery and equipment placed in service in each area.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are ~~sold~~ disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

A taxpayer that claims for the taxable year a federal income tax credit under section 41 of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. As used in this section, the terms "qualified research expenses" and "base amount" have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. – A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. – The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4."

Section 2. Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

BUSINESS TAX CREDIT.

"§ 105-129.15. (Repealed effective January 1, 2002) Definitions.

The following definitions apply in this Article:

(1) Business property. – Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the ~~taxpayer for tax purposes under the Code.~~ taxpayer. Property purchased by the taxpayer must be capitalized for tax purposes under the Code; property leased by the taxpayer must be capitalized on the taxpayer's books and records in accordance with generally accepted accounting principles. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

~~(2) Cost. – Defined in section 179 of the Code.~~

~~(3) Purchase. – Defined in section 179 of the Code.~~

"§ 105-129.16. (Repealed effective January 1, 2002) Credit for investing in business property.

(a) Credit. – ~~A~~ If a taxpayer that has purchased or leased business property ~~and~~ places it in service in this State during the taxable ~~year~~ year, the taxpayer is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars ($4,500). The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. – If, in one of the five years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is ~~sold~~

disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) No Double Credit. – A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property.

"§ 105-129.17. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. – The 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 the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – The credit allowed in this Article may not exceed fifty percent (50%) of the 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 the credit may be carried forward for the succeeding five years.

"§ 105-129.18. (Repealed effective January 1, 2002) Substantiation.

To claim the credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue 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 the 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.

"§ 105-129.19. (Repealed effective January 1, 2002) Reports.

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

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

(2) The cost of business property with respect to which credits were claimed.

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

Section 3. G.S. 105-129.3(c), as enacted by this act, is effective when this act becomes law and, notwithstanding G.S. 105-129.3(b), applies retroactively to designations for the 1997 and later calendar years; the other amendments to G.S. 105-129.3 made by this act are effective when this act becomes law and apply to designations for the 1998 and later calendar years. The amendments to G.S. 105-129.5 and G.S. 105-129.6 made by this act are effective for taxable years beginning on or after January 1,

1996. The remainder of this act is effective for taxable years beginning on or after January 1, 1997.