

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2003

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HOUSE DRH30439-LC-165M (11/05)

Short Title: New Jobs Creation Act. (Public)

Sponsors: Representatives Miner, Baker, Sherrill, Howard (Primary Sponsors); and Grady.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR MANUFACTURERS WHO EXPORT CIGARETTES, INCREASE EMPLOYMENT IN THIS STATE, AND UTILIZE STATE PORTS AND TO PROVIDE INCENTIVES FOR MAJOR PHARMACEUTICAL AND BIOPROCESSING FACILITIES BY: (1) APPROPRIATING TWENTY-FIVE MILLION DOLLARS FOR INDUSTRIAL SITE INFRASTRUCTURE FOR MAJOR PROJECTS FOR THESE INDUSTRIES; (2) MODIFYING THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM; (3) EXTENDING THE BILL LEE ACT SUNSET FOR THESE INDUSTRIES; AND (4) AUTHORIZING SALES TAX REFUNDS FOR CONSTRUCTION MATERIALS FOR THESE INDUSTRIES.

The General Assembly of North Carolina enacts:

PART 1. PHARMACEUTICAL/BIOPROCESSING SITE INFRASTRUCTURE

SECTION 1.1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437.02. Site infrastructure development.

(a) Findings. – The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional

1 industries, and the resulting adverse impact upon the State and its
2 citizens, have been exacerbated in recent years by adverse national and
3 State economic trends that contribute to the reduction in the State's
4 industrial base and that inhibit the State's ability to sustain or attract
5 new and expanding businesses.

6 (3) The economic condition of the State is not static and recent changes in
7 the State's economic condition have created economic distress that
8 requires the enactment of a new program as provided in this section
9 that is designed to stimulate new economic activity and to create new
10 jobs within the State.

11 (4) The enactment of this section is necessary to stimulate the economy,
12 facilitate economic recovery, and create new jobs in North Carolina
13 and this section will promote the general welfare and confer, as its
14 primary purpose and effect, benefits on citizens throughout the State
15 through the creation of new jobs, an enlargement of the overall tax
16 base, an expansion and diversification of the State's industrial base,
17 and an increase in revenue to the State and its political subdivisions.

18 (5) The purpose of this section is to stimulate economic activity and to
19 create new jobs within the State.

20 (b) Fund. – The Site Infrastructure Development Fund is created as a restricted
21 reserve in the Department of Commerce. The Department may use the funds in the fund
22 only in accordance with this section for site development. Funds in the fund do not
23 revert but remain available to the Department for these purposes.

24 (c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In
25 addition, the following definitions apply in this section:

26 (1) Department. – The Department of Commerce.

27 (2) Site development. – Any of the following:

28 a. A restricted grant or a forgivable loan made to a business to
29 enable the business to acquire land, improve land, or both.

30 b. A grant to one or more State agencies or nonprofit corporations
31 to enable the grantees to acquire land, improve land, or both and
32 to lease the property to a business.

33 c. A grant to one or more local government units to enable the
34 units to acquire land, improve land, or both and to lease the
35 property to a business.

36 (d) Eligibility. – To be eligible for consideration for site development for a
37 project, a business must meet all of the following conditions:

38 (1) The business will invest at least one hundred million dollars
39 (\$100,000,000) of private funds in the project.

40 (2) The project will employ at least 100 new employees.

41 (3) The business and the project are primarily engaged in one of the
42 industries listed in G.S. 105-164.14(j)(3).

1 (e) Selection. – The Department of Commerce shall administer the selection of
2 projects to receive site development. The selection process shall include the following
3 components:

4 (1) Criteria. – The Department of Commerce must develop criteria to be
5 used to identify and evaluate eligible projects for possible site
6 development.

7 (2) Initial evaluation. – The Department must evaluate major competitive
8 projects to determine if site development is merited and to determine
9 whether the project is eligible and appropriate for consideration for site
10 development.

11 (3) Application. – The Department must require a business to submit an
12 application in order for a project to be considered for site development.
13 The Department must prescribe the form of the application, the
14 application process, and the information to be provided, including all
15 information necessary to evaluate the project in accordance with the
16 applicable criteria.

