No. 62A23 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

PHILIP MORRIS USA, INC., Petitioner-Appellant, v. NORTH CAROLINA DEPARTMENT OF REVENUE, Respondent-Appellee.	)	From Wake County

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Philip Morris USA, Inc.'s Appellant's Brief

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INTRODUCTION

In 1999, the General Assembly adopted economic development legislation to provide export tax credits to cigarette manufacturers. All parties agree that, under the original version of N.C.G.S. § 105-130.45 (the "Export Credit Statute") (App. 1-2), the taxpayer could *generate* an unlimited amount of export tax credits based on its volume of cigarette sales, but could *claim* only $6 million in export tax credits per year. The General Assembly relied on the phrase "credit allowed" in this statute to

describe the amount of export tax credit a taxpayer could claim in any year.

In 2003, the Governor called a special legislative session for economic development to adopt additional incentives for economic growth in North Carolina. One purpose of this session was to extend the sunset date on the Export Credit Statute, which was set to expire on 1 January 2005. The General Assembly also adopted an alternative enhanced cigarette export credit, which was based on increased employment in the State, not increased exports. *See* N.C.G.S. § 105-130.46 (2003) (the "Enhanced Credit Statute") (App. 6-8).

At the time the legislature was considering these tax incentives, R.J. Reynolds Tobacco Company was in the process of acquiring Brown & Williamson Tobacco Company. The legislature tailored the Enhanced Credit Statute in § 105-130.46 to benefit Reynolds, anticipating that its acquisition of Brown & Williamson would increase employment in the State. The Enhanced Credit Statute thus allowed a "successor in business," a term aimed at the entity surviving the Reynolds merger, to claim the enhanced credit.

At the same time, the General Assembly tried to ensure that, should Reynolds fall short of its goal to create 800 more in-State jobs, Reynolds' benefit would be roughly the same as (or not substantially greater than) its competitors, which were limited to the export tax credit in the existing Export Credit Statute. To accomplish its goal, the legislature added two new sentences at the end of subsection (b) of the Export Credit Statute. The addition ensured that a "successor in business" could not claim its own $6 million credit, on top of any carryforward credit available to its predecessors. N.C.G.S. § 105-130.45(b) (2003) (the "Amended Export Credit Statute") (App. 3-5).

Philip Morris always has interpreted the phrase "credit allowed," as used in the Export Credit Statute and the Amended Export Credit Statute, to denote how much credit a taxpayer may claim in a given year. For more than a decade, the North Carolina Department of Revenue never disputed Philip Morris' interpretation. (*See, e.g.*, R p 134) (App. 86). Now, the Department asserts that the phrase "credit allowed," as used in the Amended Export Credit Statute, creates not just a cap on the amount of credits that a taxpayer may *claim*, but also a cap on the amount of credits a taxpayer may *generate* in a given tax year.

The plain meaning of "credit allowed" supports Philip Morris' interpretation. The word "allowed" has an ordinary meaning that connotes a permissive right to *use* or *claim* something. Both federal and North Carolina courts have applied the ordinary meaning of "allowed" in tax cases. The phrase "credit allowed," as used in the Amended Export Credit Statute, should thus be given the same meaning that it has always had—a limit on the amount of tax credits that a taxpayer may *claim* annually, not a limit on annual credit generation.

Even if the text were unclear, the Amended Export Credit Statute's context and legislative history—not to mention statements and publications from the time of the Amended Export Credit Statute's passage—support Philip Morris' position. This evidence confirms the General Assembly's intent for the Amended Export Credit Statute to enhance credits, not limit them, as the Department now contends.

The trial court reached the opposite conclusion. It agreed with the Department that the Amended Export Credit Statute restricted, for the first time, export tax credit *generation*, despite all the credit enhancements in the legislation and not a single other credit limitation in the legislation. The trial court erred. For the reasons set out below,

this Court should reverse the trial court's order and direct the Department to allow Philip Morris' export tax credits.

ISSUES PRESENTED

1. Did N.C.G.S. § 105-130.45(b) limit Philip Morris' ability to *generate* tax credits in excess of $6 million in a given year, even though the statute used the phrase "credit allowed," which, in both plain meaning and historical usage, limits only a taxpayer's ability to *claim* available tax credits in a given year?

2. Even if § 105-130.45(b)'s plain language does not resolve the question, did N.C.G.S. § 105-130.45(b) limit Philip Morris' ability to *generate* tax credits in excess of $6 million in a given year, even though the legislative history and circumstances of the statute's enactment demonstrate that the General Assembly intended to limit only a taxpayer's ability to *claim* available tax credits in a given year?

3. Even if neither § 105-130.45(b)'s plain language nor its legislative history resolve the question, did N.C.G.S. § 105-130.45(b) limit Philip Morris' ability to *generate* tax credits in excess of $6 million in a given year, even though all available extrinsic evidence confirms that the

General Assembly intended to expand the tax credits and to promote economic development by this original statute and its amendment?

STATEMENT OF THE CASE

Respondent-Appellee North Carolina Department of Revenue audited Philip Morris' corporate income and franchise tax returns for 2012 through 2014. (R pp 159–84). The Department disallowed the tobacco export tax credits that Philip Morris had claimed on its North Carolina corporate tax return for all three years and issued proposed assessments and penalties. (R pp 34, 167-68). Philip Morris timely requested review under N.C.G.S. § 105-241.11. (R p 4). The Department issued a final determination sustaining the proposed assessments and penalties. (R pp 122-131).

Philip Morris timely petitioned for a contested tax case hearing at the Office of Administrative Hearings (R pp 102-84), and both parties moved for summary judgment, (R pp 199-200, 242-43). In September 2021, an administrative law judge held a hearing on the parties' motions. (R p 32). Before the hearing, the Department conceded that all the export credits on Philip Morris' 2012 return, as well as a portion of the credits on its 2013 return, were proper. (R p 34). The Department's concessions left

two tax credits in dispute: (1) $2,004,366 in export tax credits, plus a $200,437 underreporting penalty, for 2013; and (2) $5,266,861 in export tax credits, plus a $1,316,715 underreporting penalty, for 2014. (*Id.*). On 3 November 2021, the administrative law judge issued a final decision allowing the Department's motion for summary judgment. (R pp 32-42).

On 1 December 2021, Philip Morris petitioned for judicial review. (R pp 2-51). On 2 December 2021, the Chief Justice designated the case a mandatory complex business case under N.C.G.S. § 7A-45.4(b)(1). (R p 52). The parties cross-moved for summary judgment. On 4 August 2022, the trial court held a hearing on the parties' motions. (R p 493). On 29 September 2022, the trial court entered an order allowing the Department's motion for summary judgment, denying Philip Morris' motion, and affirming the ALJ's final decision. (R pp 491-511).

On 26 October 2022, Philip Morris timely filed and served its notice of appeal. (R pp 512-14). The parties settled the record on 9 February 2023. (R p 531). Philip Morris filed the record on 23 February 2023, and the record was docketed the same day.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

The trial court's 29 September 2022 order allowing the Department's motion for summary judgment is a final, appealable order. *Quad Graphics, Inc. v. Dep't of Revenue*, 881 S.E.2d 810, 815, 2022-NCSC-133 ¶ 9 (2022). This Court has appellate jurisdiction under N.C.G.S. § 7A-27(a)(2).

STATEMENT OF THE FACTS

I. In 1999, the State of North Carolina offered tobacco manufacturers and exporters, like Philip Morris, tax incentive credits under the Export Credit Statute.

For decades, Philip Morris has done business—and has filed corporate income and franchise tax returns—in North Carolina. (R p 5). From 1999 until 2007, Philip Morris manufactured and exported cigarettes at its expansive 2.4 million square foot manufacturing facility in Cabarrus County, North Carolina. (R p 6). Even though it no longer manufactures cigarettes in North Carolina, Philip Morris continues to buy a significant quantity of tobacco from North Carolina farmers, purchasing more than $100,000,000 in 2021. (R p 7).

In 1999, the General Assembly enacted the Export Credit Statute. *See* Phase II Funds/Immunity/Tax-Exempt, 1999 N.C. Sess. Law 333 § 4

(App. 9-14). The Export Credit Statute granted cigarette manufacturers an annual tax credit based on the number of cigarettes they manufactured in North Carolina for export each year. *See* N.C.G.S. § 105-130.45(b) (1999) (App. 1-2). The credit was enacted as an incentive to maintain and potentially increase cigarette manufacturing in North Carolina, with increased cigarette production generating a larger credit. (R p 7).

Subsection (b) set out a formula for calculating the amount of the tax credit based on a taxpayer's export volume. According to subsection (b), a taxpayer exporting cigarettes to a foreign country was entitled to a tax credit. § 105-130.45(b) (App. 1). The credit was computed by comparing the taxpayer's export volume "in the year for which the credit is claimed" with the taxpayer's "base year exportation volume, rounded to the nearest whole percentage." *Id.* Eligible taxpayers could earn a credit of up to $0.40 per 1,000 cigarettes exported based on the following table:

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

Id.

Subsection (c) capped the amount of credit that the taxpayer could claim in a year. Under subsection (c), the maximum credit that a taxpayer was allowed in a given tax year could not exceed $6 million. § 105-130.45(c) (App. 1). That limitation applied "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." *Id.* The cap section specifically allowed the taxpayer to carry "[a]ny unused portion of a credit allowed…forward for the next succeeding five years." *Id.*

As enacted, the Export Credit Statute allowed the taxpayer to generate unlimited credits, but it prevented the taxpayer from claiming

more than $6 million in credits in a given tax year. Any unused credits could be carried forward for five years. The Export Credit Statute expired on 1 January 2005. *See* 1999 N.C. Sess. Law 333 § 10 ("Section 4 of this act is repealed effective for cigarettes exported on or after January 1, 2005.") (App. 13).

II. In 2003, the General Assembly amended the Export Credit Statute, aiming to expand the credit but to avoid providing R.J. Reynolds with an unfair advantage.

With the Export Credit Statute set to expire on 1 January 2005, both Philip Morris and Reynolds, its primary competitor, lobbied state officials to extend the credit. (R p 9-10, 14). To support their efforts, both companies stressed their planned, significant economic investment in the State. (R pp 6-7, 9-10).

For its part, Philip Morris committed to making significant capital investments in its Cabarrus Facility. (R pp 6-7, 304). The company explained that this capital investment would sustain, and likely increase, levels of employment in this facility. (R p 304). It was known that Reynolds was acquiring Brown & Williamson, which was projected to add 800 new jobs in the State. (R pp 10, 331). Philip Morris stressed that its planned investment would be the economic equivalent. (*Id.*).

In late 2003, the Governor called the General Assembly into a special session to consider providing "economic incentives" to select businesses, including Philip Morris and Reynolds. (R pp 302, 334). The House and Senate began drafting legislation simultaneously, with House Bill 2 starting in the House, (Doc. Ex. 10) (App. 15-26), and Senate Bill 4 starting in the Senate. *See* S.B.4, 2003 Extra Sess. on Econ. Dev. Issues (N.C. 2003) (App. 42-60). The House finished marking up House Bill 2 first and sent its draft to the upper chamber. The Senate, which had been negotiating the virtually identical, but distinct Senate Bill 4, elected to amend House Bill 2 and return it to the House for the lower chamber's concurrence. By 16 December 2003, the General Assembly had passed a bill to accomplish the Governor's objectives. *See* 2003 N.C. Sess. Law 435, pt. 5-6 (App. 70-73).

The history of House Bill 2 shows that the General Assembly wanted to extend the Export Credit, but it was careful not to give Reynolds a disproportionate advantage. The General Assembly wanted to give proportional economic incentives to both Philip Morris and Reynolds.

A. Consistent with the Governor's wishes, House Bill 2 expanded economic incentives to several industries, including cigarette manufacturers and exporters.

The legislation started in the House. (R p 334). On 9 December 2003, Representative Gordon Allen introduced House Bill 2, titled, in relevant part: "An Act to . . . Extend the Sunset on the Cigarette Exportation Tax Credit." *See* H.B.2, 2003 Extra Sess. on Econ. Dev. Issues (N.C. 2003) (Doc. Ex. 10) (App. 15). Part 5 addressed the "Cigarette Exportation Tax Credit" and proposed to extend the Export Credit Statute from 2005 to 2018. (Doc. Ex. 20-21) (App. 25-26). It proposed no other changes to the Export Credit Statute.

Later the same day, the House Committee on Finance met and adopted three amendments to House Bill 2. (*See* Doc. Ex. 6). *First*, the Committee, recognizing decreased demand for tobacco products, modified the "base year," essentially making it easier to obtain a larger credit per 1,000 cigarettes. (Doc. Ex. 8). *Second*, the Committee added language that required any cigarette company benefiting from the tax credit extension to use North Carolina's ports for their "waterborne" exports. (Doc. Ex. 8).

Third, the Committee added Part 6, the "Enhanced Cigarette Exportation Tax Credit," which was later codified at § 105-130.46 (the "Enhanced Credit Statute"). (Doc. Ex. 34). *See generally* 2003 N.C. Sess. Laws 435 pt. 6 (App. 71-73). The Enhanced Credit Statute created an alternative to the Export Credit Statute, allowing cigarette manufacturers and exporters to elect either the "current tax credit" or a credit based on "an increase in employment and use of the State's ports." (Doc. Ex. 34; *see also* Doc. Ex. 35).

The Enhanced Credit Statute targeted Reynolds. If it acquired Brown & Williamson, Reynolds had promised to bring 800 to 1000 new jobs to the State. (R p 330). The Enhanced Credit Statute allowed a manufacturer— Reynolds—a credit if it added at least 800 employees in the State in 2005.

Finally, the House Finance Committee rejected the only amendment offered that would have narrowed the incentive. (Doc. Ex. 8). Some members of the Committee opposed extending the bill's sunset provision from 2005 to 2018. (*Id.*). The limiting amendment did not pass.

After Committee mark-up, the bill was re-titled "An Act . . . to Extend the Sunset on and Modify the Cigarette Exportation Tax Credit

and Modify the Base Year and [ ] Create an Enhanced Tax Credit for Cigarette Exportation." (Doc. Ex. 22) (App. 27). The new title reflected the incentives added by the House Finance Committee. (*Id*.)

House Bill 2 passed the House on 9 December 2003 and was sent to the Senate.

B. The Senate, which had been negotiating its own version of the bill, Senate Bill 4, amended House Bill 2 and sent the amended bill back to the House.

In the meantime, Senator John Kerr introduced Senate Bill 4, "An Act to . . . Extend the Sunset on the Cigarette Exportation Tax Credit and to Modify the Base Year, Carryforward and Eligibility Provisions of that Credit." *See* S.B.4, 2003 Extra Sess. on Econ. Dev. Issues (N.C. 2003) (App. 42). Part 7 of the bill, "Extend Sunset on Current Cigarette Exportation Tax Credit," amended the Export Credit Statute. *Id.* (App. 58-60).

Senate Bill 4 differed from House Bill 2 in four ways. *First*, Senate Bill 4 clarified how the Export Credit should be calculated for a "successor in business." To determine the credit allowed after a merger, the surviving business compared its export volume for the relevant tax year against its predecessors' combined base-year export volume. S.B.4,

supra (App. 59). That is to say, the surviving business could claim an Export Credit only if it out-produced all of its predecessors. *Second*, to avoid a tobacco manufacturer double-dipping on export credits by merging with another manufacturer, the General Assembly also added language to ensure that the surviving corporation could not claim tax credits on behalf of itself and its predecessors. To that end, Senate Bill 4 provided that the "amount of credit allowed may not exceed" $6 million. S.B.4, *supra* (App. 59).

