

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 1734
Committee Substitute Favorable 8/5/02
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Fourth Edition Engrossed 8/26/02
Senate Finance Committee Substitute Adopted 9/25/02**

Short Title: NC Economic Stimulus and Job Creation Act.

(Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AND MODIFY VARIOUS ECONOMIC INCENTIVE PROGRAMS FOR BUSINESS AND INDUSTRY; TO ESTABLISH A GRADUATED RATE STRUCTURE FOR THE CORPORATE INCOME TAX; TO AMEND PROVISIONS RELATING TO INDUSTRIAL AND POLLUTION CONTROL FACILITIES FINANCING; TO AUTHORIZE THE ISSUANCE OF SPECIAL OBLIGATION BONDS FOR STATE CONSTRUCTION PROJECTS; AND TO MAKE TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

TITLE I. BUSINESS AND ECONOMIC INCENTIVES

PART 1A. BILL LEE ACT

SECTION 1A.1. G.S. 105-129.9(a) and (c) read as rewritten:

"(a) General Credit. – If a taxpayer that has purchased or leased eligible machinery and equipment places them in service in this State during the taxable year, the taxpayer is allowed a credit equal to ~~seven percent (7%)~~ the applicable percentage of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment are eligible if they are capitalized by the taxpayer for tax purposes under the Code and not leased to another party. In addition, in the case of a large investment, machinery and equipment that are not capitalized by the taxpayer are eligible if the taxpayer leases them from another party. The credit may not be taken for the taxable year in which the machinery and equipment are placed in service but shall be taken in equal installments over the seven years following the taxable year in which they are placed in service. The applicable percentage is as follows:

1	<u>Area Enterprise Tier</u>	<u>Applicable Percentage</u>
2	<u>Tier One</u>	<u>7%</u>
3	<u>Tier Two</u>	<u>7%</u>
4	<u>Tier Three</u>	<u>6%</u>
5	<u>Tier Four</u>	<u>5%</u>
6	<u>Tier Five</u>	<u>4%</u>

7 ...

8 (c) Threshold. – The applicable threshold is the appropriate amount set out in the
 9 following table based on the enterprise tier where the eligible machinery and equipment
 10 are placed in service during the taxable year. If the taxpayer places eligible machinery
 11 and equipment in service at more than one establishment in an enterprise tier during the
 12 taxable year, the threshold applies separately to the eligible machinery and equipment
 13 placed in service at each establishment. If the taxpayer places eligible machinery and
 14 equipment in service at an establishment over the course of a two-year period, the
 15 applicable threshold for the second taxable year is reduced by the eligible investment
 16 amount for the previous taxable year.

17	Area Enterprise Tier	Threshold
18	Tier One	\$ -0-
19	Tier Two	100,000
20	Tier Three	200,000
21	Tier Four	500,000 1,000,000
22	Tier Five	1,000,000 2,000,000"

23 **SECTION 1A.2.** G.S. 105-129.4 is amended by adding a new subsection to
 24 read:

25 "(b6) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under
 26 this Article if, at the time the taxpayer claims an installment or carryforward of the
 27 credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax
 28 debt has not been satisfied or otherwise resolved."

29 **SECTION 1A.3.** G.S. 105-129.4(b) reads as rewritten:

30 "(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs ~~or the~~
 31 ~~credit for worker training in an enterprise tier three, four, or five area~~ if, for the calendar
 32 year the jobs are ~~created or the worker training is provided,~~ created, the average wage of
 33 the jobs for which the credit is claimed meets the wage standard and the average wage
 34 of all jobs at the location with respect to which the credit is claimed meets the wage
 35 standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer
 36 is eligible for the credit for investing in machinery and equipment, the credit for
 37 research and development, or the credit for investing in real property for a central office
 38 or aircraft facility, or the credit for substantial investment in other property facility in a
 39 tier three, four, or five area if, for the calendar year the taxpayer engages in the activity
 40 that qualifies for the credit, the average wage of all jobs at the location with respect to
 41 which the credit is claimed meets the wage standard. In making the wage calculation,
 42 the taxpayer must include any positions that were filled for at least 1,600 hours during
 43 the calendar year the taxpayer engages in the activity that qualifies for the credit even if
 44 those positions are not filled at the time the taxpayer claims the credit. For a taxpayer

1 with a taxable year other than a calendar year, the taxpayer must use the wage standard
2 for the calendar year in which the taxable year begins. No wage standard applies to
3 credits for activities in an enterprise tier one or two area.