17 (4) Committee. – The Department must submit to the Economic
18 Investment Committee the applications for projects the Department
19 considers eligible and appropriate for consideration for site
20 development. In evaluating each application, the Committee must
21 consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.

22 (5) Findings. – In order to recommend a project for site development, the
23 Committee must make all of the following findings:

24 a. The conditions for eligibility have been met.

25 b. Site development for the project is necessary to carry out the
26 public purposes provided in subsection (a) of this section.

27 c. The project is consistent with the economic development goals
28 of the State and of the area where it will be located.

29 d. The affected local governments have participated in recruitment
30 and offered incentives in a manner appropriate to the project.

31 e. The price and nature of any real property to be acquired is
32 appropriate to the project and not unreasonable or excessive.

33 f. Site development under this section is necessary for the
34 completion of the project in this State.

35 (6) Recommendations. – If the Committee recommends a project for site
36 development, it must recommend the amount of State funds to be
37 committed, the preferred form and details of the State participation,
38 and the performance criteria and safeguards to be required in order to
39 protect the State's investment.

40 (f) Agreement. – Unless the Secretary of Commerce determines that the project
41 is no longer eligible or appropriate for site development, the Department shall enter into
42 an agreement to provide site development within available funds for a project
43 recommended by the Committee. Each site development agreement is binding and
44 constitutes a continuing contractual obligation of the State and the business. The site

1 development agreement must include all of the performance criteria, remedies, and
2 other safeguards recommended by the Committee or required by the Department to
3 secure the State's investment. Nothing in this section constitutes or authorizes a
4 guarantee or assumption by the State of any debt of any business or authorizes the
5 taxing power or the full faith and credit of the State to be pledged.

6 The Department shall cooperate with the Department of Administration and the
7 Attorney General's Office in preparing the documentation for the site development
8 agreement. The Attorney General shall review the terms of all proposed agreements to
9 be entered into under this section. To be effective against the State, an agreement
10 entered into under this section must be signed personally by the Attorney General.

11 (g) Safeguards. – To ensure that public funds are used only to carry out the
12 public purposes provided in this section, the Department shall require that each business
13 that receives State-funded site development must agree to meet performance criteria to
14 protect the State's investment and assure that the projected benefits of the project are
15 secured. The performance criteria to be required shall include creation and maintenance
16 of an appropriate level of employment and investment over the term of the agreement
17 and any other criteria the Department considers appropriate. The agreement must
18 require the business to repay or reimburse an appropriate portion of the State funds
19 expended for the site development, based on the extent of any failure by the business to
20 meet the performance criteria. The agreement must provide a method for securing these
21 payments from the business, such as structuring the site development as a conditional
22 grant, a forgivable loan, or a revocable lease.

23 (h) Monitoring and Reports. – The Department is responsible for monitoring
24 compliance with the performance criteria under each site development agreement and
25 for administering the repayment in case of default. The Department shall pay for the
26 cost of this monitoring from funds appropriated to it for that purpose or for other
27 economic development purposes.

28 Within two months after the end of each calendar quarter, the Department shall
29 report to the Joint Legislative Commission on Governmental Operations regarding the
30 Site Infrastructure Development Program. This report shall include a listing of each
31 agreement negotiated and entered into during the preceding quarter, including the name
32 of the business, the cost/benefit analysis conducted by the Committee during the
33 application process, a description of the project, and the amount of the site development
34 incentive expected to be paid under the agreement during the current fiscal year. The
35 report shall also include detailed information about any defaults and repayment during
36 the preceding quarter. The Department shall publish this report on its web site and shall
37 make printed copies available upon request."

38 **SECTION 1.2.(a)** There is appropriated from the General Fund to the Site
39 Infrastructure Development Fund in the Department of Commerce the sum of
40 twenty-five million dollars (\$25,000,000) for the 2003-2004 fiscal year to be used only
41 in accordance with G.S. 143B-437.02, as enacted by this part.