Third, Senate Bill 4 extended the carryforward period from five to 10 years. And *finally*, consistent with the House Finance Committee's intent to make the Export Credit and Enhanced Credit Statutes mutually exclusive, Senate Bill 4 made that limitation express: a taxpayer could not "claim [the Export Credit] and the credit allowed under G.S. 105-130.46 for the same activity." S.B.4, *supra* (App. 60).

After receiving House Bill 2, the Senate amended it to conform to Senate Bill 4. (R pp 226-34). The House concurred in the amendment. (T pp 32-34) (App. 83-85). On 16 December 2003, the Governor signed House Bill 2, becoming Session Law 2003-435 (the "Amended Export Credit Statute"). *See Economic Development*, 2003 North Carolina Laws

1st Ex. Sess. S.L. 2003-435 (H.B. 2) (R pp 347-62) (App. 61-76). The General Assembly repealed the Amended Export Credit Statute for cigarettes exported on or after 1 January 2018.

C. As enacted, Session Law 2003-435 conformed to the wishes of one of its biggest proponents, Senator John Kerr III.

As enacted, Session Law 2003-435 conformed to the wishes of its biggest proponent, Senator John Kerr III. Senator Kerr represented a district in Eastern North Carolina, which included many tobacco growers, and he supported economic incentives for the tobacco industry. (T p 32; R pp 330-31) (App. 83). As co-chair of the Senate Finance Committee, he introduced Senate Bill 4 and was its strong proponent. (R p 331; S.B.4., *supra* [App. 42]). Accordingly, the Amended Export Credit Statute reflects a number of Kerr's priorities.

Senator Kerr was clear that the expanded tax credit should benefit *all* eligible tobacco manufacturers, not just Reynolds. For example, addressing the "waterborne exports" requirement, Senator Kerr said that tobacco manufacturers could satisfy this requirement if they took even a single carton of cigarettes out of a North Carolina port in a rowboat. (R p 438).

Likewise, on 4 December 2003, Senator Kerr explained that both Philip Morris (by investing in enhanced equipment) and Reynolds (by increasing jobs) should be eligible for any tax incentives offered: "You've got to add jobs, you've got to add equipment, to justify [the tax credit]." (R p 331; *see also* R pp 330-32). Senator Kerr was sensitive to the sentiment that the General Assembly "c[ould]n't just do something for [Reynolds]" with respect to the tax incentives. (R p 331).

III. After enacting the Amended Export Credit Statute, the General Assembly published multiple bill summaries, which confirmed that the Amended Export Credit Statute expanded the existing tax credit.

Following the enactment of this economic development legislation, the General Assembly published many summaries to explain the provisions of the Amended Export Credit Statute. None of them suggested that the Amended Export Credit Statute would limit the amount of tax credits a taxpayer could generate in a given year.

For example, the official bill summary from the relevant session said the Amended Export Credit Statute merely "[e]xtend[ed] the sunset on the cigarette exportation tax credit from 2005 to 2018[.]" (Doc. Ex. 1). Likewise, the 2004 Finance Law Changes publication and the Summaries of Substantive Ratified Legislation publication, both prepared by the

General Assembly, summarized the amendments the same way. (R pp 409, 418).

Other official publications had slightly different takes on the Amended Export Credit Statute, but still did not suggest that the amendments altered the way the Export Credit Statute worked. For instance, the Fiscal and Budgetary Actions publication added that the amendment allowed the tax credit for exportation, not just to a foreign country, but also "to a possession or commonwealth of the U.S." (R p 403). This publication concluded that the "fiscal effect" of the Amended Export Credit Statute would be a $12 million revenue loss for years 2005 through 2007, "assum[ing] that the affected companies[1] will take the maximum amount of the credit, based on discussions with an industry representative and the Department of Revenue." (R p 403).

IV. Despite no evidence that the General Assembly intended to cap a taxpayer's ability to generate tax credits under the Amended Export Credit Statute, the Department now claims that the amended statute imposes that cap.

No one disputes now that the original Export Credit Statute allowed taxpayers, like Philip Morris, to generate unlimited credits and

[1] Reynolds and Philip Morris would claim $6 million of export credits each in a given year.

carry those credits forward for five years. (*See* R p 501, ¶ 31). For years after the General Assembly enacted the Amended Export Credit Statute, the Department never suggested that its position had changed. In fact, in its own publication, a "Supplement to 2003 Tax Law Changes," the Department identified only two substantive changes, neither of which was a limitation on a taxpayer's ability to generate credits under § 105-130.45. (*See* R p 239).[2] The Department called the other changes the General Assembly had made "clarifying" amendments, never suggesting that they limited Philip Morris' ability to generate tax credits. (R p 239).

For more than a decade and despite at least three opportunities to do so, the Department never told Philip Morris or even suggested that the Amended Export Tax Credit limited credit generation. For example, in April 2006, Philip Morris amended its 2004 corporate return because it failed to calculate the credit using the appropriate base period. (R p 136). While corresponding with the Department, Philip Morris observed that the change would not affect its tax liability, but that it would "increase the overall credit calculation for the year." (*Id.*). In the same

[2] In this publication, the Department identified two substantive changes to subsection (b): (1) requiring the taxpayer to use the state ports; and (2) adding the formula as to how a successor in business calculates its "applicable credit percentage." (R p 239).

letter, Philip Morris mentioned a conversation occurring a week earlier. It enclosed a schedule of tax credit carryforwards showing tax credits "earned" for tax years 1999 through 2004 in excess of $6 million each year. (R pp 136, 157). The Department never objected to Philip Morris' read of the amendments.

Then, the Department audited Philip Morris' 2005, 2006, and 2007 returns. (R pp 250, 277-81). In its 2007 tax return, Philip Morris calculated the export tax credit as it had before the amendments—with no limit on the amount of credit generated. (*Id.*). Although the Department made adjustments to Philip Morris' return, it did not adjust Philip Morris' calculation of the export tax credit. (R pp 282-93).

Finally, § 105-130.45(f) required the Department to publish an economic incentives report of the export credits taken under the Amended Export Credit Statute by each taxpayer. In its 2008 report, the Department recognized that Philip Morris' "[a]ctual export volumes . . . resulted in the generation of credits above the $6 million cap, which were "*available to be taken in future years*." (R p 134) (emphasis added).

Despite that history, the Department inexplicably changed its position in 2018, when it released its tax audit report of Philip Morris' 2012, 2013, and 2014 returns. (R p 159). The Department disallowed tax credits for all three tax years, asserting that Philip Morris had exceeded the "cap" in subsection (c). (R p 168). The Department did not base its decision, as it now does, on the amended language of subsection (b).

Philip Morris challenged the Department's determination, but the Department upheld it in a 31 August 2020 Notice of Final Determination. (R pp 122-132). The Notice of Final Determination disallowed Philip Morris' claimed credits, for the first time, on the basis that the 2003 amendments to subsection (b) were "clarifying" a "pre-existing requirement" in subsection (c) that limited credit generation to only $6 million per year, notwithstanding the fact that the Department had not previously relied on this alleged "pre-existing requirement." (*Id.*). The Department's Notice of Final Determination provided that "the General Assembly's revisions to the statute in 2003 further reinforce that the maximum amount of Tobacco Export Credits that a taxpayer could use

or carry forward in any particular year could not exceed $6,000,000." (R p 128) (emphasis in original).[3]

Once litigation ensued, the Department changed its position again. At the Office of Administrative Hearings and then before the trial court, the Department conceded that the *original* Export Credit Statute, and specifically subsection (c) in § 105-130.45, did *not* limit credit generation. (*See* R p 501, ¶ 31). The Department dropped its position that the 2003 amendments were "clarifying" a "pre-existing requirement" in subsection (c) of the original statute and, instead, argued that the new language in subsection (b) in the Amended Export Credit Statute resulted in a substantive change to limit credit generation to $6 million each year, notwithstanding subsection (c)'s carryforward provisions.

ARGUMENT

The trial court incorrectly adopted the Department's interpretation of the Amended Export Credit Statute. It concluded that § 105-130.45(b)'s

[3] The Department's analysis cited a purported General Assembly publication that the Department concluded supported its interpretation. (R p 128). But the General Assembly has never interpreted § 105-130.45 as the Department suggests. In fact, the language that the Department quoted in its Notice of Final Determination came from the Department's *own* "Supplement to 2003 Tax Law Changes," which it had never previously cited or followed. (R p 239).

"plain language" restricted Philip Morris' ability to generate tax credits in excess of $6 million in a given tax year: "a simple reading of the [A]mended Export Credit Statute plainly indicates that the General Assembly intended to limit credit generation to six million dollars per year effective 1 January 2005." (R p 505, ¶ 41).

Both the Department and the trial court are wrong. The statute's text, context, and history all confirm that the General Assembly did not intend the Amended Export Credit Statute to deprive Philip Morris of the ability to generate more than $6 million in tax credits per year—a right it undisputedly had under the original Export Credit Statute. (*See* R p 501). This Court should reverse the trial court's order.

I. The standard of review is de novo.

Philip Morris challenges the trial court's interpretation of § 105-130.45. This Court reviews questions of statutory interpretation de novo. *Matter of Executive Office Park of Durham Ass'n*, 382 N.C. 360, 362, 879 S.E.2d 169, 171 (2022).

The principal goal of statutory interpretation is to accomplish the legislative intent. *Lenox, Inc. v. Tolson*, 353 N.C. 659, 664, 548 S.E.2d 513, 517 (2001); *see also In re B.O.A.*, 372 N.C. 372, 380, 831 S.E.2d 305

(2019) ("Legislative intent controls the meaning of a statute."). An analysis "utilizing the plain language of the statute and the canons of construction must be done in a manner which harmonizes with the underlying reason and purpose of the statute." *Electric Supply Co. of Durham, Inc. v. Swain Elec. Co.*, 328 N.C. 651, 656, 403 S.E.2d 291, 294 (1991).

II. The Amended Export Credit Statute's plain language confirms that § 105-130.45(b) only limits the taxpayer's ability to *claim* more than $6 million in export credit.

The crux of this case is what the General Assembly meant when it said, in subsection (b), that the "credit allowed" by the Amended Export Credit Statute could not exceed $6 million. Did it mean that a taxpayer cannot *claim* more than $6 million? Or did the legislature mean that the taxpayer cannot *generate* more than $6 million in credit? Below, the Department conceded that, in the original 1999 Export Credit Statute, the phrase "credit allowed" limited only the taxpayer's ability to claim more than $6 million in tax credits. (*See* R p 501, ¶ 31 ["the Department agrees that there was no limit on the amount of credit that could be

generated each year prior to the amendment"]).[4] Yet the Department now insists—and the trial court agreed—that adding the phrase "credit allowed" a sixth time by the 2003 amendments changes the statute's meaning. Not so.

Subsection (b)'s new language to address successors in business still relied on the phrase "credit allowed," so it still limited only the credits a taxpayer may claim, not the credits a taxpayer may generate. § 105-130.45(b) (2003) (App. 3). The Department's contrary reading, adopted by the trial court, flouts basic principles of statutory construction. This Court consistently describes statutory construction as a means to accomplish the legislature's intent. *Lenox, Inc. v. Tolson*, 353 N.C. 659, 664, 548 S.E.2d 513, 517 (2001).[5] When a statute's language is clear, discovering the legislature's intent is straight-forward: "there is no room for judicial construction," and the Court should "give the statute its plain and definite meaning." *C Investments 2, LLC v. Auger*, 383 N.C. 1, 881

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[4] (*See also* R pp 221-22 [the Department admitted that the original § 105-130.45(b) "authorized" a "method … to generate credits" and argued that the 2003 statute created a limit on this generation]; RS p 711 [the Department arguing that § 105-130.45(b), as revised, contained a generation limit]).

[5] The task is the same, even if the statute deals with taxes. *See In re N.C. Inheritance Taxes*, 303 N.C. 102, 106, 277 S.E.2d 403, 407 (1981) ("[O]ur primary task in interpreting a tax statute, as with all other statutes, is to ascertain and adhere to the intent of the Legislature.").

S.E.2d 270, 276 (N.C. 2022) (internal quotations omitted). But finding a statute's plain and definite meaning cannot be done in isolation. When divining a statute's meaning, the statute's language has to be understood in context. *See id.* at 278. Applying these rules to the Amended Export Credit Statute confirms that § 105-130.45(b) limits the amount of credit *claimed*, not the amount generated.

A. The ordinary and historical meaning of the phrase "credit allowed" means credit claimed, not credit generated.

The Amended Export Credit Statute does not define the phrase "credit allowed," but "[i]n the absence of a contextual definition, courts may look to dictionaries to determine the ordinary meaning of words within a statute." *Perkins v. Arkansas Trucking Servs.*, 351 N.C. 634, 638, 528 S.E.2d 902, 904 (2000).

Dictionaries define "allow" in a way that supports Philip Morris' reading of the Amended Export Credit Statute. For instance, *Black's Law Dictionary* defines "allow" to mean "[t]o put no obstacle in the way of; to suffer to exist or occur; to tolerate" and "to give consent to; to approve."

Allow, *Black's Law Dictionary* (11th ed. 2019) (App. 77).[6] Likewise, the *American Heritage Dictionary* says "allow" means "to let do or happen; permit" and "to permit to have." Allow, *Am. Heritage Dictionary* (3d ed. 1993) (App. 78).

Under any of these definitions, the phrase "credit allowed" in the Export Credit Statute means the maximum credit a taxpayer may claim. The dictionary says the word "allowed" (and its derivations) means something akin to approval or permission—something a relatively stronger party, like a parent, boss, or state regulator, bestows on a weaker party, like a child, employee, or regulated entity. So, for example, a parent might allow a child to break curfew, or a boss might allow her employee's requested time off. Here, with tax credits, "allowed" means the maximum credit the Department of Revenue will permit Philip Morris to claim.

Other courts agree. Currently, under both federal and North Carolina tax law, the word "allowed" means "claimed." For example, in *Virginia Hotel Corp. v. Helvering*, 319 U.S. 523 (1943), the Supreme

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[6] It appears that the 7th and 8th editions of *Black's Law Dictionary*, those updated in 1999 and 2004, did not define "allow." Even so, they did define "allowance" as "a share or portion . . . that is assigned or granted." Allowance, *Black's Law Dictionary* (7th ed. 1999) (App. 79).

Court of the United States held that the term "[a]llowed connotes a grant." *Id.* at 527. As the Court explained, the term "allowed" prevents the Commissioner of Revenue from challenging permissible credits and deductions. *See id.* It does not restrain the taxpayer's ability to *generate* more than the allowable amount of credits or deductions. *See id.*

Likewise, in *Department of Revenue v. Hudson,* 196 N.C. App. 765, 675 S.E.2d 709 (2009), the Court of Appeals applied the same logic to our State's tax code. Addressing another part of the tax code, the Court concluded that the "plain meaning" of the phrase "credit allowed" set a "limit on the amount of credit a taxpayer *may claim* in a single taxable year[.]" *Id.* at 767-68, 675 S.E.2d at 711.

For a time, even the Department agreed with Philip Morris' reading of the statute. Below, the Department conceded that under the original Export Credit Statute, the phrase "credit allowed" meant credit claimed. (*See* R pp 501 at ¶ 31, 221-22). But it contends the Amended Export Credit Statute is different. Yet it's offered no reason to interpret the same phrase—credit allowed—differently.

B. Context confirms Philip Morris' reading of credit allowed.

Even if isolated phrasing were to leave any uncertainty, context proves that Philip Morris has the better read of the Amended Export Credit Statute. This Court analyzes a statute's language in context. *See C Investments 2,* 881 S.E.2d at 278; *see also King v. Burwell*, 576 U.S. 473, 486 (2015) (even in a plain language interpretation of a statute, the disputed words should be read "in their context and with a view to their place in the overall statutory scheme"); *Dep't. of Revenue v. ACF Indus.*, 510 U.S. 332, 343 (1994) (rejecting reading that "while plausible when viewed in isolation" was "untenable in light of [the statute] as a whole").

