

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

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1

HOUSE BILL 3

Short Title: New Jobs Creation Act. (Public)

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

Referred to: Finance, if favorable, Appropriations.

December 9, 2003

A BILL TO BE ENTITLED

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

12 The General Assembly of North Carolina enacts:

13 **PART 1. PHARMACEUTICAL/BIOPROCESSING SITE INFRASTRUCTURE**

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

16 "**§ 143B-437.02. Site infrastructure development.**

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

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

23 (2) Both short-term and long-term economic trends at the State, national,
24 and international levels have made the successful implementation of
25 the State's economic development policy and programs both more
26 critical and more challenging; and the decline in the State's traditional
27 industries, and the resulting adverse impact upon the State and its
28 citizens, have been exacerbated in recent years by adverse national and

1 State economic trends that contribute to the reduction in the State's
2 industrial base and that inhibit the State's ability to sustain or attract
3 new and expanding businesses.

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

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

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

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

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

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

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

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

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

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

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

36 (1) The business will invest at least one hundred million dollars
37 (\$100,000,000) of private funds in the project.

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

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

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

- 1 (1) Criteria. – The Department of Commerce must develop criteria to be
2 used to identify and evaluate eligible projects for possible site
3 development.
- 4 (2) Initial evaluation. – The Department must evaluate major competitive
5 projects to determine if site development is merited and to determine
6 whether the project is eligible and appropriate for consideration for site
7 development.
- 8 (3) Application. – The Department must require a business to submit an
9 application in order for a project to be considered for site development.
10 The Department must prescribe the form of the application, the
11 application process, and the information to be provided, including all
12 information necessary to evaluate the project in accordance with the
13 applicable criteria.
- 14 (4) Committee. – The Department must submit to the Economic
15 Investment Committee the applications for projects the Department
16 considers eligible and appropriate for consideration for site
17 development. In evaluating each application, the Committee must
18 consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.
- 19 (5) Findings. – In order to recommend a project for site development, the
20 Committee must make all of the following findings:
- 21 a. The conditions for eligibility have been met.
- 22 b. Site development for the project is necessary to carry out the
23 public purposes provided in subsection (a) of this section.
- 24 c. The project is consistent with the economic development goals
25 of the State and of the area where it will be located.
- 26 d. The affected local governments have participated in recruitment
27 and offered incentives in a manner appropriate to the project.
- 28 e. The price and nature of any real property to be acquired is
29 appropriate to the project and not unreasonable or excessive.
- 30 f. Site development under this section is necessary for the
31 completion of the project in this State.
- 32 (6) Recommendations. – If the Committee recommends a project for site
33 development, it must recommend the amount of State funds to be
34 committed, the preferred form and details of the State participation,
35 and the performance criteria and safeguards to be required in order to
36 protect the State's investment.
- 37 (f) Agreement. – Unless the Secretary of Commerce determines that the project
38 is no longer eligible or appropriate for site development, the Department shall enter into
39 an agreement to provide site development within available funds for a project
40 recommended by the Committee. Each site development agreement is binding and
41 constitutes a continuing contractual obligation of the State and the business. The site
42 development agreement must include all of the performance criteria, remedies, and
43 other safeguards recommended by the Committee or required by the Department to
44 secure the State's investment. Nothing in this section constitutes or authorizes a

1 guarantee or assumption by the State of any debt of any business or authorizes the
2 taxing power or the full faith and credit of the State to be pledged.

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

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

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

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

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

39 **SECTION 1.2.(b)** There is appropriated from the General Fund to the
40 Department of Commerce the sum of sixty-five thousand dollars (\$65,000) for the
41 2004-2005 fiscal year for a program administrator for the site infrastructure
42 development program created by this part. It is the intent of the General Assembly that
43 funds for administering this program shall be part of the Department of Commerce's
44 continuation budget.

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

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

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

12 ...

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

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

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

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

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

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

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

34 **"§ 143B-437.51. Definitions.**

35 The following definitions apply in this Part:

36 ...

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

40 ...

41 (5a) Enterprise tier. – The classification assigned to an area pursuant to
42 G.S. 105-129.3."

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

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

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

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

- 14 (1) ~~Publish the proposed criteria on the Department of Commerce's web~~
15 ~~site.~~
16 (2) ~~Provide notice to persons who have requested notice of proposed~~
17 ~~criteria.~~
18 (3) ~~Accept oral and written comments on the proposed criteria."~~

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

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

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

24 **PART 3. EXTEND BILL LEE CREDITS FOR MAJOR PHARMACEUTICAL**
25 **AND BIOPROCESSING INDUSTRIES**

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

28 "**§ 105-129.2. Definitions.**

29 The following definitions apply in this Article:

- 30 ...
- 31 (8a) Eligible major industry. – A taxpayer is an eligible major industry for
32 the purposes of this Article if the taxpayer is primarily engaged in one
33 of the industries listed in G.S. 105-164.14(j)(3) and the Secretary of
34 Commerce has certified that the owner of the facility will invest at
35 least one hundred million dollars (\$100,000,000) of private funds to
36 acquire, construct, and equip a facility in this State to engage in one or
37 more of those industries."