42 **SECTION 1.2.(b)** There is appropriated from the General Fund to the
43 Department of Commerce the sum of sixty-five thousand dollars (\$65,000) for the
44 2004-2005 fiscal year for a program administrator for the site infrastructure

1 development program created by this part. It is the intent of the General Assembly that
2 funds for administering this program shall be part of the Department of Commerce's
3 continuation budget.

4 **SECTION 1.2.(c)** Site development funded by money appropriated under
5 this section is not subject to Article 8 of Chapter 143 of the General Statutes (public
6 contracts) or Article 3 of Chapter 143 of the General Statutes (purchases and contracts).
7 Actions involving expenditures of public moneys or use of public lands for projects and
8 programs involved in site development funded by money appropriated under this
9 section are exempt from the requirements of Article 1 of Chapter 113A of the General
10 Statutes. This exemption does not apply to an ordinance adopted under G.S. 113A-8.

11 **SECTION 1.3.** G.S. 150B-1(d) is amended by adding a new subdivision to
12 read:

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

15 ...

16 (12) The Department of Commerce and the Economic Investment
17 Committee in developing criteria and administering the Site
18 Infrastructure Development Program under G.S. 143B-437.02."

19 **SECTION 1.4.** G.S. 143B-437.54(c) reads as rewritten:

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

29 If a person is convicted under this section, the person shall not provide services for
30 compensation, as an employee, consultant, or otherwise, to any business or a related
31 member of the business that was awarded a grant under this Part or under G.S.
32 143B-437.02 while the member was serving on the Committee until two years after the
33 person's conviction under this section."

34 **SECTION 1.5.** This part is effective when it becomes law.

35 **PART 2. JOB DEVELOPMENT INVESTMENT GRANT CHANGES**

36 **SECTION 2.1.** G.S. 143B-437.51 reads as rewritten:

37 **"§ 143B-437.51. Definitions.**

38 The following definitions apply in this Part:

39 ...

40 (2) Base years. – The first ~~two complete calendar years~~ 24 months
41 following the effective date of an agreement, date set by the Committee
42 for performance to begin under the agreement.

43 ...

1 (5a) Enterprise tier. – The classification assigned to an area pursuant to
2 G.S. 105-129.3."

3 **SECTION 2.2.** G.S. 143B-437.54(d) reads as rewritten:

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

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

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

15 ~~The Committee shall do all of the following at least 15 business days prior to~~
16 ~~the adoption of or amendment to any proposed criteria:~~

17 (1) ~~Publish the proposed criteria on the Department of Commerce's web~~
18 ~~site.~~

19 (2) ~~Provide notice to persons who have requested notice of proposed~~
20 ~~criteria.~~

21 (3) ~~Accept oral and written comments on the proposed criteria."~~

22 **SECTION 2.3.** G.S. 143B-437.56(b) reads as rewritten:

23 "(b) The term of the grant shall not exceed 12 years starting with the first year a
24 grant payment is made. The first grant payment must be made within six years after the
25 date on which the grant was awarded."

26 **SECTION 2.4.** This part is effective when it becomes law.

27 **PART 3. EXTEND BILL LEE CREDITS FOR MAJOR PHARMACEUTICAL**
28 **AND BIOPROCESSING INDUSTRIES**

29 **SECTION 3.1.** G.S. 105-129.2 is amended by adding a new subdivision to
30 read:

31 "**§ 105-129.2. Definitions.**

32 The following definitions apply in this Article:

33 ...

34 (8a) Eligible major industry. – A taxpayer is an eligible major industry for
35 the purposes of this Article if the taxpayer is primarily engaged in one
36 of the industries listed in G.S. 105-164.14(j)(3) and the Secretary of
37 Commerce has certified that the owner of the facility will invest at
38 least one hundred million dollars (\$100,000,000) of private funds to
39 acquire, construct, and equip a facility in this State to engage in one or
40 more of those industries."

41 **SECTION 3.2.** G.S. 105-129.2A reads as rewritten:

42 "**§ 105-129.2A. Sunset; studies.**

43 (a) Sunset. – This Article is repealed effective for business activities that occur
44 on or after January 1, 2006.