1. The long-standing meaning of "allowed" supports Philip Morris' interpretation of the statute.

To begin, courts have read the word "allowed" to mean "claimed" for nearly 80 years. When a phrase has "long-standing legal significance," this Court "presumes that legislators intended the same significance to attach by use of that term[.]" *Wilkie v. City of Boiling Spring Lake*, 370 N.C. 540, 550, 809 S.E.2d 853, 860 (2018); *accord Home Sec. Life Ins. v. McDonald*, 277 N.C. 275, 283, 177 S.E.2d 291, 297 (1970) (statutory terms that "have acquired a settled meaning through judicial interpretation" are to be "understood in the same sense" when used in a

subsequent statute on the same subject). That is to say, when a court defines a term—and when the legislature keeps using it—it's fair to assume the legislature intended the term to retain its meaning.

The General Assembly knew that "allowed" meant "claimed" based on the term's long-standing meaning. The Supreme Court of the United States adopted that definition in 1943. *See Virginia Hotel*, 319 U.S. at 527. Both that Court and lower courts have relied on *Virginia Hotel* in the years since 1943. *See, e.g.*, *United States v. Hemme*, 476 U.S. 558, 565-66 (1986); *Marx v. CIR*, 179 F.2d 938, 942 (1st Cir. 1950). Given the enduring meaning of the term "allowed," this Court should presume that the General Assembly "intended the same significance to attach" in the Amended Export Credit Statute. *Wilkie*, 370 N.C. at 550, 809 S.E.2d at 860.

2. The titles of the Session Law and House Bill 2 support Philip Morris' plain reading.

Both the preamble and the title of the legislation should be considered in any plain language interpretation of § 105-130.45. *D&W, Inc. v. City of Charlotte*, 268 N.C. 577, 582, 151 S.E.2d 241, 244 (1966) (preamble and title should be considered in deciding the meaning of a statute); *State v. Flowers*, 318 N.C. 208, 215, 347 S.E.2d 773, 778 (1986)

(title of an act may resolve doubts about the statute's effect); *Ray v. Dep't of Transp.*, 366 N.C. 1, 8, 727 S.E.2d 675, 681 (2012) (even when the language of a statute is plain, the title of an act should be considered in ascertaining the legislature's intent).

Here, the title of Session Law 2003-435 is "*Economic Development*: An Act to make the following changes recommended by the Governor… (4) extend the sunset on and modify the cigarette exportation tax credit and modify the base year." S.L. 2003-435 (emphasis added) (App. 61). Similarly, the legislation's short title as it progressed through the chambers of the General Assembly was "Job Growth and Infrastructure Act." (Doc. Ex. 10, 22) (App. 15, 27, 42). Both these titles show an intent for the legislation, in its plain reading, to expand or grow economic incentives, not limit them. This context also confirms Philip Morris' plain reading of the statute.

3. Comparing the Amended Export Credit Statute with the new Enhanced Credit Statute shows that the General Assembly knew how to limit the generation of tax credits.

Even if history and the statute's title were not enough, the statutes amended or enacted in this legislation (Session Law 2003-435)—

specifically, the Amended Export Credit Statute and Enhanced Credit Statute—provide even more context to support Philip Morris' argument.

This Court often harmonizes portions of a statute that were "enacted or amended by the same legislation." *State ex rel. Hunt v. N.C. Reins. Facility*, 302 N.C. 274, 289, 275 S.E.2d 399, 406 (1981). Likewise, a court should "normally presume" that the same language in related statutes carries a consistent meaning. *United States v. Davis*, 139 S. Ct. 2319, 2329 (2019). And the meaning of a term in one portion of an act "may often be clarified by reference to its use in others." *United States v. Cooper Corp.*, 312 U.S. 600, 606 (1941).

Consider the Enhanced Credit Statute, N.C.G.S. § 105-130.46, which was newly enacted the same day and in the same legislation as the Amended Export Credit Statute. Section 105-130.46 shows that if the General Assembly had wanted to limit credit *generation*, it knew how to do so. In statutory interpretation, different words carry different meanings. *See Nance v. S. Ry. Co.*, 149 N.C. 366, 63 S.E. 116, 118 (1908) ("Courts are not permitted to assume that the lawmaker has used words ignorantly or without meaning."). *Cf. King v. Burwell*, 576 U.S. 473 (2015) (identical phrases in legislation should have the same meaning).

The Enhanced Credit Statute proves that "allowed" cannot mean "generated" as the Department now contends.

The Enhanced Credit Statute restricted the amount of credit a taxpayer could generate. The statute caps the "amount of credit *earned during the taxable year*" to $10 million. § 105-130.46(d) (emphasis added) (App. 7); *see also* § 105-130.46(g) (using the term "earned") (App. 7).[7] "Earn" means to "gain" or "acquire." Earn, *Am. Heritage Dictionary*, *supra* (App. 80); Earn, *Webster's New Collegiate Dictionary* (9th ed., 1989) (defining "earn" to mean "to receive as return for effort") (App. 81). A restriction on the amount of credit "earned" thus restricts the amount of credits that a taxpayer can "acquire" or generate under the Enhanced Credit Statute.

There is a starkly different use of terminology between the Amended Export Credit Statute and the Enhanced Credit Statute, reflecting the General Assembly's intent to differentiate between the

[7] The General Assembly, in fact, noted the difference between "earned" and "claimed" credits in the 2003 amendments in adopting § 105-130.46(k). This portion of the Enhanced Credit Statute requires the taxpayer to submit a report stating the "amount of credit earned" and the "amount of credit including carryforwards claimed" during the previous year. This is another contemporaneous example of the General Assembly choosing between the different words "earned" and "claimed" to demonstrate its intent.

credits. The General Assembly thus could have limited Philip Morris' ability to generate additional credits by using the phrase "credit earned" in the Amended Export Credit Statute. But the General Assembly chose not to do so. Instead, it used "credit allowed," which should be given its own, independent meaning.

C. The Department's contrary construction rests on the legislature's 2003 addition of language that prohibits a business successor from double-dipping on credits.

The Department has conceded that Philip Morris' interpretation of the original Export Credit Statute is correct. (*See* R pp 501 at ¶ 31, 221-22). Even so, the Department now contends—and the trial court agreed—that the 2003 amendments transformed the meaning of § 105-130.45(b). The Department focuses on the last two sentences:

> *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)[.]

§ 105-130.45(b) (2003) (emphasis added) (App. 3). In essence, the Department claims that the final sentence—"[t]he amount of credit

allowed may not exceed" $6 million—changes § 105-130.45(b)'s entire meaning. The Department is wrong for at least four reasons.

First, the relevant portion of the Amended Export Credit Statute retains the phrase "credit allowed." That phrase has a clear and definite meaning, supported not only by the dictionary, but also by precedent, context, and history. The Department's inability to refute Philip Morris' interpretation of "credit allowed" is reason enough to reject the Department's argument.

Second, even looking beyond the plain meaning of credit allowed, the Department's interpretation of the Amended Export Credit Statute violates basic principles of grammar. It's inconsistent with the doctrine of the last antecedent. "[R]elative and qualifying words, phrases, and clauses" should be applied to the "immediately preceding" word or phrase. *Wilkie*, 370 N.C. at 545, 809 S.E.2d at 857. Here, the language at issue, "[t]he amount of credit allowed may not exceed six million dollars ($6,000,000)," comes immediately after a sentence assessing "the case of a successor in business." N.C.G.S. § 105-130.45(b) (App. 3). Under the doctrine of the last antecedent, the last sentence's "credit allowed" limitation modifies only the credits available to a "successor in business."

If the Department's position were true, the last sentence of N.C.G.S. § 105-130.45(b) would, at a minimum, need to include a "per year" limitation, which would make it clear that credit generation could not exceed a given threshold on an annual basis. This is exactly how the "credit earned" limitation is qualified in the Enhanced Credit Statute, N.C.G.S. § 105-130.46(d) (App. 7). But it does not include such a phrase, and the reason is obvious. The preceding sentence—specific to a successor-in-business—contains the necessary phrase "year for which the credit is claimed" showing the connection between those two sentences. The Department's position wrongfully attempts to isolate a sentence that cannot be isolated from its preceding sentence. This is why the doctrine of the last antecedent yields this result.

Third, the Department's reading requires twisting oneself into knots to understand the words used in this statute. Under the Department's reading, the word "allowed" shifts from *generated* in the last sentence of subsection (b) to *credited* in the first sentence of subsection (c). N.C.G.S. § 105-130.45(b), (c) (App. 3-4). There is no definition or other explanation for changing the meaning of this word from one sentence to the next, when the context surrounding the word

does not change its meaning. Likewise, the word "allowed" in sentences that were not amended suddenly changes meaning from claimed to generated under the Department's interpretation.

Finally, the Department's interpretation makes no sense in context of the entire special session legislation. The Enhanced Credit Statute proves that if the General Assembly wanted to include a generational limit, it knew how to do so. For example, § 105-130.46(d) in the Enhanced Credit Statute (App. 7), which was enacted during the same legislative session, limits credits "earned during the taxable year." The Amended Export Credit Statute does not include such a limit. If the General Assembly had intended to enact a generational limit with respect to the Amended Export Credit Statute as well, it would have included the same specific language. The lack of this language in the Amended Export Credit Statute is, in fact, indicative of an intent to not include a generational limit.

* * *

The statute's text and context should end this case. The Amended Export Credit Statute limits only a taxpayer's ability to claim available tax credits in a given year. The trial court erred when it concluded that

the statute limited the amount of tax credits a taxpayer could generate in a year, and this Court should reverse its decision.

III. Even if the Amended Export Credit Statute were ambiguous, any reading other than that offered by Philip Morris would defy the General Assembly's intent to offer broad economic incentives.

Reading the Amended Export Credit Statute's plain language highlights the trial court's error and is enough to reverse its decision. Even if it were not, and the Amended Export Credit Statute were ambiguous, the trial court's interpretation of the statute undermines the General Assembly's intent. When a statute is ambiguous, the Court interprets it by looking to its "legislative history," as well as its "spirit" and the legislature's goals. *Lenox*, 353 N.C. at 664, 548 S.E.2d at 513. The Court seeks to "ascertain legislative intent from the policy objectives behind a statute's passage 'and the consequences which would follow from a construction one way or another.'" *Electric Supply*, 328 N.C. at 656, 403 S.E.2d at 294. The extra-textual evidence supports Philip Morris.

A. The Department's argument that § 105-130.45(b) limits the credits a taxpayer may generate contravenes the Amended Export Credit Statute's legislative history.

Legislative history of a statute demonstrates legislative intent. *Shaw v. U.S. Airways, Inc.*, 362 N.C. 457, 460, 665 S.E.2d 449, 451 (2008). Legislative history may include things like bill summaries, but the absence of legislative history is also relevant. *Gooding v. United States*, 416 U.S. 430, 457 (1974) (the fact that the provision at issue "went unmentioned in the debates and hearings on the bill" suggested that it did not cause the major change the petitioner contended it did).

The Amended Export Credit Statute's legislative history reveals that the meaning of § 105-130.45(b) did not change after the 2003 amendment—because the new language is never mentioned. The title of Senate Bill 4, the source of the successor-in-business change, does not support the inference that the General Assembly wanted to shrink the export credit. *See* S.B.4, 2003 Extra Sess. on Econ. Dev. Issues (N.C. 2003) (App. 42). Nor does Part 7 of the Bill, which specifically amended the Export Credit Statute. That provision, "Extend Sunset on Current Cigarette Exportation Tax Credit," shows that extending the credit was the General Assembly's principal motivation. *Id.* (App. 58).

The General Assembly's summary publications likewise confirm Philip Morris' reading of the Amended Export Credit Statute. None of these publications mentions that the General Assembly intended to cap credit generation. Indeed, they do not mention the "may not exceed six million dollars" language at all. (*See* Doc. Ex. 1; R pp 403, 409, 418). It is implausible that such a major change, as the Department argues, would have gone unmentioned.

B. The policy objectives behind the Amended Export Credit Statute show that § 105-130.45(b) retained its meaning after amendment.

The legislature's policy objectives are a permissible consideration in statutory construction and support Philip Morris. The Court should consider the reason the legislature enacted the statute in the first place, as well as the consequences that "would follow from a construction one way or the other" as another means of showing legislative intent. *Electric Supply*, 328 N.C. at 656, 403 S.E.2d at 294 (citation omitted). *See also State v. Tew*, 326 N.C. 732, 738, 392 S.E.2d 603, 607 (1990) (giving consideration to "the purpose of the statute and the evils it was designed to remedy"); *Trustees of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs.*, 313 N.C. 230, 240, 328 S.E.2d 274, 280 (1985) (because statute was

enacted "at the urging of architects and builders" to protect them against claims long after their work was finished, it should be construed consistent with that purpose). The record confirms that the General Assembly sought to expand the export credit, not contract it.

The 2003 amendments began with the Governor's decision to call a special session. The Governor's proclamation made clear that the only agenda for the two-day special session was to enact "economic incentives" for select businesses, including Philip Morris and Reynolds. (R p 334). And the General Assembly's task was "limited to those projects that would provide the state with significant jobs and investment in the key industrial sectors of . . . tobacco manufacturing." (*Id.*).

The origin of the Amended Export Credit Statute showed intent to create incentives for tobacco manufacturers to invest in the State. Philip Morris' interpretation of the Amended Export Credit Statute—one the Department concedes was correct before 2003—furthers that objective. The Department's contrary interpretation does not. Instead, by creating a cap on credit generation, the Department's interpretation would result in an economic disincentive. It potentially limited the number of

cigarettes that would be made and, in turn, the number of jobs a taxpayer would create or the level of investment that a taxpayer would sustain.

C. The original statute and the amendment process confirms the General Assembly's intent to expand the credit, not contract it.

When an amendment leaves a statute ambiguous, courts look to the original statute and the amendment process to determine the meaning of the amended statute. An ambiguous amendment should be construed by looking at the purpose of the original statute. *See State ex. rel. N.C. Milk Commission v. Nat'l Food Stores, Inc.*, 270 N.C. 323, 332, 154 S.E.2d 548, 555 (an amendment must be construed in light of the purpose of the original statute). Here, everybody agrees that the Export Credit Statute limited only Philip Morris' ability to *claim* more than $6 million in credits per year. And the amendment's content confirms the General Assembly's intent to broaden—or at least maintain—that credit. This original intention of the statute is enough to construe the amendment in a manner that favors Philip Morris' interpretation.

Moreover, the amendment process shows a consistent effort by the General Assembly to expand incentives and to promote economic development through these economic incentives. In its original form from

the outset of the amendment process, House Bill 2 offered new incentives, or enhanced old ones. This carried through to the ultimate adoption of Session Law 2003-435. For instance, the first four parts of the Session Law provided funds for business recruitment in site development and provided tax credits to major industries and industrial facilities. S.L. 2003-435 (H.B. 2) (App. 61-70). Part 5, revising the Export Credit Statute, and Part 6, creating the Enhanced Credit Statute, likewise extended and enhanced economic incentives for tobacco manufacturers. *Id.* (App. 70-73). The legislature was explicit about its intent in Part 6, noting that its purpose was 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." *Id.* (App. 71); N.C.G.S. § 105-130.46(a) (App. 6).

The legislative revisions to Part 5, the Amended Export Credit Statute, further confirm the General Assembly's intent. For instance, the General Assembly made the formula for calculating the credit more favorable, requiring the export of fewer cigarettes for a larger credit. S.L.

