

**GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2003**

**SESSION LAW 2003-435 SECOND EXTRA SESSION
HOUSE BILL 2**

AN ACT TO MAKE THE FOLLOWING CHANGES RECOMMENDED BY THE GOVERNOR: (1) APPROPRIATE TWENTY-FOUR MILLION DOLLARS FOR INDUSTRIAL SITE INFRASTRUCTURE FOR MAJOR PROJECTS; (2) MODIFY THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM; (3) PROVIDE INCENTIVES FOR MAJOR PHARMACEUTICAL AND BIOPROCESSING FACILITIES BY EXTENDING THE BILL LEE ACT SUNSET FOR THESE INDUSTRIES AND AUTHORIZING SALES TAX REFUNDS FOR CONSTRUCTION MATERIALS FOR THESE INDUSTRIES; (4) EXTEND THE SUNSET ON AND MODIFY THE CIGARETTE EXPORTATION TAX CREDIT AND MODIFY THE BASE YEAR, (5) CREATE AN ENHANCED TAX CREDIT FOR CIGARETTE EXPORTATION, AND (6) CREATE A LIFE SCIENCES REVENUE BOND AUTHORITY.

The General Assembly of North Carolina enacts:

PART 1. MAJOR INDUSTRIAL 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 industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.
- (3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires the enactment of a new program as provided in this section that is designed to stimulate new economic activity and to create new jobs within the State.
- (4) The enactment of this section is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina and this section will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

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

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

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

(1) Department. – The Department of Commerce.

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

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

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

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

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

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

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

(e) Health Insurance. – A business is eligible for consideration for site development under this section only if the business provides health insurance for all of the full-time employees of the project with respect to which the application is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a contract for site development under this section is in effect, the business must provide the Department of Commerce a certification that the business continues to provide health insurance for all full-time employees of the project governed by the contract. If the business ceases to provide health insurance to all full-time employees of the project, Department shall provide for reimbursement of an appropriate portion of the site development funds provided to the business.

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

(g) Environmental Impact. – A business is eligible for consideration for site development under this part only if the business certifies that, at the time of the application, the business has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources must notify the Department of Commerce annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

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

- (1) Criteria. – The Department of Commerce must develop criteria to be used to identify and evaluate eligible projects for possible site development.
- (2) Initial evaluation. – The Department must evaluate major competitive projects to determine if site development is merited and to determine whether the project is eligible and appropriate for consideration for site development.
- (3) Application. – The Department must require a business to submit an application in order for a project to be considered for site development. The Department must prescribe the form of the application, the application process, and the information to be provided, including all information necessary to evaluate the project in accordance with the applicable criteria.
- (4) Committee. – The Department must submit to the Economic Investment Committee the applications for projects the Department considers eligible and appropriate for consideration for site development. In evaluating each application, the Committee must consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.
- (5) Findings. – In order to recommend a project for site development, the Committee must make all of the following findings:
 - a. The conditions for eligibility have been met.
 - b. Site development for the project is necessary to carry out the public purposes provided in subsection (a) of this section.
 - c. The project is consistent with the economic development goals of the State and of the area where it will be located.
 - d. The affected local governments have participated in recruitment and offered incentives in a manner appropriate to the project.
 - e. The price and nature of any real property to be acquired is appropriate to the project and not unreasonable or excessive.
 - f. Site development under this section is necessary for the completion of the project in this State.
- (6) Recommendations. – If the Committee recommends a project for site development, it must recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.

(i) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for site development, the Department shall enter into an agreement to provide site development within available funds for a project recommended by the Committee. Each site development agreement is binding and constitutes a continuing contractual obligation of the State and the business. The site development agreement must include all of the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department to secure the State's investment. Each site development agreement must contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Department of Administration and the Attorney General's Office in preparing the documentation for the site development

agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section must be signed personally by the Attorney General.

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

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

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

SECTION 1.2.(a) There is appropriated from the General Fund to the Site Infrastructure Development Fund in the Department of Commerce the sum of twenty-four million dollars (\$24,000,000) for the 2003-2004 fiscal year to be used only in accordance with G.S. 143B-437.02, as enacted by this part.

SECTION 1.2.(b) Reserved.

SECTION 1.2.(c) Site development funded by money appropriated under this section is not subject to Article 8 of Chapter 143 of the General Statutes (public contracts) or Article 3 of Chapter 143 of the General Statutes (purchases and contracts), except where public funds are expended the provisions of G.S. 143-48 and G.S. 143-128.2 shall apply. Actions involving expenditures of public moneys or use of public lands for projects and programs involved in site development funded by money appropriated under this section are exempt from the requirements of Article 1 of Chapter 113A of the General Statutes. This exemption does not apply to an ordinance adopted under G.S. 113A-8.