4 Jobs meet the wage standard if they pay an average weekly wage that is at least
5 equal to ~~the applicable percentage times one hundred ten percent (110%)~~ of the
6 applicable average weekly wage for the county in which the jobs will be located, as
7 computed by the Secretary of Commerce from data compiled by the Employment
8 Security Commission for the most recent period for which data are available. ~~The~~
9 ~~applicable percentage for jobs located in an enterprise tier one area is one hundred~~
10 ~~percent (100%). The applicable percentage for all other jobs is one hundred ten percent~~
11 ~~(110%).~~ The applicable average weekly wage is the lowest of the following: (i) the
12 average wage for all insured private employers in the county, (ii) the average wage for
13 all insured private employers in the State, and (iii) the average wage for all insured
14 private employers in the county multiplied by the county income/wage adjustment
15 factor. The county income/wage adjustment factor is the county income/wage ratio
16 divided by the State income/wage ratio. The county income/wage ratio is average per
17 capita income in the county divided by the annualized average wage for all insured
18 private employers in the county. The State income/wage ratio is the average per capita
19 income in the State divided by the annualized average wage for all insured private
20 employers in the State. The Department of Commerce must annually publish the wage
21 standard for each county."

22 **SECTION 1A.4.** G.S 105-129.3A(c) reads as rewritten:

23 "(c) Relationship With Enterprise Tiers. – For the purpose of ~~the wage standard~~
24 ~~requirement of G.S. 105-129.4,~~ the credit for investing in machinery and equipment
25 allowed in G.S. ~~105-129.9,~~105-129.9 and the credit for worker training allowed in G.S.
26 105-129.11, a development zone is considered an enterprise tier one area. For the
27 purpose of the wage standard requirement of G.S. 105-129.4, the percentage used in
28 calculating the wage standard for an establishment located in a development zone in an
29 enterprise tier three, four, or five area is one hundred percent (100%). For all other
30 purposes, a development zone has the same enterprise tier designation as the county in
31 which it is located."

32 **SECTION 1A.5.** G.S. 105-129.3A is amended by adding a new subsection
33 to read:

34 "(d) Parcel of Property Partially in a Development Zone. – For the purposes of this
35 section, a parcel of property that is located partially within a development zone is
36 considered entirely within the development zone if all of the following conditions are
37 satisfied:

- 38 (1) At least fifty percent (50%) of the parcel is located within the
39 development zone.
- 40 (2) The parcel was in existence and under common ownership prior to the
41 most recent federal decennial census.
- 42 (3) The parcel is a portion of land made up of one or more tracts or tax
43 parcels of land that is surrounded by a continuous perimeter
44 boundary."

- 1 (3) The economic condition of the State is not static and recent changes in
2 the State's economic condition have created economic distress that
3 requires a reevaluation of certain existing State programs and the
4 enactment of a new program as provided in this Part that are designed
5 to stimulate new economic activity and to create new jobs within the
6 State.
- 7 (4) The enactment of this Part is necessary to stimulate the economy,
8 facilitate economic recovery, and create new jobs in North Carolina;
9 and this Part will promote the general welfare and confer, as its
10 primary purpose and effect, benefits on citizens throughout the State
11 through the creation of new jobs, an enlargement of the overall tax
12 base, an expansion and diversification of the State's industrial base,
13 and an increase in revenue to the State and its political subdivisions.
- 14 (5) The purpose of this Part is to stimulate economic activity and to create
15 new jobs within the State.
- 16 (6) It is not the intent of the General Assembly that grants provided
17 through this Part be used as venture capital funds, business incubator
18 funds, or business start-up funds or to otherwise fund the initial
19 capitalization needs of new businesses.
- 20 (7) Nothing in this Part shall be construed to constitute a guarantee or
21 assumption by the State of any debt of any business or to authorize the
22 taxing power or the full faith and credit of the State to be pledged.

23 **"§ 143B-437.45. Definitions.**

24 The following definitions apply in this Part:

- 25 (1) Agreement. – A community economic development agreement under
26 G.S. 143B-437.51.
- 27 (2) Base years. – The first two complete calendar years following the
28 effective date of an agreement.
- 29 (3) Business. – A corporation, sole proprietorship, cooperative association,
30 partnership, S corporation, limited liability company, nonprofit
31 corporation, or other form of business organization, located either
32 within or outside this State.
- 33 (4) Committee. – The Economic Investment Committee established
34 pursuant to G.S. 143B-437.48.
- 35 (5) Eligible position. – A position created by a business and filled by a
36 new full-time employee in this State during the base years or in
37 subsequent years of a grant.
- 38 (6) Full-time employee. – A person who is employed for consideration for
39 at least 35 hours a week, whose wages are subject to withholding
40 under Article 4A of Chapter 105 of the General Statutes, and who is
41 determined by the Committee to be employed in a permanent position
42 according to criteria it develops. The term does not include any person
43 who works as an independent contractor or on a consulting basis for
44 the business.