2003-435 (H.B. 2), Section 5.3 (App. 71). Likewise, it extended the carry forward period from five years to 10 years. All of these amendments show an intent to expand, not limit, the tax credit. This all supports Philip Morris' interpretation of the amendment.

The case of *Royle & Pilkington Co. v. Currie* is instructive in applying legislative intent to construe a statute. 250 N.C. 726, 110 S.E.2d 339 (1959). In *Royle*, this Court held there was nothing to suggest that the General Assembly intended to diminish the right granted taxpayers in 1943 to reduce their taxable income by the amount of losses sustained in prior years. "Clearly, it intended to enlarge the right," this Court said. *Id.* at 728, 110 S.E.2d at 340; *see also King v. Burwell*, 576 U.S. 473, 475-76 (2015) (construing statute to avoid interpretation that leads to outcome contrary to obvious intent). The same analysis applies here—there is nothing to suggest from the amendment process that there was any intent to diminish the export credits granted in the original Export Credit Statute.

D. It is not enough that the Amended Export Credit Statute provided Philip Morris with *some* benefit.

The trial court supported its contrary reading of the statute by concluding that it provided Philip Morris with *some* benefit, like

extending the sunset date. (R p 502, ¶ 33). But *some* benefit is not the standard. The legislative history shows *no intent* to curtail any of the preexisting benefits offered to qualifying taxpayers but rather to expand those benefits.

The trial court's interpretation of the Amended Export Credit Statute would severely curtail the benefits available to qualifying taxpayers like Philip Morris. It would take away a valuable benefit that all involved agree existed under the original Export Credit Statute. Moreover, taking away a taxpayer's ability to carry its credits forward would have been a major change to the Export Credit Statute, which had never contained a generational limit. It is implausible that a legislative change of this magnitude—to the detriment of the taxpayers intended to benefit from the legislation—would have gone unnoticed in the legislative context here. *Cf. Gooding v. United States*, 416 U.S. at 457-58 (noting that there was no suggestion in the legislative history that a change from the prior law was intended, such that "it would be unusual for such a significant change as that proposed by petitioner to have entirely escaped notice").

E. The trial court erred in its application of the canon to avoid surplusage.

The trial court justified its erroneous conclusion by applying the canon against surplusage. A statute should be considered "as a whole" and construed so none of its provisions are "rendered useless or redundant." *Porsch Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 555, 276 S.E.2d 443, 447 (1981). But the trial court erred in relying on this canon to the exclusion of other indicia of legislative intent.

While this Court presumes that the General Assembly "did not intend any provision to be mere surplusage," *id.*, the rule is not mandatory, *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001). Other circumstances evidencing legislative intent "can overcome their force." *Id.* For example, in *King v. Burwell*, 576 U.S. 473 (2015), the Supreme Court of the United States rejected a surplusage argument because the Affordable Care Act had been drafted "with limited opportunities for debate and amendment" and "contain[ed] more than a few examples of inartful drafting." *Id.* at 491-92. The Court instead applied the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Id.* (citation omitted).

Contrary to the trial court's analysis, reading § 105-130.45(b) as imposing a limit only on credit use, not generation, does not merely repeat "the preexisting cap on the use of the credit" in § 105-130.45(c). (R p 504, ¶ 39). True, subsection (c) does contain a $6 million cap on use, but the caps in subsections (b) and (c) accomplish different purposes. Subsection (c) sets a $6 million ceiling on annual credit use for every eligible taxpayer. As explained, the $6 million cap in subsection (b) modifies the "successor in business" language that precedes it. In other words, it ensures that a "successor in business" cannot claim its own $6 million credit, on top of any carryforward credit available to its predecessors. There is no surplusage.

More than wrong, the trial court's surplusage analysis also creates a larger surplusage problem. Subsection (c) of the Export Credit Statute, both before and after the 2003 amendment, said the $6 million limit applied "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." If, as both the trial court and Department contend, a taxpayer could generate only $6 million in credit per year, there would

be no need for a carryforward system at all. The entire portion of the statute on carryforward becomes surplusage.

This surplusage may not have resulted in all instances, but it did for Philip Morris and Reynolds—the two intended beneficiaries of the Amended Export Credit Statute. At the time of enactment, the legislature knew and reasonably assumed this would be the case. (*See* R p 403 [General Assembly publication "assum[ed] that the affected companies will take the maximum amount of the credit," based on discussions with the Department and an industry representative]).

In all events, even if Philip Morris' interpretation did create a surplusage concern, the canon of surplusage should yield to the legislative intent. *See Chickasaw Nation*, 534 U.S. at 94. The legislative history does not support the trial court's interpretation. To the contrary, the Amended Export Credit Statute's context, wording, legislative history, and statutory purpose all support Philip Morris' interpretation. If the legislature's drafting was "inartful" due to the 48-hour period of the special session and it inadvertently created surplusage, the legislative intent should overcome any such surplusage. *King*, 576 U.S. at 491-92. *Cf. Toomey v. Munger & Bennett Lumber Co.*, 171 N.C. 178, 88 S.E. 215,

217 (1916) (explaining that errors or mistakes in drafting can be overcome when the intention of the General Assembly can still be met); *Teachy v. Coble Dairies, Inc.*, 306 N.C. 324, 331, 293 S.E.2d 182, 186 (1982) (construing statute as containing a clerical error because otherwise would thwart the obvious legislative intent).

F. The Department's position yields an absurd result, which must be guarded against in any statutory construction.

The competing applications of the canon to avoid surplusage also should yield to a more helpful canon of statutory construction—the canon to avoid absurd results. *Variety Theatres, Inc. v. Cleveland Cnty.*, 282 N.C. 272, 275, 192 S.E.2d 290, 292 (1972) ("In construing any statute or ordinance the court will avoid an interpretation which would lead to absurd results."); *Woodhouse v. Bd. of Comm'rs of Town of Nags Head*, 299 N.C. 211, 225, 261 S.E.2d 882, 891 (1980) (explaining spirit and intent of the legislative act control, not an absurd construction). This is not a dispute where both interpretations of a statute could fit within the General Assembly's manifest purpose in adopting the statute. To the contrary, only one construction of the statute meets with the spirit and

intent behind Session Law 2003-435 and the Amended Export Credit Statute within it.

In light of the General Assembly's manifest purpose to expand economic incentives and to promote economic development in both the original and amended versions of § 105-130.45, any construction of the Amended Export Credit Statute to limit or restrict the credits would yield an absurd or illogical result. To aid economic development, the tax credit must be increased or extended, not limited. This Court should avoid construing the Amended Export Credit Statute in a way that leads to absurd or illogical results: it should not be construed to have a $6 million generation limit and the carryforward credits taken by Philip Morris should be allowed.

* * *

Even if the Amended Export Credit Statute were ambiguous, the trial court's interpretation of the statute undermines the General Assembly's intent. The legislative history, content, and purpose of the Amended Export Credit Statute all reveal a legislative intent to expand the credit, consistent with Philip Morris' interpretation. Properly

applied, the canons of construction likewise support this position. This Court should reverse.

IV. If, after considering text, context, and legislative history, the Amended Export Credit Statute is still unclear, this Court can consider extrinsic evidence, which supports Philip Morris.

While text, context, and history should be sufficient to support reversal, extrinsic evidence also supports Philip Morris. In particular, contemporaneous statements from those involved in enacting legislation can help interpret the legislation. *See N.C. Corp. Comm'n v. Southern Ry. Co.*, 185 N.C. 435, 117 S.E. 563, 577 (1923) ("[T]he propriety of referring to statements made by a committee member in charge of a bill, of course, is well recognized.").[8] The "interpretation given to proposed legislation by the department . . . responsible for its administration" also is relevant. *Applications for Reassignment of Pupils*, 247 N.C. 413, 420, 101 S.E.2d 359, 365 (1958). Both of these extrinsic aids support Philip Morris' interpretation of the Amended Export Credit Statute.

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[8] The admissibility and value of contemporaneous statements made by an elected official at the time of legislative enactment stand in sharp contrast to the inadmissible nature of affidavits from elected officials after the legislative session. *Compare N.C. Corp. Comm'n v. Southern Ry. Co.*, 117 S.E. at 577 *with D&W,* 268 N.C. at 582, 151 S.E.2d at 244.

A. Senator Kerr's contemporaneous statements show his intent to create economic incentives for all eligible tobacco manufacturers, not limited to Reynolds.

Consider first the contemporaneous statements of Senator Kerr, made in connection with the introduction of Senate Bill 4. His statements reflect his position both that the export tax credit should be expanded and that the tax credits should not disproportionately favor Reynolds.

For example, Senator Kerr was concerned that Reynolds would receive an outsized or unfair advantage. In a 4 December 2003 news article on the upcoming special session on economic incentives, Senator Kerr said that the tax incentives should go to those tobacco manufacturers investing in the state's economy. (R p 331). But as a legislator representing eastern North Carolina, he did not want the export tax credit to solely or primarily benefit Winston-Salem based Reynolds, stating that "[a] lot of people feel that you can't just do something for" Reynolds. (*Id.*).

These statements explain why Senator Kerr added the final sentence to subsection (b). Based on Reynolds' announced acquisition of or combination of assets with Brown & Williamson, Senator Kerr included language to cover that anticipated event. He added: (1) the

same "successor in business" definition from House Bill 2's Enhanced Credit Statute to subsection (a); and (2) a sentence in subsection (b) as to how the tax credit should be calculated for a business successor ("In the case of a successor in business, the amount of credit allowed under this section is determined by…").

But he also wanted to ensure that Reynolds did not receive *more* advantage from the export tax credit than other tobacco manufacturers contributing to the State's economy. Thus, Senator Kerr added language directly after the business successor sentence in subsection (b) to ensure that a business successor could still only claim the $6 million annual credit allowed single-market participants in subsection (c). Similarly, he added subsection (e), also already contained in the Enhanced Credit Statute, to ensure that Reynolds could not try to use both the export tax credit and the enhanced tax credit. § 105-130.45(e) (App. 4, 60).

Senator Kerr's contemporaneous statements thus support Philip Morris. Senator Kerr intended to enhance the economic incentives for tobacco manufacturers to invest in this State and to ensure that Reynolds received the same, but not more, benefit from this tax credit. These statements do *not* suggest that Senator Kerr intended to create a

generational limit that would act as a disincentive for all taxpayers eligible for the credit.

B. Before 2018, the Department had never read a limit on credit generation into the Amended Export Credit Statute.

The Department's years' long failure to interpret the Amended Export Credit Statute as constraining credit generation is also telling. For instance, in its "Supplement to 2003 Tax Law Changes," the Department distinguished between "substantive" and "clarifying" changes to subsection (b) of the Amended Export Credit Statute. (R p 239). The Department's publication identified two substantive changes to subsection (b): (1) requiring the taxpayer to use the state ports; and (2) adding the formula as to how a successor in business calculates its "applicable credit percentage." (*Id.*). The Department did not identify the 2003 amendments to subsection (b) to have any "substantive" change with regard to credit generation. This is consistent with Philip Morris' interpretation that the Amended Export Credit Statute did not make a substantive change on credit generation, and the Department's concession here is meaningful because the Department consistently acknowledged that there was no limit on credit generation in the original

Export Credit Statute, only a limit on credit use. (*See* R p 501, ¶ 31). If there was no "substantive" change on credit generation in these amendments, there remained no limit on credit generation under the Amended Export Credit Statute. This contemporaneous interpretation by the department of the state administering the statute, showing no "substantive" change with regard to credit generation, is valuable in ascertaining legislative intent. *Cf. State ex rel. Edmisten v. J.C. Penney Co., Inc.*, 292 N.C. 311, 317-18, 233 S.E.2d 895, 899 (1977) (looking to a "contemporaneous article" written by the Attorney General as to "his views on the effect of the statute" as legislative history).

For the next *17 years*, the Department held fast to its conclusion that the Amended Export Credit Statute did not substantively modify the original on the issue of credit generation. For example, in April 2006, the Department did not correct or object to Philip Morris' statements that it could use its carryforward tax credits as before the amendments or to its schedule of carryforwards showing tax credits "earned" in excess of $6,000,000. (R pp 136, 157). Likewise, the Department failed to adjust Philip Morris' calculation of its export tax credit in its 2007 tax return—a calculation after the 2003 amendment that was consistent with all

parties' understanding of the original statute. (R pp 250, 277-93). Further, in its 2008 statutorily-required economic incentives report, the Department explicitly recognized that Philip Morris had "genera[ted] [ ] credits above the $6 million cap" and that "[t]hese excess credits are available to be taken in future years." (R p 134) (App. 86).

The Department also failed, in 2018, to advance its new interpretation of § 105-130.45(b) when it audited Philip Morris' 2012–14 tax returns. True, the Department concluded in this 2018 audit that Philip Morris had improperly taken more than $6 million in tax credits, but it relied on subsection (c)—not subsection (b)—to reach that conclusion. (R p 168).

It was not until August 2020 that the Department advanced its newfound interpretation of § 105-130.45(b). But even then, it failed to articulate a clear or accurate position. It determined that the Amended Export Credit Statute had clarified "the pre-existing requirement set forth in subsection (c) that the amount of Tobacco Export Credits a taxpayer could generate in any single tax year could not exceed $6,000,000," which it said was supported by "the General Assembly's contemporaneously prepared summary of the 2003 Statute." (R p 128).

But everyone agrees that subsection (c) never restricted credit generation. (*See* R p 501, ¶ 31). The amended language thus could not "clarify" a non-existent provision. Moreover, the General Assembly never created a document to support the Department's interpretation. *See supra*, note 3.

This history does not support the Department's claim that the Amended Export Credit Statute was always intended to create a new limit on credit generation. Rather, it shows that the Department concocted this interpretation as a newfound means of upholding the assessments and penalties against Philip Morris.

CONCLUSION

For these reasons, Philip Morris asks that this Court reverse the trial court's order. This Court should remand this matter to the trial court for entry of judgment in Philip Morris' favor, directing the Department to allow Philip Morris' tax credits.

Respectfully submitted, this the 20th day of March, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing PHILIP MORRIS USA, INC.'S APPELLANT'S BRIEF via email addressed to the following person at the following email address which is the last address known to me:

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This the 20th day of March, 2023.

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WEST'S NORTH CAROLINA GENERAL STATUTES ANNOTATED
CHAPTER 105. TAXATION
SUBCHAPTER I. LEVY OF TAXES
ARTICLE 4. INCOME TAX
PART 1. CORPORATION INCOME TAX.

§ 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.

(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.

(b) Credit.—A corporation engaged in the business of manufacturing cigarettes for exportation to a foreign country 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. The amount of credit allowed is 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 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 Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury for the months in the tax year for which the credit is claimed.

Added by S.L. 1999-333, § 4.

REPEAL

<This section is repealed effective for cigarettes exported on or after Jan. 1, 2005.>

HISTORICAL AND STATUTORY NOTES

S.L. 1999-333, § 10, provides:

"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."

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West's North Carolina General Statutes Annotated
Chapter 105. Taxation
Subchapter I. Levy of Taxes (Refs & Annos)
Article 4. Income Tax (Refs & Annos)
Part 1. Corporation Income Tax (Refs & Annos)

This section has been updated. Click here for the updated version.

N.C.G.S.A. § 105-130.45

§ 105-130.45. Credit for manufacturing cigarettes for exportation

Effective: [See Text Amendments] to December 31, 2006

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

(1) Base year exportation volume. -- The number of cigarettes manufactured and exported by a corporation during the calendar year 2003.

(2) Exportation. -- The shipment of cigarettes manufactured in the United States to any of the following sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes:

a. A foreign country.

b. A possession of the United States.

c. A commonwealth of the United States that is not a state.