1 (a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this
2 section, in the case of an interstate air courier that enters into a real estate lease on or
3 before January 1, 2006, with an airport authority that provides for the lease of at least
4 100 acres of real property with a lease term in excess of 15 years, this Article is repealed
5 effective for business activities that occur on or after January 1, 2010.

6 (a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this
7 section, in the case of a taxpayer that qualifies as an eligible major industry on or before
8 January 1, 2006, this Article is repealed effective for business activities that occur on or
9 after January 1, 2010.

10 (b) Equity Study. – The Department of Commerce shall study the effect of the
11 tax incentives provided in this Article on tax equity. This study shall include the
12 following:

13 (1) Reexamining the formula in G.S. 105-129.3(b) used to define
14 enterprise tiers, to include consideration of alternative measures for
15 more equitable treatment of counties in similar economic
16 circumstances.

17 (2) Considering whether the assignment of tiers and the applicable
18 thresholds are equitable for smaller counties, for example those under
19 50,000 in population.

20 (3) Compiling any available data on whether expanding North Carolina
21 businesses receive fewer benefits than out-of-State businesses that
22 locate to North Carolina.

23 (c) Impact Study. – The Department of Commerce shall study the effectiveness
24 of the tax incentives provided in this Article. This study shall include:

25 (1) Study of the distribution of tax incentives across new and expanding
26 industries.

27 (2) Examination of data on economic recruitment for the period from 1994
28 through the most recent year for which data are available by county, by
29 industry type, by size of investment, and by number of jobs, and other
30 relevant information to determine the pattern of business locations and
31 expansions before and after the enactment of the William S. Lee Act
32 incentives.

33 (3) Measuring the direct costs and benefits of the tax incentives.

34 (4) Compiling available information on the current use of incentives by
35 other states and whether that use is increasing or declining.

36 (d) Report. – The Department of Commerce shall report the results of these
37 studies and its recommendations to the General Assembly biennially with the first report
38 due by April 1, 2001."

39 **SECTION 3.3.** G.S. 105-129.4(b1) reads as rewritten:

40 "(b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit
41 under this Article becomes eligible for the large investment enhancements provided for
42 credits under this Article if the Secretary of Commerce makes a written determination
43 that the taxpayer is expected to purchase or lease, and place in service in connection
44 with the eligible business within a two-year period, at least one hundred fifty million

1 dollars (\$150,000,000) worth of one or more of the following: real property, machinery
2 and equipment, or central office or aircraft facility property. In the case of an interstate
3 air courier that has or is constructing a hub in this ~~State~~,State and in the case of an
4 eligible major industry, this investment may be placed in service in connection with the
5 eligible business within a seven-year period. If the taxpayer fails to make the required
6 level of investment within the applicable period, the taxpayer forfeits the large
7 investment enhancements as provided in subsection (d) of this section."

8 **SECTION 3.4.** G.S. 105-129.4(d) reads as rewritten:

9 "(d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the
10 taxpayer was not eligible for the credit for the calendar year in which the taxpayer
11 engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits
12 a large investment enhancement of a tax credit if the taxpayer fails to timely make the
13 required level of investment under subsection (b1) of this section. If an eligible major
14 industry fails to timely make the required level of investment under G.S. 105-129.2(8a),
15 the taxpayer forfeits all credits allowed under this Article that it would not otherwise
16 have been eligible for if it were not an eligible major industry. A taxpayer forfeits the
17 credit for substantial investment in other property allowed under G.S. 105-129.12A if
18 the taxpayer fails to timely create the number of required new jobs or to timely make the
19 required level of investment under subsection (b5) of this section. A taxpayer forfeits
20 the technology commercialization credit allowed under G.S. 105-129.9A if the taxpayer
21 fails to make the level of investment required by subsection (e) of that section within the
22 required period or if the taxpayer fails to meet the terms of its licensing agreement with
23 a research university. If a taxpayer claimed a twenty percent (20%) technology
24 commercialization credit under G.S. 105-129.9A(d) and fails to make the level of
25 investment required under that subsection within the required period, but does make the
26 level of investment required under subsection (e) of that section within the required
27 period, the taxpayer forfeits one-fourth of the twenty percent (20%) credit.