- 1 (7) New employee. – A full-time employee who represents a net increase
2 in the number of the business's employees statewide. The term
3 includes an employee who previously filled an eligible position who is
4 rehired or called back from a layoff that occurs during or following the
5 base years to a vacant position previously held by that employee or to
6 a new position established during or following the base years.
- 7 (8) Overdue tax debt. – Defined in G.S. 105-243.1.
- 8 (9) Related member. – Defined in G.S. 105-130.7A.
- 9 (10) Withholdings. – The amount that would be withheld by the business
10 from the wages of employees in eligible positions under Article 4A of
11 Chapter 105 of the General Statutes if the wages were considered to be
12 the only source of income of the employees and an amount were
13 withheld from the wages of all those employees according to the
14 withholding tables published by the Department of Revenue with the
15 proper number of exemptions.

16 **"§ 143B-437.46. Job Development Investment Grant Program.**

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

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

39 (b) Cap. – The maximum number of agreements the Committee may enter into
40 each calendar year is 15.

41 (c) Ceiling. – The maximum amount of total annual liability for grants for
42 agreements entered into in any single calendar year may not exceed ten million dollars
43 (\$10,000,000). No agreement may be entered into that, when considered together with
44 other existing agreements entered into during that calendar year, could cause the State's

1 potential total annual liability for grants entered into in that calendar year to exceed this
 2 amount.

3 **"§ 143B-437.47. Eligible projects.**

4 (a) Minimum Number of Eligible Positions. – A business may apply to the
 5 Committee for a grant for any project that creates the minimum number of eligible
 6 positions as set out in the table below. If the project will be located in more than one
 7 enterprise tier area, the location with the highest enterprise tier area designation
 8 determines the minimum number of eligible positions that must be created.

<u>Enterprise Tier Area</u>	<u>Number of Eligible Positions</u>
<u>Tier One</u>	<u>10</u>
<u>Tier Two</u>	<u>10</u>
<u>Tier Three</u>	<u>10</u>
<u>Tier Four</u>	<u>20</u>
<u>Tier Five</u>	<u>20</u>

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

24 A project that consists of a professional or semiprofessional sports team or club is
 25 not eligible for a grant under this Part.

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

33 Each year that a business receives a grant under this Part, the business must provide
 34 with the submission required under G.S. 143B-437.52 a certification that the business
 35 continues to provide health insurance for all full-time employees of the project with
 36 respect to which the grant is made. If the business ceases to provide health insurance to
 37 all full-time employees of the project with respect to which a grant is made, the
 38 Committee shall amend or terminate the agreement as provided in G.S. 143B-437.53.

39 (d) Wage Standard. – In order for a business to be eligible for a grant under this
 40 Part, the average wage of all jobs at the location with respect to which a grant is made
 41 must meet the wage standard set out in G.S. 105-129.4(b). If a project is to be located at
 42 more than one location, the average wage of all jobs at a location must meet the wage
 43 standard set out in G.S. 105-129.4(b) in order for that location to be included in the
 44 agreement.

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

7 **"§ 143B-437.48. Economic Investment Committee established.**

8 (a) Membership. – The Economic Investment Committee is established. The
9 Committee consists of the following members:

10 (1) The Secretary of Commerce.

11 (2) The Secretary of Revenue.

12 (3) The Director of the Office of State Budget and Management.

13 (4) One member appointed by the General Assembly upon the
14 recommendation of the Speaker of the House of Representatives.

15 (5) One member appointed by the General Assembly upon the
16 recommendation of the President Pro Tempore of the Senate.

17 The members of the Committee appointed by the General Assembly may not be
18 members of the General Assembly. The members of the Committee appointed by the
19 General Assembly serve two-year terms that begin upon appointment.

20 (b) Decision Required. – The Committee may act only upon a decision of three
21 of its five members.

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

31 If a person is convicted under this section, the person shall not provide services for
32 compensation, as an employee, consultant, or otherwise, to any business or a related
33 member of the business that was awarded a grant under this Part while the former
34 member was serving on the Committee until two years after the person's conviction
35 under this section.

36 (d) Sunshine. – Meetings of the Committee are subject to the open meetings
37 requirements of Article 33C of Chapter 143 of the General Statutes. All documents of
38 the Committee, including applications for grants, are public records governed by
39 Chapter 132 of the General Statutes and any applicable provisions of the General
40 Statutes protecting confidential information.