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

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

Current Year's Exportation Volume Compared to its Base Year's Exportation Volume	**Amount of Credit per Thousand Cigarettes Exported**
120% or more	40s
119%--100%	35s
99%--80%	30s
79%--60%	25s
59%--50%	20s
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 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 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.

<Text of subsec. (f) is eff. Jan. 1, 2007.>

(f) Report. -- The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

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

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

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

Credits

Added by S.L. 1999-333, § 4. Amended by S.L. 2003-435 (2nd Ex. Sess.), § 5.2, eff. Jan. 1, 2005; S.L. 2003-435, (2nd Ex. Sess.), § 5.3, eff. Jan. 1, 2004; S.L. 2005-429, § 2.10, eff. Jan. 1, 2007.

Editors' Notes

REPEAL

<This section is repealed effective for cigarettes exported on or after Jan. 1, 2018.>

N.C.G.S.A. § 105-130.45, NC ST § 105-130.45

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 105. Taxation
Subchapter I. Levy of Taxes (Refs & Annos)
Article 4. Income Tax (Refs & Annos)
Part 1. Corporation Income Tax (Refs & Annos)

This section has been updated. Click here for the updated version.

N.C.G.S.A. § 105-130.46

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

Effective: [See Text Amendments] to June 30, 2010

(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. A job is included in the employment level for a year only if that job is located within the State for more than six months of the year. A job is located in this State if more than fifty percent (50%) of the employee's duties are performed in this State.

(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 for the taxable year 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 for the taxable year 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.

(d) Credit. -- A corporation that satisfies the employment level requirement under subsection (c) 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 (d) 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 for the taxable year 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 for the taxable year 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 (d) 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.

Credits

Added by S.L. 2003-435 (2nd Ex. Sess.), § 6.1, eff. Jan. 1, 2006; S.L. 2004-170, § 16(a), eff. Jan. 1, 2006.

Editors' Notes

REPEAL

<This section is repealed eff. Jan. 1, 2018, pursuant to S.L. 2003-435 (2nd Ex. Sess.), § 6.2.>

N.C.G.S.A. § 105-130.46, NC ST § 105-130.46

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-333
HOUSE BILL 74

AN ACT TO AUTHORIZE THE APPOINTMENT BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE OF MEMBERS OF THE BOARD OF DIRECTORS OF THE CERTIFICATION ENTITY FOR THE PHASE II SETTLEMENT FUNDS, TO PROVIDE THE MEMBERS OF THE BOARD OF DIRECTORS LIMITED IMMUNITY FROM CIVIL LIABILITY, TO PROVIDE AN EXEMPTION FROM STATE INCOME TAX FOR INTEREST, INVESTMENT EARNINGS, AND GAINS OF CERTAIN TRUST FUNDS, TO PROVIDE A CORPORATE INCOME TAX CREDIT FOR MANUFACTURERS PRODUCING CIGARETTES FOR EXPORTATION TO A FOREIGN COUNTRY, AND TO PROHIBIT THE SALE OF CERTAIN PACKAGES OF CIGARETTES.

The General Assembly of North Carolina enacts:

Section 1.(a) The General Assembly finds that:

(1) Philip Morris, Inc., Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and R.J. Reynolds Tobacco Company (hereinafter, the "tobacco companies") have proposed to create a National Tobacco Grower Settlement Trust under which the tobacco companies will pay, during a 12-year period, a base amount of approximately five billion one hundred fifty million dollars ($5,150,000,000) into a trust to provide payments to tobacco growers and allotment holders in 14 grower states, including North Carolina, for the purposes of ameliorating potential adverse economic consequences of likely changes in the tobacco market on grower states.

(2) The tobacco companies desire that the money paid into the trust be divided among tobacco producers and allotment holders in accordance with a plan designed and approved by a certification entity in each state.

(3) The tobacco companies desire that in larger grower states, including North Carolina, the certification entity be a nonprofit corporation governed by a board of directors consisting of the following public officials and persons appointed by public officials: the Governor, who shall serve as chair of the board of directors; the Commissioner of Agriculture, who shall serve as vice-chair; the Attorney General, who shall serve as secretary; a State Senator appointed by the President Pro

Tempore of the Senate; a State Representative appointed by the Speaker of the House of Representatives; two members of the North Carolina congressional delegation selected by the delegation; and four to seven citizens appointed by the Governor.

(4) It is in the public interest that these officials and citizens serve on the board of directors and determine the distribution of these private trust funds to tobacco producers and allotment holders in North Carolina.

Section 1.(b) The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate are authorized to appoint members of the board of directors of the certification entity as provided in Section 1.(a)(3), and the public officials referred to in Section 1.(a)(3) are authorized to serve on that board.

Section 1.(c) No member of the certification entity for the National Tobacco Grower Trust Fund is subject to civil liability for any act or omission arising out of the performance of the member's duties as a member or officer of the certification entity. This section does not apply to liability arising from willful or wanton misconduct, intentional wrongdoing, or the operation of a motor vehicle.

Section 2. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

…

(18) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.

b. A court of this State approves and retains jurisdiction over the trust.

c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials."

Section 3. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

…

(15) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.

b. A court of this State approves and retains jurisdiction over the trust.

c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials."

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

"**§ 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.

(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.

(b) Credit. – A corporation engaged in the business of manufacturing cigarettes for exportation to a foreign country 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. The amount of credit allowed is 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 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 Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury for the months in the tax year for which the credit is claimed."

Section 5. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-400.18. Sale of certain packages of cigarettes prohibited.**

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

(1) Cigarette. – Defined in G.S. 105-113.4.

(2) Package. – Defined in G.S. 105-113.4.

(b) Offenses. – A person who sells or holds for sale (other than for export to a foreign country) a package of cigarettes that meets one or more of the following descriptions commits a Class A1 misdemeanor and engages in an unfair trade practice prohibited by G.S. 75-1.1:

(1) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

(2) The package is labeled 'For Export Only,' 'U.S. Tax Exempt,' 'For Use Outside U.S.,' or has similar wording indicating that the manufacturer did not intend that the product be sold in the United States.

(3) The package was altered by adding or deleting the wording, labels, or warnings described in subdivision (1) or (2) of this subsection.

(4) The package was imported into the United States after January 1, 2000, in violation of 26 U.S.C. § 5754.

(5) The package violates federal trademark or copyright laws.

(c) Contraband. – A package of cigarettes described in subsection (b) of this section is contraband and may be seized by a law enforcement officer. The procedure for seizure and disposition of this contraband is the same as the procedure under G.S. 105-113.31 and G.S. 105-113.32 for non-tax-paid cigarettes."

Section 6. Part 1 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-113.4B. Reasons why the Secretary can cancel a license.**

(a) Reasons. – The Secretary may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel the

license of a license holder when the Secretary finds that the license holder is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a license holder that commits one or more of the following acts after holding a hearing on whether the license should be cancelled:

(1) A violation of this Article.

(2) A violation of G.S. 14-400.18.

(b) Procedure. – The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder."

Section 7. G.S. 105-113.16 is repealed.

Section 8. G.S. 105-164.29(d) reads as rewritten:

"(d) Revocation. – Whenever a license holder fails to comply with this ~~Article,~~ Article or violates G.S. 14-400.18, the Secretary, upon hearing, after giving the license holder 10 days' notice in writing, specifying the time and place of hearing and requiring the license holder to show cause why the license should not be revoked, may revoke or suspend the license. The notice may be served personally or by registered mail directed to the last known address of the license holder. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section.

Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after the license has been suspended or revoked, and each officer of any corporation that so engages in business shall be guilty of a Class 3 misdemeanor and only subject to a fine of up to five hundred dollars ($500.00) for each offense."

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

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

s/ James B. Hunt, Jr.
Governor

Approved 3:25 p.m. this 22nd day of July, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2003

FILED
0002 DEC-9 P

H

HOUSE PRINCIPAL CLERK D

HOUSE DRH90016-LC-165T (11/05)

Short Title: Job Growth and Infrastructure Act. (Public)

Sponsors: Representative G. Allen.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE THE FOLLOWING CHANGES RECOMMENDED BY THE GOVERNOR: (1) APPROPRIATE TWENTY-FIVE 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; AND (4) EXTEND THE SUNSET ON THE CIGARETTE EXPORTATION TAX CREDIT.

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) 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.

(f) 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. 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.

(g) 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.

(h) 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-five million dollars ($25,000,000) 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) There is appropriated from the General Fund to the Department of Commerce the sum of sixty-five thousand dollars ($65,000) for the 2004-2005 fiscal year for a program administrator for the site infrastructure development program created by this part. It is the intent of the General Assembly that funds for administering this program shall be part of the Department of Commerce's continuation budget.

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). 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:

"(i) 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. 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 am oules, 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. This part is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Second Extra Session 2003

H 2

HOUSE BILL 2

Second Edition Engrossed 12/9/ 3

Short Title: Job Growth and Infrastructure Act. (Public)

Sponsors: Representative G. Allen.

Referred to: Finance, if favorable to Appropriations.

December 9, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE FOLLOWING CHANGES RECOMMENDED BY THE GOVERNOR: (1) APPROPRIATE TWENTY-FIVE 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, AND (5) CREATE AN ENHANCED TAX CREDIT FOR CIGARETTE EXPORTATION.

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 erformance 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-five million dollars ($25,000,000) 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) There is appropriated from the General Fund to the Department of Commerce the sum of sixty-five thousand dollars ($65,000) for the 2004-2005 fiscal year for a program administrator for the site infrastructure development program created by this part. It is the intent of the General Assembly that funds for administering this program shall be part of the Department of Commerce's continuation budget.

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 I 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. 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(a) reads as rewritten:

"(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."

SECTION 5.3. Effective for cigarettes exported on or after January 1, 2005, G.S. 105-130.45(b), as amended by this part, reads as rewritten:

"(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. The amount of credit allowed is 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"

SECTION 5.4. Sections 5.2 and 5.3 of this part are effective for cigarettes exported on or after January 1, 2005. The remainder of this part is effective when it becomes law.

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) 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.

(b) 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.

(c) 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).

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

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

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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2003

S **D**

SENATE DRS35390-LY-131 (11/05)

Short Title:	Job Growth and Infrastructure Act.	(Public)
Sponsors:	Senator Kerr.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MAKE THE FOLLOWING CHANGES RECOMMENDED BY THE GOVERNOR: (1) APPROPRIATE TWENTY-FIVE 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) CREATE A LIFE SCIENCES REVENUE BOND AUTHORITY; (5) TO SUPPORT A TRADITIONAL INDUSTRY AND ENCOURAGE THE USE OF DOMESTIC TOBACCO BY CREATING A TAX CREDIT FOR MANUFACTURERS WHO EXPORT CIGARETTES, INCREASE EMPLOYMENT IN THIS STATE, AND UTILIZE STATE PORTS; AND (6) TO EXTEND THE SUNSET ON THE CIGARETTE EXPORTATION TAX CREDIT AND TO MODIFY THE BASE YEAR, CARRYFORWARD, AND ELIGIBILITY PROVISIONS OF THAT CREDIT.

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) 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.

(f) 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. Nothing in this section constitutes 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.

(g) 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.

(h) 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-five million dollars ($25,000,000) 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) There is appropriated from the General Fund to the Department of Commerce the sum of sixty-five thousand dollars ($65,000) for the 2004-2005 fiscal year for a program administrator for the site infrastructure development program created by this part. It is the intent of the General Assembly that funds for administering this program shall be part of the Department of Commerce's continuation budget.

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). 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. 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. LIFE SCIENCES REVENUE BOND AUTHORITY

SECTION 5.1. 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 5.2. 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 5.3. Nothing in this part requires the General Assembly to appropriate funds to implement it.

SECTION 5.4. This part is effective when it becomes law.

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 (d) 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 ten million dollars ($10,000,000) 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) 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.

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

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. EXTEND SUNSET ON CURRENT CIGARETTE EXPORTATION TAX CREDIT

SECTION 7.1. 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 7.2. 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 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 7.3. Section 7.2 of this act is effective for taxable years beginning on or after January 1, 2005. The remainder of this part is effective when it becomes law.

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

Black's Law Dictionary (11th ed. 2019), allow

ALLOW

Bryan A. Garner, Editor in Chief

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allow *vb.* (14c) **1.** To put no obstacle in the way of; to suffer to exist or occur; to tolerate <she allowed the neighbor's children to play on her lawn>. **2.** To give consent to; to approve <the appellate court allowed the writ of error>. **3.** To concede or admit; to acknowledge <will you allow that you were present on the evening of June 21?>. **4.** To recognize as a right or privilege; to accord as a legal entitlement <the law allows it> <they allowed their children $20 a week>. **5.** To permit to (oneself) by way of indulgence <allows herself no childish fripperies>. **6.** To assign (money, time, etc.) for a particular purpose <allow an extra hour for negotiating the heavy traffic>. **7.** To make allowance or provision for; to take into account <we should allow much on account of his lack of education>. **8.** To grant by addition or subtraction; esp., to abate or deduct <allow $150 off the rent for leaky plumbing>. **9.** To grant permission; to permit <to allow each student one absence>. **10.** To assert, declare, say, or opine; esp., by mental assertion, to mean, intend, or think <privately, he allowed that he might bear some of the blame>. **11.** In an intransitive sense, to make abatement or concession <allow for extra time spent>.

can represent the phoneme /f/. **3.** Writing, esp. a signature, made by one person for another.

al•lom•er•ism (ə-lŏm′ə-rĭz′əm) *n.* Consistency in crystalline form with variation in chemical composition. — **al•lom′er•ous** *adj.*

al•lom•e•try (ə-lŏm′ĭ-trē) *n.* The study of the change in proportion of various parts of an organism as a consequence of growth. — **al′lo•met′ric** (ăl′ə-mĕt′rĭk) *adj.*

al•lo•morph[1] (ăl′ə-môrf′) *n.* See **paramorph.** — **al′lo•mor′phic** *adj.* — **al′lo•mor′phism** *n.*

al•lo•morph[2] (ăl′ə-môrf′) *n.* Any of the variant forms of a morpheme. [ALLO- + MORPH(EME).] — **al′lo•mor′phic** *adj.* — **al′lo•mor′phism** *n.*

al•lo•nym (ăl′ə-nĭm′) *n.* The name of a person, usu. historical, assumed by a writer. [Fr. *allonyme*: Gk. *allos*, other; see ALLO- + Gk. *onoma*, name; see **nō-men-***.] — **al•lon′y•mous** (ə-lŏn′ə-məs) *adj.* — **al•lon′y•mous•ly** *adv.*

al•lo•path (ăl′ə-păth′) also **al•lop•a•thist** (ə-lŏp′ə-thĭst) *n.* One who practices or advocates allopathy.

al•lop•a•thy (ə-lŏp′ə-thē) *n.* A method of treating disease with remedies causing effects different from those of the disease itself. — **al′lo•path′ic** (ăl′ə-păth′ĭk) *adj.* — **al′lo•path′i•cal•ly** *adv.*

al•lo•pat•ric (ăl′ə-păt′rĭk) *adj. Ecol.* Occurring in separate, nonoverlapping geographic areas, esp. when unable to cross-breed because of the separation. [ALLO- + Gk. *patra*, fatherland (< *patēr*, father; see **pəter-***) + -IC.] — **al′lo•pat′ri•cal•ly** *adv.* — **al•lop′a•try** (ə-lŏp′ə-trē) *n.*

al•lo•phane (ăl′ə-fān′) *n.* An amorphous translucent mineral, essentially hydrous aluminum silicate. [< Gk. *allophanēs*, appearing otherwise : *allos*, other; see ALLO- + *phainesthai*, to appear, passive of *phainein*, to show; see FANTASY.]