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

39 **SECTION 3.5.** G.S. 105-129.5(c) reads as rewritten:

40 "(c) Carryforward. – Any unused portion of a credit with respect to a large
41 investment, with respect to the technology commercialization credit allowed in G.S.
42 105-129.9A, or with respect to substantial investment in other property under G.S.
43 105-129.12A may be carried forward for the succeeding 20 years. Any unused portion
44 of a credit with respect to research and development activities under G.S. 105-129.10

1 may be carried forward for the succeeding 15 years. Any unused portion of a credit may
2 be carried forward for the succeeding 10 years if, before the taxpayer claims the credit,
3 the Secretary of Commerce makes a written determination that the taxpayer is expected
4 to purchase or lease, and place in service in connection with the eligible business within
5 a two-year period, at least fifty million dollars (\$50,000,000) worth of one or more of
6 the following: real property, machinery and equipment, or central office or aircraft
7 facility property. In the case of an interstate air courier that has or is constructing a hub
8 in this ~~State~~,State and in the case of an eligible major industry, this investment may be
9 placed in service in connection with the eligible business within a seven-year period. If
10 the taxpayer fails to make the required level of investment within the applicable period,
11 the taxpayer forfeits this enhanced carryforward period. Any unused portion of any
12 other credit may be carried forward for the succeeding five years."

13 **SECTION 3.6.** G.S. 105-129.8(d) reads as rewritten:

14 "(d) Planned Expansion. – A taxpayer that signs a letter of commitment with the
15 Department of Commerce to create at least twenty new full-time jobs in a specific area
16 within two years of the date the letter is signed qualifies for the credit in the amount
17 allowed by this section based on the area's enterprise tier and development zone
18 designation for that year even though the employees are not hired that year. In the case
19 of an interstate air courier that has or is constructing a hub in this ~~State~~,State and in the
20 case of an eligible major industry, the applicable time period is seven years. The credit
21 shall be available in the taxable year after at least twenty employees have been hired if
22 the hirings are within the applicable commitment period. The conditions outlined in
23 subsection (a) apply to a credit taken under this subsection except that if the area is
24 redesignated to a higher-numbered enterprise tier or loses its development zone
25 designation after the year the letter of commitment was signed, the credit is allowed
26 based on the area's enterprise tier and development zone designation for the year the
27 letter was signed. If the taxpayer does not hire the employees within the applicable
28 period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies
29 for a credit under subsection (a) in the year any new employees are hired, the taxpayer
30 may take the credit under that subsection."

31 **SECTION 3.7.** G.S. 105-129.9(e) reads as rewritten:

32 "(e) Planned Expansion. – A taxpayer that signs a letter of commitment with the
33 Department of Commerce to place specific eligible machinery and equipment in service
34 in an area within two years after the date the letter is signed may, in the year the eligible
35 machinery and equipment are placed in service in that area, calculate the credit for
36 which the taxpayer qualifies based on the area's enterprise tier and development zone
37 designation for the year the letter was signed. In the case of an interstate air courier that
38 has or is constructing a hub in this ~~State~~,State and in the case of an eligible major
39 industry, the applicable time period is seven years. All other conditions apply to the
40 credit, but if the area has been redesignated to a higher-numbered enterprise tier or has
41 lost its development zone designation after the year the letter of commitment was
42 signed, the credit is allowed based on the area's enterprise tier and development zone
43 designation for the year the letter was signed. If the taxpayer does not place part or all of
44 the specified eligible machinery and equipment in service within the applicable period,

1 the taxpayer does not qualify for the benefit of this subsection with respect to the
2 machinery and equipment not placed in service within the applicable period. However,
3 if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are
4 placed in service, the taxpayer may take the credit for that year as if no letter of
5 commitment had been signed pursuant to this subsection."

