

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-54
SENATE BILL 575**

AN ACT TO ENCOURAGE THE LOCATION AND EXPANSION OF CAPITAL INTENSIVE COMPANIES IN THIS STATE BY PROVIDING FOR APPORTIONMENT OF CORPORATE INCOME BASED SOLELY ON THE SALES FACTOR FOR COMPANIES THAT MEET CERTAIN INVESTMENT AND QUALITY JOBS CRITERIA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.4 is amended by adding a new subsection to read:

"(s1) All apportionable income of a qualified capital intensive corporation shall be apportioned by multiplying the income by the sales factor as determined under subsection (1) of this section. A 'qualified capital intensive corporation' is a corporation that satisfies all of the conditions of this subsection. A corporation that is subject to this subsection must list on its return the property, payroll, and sales factors it used in determining whether it is a qualified capital intensive corporation. If the corporation fails to invest one billion dollars (\$1,000,000,000) in private funds within nine years as required by subdivision (2) of this subsection, the benefit of this subsection expires and the corporation must apportion income as it would otherwise be required to do under this section absent this subsection. The conditions are:

- (1) The corporation's property factor as a percentage of the sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factor, exceeds seventy-five percent (75%) or the corporation's average property factor for the preceding three years as a percentage of the average sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factors, for the preceding three years exceeds seventy-five percent (75%).
- (2) The Secretary of Commerce makes a written determination that the corporation has invested or is expected to invest at least one billion dollars (\$1,000,000,000) in private funds to construct a facility in this State within nine years after the time that construction begins. For the purposes of this subsection, costs of construction include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.
- (3) The corporation maintains the average number of employees it has at the facility during the first two years after the facility is placed in service for the remainder of time in which the corporation must complete the investment required under subdivision (2) of this subsection.
- (4) The facility that satisfies the condition of subdivision (2) of this subsection is located in a county that was designated as a development tier one or two area at the time construction of the facility began.
- (5) The corporation satisfies a wage standard at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this



subdivision, the wage standard that must be satisfied is the one established under G.S. 105-129.83(c).

- (6) The corporation provides health insurance for all of its full-time employees at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, a company provides health insurance if it satisfies the provisions of G.S. 105-129.83(d)."

SECTION 2. G.S. 105-130.4(i) reads as rewritten:

"(i) All apportionable income of corporations other than public ~~utilities and excluded corporations~~ utilities, excluded corporations, and qualified capital intensive corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. ~~Provided, that where~~ If the sales factor does not exist, the denominator of the fraction ~~shall be~~ is the number of existing factors and ~~where if~~ if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction ~~shall be~~ is the number of existing factors plus one."

SECTION 3. G.S. 105-129.83 is amended by adding a new subsection to read:

"(m) Qualified Capital Intensive Corporations. – A corporation that is a qualified capital intensive corporation under G.S. 105-130.4(s1) is not eligible for any credit under this Article with respect to the facility that satisfies the condition of subdivision (2) of that subsection."

SECTION 4. A corporation that is a qualified capital intensive corporation under G.S. 105-130.4(s1) is not eligible for a grant under the Job Development Investment Grant Program established under Part 2G of Article 10 of Chapter 143B of the General Statutes or the One North Carolina Fund established under Part 2H of Article 10 of Chapter 143B of the General Statutes with respect to the facility that satisfies the condition of G.S. 105-130.4(s1)(2).

SECTION 5. The General Assembly encourages qualified capital intensive corporations that locate in this State to enter into a first source hiring agreement to utilize the State Employment Security Commission and any cooperating local agency as a first source for recruitment and referral of applicants for new and replacement employment associated with the applicable facility.

SECTION 6. This act is effective for taxable years beginning on or after January 1, 2010. If no corporation has qualified as a qualified capital intensive corporation under G.S. 105-130.4(s1) prior to January 1, 2019, then G.S. 105-130.4(s1) is repealed for taxable years beginning on or after January 1, 2019.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 8:56 a.m. this 3rd day of June, 2009