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

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

...

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

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

"(c) Conflict of Interest. – It is unlawful for a current or former member of the Committee to, while serving on the Committee or within two years after the end of

service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that is awarded a grant under this Part or under G.S. 143B-437.02 while the member is serving on the Committee. Violation of this subsection is a Class 1 misdemeanor. In addition to the penalties imposed under G.S. 15A-1340.23, the court shall also make a finding as to what compensation was received by the defendant for services in violation of this section and shall order the defendant to forfeit that compensation.

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

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

PART 2. JOB DEVELOPMENT INVESTMENT GRANT CHANGES

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

"§ 143B-437.51. Definitions.

The following definitions apply in this Part:

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

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

SECTION 2.2. G.S. 143B-437.52 is amended by adding a new subsection to read:

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

- (1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.
- (2) The designation contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related entity of the business."

SECTION 2.3. G.S. 143B-437.53(d) is repealed.

SECTION 2.4. G.S. 143B-437.54(d) reads as rewritten:

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

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

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

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

- ~~(2) Provide notice to persons who have requested notice of proposed criteria.~~
- ~~(3) Accept oral and written comments on the proposed criteria."~~

SECTION 2.5. G.S. 143B-437.56(b) reads as rewritten:

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

SECTION 2.6. This part is effective when it becomes law.

PART 3. EXTEND BILL LEE CREDITS FOR CERTAIN MAJOR INDUSTRIES

SECTION 3.1. G.S. 105-129.2 is amended by adding a new subdivision to

read:

"§ 105-129.2. Definitions.

The following definitions apply in this Article:

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

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

"§ 105-129.2A. Sunset; studies.

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

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

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

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

- (1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
- (2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.
- (3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

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

- (1) Study of the distribution of tax incentives across new and expanding industries.
- (2) Examination of data on economic recruitment for the period from 1994 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and

expansions before and after the enactment of the William S. Lee Act incentives.

- (3) Measuring the direct costs and benefits of the tax incentives.
- (4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

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

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

"(b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars (\$150,000,000) worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. In the case of an interstate air courier that has or is constructing a hub in this ~~State~~, State and in the case of an eligible major industry, this investment may be placed in service in connection with the eligible business within a seven-year period. If the taxpayer fails to make the required level of investment within the applicable period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section."

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

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

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

"(c) Carryforward. – Any unused portion of a credit with respect to a large investment, with respect to the technology commercialization credit allowed in G.S.

105-129.9A, or with respect to substantial investment in other property under G.S. 105-129.12A may be carried forward for the succeeding 20 years. Any unused portion of a credit with respect to research and development activities under G.S. 105-129.10 may be carried forward for the succeeding 15 years. Any unused portion of a credit may be carried forward for the succeeding 10 years if, before the taxpayer claims the credit, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with the eligible business within a two-year period, at least fifty million dollars (\$50,000,000) worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. In the case of an interstate air courier that has or is constructing a hub in this ~~State, State~~ and in the case of an eligible major industry, this investment may be placed in service in connection with the eligible business within a seven-year period. If the taxpayer fails to make the required level of investment within the applicable period, the taxpayer forfeits this enhanced carryforward period. Any unused portion of any other credit may be carried forward for the succeeding five years."

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

"(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 and development zone designation for that year even though the employees are not hired that year. In the case of an interstate air courier that has or is constructing a hub in this ~~State, State~~ and in the case of an eligible major industry, the applicable time period is seven years. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the applicable 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 or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the applicable 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."

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

"(e) **Planned Expansion.** – A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. In the case of an interstate air courier that has or is constructing a hub in this ~~State, State~~ and in the case of an eligible major industry, the applicable time period is seven years. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the applicable period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the applicable period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

SECTION 3.8. It is the intent of the General Assembly that the provisions of this part not be expanded. If a court of competent jurisdiction holds any provision of this part invalid, the section containing that provision is repealed. The repeal of a section of

this part under this section does not affect other provisions of this part that may be given affect without the invalid provision.

