

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-168
HOUSE BILL 2744**

AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO ENHANCE CERTAIN SALES AND USE TAX BENEFITS.

The General Assembly of North Carolina enacts:

PART I. JDIG CHANGES

SECTION 1.1. G.S. 143B-437.51 reads as rewritten:

"§ 143B-437.51. Definitions.

The following definitions apply in this Part:

- (1) Agreement. – A community economic development agreement under G.S. 143B-437.57.
- (2) Base years period. – ~~The first 24 months following the date set by the Committee for performance to begin under the agreement period of time set by the Committee during which new employees are to be hired for the positions on which the grant is based.~~
- (3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.
- (4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.
- (5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base years ~~or in subsequent years of a grant period.~~
- (5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.
- (6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

- (7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide. ~~The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.~~
- (8) Overdue tax debt. – Defined in G.S. 105-243.1.
- (9) Related member. – Defined in G.S. 105-130.7A.
- (10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 1.2. G.S. 143B-437.52 reads as rewritten:

"§ 143B-437.52. Job Development Investment Grant Program.

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

- (1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.
- (2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.
- (3) The project is consistent with economic development goals for the State and for the area where it will be located.
- (4) A grant under this Part is necessary for the completion of the project in this State.
- (5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of agreements the Committee may enter into each calendar year is 25.

(c) Ceiling. – ~~The~~ Except as provided in this section, the maximum amount of total annual liability for grants for agreements entered into in any single calendar year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars (\$15,000,000). The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not

exceed thirty million dollars (\$30,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 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 agreement~~ 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 member of the business."

SECTION 1.3. G.S. 143B-437.53(b) reads as rewritten:

"(b) Ineligible Businesses. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or ~~club-club~~, other than a professional motorsports racing team, is not eligible for a grant under this Part."

SECTION 1.4. G.S. 143B-437.55 reads as rewritten:

"§ 143B-437.55. Applications; fees; reports; study.

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

- (1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
- (2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
- (3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
- (4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~ for the project and the salaries for these positions.

- (5) An estimate of the total withholdings.
- (6) Certification that the business will provide health insurance to ~~all~~ full-time employees of the ~~project~~project as required by G.S. 143B-437.53(c).
- (7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
- (8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
- (9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars (\$5,000). The fee is due at the time the application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

- (1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.
- (2) An update on the status of projects under agreements entered into before the preceding calendar year.
- (3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.
- (3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.
- (4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars (\$5,000).
- (5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.
- (6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.
- (7) The effectiveness of the program in recruiting new and expanding businesses.
- (8) The environmental impact of businesses that have received grants under the program.
- (9) The geographic distribution of grants, by number and amount, awarded under the program.
- (10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.
- (11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.
- ~~(12) The division and use of fees collected by the Committee under this section and under G.S. 143B-437.58.~~
- (13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development 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 grant expected to be made under the agreement during the current fiscal year.

(e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year."

SECTION 1.5. G.S. 143B-437.56 reads as rewritten:

"§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

- (1) The number of eligible positions to be created.
- (2) The expected duration of those positions.
- (3) The type of contribution the business can make to the long-term growth of the State's economy.
- (4) The amount of other financial assistance the project will receive from the State or local governments.
- (5) The total dollar investment the business is making in the project.
- (6) Whether the project utilizes existing infrastructure and resources in the community.
- (7) Whether the project is located in a development zone.
- (8) The number of eligible positions that would be filled by residents of a development zone.
- (9) The extent to which the project will mitigate unemployment in the State and locality.

(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. The number of years in the base period for which grant payments may be made shall not exceed five years.

(c) ~~The grant may be based only on eligible positions created during the base years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant period.~~

(d) ~~The percentage established in the agreement shall be reduced by one fourth for~~ For any eligible position that is located in an enterprise tier four or five area, area, seventy-five percent (75%) of the annual grant approved for disbursement shall be

payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the enterprise tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible ~~position~~-position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars (\$6,500) in any year."

SECTION 1.6. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

- (1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~-during the ~~base years and later years~~-period.
- (2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
- (3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
- (4) The amount of the grant based on a percentage of withholdings.
- (5) A method for determining the number of new employees hired during a grant year.
- (6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
- (7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
- (8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
- (9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.
- (10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.
- (11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the ~~base years~~-period.

- (12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.
- (13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.
- (14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.
- (15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.
- (16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.
- (17) A provision encouraging the business to hire North Carolina residents.
- (18) A provision encouraging the business to use the North Carolina State Ports.
- (19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.
- (20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).
- (21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
- (22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.
- (23) A provision stating that the amount of a grant associated with any specific eligible ~~position~~-position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars (\$6,500) in any year.

- (24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.
- (25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services."

SECTION 1.7. G.S. 143B-437.58 reads as rewritten:

"§ 143B-437.58. Grant recipient to submit records.

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are~~ have been created during the base years and the new eligible positions created during each subsequent preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax ~~information~~ information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars (\$1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds."