41 **"§ 143B-437.49. Applications; fees; reports; study.**

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

- 1 (1) The name of the business, the proposed location of the project, and the
2 type of activity in which the business will engage at the project site or
3 sites.
- 4 (2) The names and addresses of the principals or management of the
5 business, the nature of the business, and the form of business
6 organization under which it is operated.
- 7 (3) The financial statements of the business prepared by a certified public
8 accountant and any other financial information the Committee
9 considers necessary.
- 10 (4) The number of eligible positions proposed to be created during the
11 base years and thereafter and the salaries for these positions.
- 12 (5) An estimate of the total withholdings.
- 13 (6) Certification that the business will provide health insurance to all
14 full-time employees of the project.
- 15 (7) Information concerning other locations, including locations in other
16 states and countries, being considered for the project and the nature of
17 any benefits that would accrue to the business if the project were to be
18 located in one of those locations.
- 19 (8) Information concerning any other State or local government incentives
20 for which the business is applying or that it has an expectation of
21 receiving.
- 22 (9) Any other information necessary for the Committee to evaluate the
23 application.

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

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

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

1 an agreement to be executed, each related member included in the application must sign
2 the agreement and agree to abide by its terms.

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

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

12 (1) A listing of each community economic development agreement
13 negotiated and entered into during the preceding calendar year,
14 including the name of the business, the cost/benefit analysis conducted
15 by the Committee during the application process, a description of the
16 project, the term of the agreement, the percentage used to determine
17 the amount of the grant, and the amount of the grant made under the
18 agreement during that year.

19 (2) An update on the status of projects under agreements entered into
20 before the preceding calendar year.

21 (3) The number and enterprise tier area of eligible positions created by
22 projects with respect to which grants were awarded.

23 (4) The wage levels of all eligible positions created by projects with
24 respect to which grants are awarded, aggregated and listed in
25 increments of five thousand dollars (\$5,000).

26 (5) The amount of new income tax revenue received from withholdings
27 related to the projects for which grants were awarded.

28 (6) The criteria developed by the Committee to implement this Part and
29 any changes in those criteria from the previous calendar year.

30 (7) The effectiveness of the program in recruiting new and expanding
31 businesses.

32 (8) The environmental impact of businesses that have received grants
33 under the program.

34 (9) The geographic distribution of grants, by number and amount, awarded
35 under the program.

36 (10) An explanation of whether the projects with respect to which
37 agreements are entered into involve new businesses in the State or
38 expanding existing businesses in the State.

39 (11) A listing of all businesses making an application under this Part and an
40 explanation of whether each business ultimately located the project in
41 this State regardless of whether the business was awarded a grant for
42 the project under this Part.

43 (12) The division and use of fees collected by the Committee under this
44 section and under G.S. 143B-437.52.

1 (d) Quarterly Reports. – The Committee shall publish a report on the Job
2 Development Investment Grant Program within two months of the end of each quarter.
3 This report shall include a listing of each community economic development agreement
4 negotiated and entered into during the preceding quarter, including the name of the
5 business, the cost/benefit analysis conducted by the Committee during the application
6 process, a description of the project, and the amount of the grant expected to be made
7 under the agreement during the current fiscal year.

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

15 **"§ 143B-437.50. Calculation of minimum and maximum grants; factors considered.**

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

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

36 (b) The term of the grant shall not exceed 12 years starting with the first year a
37 grant is made.

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

42 (d) The percentage established in the agreement shall be reduced by one-fourth
43 for any eligible position that is located in an enterprise tier four or five area.

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

6 (f) The amount of a grant associated with any specific eligible position may not
7 exceed six thousand five hundred dollars (\$6,500) in any year.

8 **"§ 143B-437.51. Community economic development agreement.**

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

11 (1) A detailed description of the proposed project that will result in job
12 creation and the number of new employees to be hired in the base
13 years and later years.

14 (2) The term of the grant and the criteria used to determine the first year
15 for which the grant may be claimed.

16 (3) The number of eligible positions that are subjects of the grant and a
17 description of those positions and the location of those positions.

18 (4) The amount of the grant based on a percentage of withholdings.

19 (5) A method for determining the number of new employees hired during
20 a grant year.

21 (6) A method for the business to report annually to the Committee the
22 number of eligible positions for which the grant is to be made.

23 (7) A requirement that the business report to the Committee annually the
24 aggregate amount of withholdings during the grant year.

25 (8) A provision permitting an audit of the payroll records of the business
26 by the Committee from time to time as the Committee considers
27 necessary.

28 (9) A provision that requires the Committee to amend an agreement
29 pursuant to G.S. 143B-437.53.