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

PART 4. MAJOR INDUSTRIAL FACILITY SALES TAX REFUNDS

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

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

- (1) Refund. – The owner of an eligible facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.
- (2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:
 - a. It is primarily engaged in one of the industries listed in this subsection.
 - b. The Secretary of Commerce has certified that the owner of the facility will invest at least one hundred million dollars (\$100,000,000) of private funds to acquire, construct, and equip the facility in this State.
- (3) Industries. – This subsection applies to the following industries:
 - a. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.
 - b. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
 1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
 2. Processing botanical drugs and herbs by grading, grinding, and milling.
 3. Isolating active medicinal principals from botanical drugs and herbs.
 4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.
- (4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this subsection with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this subsection. Upon forfeiture, the owner is liable for tax under this

Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236."

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

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

PART 5. CIGARETTE EXPORTATION TAX CREDIT

SECTION 5.1. Section 10 of S.L. 1999-333 reads as rewritten:

"**Section 10.** Sections 2, 3, and 4 of this act are effective for taxable years beginning on or after January 1, 1999. Sections 5 through 8 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Section 4 of this act is repealed effective for cigarettes exported on or after January 1, ~~2005~~, 2018."

SECTION 5.2. 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 ~~1998~~, 2003.
- (2) Exportation. – The shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.
- (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

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

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

- (1) A statement of the base year exportation volume.
- (2) A statement of the exportation volume on which the credit is based.
- (3) A list of the corporation's export volumes shown on its monthly reports to the Alcohol and Tobacco Tax and Trade Bureau ~~Bureau of Alcohol, Tobacco, and Firearms~~ of the United States Treasury for the months in the tax year for which the credit is claimed.

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

SECTION 5.3. G.S. 105-130.45(a)(2) reads as rewritten:

"(2) Exportation. – The shipment of cigarettes manufactured in the United States to ~~a foreign country~~ any of the following sufficient to relieve the cigarettes in the shipment of the federal excise tax on ~~cigarettes~~ cigarettes:

- a. A foreign country.
- b. A possession of the United States.
- c. A commonwealth of the United States that is not a state."

SECTION 5.4. Section 5.2 of this part is effective for cigarettes exported on or after January 1, 2005. Section 5.3 of this part is effective for taxable years beginning on or after January 1, 2004. The remainder of this part is effective when it becomes law. If any clause or other portion of this act is held invalid, that decision shall not affect the validity of the remaining portions of this act, which are severable.

PART 6. ENHANCED CIGARETTE EXPORTATION TAX CREDIT

SECTION 6.1. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

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

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

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

- (1) Employment level. – The total number of full-time jobs and part-time jobs converted into full-time equivalences.
- (2) Exportation. – The shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.
- (3) 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.
- (4) 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.

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

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

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

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

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

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

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

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

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

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

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

SECTION 6.2. This part is effective for taxable years beginning on or after January 1, 2006, and expires for exports occurring on or after January 1, 2018.

PART 7. LIFE SCIENCES REVENUE BOND AUTHORITY

SECTION 7.1. Chapter 159D of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Life Sciences Revenue Bond Authority.

"§ 159D-65. Legislative findings.

The General Assembly finds the following:

- (1) The life sciences, including biology, zoology, agronomy, biochemistry, genetics, and molecular biology, have developed and are continuing to develop new commercially viable products designed to diagnose and treat diseases, produce therapeutic proteins and industrial enzymes, synthesize nutritional supplements and specialty chemicals in microorganisms, plants, and animals, and accomplish other beneficial purposes.
- (2) The commercialization of life science products has provided, and will continue to provide, significant economic benefits for the citizens of North Carolina through increased business development and employment.
- (3) North Carolina has a strong life sciences infrastructure in place, fostered over many years by the General Assembly, public and private universities, the North Carolina Biotechnology Center, life sciences companies and investors, and various State, regional, and local economic development initiatives.
- (4) Nationally and within North Carolina, the life sciences industry has an immediate need for additional manufacturing capacity for the extraction, separation, purification, and packaging of products at various stages of the development, testing, and commercialization process, and the demand for this manufacturing capacity is likely to increase significantly in the next three to five years.
- (5) Employment opportunities created by life sciences manufacturing facilities are ideally suited for rural and urban regions of North Carolina currently undergoing significant economic challenges, and ancillary employment opportunities in construction, logistical support, transportation, raw material supply, and other fields will be enhanced through the construction and operation of life sciences manufacturing facilities in the State.
- (6) A Life Sciences Revenue Bond Authority to help finance bioprocessing development facilities and bioprocessing manufacturing facilities addresses a critical need for companies that are formulating products, conducting field and clinical trials, and engaging in the production of new products.

- (7) It is in the interest of the people of North Carolina that the State take steps to encourage the development of these facilities in the State and that the State seek to achieve a position of national leadership and innovation in the field of bioprocess manufacturing by facilitating the construction of economically sound and sustainable facilities in the State.