SECTION 1.8. G.S. 143B-437.59 reads as rewritten:

"§ 143B-437.59. Failure to comply with agreement.

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the ~~Committee amends~~ business fails to comply with the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years, ~~the Committee shall terminate the agreement years:~~

- (1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.
- (2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 1.9. G.S. 143B-437.60 reads as rewritten:

"§ 143B-437.60. Disbursement of grant.

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified ~~to the State Controller~~ that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify this information and certify to the State Controller that the terms of the agreement have been met. The Committee shall ~~further certify to the State Controller~~ the grant amount of a grant for which the business is eligible under the agreement and the grant amount of a grant for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The ~~State Controller~~Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee."

SECTION 1.10. G.S. 143B-437.61 reads as rewritten:

"§ 143B-437.61. Transfer to Industrial Development Fund.

At the time the ~~State Controller~~Department of Commerce remits a check to a business under G.S. 143B-437.60, the ~~State Controller~~Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d)."

SECTION 1.11. G.S. 143B-437.62 reads as rewritten:

"§ 143B-437.62. Expiration.

The authority of the Committee to enter into new agreements expires January 1, ~~2008,2010.~~"

SECTION 1.13. The Department of Commerce shall conduct a comprehensive, systematic study of the Job Development Investment Grant Program. The study shall be completed and submitted to the Chairs of the House of Representatives and Senate Finance Committees and the House of Representatives and Senate Appropriations Committees no later than February 1, 2007. The study shall include an examination of the following:

- (1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.
- (2) The costs of the program in relation to other State economic development incentive programs.
- (3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.
- (4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

SECTION 1.14. This part is effective when it becomes law.

PART II. BILL LEE ACT CHANGES

SECTION 2.1. G.S. 105-129.2A(a2) reads as rewritten:

"(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, ~~2006,2008,~~ this Article is repealed effective for business activities that occur on or after January 1, 2010."

SECTION 2.2. This part is effective when it becomes law.

PART III. SALES TAX REFUND CHANGES

SECTION 3.1. G.S. 105-164.14(j) reads as rewritten:

"(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 qualified 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. Building materials, building supplies, fixtures, and equipment are qualified if they are installed in the construction of the facility. Purchases for subsequent repair, renovation, or equipment replacement are not qualified.

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~~ all 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 the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in an enterprise tier one, two, or three area as defined in G.S. 105-129.3, the required amount is fifty million dollars (\$50,000,000). For all other facilities, the required amount is one hundred million dollars (\$100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. ~~In the case of a computer manufacturing facility,~~ For the purpose of this subsection, the term 'facility' has the same meaning as under G.S. 105-129.61.

c. If the facility is primarily engaged in financial services, securities operations, and related systems development, it satisfies all of the following conditions:

1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.

2. No part of it is leased to a third-party tenant that is not a related entity of the business.

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

a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.

b. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.

c. 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.

- d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.
- e. Reserved for future codification purposes.
- f. Financial services, securities operations, and related systems development. Financial services, securities operations, and related systems development means one or both of the following functions:
 - 1. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.
 - 2. Developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed and mainframe computing resources for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.
- g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
 - 1. Manufacturing complete automobiles and light-duty motor vehicles.
 - 2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
 - 3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

- h. Reserved for future codification purposes.
 - i. Reserved for future codification purposes.
 - j. 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.
 - k. Reserved for future codification purposes.
 - l. Reserved for future codification purposes.
 - m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components.
- (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.
- (5) Sunset. This subsection is repealed for sales made on or after January 1, ~~2010~~2013."

SECTION 3.2. The changes made to G.S. 105-164.14(j)(2)b. by Section 3.1 of this act become effective January 1, 2005, and apply to sales made on or after that date. The remainder of this part becomes effective July 1, 2006, and applies to purchases made on or after that date.

PART IV. INTERNET DATA CENTER TAX EXEMPTION CHANGES

SECTION 4.1. G.S. 105-164.3(8e), as enacted by S.L. 2006-66, reads as rewritten:

- "(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:
- a. The facility is used primarily or is to be used primarily by a business engaged in ~~Internet~~–"Internet service providers and Web search portals–portals" industry 51811, as defined by NAICS.
 - b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
 - c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area pursuant to G.S. 105-129.3, regardless of any subsequent change in county enterprise tier status.
 - d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 4.2. G.S. 105-164.13(55), as enacted by S.L. 2006-66, reads as rewritten:

- "(55) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:
- a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.
 - b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.
 - c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located

and used at an eligible Internet data center, then the exemption provided for ~~the such~~ eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet data center, then the exemption provided for ~~the such~~ electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 4.3. Section 24.17(c) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.17.(c)** ~~This Subsection (b) of this section~~ becomes effective October 1, 2006, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law."

SECTION 4.4. Section 4.2 of this part becomes effective October 1, 2006. The remainder of this part is effective when it becomes law.

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

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

s/ Michael F. Easley
Governor

Approved 3:24 p.m. this 27th day of July, 2006