6 **SECTION 3.8.** It is the intent of the General Assembly that the provisions of
7 this part not be expanded. If a court of competent jurisdiction holds any provision of this
8 part invalid, the section containing that provision is repealed. The repeal of a section of
9 this part under this section does not affect other provisions of this part that may be given
10 affect without the invalid provision.

11 **SECTION 3.9.** This part becomes effective for taxable years beginning on
12 or after January 1, 2004.

13 **PART 4. SALES TAX REFUNDS FOR MAJOR PHARMACEUTICAL AND**
14 **BIOPROCESSING FACILITIES**

15 **SECTION 4.1.** G.S. 105-164.14 is amended by adding a new subsection to
16 read:

17 "(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an
18 annual refund of sales and use taxes as provided in this subsection.

19 (1) Refund. – The owner of an eligible facility is allowed an annual refund
20 of sales and use taxes paid by it under this Article on building
21 materials, building supplies, fixtures, and equipment that become a
22 part of the real property of the eligible facility. Liability incurred
23 indirectly by the owner for sales and use taxes on these items is
24 considered tax paid by the owner. A request for a refund must be in
25 writing and must include any information and documentation required
26 by the Secretary. A request for a refund is due within six months after
27 the end of the State's fiscal year. Refunds applied for after the due date
28 are barred.

29 (2) Eligibility. – A facility is eligible under this subsection if it meets both
30 of the following conditions:

31 a. It is primarily engaged in one of the industries listed in this
32 subsection.

33 b. The Secretary of Commerce has certified that the owner of the
34 facility will invest at least one hundred million dollars
35 (\$100,000,000) of private funds to acquire, construct, and equip
36 the facility in this State.

37 (3) Industries. – This subsection applies to the following industries:

38 a. Bioprocessing. Bioprocessing means biomanufacturing or
39 processing that includes the culture of cells to make commercial
40 products, the purification of biomolecules from cells, or the use
41 of these molecules in manufacturing.

42 b. Pharmaceutical and medicine manufacturing. Pharmaceutical
43 and medicine manufacturing means any of the following:

- 1 1. Manufacturing biological and medicinal products. For
2 the purpose of this sub-subdivision, a biological product
3 is a preparation that is synthesized from living organisms
4 or their products and used medically as a diagnostic,
5 preventive, or therapeutic agent. For the purpose of this
6 sub-subdivision, bacteria, viruses, and their parts are
7 considered living organisms.
- 8 2. Processing botanical drugs and herbs by grading,
9 grinding, and milling.
- 10 3. Isolating active medicinal principals from botanical
11 drugs and herbs.
- 12 4. Manufacturing pharmaceutical products intended for
13 internal and external consumption in forms such as
14 ampoules, tablets, capsules, vials, ointments, powders,
15 solutions, and suspensions.
- 16 (4) Forfeiture. – If the owner of an eligible facility does not make the
17 required minimum investment within five years after the first refund
18 under this subsection with respect to the facility, the facility loses its
19 eligibility and the owner forfeits all refunds already received under this
20 subsection. Upon forfeiture, the owner is liable for tax under this
21 Article equal to the amount of all past taxes refunded under this
22 subsection, plus interest at the rate established in G.S. 105-241.1(i),
23 computed from the date each refund was issued. The tax and interest
24 are due 30 days after the date of the forfeiture. A person that fails to
25 pay the tax and interest is subject to the penalties provided in
26 G.S. 105-236."

27 **SECTION 4.2.** It is the intent of the General Assembly that the provisions of
28 this part not be expanded. If a court of competent jurisdiction holds any provision of this
29 part invalid, the section containing that provision is repealed. The repeal of a section of
30 this part under this section does not affect other provisions of this part that may be given
31 affect without the invalid provision.

32 **SECTION 4.3.** This part becomes effective January 1, 2004, and applies to
33 sales made on or after that date.