al•lo•phone (ăl′ə-fōn′) *n. Ling.* A predictable phonetic variant of a phoneme. For example, the aspirated *t* of *top* and the unaspirated *t* of *stop* are allophones of the English phoneme /t/. [ALLO- + PHONE(ME).] — **al′lo•phon′ic** (-fŏn′ĭk) *adj.*

al•lo•pol•y•ploid (ăl′ə-pŏl′ē-ploid′) *adj.* Having three or more complete sets of chromosomes derived from different species. — **al•lo•pol′•y•ploid′** *n.* — **al′lo•pol′y•ploi′dy** *n.*

al•lo•pu•ri•nol (ăl′ō-pyo͝or′ə-nôl′, -nōl′, -nŏl′) *n.* A drug, $C_5H_4N_4O$, used to treat gout because it promotes the excretion of uric acid. [ALLO- + PURIN(E) + -OL[2].]

all-or-none (ôl′ər-nŭn′) *adj.* Characterized by either a complete response or a total lack of response or effect.

all-or-noth•ing (ôl′ər-nŭth′ĭng) *adj.* **1.** Involving either complete success or failure, with no intermediate result. **2.** Refusing to accept less than all demands; uncompromising.

al•lo•ster•ic (ăl′ə-stĕr′ĭk) *adj.* Of or involving molecular binding to an enzyme at a site other than the enzymatically active one. — **al′lo•ster′i•cal•ly** *adv.* — **al•los′ter•y** (ə-lŏs′tə-rē) *n.*

al•lot (ə-lŏt′) *tr.v.* **-lot•ted, -lot•ting, -lots. 1.** To parcel out; distribute or apportion: *allot land.* **2.** To assign as a portion; allocate: *allot time to each speaker.* [ME *alotten* < OFr. *aloter*: *a-*, to (< Lat. *ad-*; see AD-) + *lot*, portion (of Gmc. orig.).] — **al•lot′tee′** *n.* — **al•lot′ter** *n.*

al•lot•ment (ə-lŏt′mənt) *n.* **1.** The act of allotting. **2.** Something allotted. **3.** A portion of military pay regularly deducted and set aside, as for insurance.

al•lo•trans•plant (ăl′ō-trănz′plănt′) *tr.v.* **-plant•ed, -plant•ing, -plants.** To transfer (an organ or body tissue) between two genetically different individuals of the same species. — *n.* An organ or tissue so transferred. — **al′lo•trans′plan•ta′tion** *n.*

al•lo•trope (ăl′ə-trōp′) *n.* A structurally differentiated form of an element that exhibits allotropy. [Back-formation < ALLOTROPY.]

al•lot•ro•py (ə-lŏt′rə-pē) *n.* The existence, esp. in the solid state, of two or more crystalline or molecular structural forms of an element. — **al′lo•trop′ic** (ăl′ə-trŏp′ĭk, -trō′pĭk), **al′lo•trop′i•cal** *adj.* — **al′lo•trop′i•cal•ly** *adv.*

all' ot•ta•va (ăl′ə-tä′və, äl′ō-) *adv. & adj. Mus.* Ottava. [Ital. : *all'*, at the + *ottava*, octave.]

all out *adv.* With every possible effort: *worked all out.*

all-out (ôl′out′) *adj.* Using all available means or resources.

all over *adv.* **1.** Over the whole area or extent: *embroidered all over.* **2.** Everywhere: *searched all over.* **3.** In all respects.

all-o•ver also **all•o•ver** (ôl′ō′vər) *adj.* Covering an entire surface: *wallpaper with an all-over pattern.*

all-o•vers (ôl′ō′vərz) *pl.n. Informal.* A feeling of great unease or extreme nervousness.

al•low (ə-lou′) *v.* **-lowed, -low•ing, -lows.** — *tr.* **1.** To let do or happen; permit: *We allow smoking only in restricted areas.* **2.** To permit the presence of: *No pets allowed.* **3.** To permit to have: *allow oneself a treat.* **4.** To make provision for; assign: *Allow time for a break.* **5.** To plan for in case of need: *allowed room for shrinkage.* **6.** To grant as a discount or in exchange: *allowed me 20 dollars on my old word processor.* **7.** *Chiefly Upper Southern U.S.* **a.** To admit; grant: *I allowed as how he was right.* **b.** To suppose. **c.** To assert. — *intr.* **1.** To offer a possibility; admit: *The poem allows of several interpretations.* **2.** To take a possibility into account; make allowance. [ME *allouen*, to approve, permit < OFr. *allouer* < Lat. *allaudāre*, to praise (*ad-*, intensive pref.; see AD- + *laudāre*, to praise; see LAUD) and < Med.Lat. *allocāre*, to assign; see ALLOCATE.] — **al•low′a•ble** *adj.* — **al•low′a•bly** *adv.*

al•low•ance (ə-lou′əns) *n.* **1.** The act of allowing. **2.** An amount allowed or granted: *a weekly allowance of two eggs.* **3.** Something, such as money, given regularly or for a specific purpose: *a travel allowance.* **4.** A price reduction, esp. in exchange for used merchandise: *an allowance on an old car.* **5.** A consideration for possibilities or modifying circumstances: *made allowances for rush-hour traffic.* **6.** An allowed difference in dimension of closely mating machine parts. — *tr.v.* **-anced, -anc•ing, -anc•es. 1.** To put on a fixed allowance. **2.** To dispense in fixed quantities; ration.

al•low•ed•ly (ə-lou′ĭd-lē) *adv.* By general admission.

al•loy (ăl′oi′, ə-loi′) *n.* **1.** A homogeneous mixture or solid solution of two or more metals, the atoms of one replacing or occupying interstitial positions between the atoms of the other. **2.** A mixture; an amalgam. **3.** The relative degree of mixture with a base metal; fineness. **4.** Something added that lowers value or purity. — *tr.v.* (ə-loi′, ăl′oi′) **-loyed, -loy•ing, -loys. 1.** To combine (metals) to form an alloy. **2.** To combine; mix: *idealism alloyed with skill.* **3.** To debase by adding an inferior element. [Alteration (influenced by Fr. *aloi*, alloy) of obsolete *allay* < ME *alay* < ONFr. *allai* < *allayer*, to alloy < Lat. *alligāre*, to bind : *ad-*, ad- + *ligāre*, to bind; see **leig-***.]

all-pur•pose (ôl′pûr′pəs) *adj.* Serving many purposes.

all right *adj.* **1.a.** In proper or satisfactory operational or working order: *Were the tires all right?* **b. all-right** (ôl′rīt′). *Informal.* Satisfactory; good: *an all-right movie.* **2.** Correct. **3.** Average; mediocre: *The show was just all right, not great.* **4.** Uninjured; safe. **5.** Fairly healthy; well: *I feel all right.* — *adv.* **1.** Satisfactorily; adequately: *did all right.* **2.** Very well; yes. Used as a reply to a question or to introduce a declaration: *Will you join us? All right. All right, here's the plan.* **3.** Without a doubt: *It's cold, all right.*

Usage Note: *All right*, usually pronounced as if it were a single word, probably should have followed the same orthographic development as *already* and *altogether*. But despite its use by a number of reputable authors, the spelling *alright* has never been accepted as a standard variant.

all-round (ôl′round′) *adj.* Var. of **all-around.**

All Saints' Day (sānts) *n.* November 1, the day on which a Christian feast honoring all the saints is observed.

All Souls' Day (sōlz) *n. Rom. Cath. Ch.* November 2, when special prayers are offered for souls in purgatory.

all•spice (ôl′spīs′) *n.* **1.** A tropical American evergreen tree *(Pimenta dioica)* having opposite simple leaves and small white flowers clustered in cymes. **2.** The dried, nearly ripe berries of this plant used as a spice, esp. in baking.

all-star (ôl′stär′) *adj.* Made up wholly of star performers. — *n. Sports.* One chosen for a team of star players.

all the same *adv.* Nevertheless: *I was ill but went all the same.*

all-time (ôl′tīm′) *adj.* Exceeding all others up to the present.

all told *adv.* Counting everything; in all.

al•lude (ə-lo͞od′) *intr.v.* **-lud•ed, -lud•ing, -ludes.** To make an indirect reference. [Lat. *allūdere*, to play with : *ad-*, ad- + *lūdere*, to play (< *lūdus*, game; see **leid-***).]

Usage Note: *Allude* and *allusion* are often used where the more general terms *refer* and *reference* would be preferable. *Allude* and *allusion* apply to indirect references in which the source is not specifically identified: *"Well, we'll always have Paris," he told the travel agent, in an allusion to* Casablanca. *Refer* and *reference,* unless qualified, usually imply specific mention of a source: *I will refer to* Hamlet *for my conclusion: As Polonius says, "Though this be madness, yet there is method in't."* See Usage Note at **refer.**

al•lure (ə-lo͝or′) *v.* **-lured, -lur•ing, -lures.** — *tr.* To attract with something desirable; entice: *Promises allure the unwary.* — *intr.* To be highly, often subtly attractive. — *n.* The power to attract; enticement. [ME *aluren* < OFr. *alurer*: *a-*, to (< Lat. *ad-*; see AD-) + *loirre*, bait (of Gmc. orig.).] — **al•lure′ment** *n.* — **al•lur′er** *n.* — **al•lur′ing•ly** *adv.*

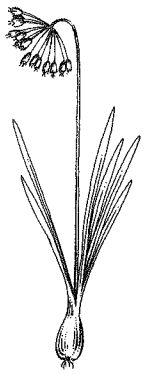
al•lu•sion (ə-lo͞o′zhən) *n.* **1.** The act of alluding; indirect reference: *The candidate criticized them by allusion.* **2.** An instance of indirect reference. See Usage Note at **allude.** [LLat. *allūsiō, allūsiōn-*, a playing with < Lat. *allūsus*, p.part. of *allūdere*, to play with. See ALLUDE.]

al•lu•sive (ə-lo͞o′sĭv) *adj.* Characterized by indirect references. — **al•lu′sive•ly** *adv.* — **al•lu′sive•ness** *n.*

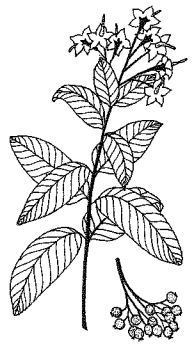
al•lu•vi•al (ə-lo͞o′vē-əl) *adj.* Of, relating to, or found in alluvium: *alluvial soil; alluvial gold.*

alluvial fan *n.* A fan-shaped accumulation of alluvium deposited at the mouth of a ravine or at the juncture of a tributary stream with the main stream.

al•lu•vi•on (ə-lo͞o′vē-ən) *n.* **1.** See **alluvium. 2.** The flow of water against a shore or bank. **3.** Inundation by water; flood. **4.** *Law.* The increasing of land area along a shore by deposited alluvium or water recession. [Lat. *alluviō, alluviōn-* < *alluere*, to wash against : *ad-*, ad- + *-luere*, to wash; see **leu(ə)-***.]



allium
Nodding wild onion
Allium cernuum



allspice
Pimenta dioica

ă	pat	oi	boy
ā	pay	ou	out
âr	care	o͝o	took
ä	father	o͞o	boot
ĕ	pet	ŭ	cut
ē	be	ûr	urge
ĭ	pit	th	thin
ī	pie	*th*	this
îr	pier	hw	which
ŏ	pot	zh	vision
ō	toe	ə	about,
ô	paw		item

Stress marks:
′ (primary);
ˌ (secondary), as in **dictionary** (dĭk′shə-nĕrˌē)

Black's Law Dictionary (7th ed. 1999), allowance

ALLOWANCE

Bryan A. Garner, Editor in Chief

Preface | Guide | Legal Maxims

allowance **1.** A share or portion, esp. of money that is assigned or granted.

- ***backhaul allowance*** A price discount given to customers who get their goods from a seller's warehouse as a reflection of the seller's freight-cost savings.

- ***family allowance*** A portion of a decedent's estate set aside by statute for a surviving spouse, children, or parents, regardless of any testamentary disposition or competing claims.

- ***gratuitous allowance*** A pension voluntarily granted by a public entity. • The gratuitous (rather than contractual) nature of this type of allowance gives the pensioner no vested rights in the allowance.

- ***spousal allowance*** A portion of a decedent's estate set aside by statute for a surviving spouse, regardless of any testamentary disposition or competing claims. • This allowance is superior to the claims of general creditors. In some states, it is even preferred to the expenses of administration, funeral, and last illness of the spouse. — Also termed *widow's allowance*; *widower's allowance*.

2. The sum awarded by a court to a fiduciary as payment for services. **3.** A deduction.

- ***depletion allowance*** A tax deduction for the owners of oil, gas, mineral, or timber resources corresponding to the reduced value of the property resulting from the removal of the resource.

E e

e[1] or **E** (ē) *n., pl.* **e's** or **E's. 1.** The fifth letter of the modern English alphabet. **2.** Any of the speech sounds represented by the letter *e*. **3.** The fifth in a series. **4.** *Mus.* **a.** The third tone in the scale of C major or the fifth tone in the relative minor scale. **b.** A key or scale in which E is the tonic. **5. E. a.** A grade that indicates below average work or failing status. **b.** A grade that indicates excellence in achievement or quality. **6. e.** *Math.* The base of the natural system of logarithms, having a numerical value of approx. 2.7183.

e[2] *abbr.* **1.** Electron. **2.** Or **e.** *Baseball.* Error.

E *abbr.* **1.** Or **E.** also **e** or **e.** East. **2.** Or **E.** English.

e. or **E.** *abbr.* Engineer; engineering.

E. *abbr.* Earl.

ea. *abbr.* Each.

each (ēch) *adj.* Being one of two or more considered individually; every: *Each person voted.* — *pron.* Every one of a group considered individually; each one. — *adv.* For or to each one; apiece. [ME *ech* < OE *ǣlc.* See **līk-***.]

Usage Note: The traditional rule holds that when the subject of a sentence begins with *each,* it is grammatically singular, and the verb and following pronouns must be singular as well: *Each of the suites has its own bath.* When *each* follows a plural subject, however, the verb and subsequent pronouns remain in the plural: *The suites each have their own baths.* See Usage Notes at **every, he**[1].

each other *pron.* Each the other. Used to indicate that a relationship or an action is reciprocal: *The boys like each other.*

Eads (ēdz), **James Buchanan.** 1820–87. Amer. engineer who bridged the Mississippi R. at St. Louis (1874).

Ea•gan (ē′gən). A city of E MN, a suburb of Minneapolis–St. Paul. Pop. 47,409.

ea•ger[1] (ē′gər) *adj.* **-ger•er, -ger•est. 1.** Having or exhibiting keen interest, intense desire, or impatient expectancy. See Usage Note at **anxious. 2.** *Obsolete.* Tart; sharp; cutting. [ME *eger,* sour, sharp, impetuous < AN *egre* < Lat. *ācer.* See **ak-***.] — **ea′ger•ly** *adv.* — **ea′ger•ness** *n.*

ea•ger[2] (ē′gər, ā′-) *n.* Var. of **eagre.**

eager beaver *n. Informal.* One that is exceptionally industrious or zealous. — **ea′ger-bea′ver** (ē′gər-bē′vər) *adj.*

ea•gle (ē′gəl) *n.* **1.** Any of various large birds of prey of the family Accipitridae, characterized by a hooked bill, keen vision, and long broad wings. **2.** A representation of an eagle used as an emblem or insignia. **3.** A gold coin formerly used in the United States, stamped with an eagle on the reverse side and worth ten dollars. **4.** *Sports.* A golf score of two strokes under par on a hole. — *v.* **-gled, -gling, -gles.** — *tr.* To shoot (a hole in golf) in two strokes under par. — *intr.* To score an eagle in golf. [ME *egle* < AN < OProv. *aigla* < Lat. *aquila.*]

ea•gle-eyed (ē′gəl-īd′) *adj.* **1.** Having keen eyesight. **2.** Showing close attention to detail; perceptive.