30 (10) A provision that requires the business to maintain operations at the
31 project location or another location approved by the Committee for at
32 least one hundred fifty percent (150%) of the term of the grant and a
33 provision to permit the Committee to recapture all or part of the grant
34 at its discretion if the business does not remain at the site for the
35 required term.

36 (11) A provision that requires the business to maintain employment levels
37 in this State at the level of the year immediately preceding the base
38 years.

39 (12) A provision establishing the conditions under which the grant
40 agreement may be terminated, in addition to those under G.S.
41 143B-437.53, and under which grant funds may be recaptured by the
42 Committee.

43 (13) A provision stating that unless the agreement is amended or terminated
44 pursuant to G.S. 143B-437.53, the agreement is binding and

1 constitutes a continuing contractual obligation of the State and the
2 business.

3 (14) A provision setting out any allowed variation in the terms of the
4 agreement that will not subject the business to amendment or
5 termination of the agreement under G.S. 143B-437.53.

6 (15) A provision that prohibits the business from manipulating or
7 attempting to manipulate employee withholdings with the purpose of
8 increasing the amount of the grant and that requires the Committee to
9 terminate the agreement and take action to recapture grant funds if the
10 Committee finds that the business has manipulated or attempted to
11 manipulate withholdings with the purpose of increasing the amount of
12 the grant.

13 (16) A provision requiring that the business engage in fair employment
14 practices as required by State and federal law and a provision
15 encouraging the business to use small contractors, minority
16 contractors, physically handicapped contractors, and women
17 contractors whenever practicable in the conduct of its business.

18 (17) A provision encouraging the business to hire North Carolina residents.

19 (18) A provision encouraging the business to use the North Carolina State
20 Ports.

21 (19) A provision stating that the State is not obligated to make any annual
22 grant payment unless and until the State has received withholdings
23 from the business in an amount that exceeds the amount of the grant
24 payment.

25 (20) A provision describing the manner in which the amount of a grant will
26 be measured and administered to ensure compliance with the
27 provisions of G.S. 143B-437.46(c).

28 (21) A provision stating that any recapture of a grant and any amendment to
29 an agreement reducing the amount of the grant or the term of the
30 agreement must, at a minimum, be proportional to the failure to
31 comply measured relative to the condition or criterion with respect to
32 which the failure occurred.

33 (22) A provision stating that any disputes over interpretation of the
34 agreement shall be submitted to binding arbitration.

35 (23) A provision stating that the amount of a grant associated with any
36 specific eligible position may not exceed six thousand five hundred
37 dollars (\$6,500) in any year.

38 (b) Approval of Attorney General. – The Attorney General shall review the terms
39 of all proposed agreements entered into by the Committee. To be effective against the
40 State, an agreement entered into under this Part must be signed personally by the
41 Attorney General.

42 **"§ 143B-437.52. Grant recipient to submit records.**

43 (a) No later than February 1 of each year, for the preceding grant year, every
44 business that is awarded a grant under this Part shall submit to the Committee a copy of

1 its State and federal tax returns showing business and nonbusiness income and a report
2 showing withholdings as a condition of its continuation in the grant program. In
3 addition, the business shall submit to the Committee an annual payroll report showing
4 the eligible positions that are created during the base years and the new eligible
5 positions created during each subsequent year of the grant. When making a submission
6 under this section, the business must pay the Committee a fee of one thousand five
7 hundred dollars (\$1,500). The fee is due at the time the submission is made. The
8 Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of
9 State Budget and Management shall determine the allocation of the fee imposed by this
10 section among their agencies. The proceeds of the fee are receipts of the agency to
11 which they are credited.

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

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

16 **"§ 143B-437.53. Failure to comply with agreement.**

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

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

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

35 **"§ 143B-437.54. Disbursement of grant.**

36 A business may not receive an annual disbursement of a grant if, at the time of
37 disbursement, the business has received a notice of an overdue tax debt and that overdue
38 tax debt has not been satisfied or otherwise resolved. A business may receive an annual
39 disbursement of a grant only after the Committee has certified to the State Controller
40 that there are no outstanding overdue tax debts and that the business has met the terms
41 and conditions of the agreement. No amount shall be disbursed to a business as a grant
42 under this Part in any year until the Secretary of Revenue has certified to the Committee
43 (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of
44 withholdings received in that year by the Department of Revenue from the business. A

1 business that has met the terms of the agreement shall make an annual certification of
2 this to the Committee. The Committee shall verify this information and certify to the
3 State Controller that the terms of the agreement have been met. The Committee shall
4 further certify to the State Controller the amount of a grant for which the business is
5 eligible under the agreement and the amount of a grant for which the business would be
6 eligible under the agreement without regard to G.S. 143B-437.50(d). The State
7 Controller shall remit a check to the business in the amount of the certified grant
8 amount within 90 days of receiving the certification of the Committee.