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

39 "**§ 105-129.2A. Sunset; studies.**

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

42 (a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this
43 section, in the case of an interstate air courier that enters into a real estate lease on or
44 before January 1, 2006, with an airport authority that provides for the lease of at least

1 100 acres of real property with a lease term in excess of 15 years, this Article is repealed
2 effective for business activities that occur on or after January 1, 2010.

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

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

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

14 (2) Considering whether the assignment of tiers and the applicable
15 thresholds are equitable for smaller counties, for example those under
16 50,000 in population.

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

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

22 (1) Study of the distribution of tax incentives across new and expanding
23 industries.

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

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

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

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

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

37 "(b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit
38 under this Article becomes eligible for the large investment enhancements provided for
39 credits under this Article if the Secretary of Commerce makes a written determination
40 that the taxpayer is expected to purchase or lease, and place in service in connection
41 with the eligible business within a two-year period, at least one hundred fifty million
42 dollars (\$150,000,000) worth of one or more of the following: real property, machinery
43 and equipment, or central office or aircraft facility property. In the case of an interstate
44 air courier that has or is constructing a hub in this ~~State~~,State and in the case of an

1 eligible major industry, this investment may be placed in service in connection with the
2 eligible business within a seven-year period. If the taxpayer fails to make the required
3 level of investment within the applicable period, the taxpayer forfeits the large
4 investment enhancements as provided in subsection (d) of this section."

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

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

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

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

37 "(c) Carryforward. – Any unused portion of a credit with respect to a large
38 investment, with respect to the technology commercialization credit allowed in G.S.
39 105-129.9A, or with respect to substantial investment in other property under G.S.
40 105-129.12A may be carried forward for the succeeding 20 years. Any unused portion
41 of a credit with respect to research and development activities under G.S. 105-129.10
42 may be carried forward for the succeeding 15 years. Any unused portion of a credit may
43 be carried forward for the succeeding 10 years if, before the taxpayer claims the credit,
44 the Secretary of Commerce makes a written determination that the taxpayer is expected

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

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

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

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

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

1 placed in service, the taxpayer may take the credit for that year as if no letter of
2 commitment had been signed pursuant to this subsection."

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

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

10 **PART 4. SALES TAX REFUNDS FOR MAJOR PHARMACEUTICAL AND**
11 **BIOPROCESSING FACILITIES**

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

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

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

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

28 a. It is primarily engaged in one of the industries listed in this
29 subsection.

30 b. The Secretary of Commerce has certified that the owner of the
31 facility will invest at least one hundred million dollars
32 (\$100,000,000) of private funds to acquire, construct, and equip
33 the facility in this State.

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

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

39 b. Pharmaceutical and medicine manufacturing. Pharmaceutical
40 and medicine manufacturing means any of the following:

41 1. Manufacturing biological and medicinal products. For
42 the purpose of this sub-subdivision, a biological product
43 is a preparation that is synthesized from living organisms
44 or their products and used medically as a diagnostic,

1 preventive, or therapeutic agent. For the purpose of this
2 sub-subdivision, bacteria, viruses, and their parts are
3 considered living organisms.

4 2. Processing botanical drugs and herbs by grading,
5 grinding, and milling.

6 3. Isolating active medicinal principals from botanical
7 drugs and herbs.

8 4. Manufacturing pharmaceutical products intended for
9 internal and external consumption in forms such as
10 ampoules, tablets, capsules, vials, ointments, powders,
11 solutions, and suspensions.

12 (4) Forfeiture. – If the owner of an eligible facility does not make the
13 required minimum investment within five years after the first refund
14 under this subsection with respect to the facility, the facility loses its
15 eligibility and the owner forfeits all refunds already received under this
16 subsection. Upon forfeiture, the owner is liable for tax under this
17 Article equal to the amount of all past taxes refunded under this
18 subsection, plus interest at the rate established in G.S. 105-241.1(i),
19 computed from the date each refund was issued. The tax and interest
20 are due 30 days after the date of the forfeiture. A person that fails to
21 pay the tax and interest is subject to the penalties provided in
22 G.S. 105-236."

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

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

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

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

33 **"§ 105-130.46. Credit for manufacturing cigarettes for exportation while**
34 **increasing employment and utilizing State Ports.**

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

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

41 (1) Employment level. – The total number of full-time jobs and part-time
42 jobs converted into full-time equivalences.

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

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

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

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

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

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

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

1 carryforwards. A taxpayer may elect a different allocation for each year in which the
2 taxpayer qualifies for a credit.

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

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

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

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

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

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

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

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