"§ 159D-66. Definitions.

The following definitions apply in this Article:

- (1) Authority. – The Life Sciences Revenue Bond Authority.
(2) Board. – The Board of Directors of the Authority.

"§ 159D-67. Creation and purposes of Life Sciences Revenue Bond Authority.

(a) Creation. – The Life Sciences Revenue Bond Authority is created within the Department of State Treasurer for organizational and budgetary purposes only. The Authority shall be governed by a Board of Directors. The Board of Directors is authorized to administer the Authority independently in accordance with the requirements of this Article.

(b) Purposes. – The Authority has the following purposes:

- (1) To examine alternatives for enhancing North Carolina's construction financing infrastructure for life sciences manufacturing facilities by credit enhancement vehicles such as revenue bonds.
(2) To establish proposed guidelines for the deployment, oversight, promotion, monitoring, and management of these credit enhancement vehicles.
(3) To identify prospective life sciences enterprises that might benefit from the establishment of credit enhancement vehicles.
(4) To advise and make recommendations to the General Assembly regarding further legislation to achieve the goals of the Authority.
(5) To serve as the central life sciences revenue bond policy planning body in the State through collaboration and coordination with State, regional, local agencies, The University of North Carolina System, the North Carolina Biotechnology Center, the State Treasurer, and private entities in order to develop and foster a life sciences credit enhancement infrastructure for the benefit of the citizens of North Carolina.

"§ 159D-68. Board of Directors.

(a) Members. – The Board of Directors consists of seven voting members, as follows:

- (1) Two members appointed by the Governor.
(2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
(4) The State Treasurer of North Carolina or the Treasurer's designee.

(b) Terms. – The initial terms of office begin on the date of appointment and expire on June 30, 2005. Board members appointed for subsequent terms shall serve terms of three years. Board members may serve up to two full consecutive three-year terms. All members of the Board shall remain in office until their successors are appointed and qualify.

(c) Vacancies. – A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of the term. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(d) Chair. – The members of the Board shall elect a Chair from among their members. The Chair shall serve in that position at the pleasure of the Board.

"§ 159D-69. Powers and duties of Authority.

(a) Powers. – The Authority has all of the powers necessary or convenient to carry out this Article, including the following powers:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties.
- (2) To adopt and modify an official seal.
- (3) To maintain an office at any place within the State as it may determine.
- (4) To apply for, accept, and utilize grants, contributions, and appropriations in order to carry out its duties as provided in this Article.
- (5) To employ, contract with, direct, and supervise all personnel and consultants and to enter into other contracts as necessary to accomplish the purposes of this Article, within the resources available to the Authority for that purpose.
- (6) To review and recommend changes in laws, rules, programs, and policies of the State and its agencies and subdivisions to further the enhancement of the life sciences construction financing infrastructure within the State.

(b) Duties. – The Authority has the following duties:

- (1) To establish an organizational structure and operational procedures to administer the Authority's programs.
- (2) To examine various alternatives for encouraging the expansion of North Carolina's life sciences manufacturing industry by the use of credit enhancement vehicles such as revenue bonds and otherwise.
- (3) To establish proposed guidelines for the deployment, oversight, promotion, monitoring, and management of these credit enhancement vehicles.
- (4) To collaborate and coordinate with State, regional, and local agencies, The University of North Carolina System, the North Carolina Biotechnology Center, the State Treasurer, and private entities in order to develop and foster a life sciences credit enhancement infrastructure for the benefit of the citizens of North Carolina.
- (5) To develop the detailed procedures that could be employed to identify and qualify applicants for credit enhancement programs, including procedures to evaluate the scientific, business, and financial qualifications of these applicants.
- (6) To receive and process test or pro forma applications from potential applicants for credit enhancement programs to demonstrate the need for the programs and to assess and collect fees from the potential applicants to cover the costs of processing and reviewing the applications."

SECTION 7.2. The Life Sciences Revenue Bond Authority created in this part shall provide a written report to the General Assembly by May 1, 2004, setting forth its findings regarding the steps required to encourage and foster the expansion of the North Carolina life sciences manufacturing industry, including proposed legislation if considered appropriate by the Authority.

SECTION 7.3. Nothing in this part requires the General Assembly to appropriate funds to implement it.

SECTION 7.4. This part is effective when it becomes law.
In the General Assembly read three times and ratified this the 10th day of
December, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:39 a.m. this 16th day of December, 2003