9 **"§ 143B-437.55. Transfer to Industrial Development Fund.**

10 At the time the State Controller remits a check to a business under G.S.
11 143B-437.54, the State Controller shall transfer to the Utility Account of the Industrial
12 Development Fund an amount equal to the amount certified by the Committee as the
13 difference between the amount of the grant and the amount of the grant for which the
14 business would be eligible without regard to G.S. 143B-437.50(d).

15 **"§ 143B-437.56. Authority.**

16 The authority of the Committee to enter into new agreements begins January 1,
17 2003, and expires January 1, 2005."

18 **SECTION 1B.1.(b)** In developing criteria under G.S. 143B-437.46 for the
19 awarding of grants under Part 2F of Article 10 of Chapter 143B of the General Statutes
20 and under G.S. 143B-437.50 for determining the percentage upon which the amount of
21 a grant is based, the Economic Investment Committee may consider criteria that address
22 the following:

- 23 (1) Factors related to the economic impact of the project, such as the
24 following:
- 25 a. Impact on gross regional product and gross State product.
 - 26 b. Costs and benefits of the project to the State, including the
27 expected return on investment made in the project by the State.
 - 28 c. Number of direct jobs that will be created by the project, the
29 wages of those jobs, and the total payroll for the project.
 - 30 d. Number of induced short-term, project-related jobs expected to
31 be generated by the project as well as the number of long-term
32 permanent jobs expected to be generated indirectly in the
33 economy as a result of the project.
 - 34 e. Dollar value of the investment, including the size of the
35 investment in real versus personal property and expected
36 depreciation rates.
 - 37 f. Economic circumstances of the county and region, including the
38 extent to which the project will serve to mitigate
39 unemployment.
 - 40 g. The expected time frame during which the project is expected
41 to pay back in State tax revenues the amount of any grants to be
42 paid out.
 - 43 h. The economic demands the project is expected to place upon
44 the community or communities in which it will locate.

- 1 i. The number of eligible positions that would be filled by
2 residents of development zones.
- 3 (2) Factors related to the strategic importance of the project to the State,
4 region, or locality, such as the following:
- 5 a. The extent to which the project builds or enhances an industrial
6 cluster.
- 7 b. The extent to which the project falls within a classification of
8 business and industry that the Department of Commerce regards
9 as a target for growth and expansion in the State.
- 10 c. The ability of the project to attract follow-on investment in the
11 State by suppliers and vendors.
- 12 d. The extent to which the project serves to maintain and grow
13 jobs in the State in a business undergoing an internal
14 restructuring or rationalization process.
- 15 e. The extent to which the project can be expected to contribute
16 significantly to and support the local community.
- 17 (3) Factors related to the quality of jobs, such as the following:
- 18 a. The wage level and status of the jobs to be created.
- 19 b. The quality and value of benefits offered by the company.
- 20 c. The potential for employee advancement.
- 21 d. The extent of training programs offered by the company.
- 22 e. The sustainability of the jobs in the future.
- 23 f. The workplace safety record of the company.
- 24 (4) Factors related to the quality of the industry and the project, such as
25 the following:
- 26 a. The nature of the project and the project's relationship to the
27 larger business of the company.
- 28 b. The nature of the industrial classification of the project and the
29 nature of the business of the company undertaking it.
- 30 c. The long-term prospects for growth at the project site or sites.
- 31 d. The long-term prospects for growth of the company and the
32 industry within the United States.
- 33 e. The financial stability of the company associated with the
34 project.
- 35 (5) Factors related to the environmental impact of the project, such as the
36 following:
- 37 a. The nature of the business to be conducted.
- 38 b. The ability of the project to satisfy State, federal, and local
39 environmental law and regulations.
- 40 (6) The degree to which use of the program has been geographically
41 dispersed among the various regions of the State and between rural and
42 urban areas.
- 43 (7) Other factors that the Economic Investment Committee considers
44 relevant that are not inconsistent with this section and that the

1 Committee determines will further the purposes of Part 2F of Article
2 10 of Chapter 143B of the General Statutes.

3 **SECTION 1B.2.(a)** G.S. 143B-437.01(a)(1) reads as rewritten:

4 "(1) The funds shall be used for (i) installation of or purchases of
5 equipment for eligible industries, (ii) structural repairs, improvements,
6 or renovations of existing buildings to be used for expansion of
7 eligible industries, or (iii) construction of or improvements to new or
8 existing water, sewer, gas, telecommunications, high-speed broadband,
9 or electrical utility distribution lines or equipment for existing or new
10 or proposed industrial buildings to be used for eligible industries. To
11 be eligible for funding, the water, sewer, gas, telecommunications,
12 high-speed broadband, or electrical utility lines or facilities shall be
13 located on the site of the building or, if not located on the site, shall be
14 directly related to the operation of the specific eligible industrial
15 activity."