Ea•gle Pass (ē′gəl). A city of SW TX on the Rio Grande WSW of San Antonio. Pop. 20,651.

eagle ray *n.* Any of numerous rays of the family Myliobatidae, having massive jaws and winglike pectoral fins.

Eagle Scout *n.* One holding the highest rank in the Boy Scouts.

ea•glet (ē′glĭt) *n.* A young eagle.

ea•gre also **ea•ger** (ē′gər, ā′gər) *n.* See **bore**[3]. [?]

Ea•kins (ā′kĭnz), **Thomas.** 1844–1916. Amer. painter whose works include *Max Schmitt in a Single Scull* (1871).

eal•dor•man (ôl′dər-mən) *n.* The chief magistrate of a district in Anglo-Saxon England. [OE. See ALDERMAN.]

Eames (ēmz), **Charles.** 1907–78. Amer. designer noted for his chairs made of aluminum tubing and molded plywood.

Eames chair A trademark for a functional chair with seat and back shaped to the contours of the human body.

ear[1] (ĭr) *n.* **1.** *Anat.* **a.** The vertebrate organ of hearing, which maintains equilibrium as well as senses sound. **b.** The part of this organ that is externally visible. **2.** An invertebrate organ analogous to the mammalian ear. **3.** The sense of hearing. **4.** Sensitivity or receptiveness to sound, esp.: **a.** Sharpness or refinement of hearing: *a good ear for harmony.* **b.** The ability to retain and reproduce a passage of music: *plays the piano by ear.* **c.** Responsiveness to the sounds or forms of spoken language. **5.** Sympathetic or favorable attention. **6.** Something resembling the external ear in position or shape, esp.: **a.** A flexible tuft of feathers located above the eyes of certain birds that functions only in visual communication. **b.** A projecting handle, as on a vase. **7.** A small box in the upper corner of the page in a newspaper or periodical that contains a printed notice. **8. ears.** *Informal.* Headphones. — ***idioms.*** **all ears.** *Informal.* Acutely attentive. **give** (or **lend**) **an ear.** To pay close attention; listen attentively. **have** (or **keep**) **an ear to the ground.** To be on the watch for new trends or information. **in one ear and out the other.** Without any influence or effect; unheeded. **on its** (or **someone's**) **ear.** In a state of amazement, excitement, or uproar. **play it by ear.** *Informal.* To act according to the circumstances; improvise. [ME *ere* < OE *ēare.* See **ous-***.]

ear[2] (ĭr) *n.* The seed-bearing spike of a cereal plant, such as corn. — *intr.v.* **eared, ear•ing, ears.** To form or grow ears. [ME *ere* < OE *ēar.* See **ak-***.]

ear•ache (ĭr′āk′) *n.* Pain in the ear; otalgia.

ear•bob (ĭr′bŏb′) *n. Chiefly Southern U.S.* See **earring.**

ear canal *n.* The narrow tubelike passage through which sound enters the ear.

ear•drop (ĭr′drŏp′) *n.* **1.** An earring, esp. one with a pendant. **2. eardrops.** Liquid medicine administered into the ear.

ear•drum (ĭr′drŭm′) *n. Anat.* The thin oval-shaped membrane that separates the middle ear from the external ear.

eared (ĭrd) *adj.* **1.** Having ears or earlike projections. **2.** Having a specified kind or number of ears.

eared seal *n.* Any of various seals of the family Otariidae, which includes the fur seals, characterized by external ears, oarlike front flippers, and hind flippers for walking on land.

ear•flap (ĭr′flăp′) *n.* A flap on a cap that may be turned down to cover the ears.

ear•ful (ĭr′fo͝ol′) *n.* **1.** An abundant or excessive amount of something heard. **2.** Gossip, esp. of an intimate or scandalous nature. **3.** A scolding or reprimand.

Ear•hart (âr′härt′), **Amelia.** 1897?–1937. Amer. aviator who was the first woman to fly solo across the Atlantic Ocean (1932). She crashed and disappeared in the Pacific Ocean while attempting to fly around the world.

ear•ing (ĭr′ĭng) *n. Naut.* A short line attaching an upper corner of a sail to the yard. [Perh. < EAR[1].]

earl (ûrl) *n.* **1.** A British nobleman next in rank above a viscount and below a marquis. **2.** Used as a title for such a nobleman. [ME *erl,* nobleman of high rank < OE *eorl.*]

ear•lap (ĭr′lăp′) *n.* See **earflap.**

earl•dom (ûrl′dəm) *n.* The rank, title, or territory of an earl.

ear•less seal (ĭr′lĭs) *n.* Any of various seals of the family Phocidae, marked by short fore flippers, reduced hind flippers for swimming, and the absence of external ears.

ear•lobe also **ear lobe** (ĭr′lōb′) *n.* The soft, fleshy, pendulous lower part of the external ear.

ear•ly (ûr′lē) *adj.* **-li•er, -li•est. 1.** Of or occurring near the beginning of a given series, period of time, or course of events. **2.a.** Of or belonging to a previous or remote period of time. **b.** Of or belonging to an initial stage of development. **3.** Occurring, developing, or appearing before the expected or usual time. **4.** Maturing or developing relatively soon. **5.** Occurring in the near future. — *adv.* **-lier, -liest. 1.** Near the beginning of a given series, period of time, or course of events. **2.** At or during a remote or initial period. **3.** Before the expected or usual time: *arrived early.* **4.** Soon in relation to others of its kind. [ME *erli* < OE *ærlīce* : *ær,* before; see **ayer-*** + *-lice,* adv. suff.; see **-LY**[2].] — **ear′li•ness** *n.*

Ear•ly (ûr′lē), **Jubal Anderson.** 1816–94. Amer. Confederate general whose forces threatened Washington DC (1864) but were ultimately defeated by Union troops.

early bird *n. Informal.* **1.** A person who arises early in the morning. **2.** One that arrives or takes place early or before others. — **ear′ly-bird′** (ûr′lē-bûrd′) *adj.*

early on *adv.* At an early stage or point.

ear•mark (ĭr′märk′) *n.* **1.** An identifying feature or characteristic. **2.** An identifying mark on the ear of a domestic animal. — *tr.v.* **-marked, -mark•ing, -marks. 1.** To reserve or set aside for a particular purpose. See Syns at **allocate. 2.** To place an identifying or distinctive mark on. **3.** To mark the ear of (a domestic animal) for identification.

ear•muff (ĭr′mŭf′) *n.* Either of a pair of ear coverings often attached to a headband and worn to protect the ears.

earn[1] (ûrn) *tr.v.* **earned, earn•ing, earns. 1.** To gain esp. for the performance of service, labor, or work. **2.** To acquire or deserve as a result of effort or action. **3.** To yield as return or profit. — ***idiom.*** **earn (one's) spurs.** To gain a position through hard work, often in the face of difficulties. [ME *ernen* < OE *earnian.*] — **earn′er** *n.*

Syns: *earn, deserve, merit, rate, win.* The central meaning shared by these verbs is "to gain as a result of one's behavior or effort": *earns a large salary; deserves our congratulations; a suggestion that merits consideration; an event that rates a mention in the news; a candidate who won wide support.*

earn[2] (ûrn) *intr.v.* **earned, earn•ing, earns.** *Obsolete.* To yearn. [ME *ernen,* var. of *yernen.* See YEARN.]

earned run (ûrnd) *n. Baseball.* A run scored without the aid of an error, used in computing earned run averages.

earned run average *n. Baseball.* A measure of a pitcher's performance obtained by dividing the total of earned runs by the total of innings pitched and multiplying by nine.

ear•nest[1] (ûr′nĭst) *adj.* **1.** Marked by or showing deep sincerity or seriousness: *an earnest gesture of goodwill.* **2.** Of important or weighty nature; grave. See Syns at **ser** — ***idiom.*** **in earnest. 1.** With a purposeful or sincere in *study in earnest.* **2.** Serious; determined. [ME *ernest* < *eornoste.* See **er-1***.] — **ear′nest•ly** *adv.* — **ear′nest•ne**

ear•nest[2] (ûr′nĭst) *n.* **1.** Money paid in advance as part ment to bind a contract or bargain. **2.** A token of some to come; a promise or an assurance. [ME *ernest,* var. of alteration of OFr. *erres,* pl. of *erre,* pledge < Lat. *arra,* ation of *arrabō* < Gk. *arrabōn,* earnest-money < Heb *bōn* < *ʿārab,* to pledge.]

earn•ings (ûr′nĭngz) *pl.n.* **1.** Salary or wages. **2.a.** Bu profits. **b.** Gains from investments.

Earp (ûrp), **Wyatt.** 1848–1929. Amer. law officer invol the gunfight at the O.K. Corral in Tombstone AZ (18

ear•phone (ĭr′fōn′) *n.* A device that converts electric sig audible sound and fits over or in the ear.

ear•piece (ĭr′pēs′) *n.* **1.** A part, as of a hearing aid, th in or is held next to the ear. **2.** See **earphone. 3.** Either two parts of an eyeglasses frame that fit on the ear.

ear•plug (ĭr′plŭg′) *n.* **1.** An object made of a soft pliat terial and fitted into the ear canal to block the entry o or sound. **2.** An earphone, esp. one that fits into the

ear•ring (ĭr′rĭng, ĭr′ĭng) *n.* An ornament worn on or p from the ear, esp. the earlobe. Also called regionally

ear rot *n.* Any of various fungus diseases of corn chara by decay and molding of the ears.

ear sew•er (sō′ər) *n. Northern California.* See **dragon** Regional Note at **dragonfly.**

ear shell *n.* **1.** See **abalone. 2.** The shell of the abalor

ear•shot (ĭr′shŏt′) *n.* The range within which sound heard by the unaided ear; hearing distance.

ear•split•ting (ĭr′splĭt′ĭng) *adj.* Loud and shrill en hurt the ears.

earth (ûrth) *n.* **1.a.** The land surface of the world. **b.** Th friable part of land; soil, esp. productive soil. **2.** Ofte The third planet from the sun, having a sidereal p revolution about the sun of 365.26 days at a mean dis approx. 149 million kilometers (92.96 million miles average radius of 6,374 kilometers (3,959 miles). realm of mortal existence; the temporal world. **4.** Th inhabitants of the world. **5.a.** Worldly affairs and **b.** Everyday life; reality. **6.** The substance of the hum clay. **7.** The lair of a burrowing animal. **8.** *Chiefly* The ground of an electrical circuit. **9.** *Chem.* Any metallic oxides, such as alumina, that are difficult — *v.* **earthed, earth•ing, earths.** — *tr.* **1.** To cove (plants) with soil for protection. **2.** To chase (an ani an underground hiding place. — *intr.* To burrow the ground. Used of a hunted animal. — ***idiom.*** Among all the possibilities: *Why on earth did you*

erthe < OE *eorthe.* See **er-2***.]

earth•born (ûrth′bôrn′) *adj.* **1.** Springing from or bo earth. **2.** Human; mortal: *earthborn existence.*

earth•bound also **earth-bound** (ûrth′bound′) *adj.* **1.** in or to the soil. **2.a.** Attached or confined to the e earthly concerns. **b.** Unimaginative; ordinary.

earth•en (ûr′thən, *-thən*) *adj.* **1.** Made of earth o *earthen fortification; an earthen pot.* **2.** Earthly; w

earth•en•ware (ûr′thən-wâr′, *-thən-*) *n.* Pottery ma porous clay that is fired at relatively low temperat

earth•light (ûrth′līt′) *n.* See **earthshine.**

earth•ling (ûrth′lĭng) *n.* **1.** One, esp. a human b inhabits the planet Earth. **2.** A person devoted to

earth•ly (ûrth′lē) *adj.* **1.** Of, relating to, or chara this earth. **2.a.** Terrestrial; not heavenly or divine. **3.** Conceivable; possible. — **earth′li•ness** *n.*

earth•man (ûrth′măn′) *n.* A human inhabitant of Earth; an earthling.

earth mother *n.* **1.** A goddess or female spirit repre earth as the giver of life. **2.** A woman combining m sensual qualities.

earth•mov•er (ûrth′mōō′vər) *n.* A machine, such hoe, used for digging or pushing earth. — **earth′m**

earth•nut (ûrth′nŭt′) *n.* **1.a.** A Eurasian and north plant *(Conopodium denudatum)* having tuberou are edible when roasted. **b.** The tuber of this plan various other similar plants, such as the peanut.

earth•quake (ûrth′kwāk′) *n.* A sudden moven earth's crust caused by the release of stress accum geologic faults or by volcanic activity.

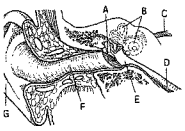
earth•rise (ûrth′rīz′) *n.* The rising of the earth al rizon as seen from the moon.

earth science *n.* Any of several sciences concern origin, structure, and physical phenomena of th

earth•shak•ing (ûrth′shā′kĭng) *adj.* Very impor

earth•shine (ûrth′shīn′) *n.* The sunlight reflect earth's surface that illuminates part of the moo

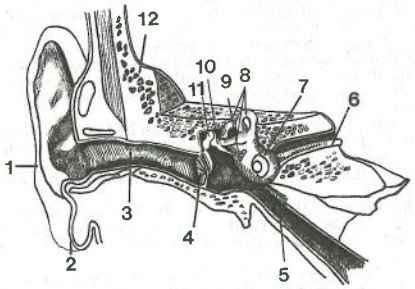
earth smoke *n. Bot.* See **fumitory.**



ear
A. Eardrum
B. Inner ear
C. Auditory nerve
D. Eustachian tube
E. Middle ear
F. Ear canal
G. Auricle

Amelia Earhart

in shape or position: as **a :** a projecting part (as a lug or handle) **b :** either of a pair of tufts of lengthened feathers on the head of some birds **5 a :** sympathetic attention **b :** ATTENTION, AWARENESS **6 :** a space in the upper corner of the front page of a periodical (as a newspaper) usu. containing advertising for the periodical itself or a weather forecast — **by ear :** without reference to or memorization of written music : EXTEMPORANEOUSLY — **in one ear and out the other :** through one's mind without making an impression ⟨everything you say to him goes *in one ear and out the other*⟩ — **on one's ear :** in or into a state of irritation, shock, or discord ⟨his insults really put me *on my ear*⟩ ⟨he set the racing world *on its ear* by breaking 50 world records⟩ — **up to one's ears :** deeply involved : heavily implicated ⟨*up to his ears* in the conspiracy⟩



ear 1a: *1* pinna, *2* lobe, *3* auditory meatus, *4* tympanic membrane, *5* eustachian tube, *6* auditory nerve, *7* cochlea, *8* semicircular canals, *9* stapes, *10* incus, *11* malleus, *12* bones of skull

²ear *n* [ME *er*, fr. OE *ēar*; akin to OHG *ahir* ear, OE *ecg* edge — more at EDGE] (bef. 12c) **:** the fruiting spike of a cereal (as Indian corn) including both the seeds and protective structures