34 **PART 5. CIGARETTE EXPORTATION TAX CREDIT**

35 **SECTION 5.1.** Part 1 of Article 4 of Chapter 105 of the General Statutes is
36 amended by adding a new section to read:

37 **"§ 105-130.46. Credit for manufacturing cigarettes for exportation while**
38 **increasing employment and utilizing State Ports.**

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

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

- 1 (1) Employment level. – The total number of full-time jobs and part-time
2 jobs converted into full-time equivalences.
- 3 (2) Exportation. – The shipment of cigarettes manufactured in the United
4 States to a foreign country sufficient to relieve the cigarettes in the
5 shipment of the federal excise tax on cigarettes.
- 6 (3) Full-time job. – A position that requires at least 1,600 hours of work
7 per year and is intended to be held by one employee during the entire
8 year.
- 9 (4) Successor in business. – A corporation that through amalgamation,
10 merger, acquisition, consolidation, or other legal succession becomes
11 invested with the rights and assumes the burdens of the predecessor
12 corporation and continues the cigarette exportation business.

13 (c) Employment Level. – In order to be eligible for a full credit allowed under
14 this section, the corporation must maintain an employment level in this State that
15 exceeds the corporation's employment level in this State at the end of the 2004 calendar
16 year by at least 800 full-time jobs. In the case of a successor in business, the corporation
17 must maintain an employment level in this State that exceeds all its predecessor
18 corporations' combined employment levels in this State at the end of the 2004 calendar
19 year by at least 800 full-time jobs. A job is located in this State if more than fifty
20 percent (50%) of the employee's duties are performed in this State.

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

28 (e) Reduction of Credit. – A corporation that has previously satisfied the
29 qualification requirements of this section but that fails to satisfy the employment level
30 requirement in a succeeding year may still claim a partial credit for the year in which
31 the employment level requirement is not satisfied. The partial credit allowed is equal to
32 the credit that would otherwise be allowed under subsection (d) of this section
33 multiplied by a fraction. The numerator of the fraction is the number of full-time jobs by
34 which the corporation's employment level in this State exceeds the corporation's
35 employment level in this State at the end of the 2004 calendar year. The denominator of
36 the fraction is 800. In the case of a successor in business, the numerator of the fraction
37 is the number of full-time jobs by which the corporation's employment level in this
38 State exceeds all its predecessor corporations' combined employment levels in this State
39 at the end of the 2004 calendar year.

40 (f) Allocation. – The credit allowed by this section may be taken against the
41 income taxes levied under this Part or the franchise taxes levied under Article 3 of this
42 Chapter. When the taxpayer claims a credit under this section, the taxpayer must elect
43 the percentage of the credit to be applied against the taxes levied under this Part with
44 any remaining percentage to be applied against the taxes levied under Article 3 of this

1 Chapter. This election is binding for the year in which it is made and for any
2 carryforwards. A taxpayer may elect a different allocation for each year in which the
3 taxpayer qualifies for a credit.

4 (g) Ceiling. – The total amount of credit that may be taken in a taxable year
5 under this section may not exceed the lesser of ten million dollars (\$10,000,000) or fifty
6 percent (50%) of the amount of tax against which the credit is taken for the taxable year
7 reduced by the sum of all other credits allowable, except tax payments made by or on
8 behalf of the taxpayer. This limitation applies to the cumulative amount of the credit
9 allowed in any tax year, including carryforwards claimed by the taxpayer under this
10 section or G.S. 105-130.45 for previous tax years.

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

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

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

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

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

24 (j) Reports. – Any corporation that takes a credit under this section must submit
25 an annual report by May 1 of each year to the Senate Finance Committee, the House of
26 Representatives Finance Committee, the Senate Appropriations Committee, the House
27 of Representatives Appropriations Committee, and the Fiscal Research Division of the
28 General Assembly. The report must state the amount of credit earned by the corporation
29 during the previous year, the amount of credit including carryforwards claimed by the
30 corporation during the previous year, and the percentage of domestic leaf content in
31 cigarettes produced by the corporation during the previous year. The first reports
32 required under this section are due by May 1, 2006."

33 **SECTION 5.2.** This part is effective for taxable years beginning on or after
34 January 1, 2006, and expires for exports occurring on or after January 1, 2018.