16 **SECTION 1B.2.(b)** G.S. 143B-437.01(b1) reads as rewritten:

17 "(b1) Utility Account. – There is created within the Industrial Development Fund a
18 special account to be known as the Utility Account to provide funds to assist the local
19 government units of enterprise tier ~~one and tier two~~one, two, and three areas, as defined
20 in G.S. 105-129.3, in creating jobs in eligible industries. The Department of Commerce
21 shall adopt rules providing for the administration of the program. Except as otherwise
22 provided in this subsection, those rules shall be consistent with the rules adopted with
23 respect to the Industrial Development Fund. The rules shall provide that the funds in the
24 Utility Account may be used only for construction of or improvements to new or
25 existing water, sewer, gas, telecommunications, high-speed broadband, or electrical
26 utility distribution lines or equipment for existing or new or proposed industrial
27 buildings to be used for eligible industrial operations. To be eligible for funding, the
28 water, sewer, gas, telecommunications, high-speed broadband, or electrical utility lines
29 or facilities shall be located on the site of the building or, if not located on the site, shall
30 be directly related to the operation of the specific industrial activity. There shall be no
31 maximum funding amount per new job to be created or per project."

32 **SECTION 1B.3.** G.S. 105-259(b) is amended by adding a new subdivision
33 to read:

34 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
35 who has access to tax information in the course of service to or employment by the State
36 may not disclose the information to any other person unless the disclosure is made for
37 one of the following purposes:

38 ...

39 (28) To provide to the Economic Investment Committee established
40 pursuant to G.S. 143B-437.48 information necessary to implement
41 Part 2F of Article 10 of Chapter 143B of the General Statutes."

42 **SECTION 1B.4.(a)** G.S. 153A-149(c)(10b) reads as rewritten:

43 "(c) Each county may levy property taxes for one or more of the purposes listed in
44 this subsection up to a combined rate of one dollar and fifty cents (\$1.50) on the one

1 hundred dollars (\$100.00) appraised value of property subject to taxation. Authorized
2 purposes subject to the rate limitation are:

3 ...

4 (10b) Economic Development. – To provide for economic development as
5 authorized by G.S. 158-7.1 and G.S. 158-12."

6 **SECTION 1B.4.(b)** G.S. 160A-209(c)(10b) reads as rewritten:

7 "(c) Each city may levy property taxes for one or more of the following purposes
8 subject to the rate limitation set out in subsection (d):

9 ...

10 (10b) Economic Development. – To provide for economic development as
11 authorized by G.S. 158-7.1 and G.S. 158-12."

12 **SECTION 1B.5.** G.S. 120-123 is amended by adding a new subdivision to
13 read:

14 "**§ 120-123. Service by members of the General Assembly on certain boards and**
15 **commissions.**

16 No member of the General Assembly may serve on any of the following boards or
17 commissions:

18 ...

19 (75) The Economic Investment Committee established under G.S.
20 143B-437.48."

21 **SECTION 1B.6.** The Revenue Laws Study Committee created in Article
22 12L of Chapter 120 of the General Statutes shall study the use, the effectiveness, and
23 the cost versus benefits of the Job Development Investment Grant Program created in
24 this act, the Bill Lee Act credits in Chapter 105 of the General Statutes, and the
25 Industrial Recruitment Competitive Fund. The Study Committee may report the results
26 of its study and any recommendations to the 2004 Regular Session of the 2003 General
27 Assembly and shall make a final report by March 15, 2005, to the 2005 General
28 Assembly.

29 **SECTION 1B.7.** This part is effective when it becomes law.

30 **PART 1C. FILM INDUSTRY INCENTIVES**

31 **SECTION 1C.1.** G.S. 143B-434.3(a) reads as rewritten:

32
33 "(a) Creation and Purpose of Account. – There is created in the Department of
34 Commerce, Division of Tourism, Film, and Sports Development, the Film Industry
35 Development Account to provide annual grants as incentives to production companies
36 that engage in production activities in this State. The Division of Tourism, Film, and
37 Sports Development shall administer this program in accordance with the following
38 provisions:

39 (1) To be eligible for a grant, a production company must engage in
40 production activities in this ~~State~~State with expenditures in this State
41 of at least one million dollars (\$1,000,000). A grant may not be used
42 for political or issue advertising.
43

1 (2) A grant may not exceed fifteen percent (15%) of the amount the
2 production company spends for goods and services in this State during
3 the calendar year.