³ear *vi* (14c) **:** to form ears in the course of growing — often used with *up* ⟨the rye should be *~ing* up⟩

ear·ache \'i(ə)r-ˌāk\ *n* (1789) **:** an ache or pain in the ear

ear·drop \-ˌdräp\ *n* (1720) **:** EARRING; *esp* **:** one with a pendant

ear·drum \-ˌdrəm\ *n* (1645) **:** TYMPANIC MEMBRANE

eared \'i(ə)rd\ *adj* (14c) **:** having ears esp. of a specified kind or number ⟨a big-*eared* man⟩ ⟨golden-*eared* corn⟩

eared seal *n* (1883) **:** any of a family (Otariidae) of seals including the sea lions and fur seals and having independent mobile hind limbs and small well-developed external ears — compare HAIR SEAL

ear·flap \'i(ə)r-ˌflap\ *n* (1907) **:** a warm covering for the ears; *esp* **:** an extension on the lower edge of a cap that may be folded up or down

ear·ful \'i(ə)r-ˌfůl\ *n* (1916) **1 :** an outpouring of news or gossip **2 :** a sharp reprimand

ear·ing \'i(ə)r-iŋ\ *n* [perh. fr. ¹*ear*] (1626) **:** a line used to fasten a corner of a sail to the yard or gaff or to haul a reef cringle to the yard

earl \'ər(-ə)l\ *n* [ME *erl*, fr. OE *eorl* warrior, nobleman; akin to ON *jarl* warrior, nobleman] (bef. 12c) **:** a member of the British peerage ranking below a marquess and above a viscount — **earl·dom** \-dəm\ *n*

earlier on *adv* (1934) **:** BEFORE ⟨discussed the matter *earlier on*⟩

earl marshal *n* (13c) **:** an officer of state in England serving chiefly as a royal attendant on ceremonial occasions, as marshal of state processions, and as head of the College of Arms

ear·lobe \'i(ə)r-ˌlōb\ *n* (1859) **:** the pendent part of the ear of man or some fowls

ear·lock \-ˌläk\ *n* (1775) **:** a curl of hair hanging in front of the ear

¹ear·ly \'ər-lē\ *adv* **ear·li·er; -est** [ME *erly*, fr. OE *ærlice*, fr. *ær* early, soon — more at ERE] (bef. 12c) **1 a :** near the beginning of a period of time ⟨awoke *~* in the morning⟩ **b :** near the beginning of a course, process, or series ⟨*~* in his senatorial career⟩ **2 a :** before the usual time **b** *archaic* **:** SOON **c :** sooner than related forms ⟨these apples bear *~*⟩

²early *adj* **ear·li·er; -est** (13c) **1 a :** of, relating to, or occurring near the beginning of a period of time, a development, or a series **b** (1) **:** distant in past time (2) **:** PRIMITIVE **2 a :** occurring before the usual time **b :** occurring in the near future **c :** maturing or producing sooner than related forms ⟨an *~* peach⟩ — **ear·li·ness** *n*

Early American *n* (1895) **:** a style of furniture, architecture, or fabric originating in or characteristic of colonial America

early bird *n* [fr. the proverb, "the early bird catches the worm"] (ca. 1890) **1 :** an early riser **2 :** one that arrives early and esp. before possible competitors

early on *adv* (1928) **:** at or during an early point or stage ⟨the reasons were obvious *early on* in the experiment⟩

usage This adverb is sometimes objected to in American writing as an obtrusive Briticism. It is a relative newcomer to the language, having arisen in British English around 1928. It seems to have filled a need, however. It came into frequent use in American English in the late 1960s and is now well established on both sides of the Atlantic.

ear·ly-wood \'ər-lē-ˌwůd\ *n* (ca. 1914) **:** SPRINGWOOD

¹ear·mark \'i(ə)r-ˌmärk\ *n* (15c) **1 :** a mark of identification on the ear of an animal **2 :** a distinguishing mark ⟨all the *~s* of poverty⟩

²earmark *vt* (1591) **1 a :** to mark (livestock) with an earmark **b :** to mark in a distinguishing manner ⟨dissipation *~s* a man⟩ **2 :** to designate (as funds) for a specific use or owner

ear·muff \'i(ə)r-ˌməf\ *n* (1859) **:** one of a pair of ear coverings connected by a flexible band and worn as protection against cold or noises

¹earn \'ərn\ *vt* [ME *ernen*, fr. OE *earnian*] (bef. 12c) **1 a :** to receive as return for effort and esp. for work done or services rendered **b :** to bring in by way of return ⟨bonds *~ing* 10% interest⟩ **2 a :** to come to be duly worthy of or entitled or suited to ⟨he had *~ed* a promotion by his devotion to duty⟩ ⟨she *~ed* her master's degree⟩ **b :** to make worthy of or obtain for ⟨his devotion to duty had *~ed* him a promotion⟩ — **earn·er** *n*

²earn *vi* [prob. alter. of *yearn*] *obs* (1599) **:** GRIEVE

earned run *n* (1886) **:** a run in baseball that scores without benefit of an error before the fielding team has had a chance to make the third putout of the inning

earned run average *n* (1947) **:** the average number of earned runs per game scored against a pitcher in baseball determined by dividing the total of earned runs scored against him by the total number of innings pitched and multiplying by nine

¹ear·nest \'ər-nəst\ *n* [ME *ernest*, fr. OE *eornost*; akin to OHG *ernust* earnest] (bef. 12c) **:** a serious and intent mental state ⟨in *~*⟩

²earnest *adj* (bef. 12c) **1 :** characterized by or proceeding from an intense and serious state of mind **2 :** GRAVE, IMPORTANT ***syn*** see SERIOUS — **ear·nest·ly** *adv* — **ear·nest·ness** \-nəs(t)-nəs\ *n*

³earnest *n* [ME *ernes, ernest*, fr. OF *erres*, pl. of *erre* earnest, fr. L *arra*, short for *arrabo*, fr. Gk *arrhabōn*, fr. Heb *ʿērābhōn*] (13c) **1 :** something of value given by a buyer to a seller to bind a bargain **2 :** a token of what is to come **:** PLEDGE

earn·ings \'ər-niŋz\ *n pl* (1675) **1 :** something (as wages) earned **2 :** the balance of revenue after deduction of costs and expenses

ear·phone \'i(ə)r-ˌfōn\ *n* (1924) **:** a device that converts electrical energy into sound waves and is worn over or inserted into the ear

ear pick *n* (14c) **:** a device often of precious metal for removing wax or foreign bodies from the ear

ear·piece \'i(ə)r-ˌpēs\ *n* (ca. 1843) **1 :** a part of an instrument (as a stethoscope or hearing aid) to which the ear is applied; *esp* **:** EARPHONE **2 :** one of the two sidepieces that support eyeglasses by passing over or behind the ears

ear·plug \-ˌpləg\ *n* (1904) **:** a device of pliable material for insertion into the outer opening of the ear (as to keep out water or deaden sound)

ear·ring \'i(ə)r-(ˌ)iŋ, -ˌriŋ\ *n* (bef. 12c) **:** an ornament for the earlobe

ear rot *n* (1926) **:** a condition of Indian corn that is characterized by molding and decay of the ears and that is caused by fungi (genera *Diplodia, Fusarium*, or *Gibberella*)

ear shell *n* (ca. 1859) **:** ABALONE

ear·shot \'i(ə)r-ˌshät\ *n* (1607) **:** the range within which the unaided voice may be heard

ear·split·ting \-ˌsplit-iŋ\ *adj* (1884) **:** distressingly loud or shrill ***syn*** see LOUD

¹earth \'ərth\ *n* [ME *erthe*, fr. OE *eorthe*; akin to OHG *erda* earth, Gk *era*] (bef. 12c) **1 :** the fragmental material composing part of the surface of the globe; *esp* **:** cultivable soil **2 :** the sphere of mortal life as distinguished from spheres of spirit life — compare HEAVEN, HELL **3 a :** areas of land as distinguished from sea and air **b :** the solid footing formed of soil **:** GROUND **4** *often cap* **:** the planet on which we live that is third in order from the sun — see PLANET table **5 a :** the people of the planet Earth **b :** the mortal body of man **c :** the pursuits, interests, and pleasures of earthly life as distinguished from spiritual concerns **6 :** the lair of a burrowing animal **7 :** a difficultly reducible metallic oxide (as alumina) formerly classed as an element — **earth·like** \-ˌlīk\ *adj* — **on earth :** among many possibilities — used as an intensive

²earth *vt* (1575) **1 :** to drive to hiding in the earth **2 :** to draw soil about (plants) **3** *chiefly Brit* **:** GROUND 3 **~** *vi, of a hunted animal*: to hide in the ground

earth·born \'ərth-ˌbȯ(ə)rn\ *adj* (1667) **1 :** born on this earth **:** MORTAL **2 :** associated with earthly life ⟨*~* cares⟩

earth·bound \-ˌbaůnd\ *adj* (1605) **1 a :** fast in or to the soil ⟨*~* roots⟩ **b :** restricted to land or to the surface of the earth **2 a :** bound by earthly interests **b :** PEDESTRIAN, UNIMAGINATIVE

earth·en \'ər-thən, -thən\ *adj* (13c) **1 :** made of earth **2 :** EARTHLY

earth·en·ware \-ˌwa(ə)r, -ˌwe(ə)r\ *n* (1673) **:** ceramic ware made of slightly porous opaque clay fired at low heat

earth·i·ly \'ər-thə-lē, -thə-\ *adv* (1953) **:** in an earthy manner

earth·light \'ərth-ˌlīt\ *n* (1833) **:** EARTHSHINE

earth·ling \'ərth-liŋ\ *n* (1593) **1 :** an inhabitant of the earth **2 :** WORLDLING

earth·ly \'ərth-lē\ *adj* (bef. 12c) **1 a :** characteristic of or belonging to this earth **b :** relating to man's actual life on this earth **2 :** POSSIBLE ⟨there is no *~* reason for such behavior⟩ — **earth·li·ness** *n*

syn EARTHLY, MUNDANE, WORLDLY mean belonging to or characteristic of the earth. EARTHLY often implies a contrast with what is heavenly or spiritual ⟨*earthly* love⟩ WORLDLY and MUNDANE both imply a relation to the immediate concerns and activities of human beings, WORLDLY suggesting tangible personal gain or gratification ⟨*worldly* goods⟩ and MUNDANE suggesting reference to the immediate and practical ⟨a *mundane* discussion of finances⟩

earth mother *n, often cap E & M* (1902) **1 :** the earth viewed (as in primitive theology) as the divine source of terrestrial life **2 :** the female principle of fertility

earth·quake \'ərth-ˌkwāk\ *n* (13c) **1 :** a shaking or trembling of the earth that is volcanic or tectonic in origin **2 :** UPHEAVAL 2

earth·rise \'ərth-ˌrīz\ *n* (1968) **:** the rising of the earth above the horizon of the moon as seen from lunar orbit

earth science *n* (1939) **:** any of the sciences (as geology, meteorology, oceanography) that deal with the earth or with one or more of its parts

earth-shak·er \'ərth-ˌshā-kər\ *n* (1953) **:** one that is earthshaking

earth-shak·ing \-kiŋ\ *adj* (1948) **:** of fundamental importance — **earth-shak·ing·ly** \-kiŋ-lē\ *adv*

earth–shat·ter·ing \'ərth-'shat-ə-riŋ\ *adj* (1970) **:** EARTHSHAKING

earth·shine \'ərth-ˌshīn\ *n* (1876) **:** sunlight reflected by the earth that illuminates the dark part of the moon — called also *earthlight*

earth·star \-ˌstär\ *n* (1885) **:** a globose fungus (genus *Geastrum*) with a double wall whose outer layer splits into the shape of a star

earth tone *n* (1974) **:** any of various rich dark colors containing some brown

earth·ward \-wərd\ *or* **earth·wards** \-wərdz\ *adv* (14c) **:** toward the earth

earth·work \'ərth-ˌwərk\ *n* (1633) **1 :** an embankment or other construction made of earth; *esp* **:** one used as a field fortification **2 :** the operations connected with excavations and embankments of earth **3 :** a work of art consisting of a portion of land (as a field or hill) that has been modified by the artist

No. 62P23

IN THE NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
IN THE BUSINESS COURT

* *

PHILIP MORRIS USA, INC.,
Petitioner,

Wake County
21 CVS 16006

versus

NORTH CAROLINA DEPARTMENT OF REVENUE,
Respondent.

* *

TRANSCRIPT, Volume 1 of 1

(Pages: 1 through 81)

Thursday, August 4, 2022

* *

August 4, 2022, Special Session
The Honorable Julianna Theall Earp
Special Superior Court Judge Presiding

Hearing on Petition for Judicial Review

APPEARANCES:

Kay Miller Hobart, Esq.
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on behalf of the Petitioner

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There was discussion about the special session before it was announced by the governor on the 8th, and Senator Kerr, whose district includes tobacco growers in east -- eastern Carolina, said about the special session, "I personally want to get some commitments about buying domestic tobacco," calling it a "must." And then Governor Easley issued the proclamation on December 8th, was very clearly designated as a special session on economic incentives.

As I said, House and Senate convened at four o'clock. And it is important to understand there were two -- there were two bills introduced at -- relevant to our purposes. There were, you know, others, but House Bill 2 and Senate Bill 4. And it's important to remember that the vehicle through which the legislation was ultimately enacted was House Bill 2. And I so I want to walk through how House Bill 2 traveled through the two chambers.

As introduced, House Bill 2 extended the sunset, but it made no other changes to the statute. The bill was referred to House Finance, and in House Finance, the committee made a number of amendments relevant to the statute that we have under consideration today. The ports requirement was added by Representative McComas, who happens to hail from Wilmington, and the -- the base year was changed from 1998 to 2003. The base-year change was

important to the industry because, as I mentioned, tobacco consumption was declining, and therefore, the 2003 base year was very favorable, because you were starting with a lower number, if you will. Those were the two changes in House Finance.

The bill then went to House Appropriations, and then back to the full House for a vote on the bill, House Bill 2 as amended. The full House voted on the bill at 9:51 p.m. that evening. At 10:22 p.m., House Bill 2 as approved by the House was sent over to the Senate for its consideration.

At this point in time, the language in dispute had not made an appearance. So it's about 10:30 at night, and the language in question has not been considered, debated, discussed. It was during the Senate's consideration of House Bill 2 that Senator Kerr introduced Senate Amendment Number 1. And what Senator Kerr's amendment did was to allow a successor in business to claim the credit. And that's where the six-million-dollar language first appears, in connection with that amendment.

Mr. Sands and Mr. Rainey were in the Senate when they debated. Senator Kerr's amendment, there was no discussion of the six million dollars. Instead, Senator Kerr explained rather colorfully that to satisfy the ports requirement, all a company would have to do would put one

carton of cigarettes in a rowboat and take that carton out of a port, and as long as that was done, any cigarettes exported qualified for the credit. The Senate approved the amendment just before midnight, at 11:58 p.m. Thus, at most, the Senate had less than an hour and a half to read, review, understand, consider, and approve the language in question.

At 12:40 in the morning, the Senate voted and approved House Bill 2, and sent Senate Amendment Number 1 to the House for its concurrence. The time frame for the House to consider this language was even more condensed. The House received the language in question no sooner than 12:40 in the morning, and concurred in the Senate amendment shortly before one a.m., at 12:59 a.m. Thus, the House had nineteen minutes, nineteen minutes, to read, review, reflect, discuss, debate, consider, and approve something the Department is saying was a drastic change from existing law. Simply does not make any sense, Your Honor. And as the Supreme Court explained in the *King* case, rushed legislation and a limited opportunity for debate and discussion are factors that can lead to inartful drafting.

And, Your Honor, given this context, given this timeline, we believe that that is the best and the only logical explanation for that language. It was -- it was adopted in connection with the "successor in business"

North Carolina Department of Revenue
Cigarette Export Credits

Processed during Calendar Year 2008

Taxpayer	Credits Taken ($)	Export Volume (mil cigarettes)
Philip Morris USA, Inc.	12,000,000	*
Total	**12,000,000**	

Source: Policy Analysis and Statistics Division, North Carolina Department of Revenue

Procedural Note: Amount for the taxpayer reflects credits taken in multiple years. Export volumes are those with respect to which credits were taken. Actual export volumes were well above those levels and resulted in the generation of credits above the $6 million cap. These excess credits are available to be taken in future years.

*** This taxpayer did not provide the required information.**