4 (3) A grant may not exceed two hundred thousand dollars (\$200,000) per
5 production."

6 **SECTION 1C.2.** G.S. 105-164.14 is amended by adding a new subsection to
7 read:

8 "(j) Production Companies. – A production company is allowed an annual refund
9 of part of the State sales tax it pays under G.S. 105-164.4(a)(3) on the rental of transient
10 accommodations for occupancy by its employees. If an employee of the production
11 company occupies a transient accommodation for a continuous period of more than 30
12 days but less than 90 days, the production company is allowed a refund of the State
13 sales tax it paid on the rental for the entire rental period. Notwithstanding any other
14 provision of law, the refund allowed in this subsection does not apply to general local
15 sales and use taxes levied under Subchapter VIII of this Chapter, Chapter 1069 of the
16 1967 Session Laws, or any other local act.

17 A request for a refund must be in writing and must include any information and
18 documentation required by the Secretary. A request for a refund is due within six
19 months after the end of the State's fiscal year. Refunds applied for after the due date are
20 barred."

21 **SECTION 1C.3.** The Revenue Laws Study Committee created in Article
22 12L of Chapter 120 of the General Statutes shall study options for additional economic
23 incentives for the film industry and shall make a report to the 2003 General Assembly
24 on its findings, including any recommendations for legislative action.

25 **SECTION 1C.4.** Section 1C.2 becomes effective January 1, 2003, and
26 applies to rentals of transient accommodations that begin on or after that date. The
27 remainder of this part is effective when it becomes law.

28 **PART 1D. NORTH CAROLINA RAILROAD CONDEMNATION AUTHORITY**

29 **SECTION 1D.1.** G.S. 40A-3(a)(4) reads as rewritten:

30
31 "(a) Private Condemnors. – For the public use or benefit, the persons or
32 organizations listed below shall have the power of eminent domain and may acquire by
33 purchase or condemnation property for the stated purposes and other works which are
34 authorized by law.
35

36 ...

37 (4) Any railroad company has the power of eminent domain for the
38 purposes of: constructing union depots; maintaining, operating,
39 improving or straightening lines or of altering its location; constructing
40 double tracks; constructing and maintaining new yards and terminal
41 facilities or enlarging its yard or terminal facilities; connecting two of
42 its lines already in operation not more than six miles apart; or
43 constructing an industrial siding ~~ordered by the Utilities Commission~~
44 ~~as provided in G.S. 62-232.siding."~~

1 SECTION 1D.2. This part is effective when it becomes law.

2
3 **PART 1E. CORPORATE INCOME TAX RATE CHANGE**

4
5 SECTION 1E.1. G.S. 105-130.3 reads as rewritten:

6 **"§ 105-130.3. Corporations.**

7 A tax is imposed on the State net income of every C Corporation doing business in
8 this State. An S Corporation is not subject to the tax levied in this section. The tax is a
9 percentage of the taxpayer's State net income computed as follows:

Income Years Beginning	Tax
In 1997	7.5%
In 1998	7.25%
In 1999	7%
After 1999	6.9%

- 10
11
12
13
14
15 (1) On State net income up to three thousand dollars (\$3,000), one percent
16 (1%).
17 (2) On State net income over three thousand dollars (\$3,000) and up to six
18 thousand dollars (\$6,000), two percent (2%).
19 (3) On State net income over six thousand dollars (\$6,000) and up to nine
20 thousand dollars (\$9,000), three percent (3%).
21 (4) On State net income over nine thousand dollars (\$9,000) and up to
22 twelve thousand dollars (\$12,000), four percent (4%).
23 (5) On State net income over twelve thousand dollars (\$12,000) and up to
24 fifteen thousand dollars (\$15,000), five percent (5%).
25 (6) On State net income over fifteen thousand dollars (\$15,000) and up to
26 thirty thousand dollars (\$30,000), six percent (6%).
27 (7) On State net income over thirty thousand dollars (\$30,000), six and
28 nine-tenths percent (6.9%)."

29 SECTION 1E.2. This part is effective for taxable years beginning on or after
30 January 1, 2004.

31
32 **PART 1F. TRAVEL AND TOURISM INCENTIVES**

33
34 SECTION 1F.1. Part 2 of Article 10 of Chapter 143B of the General
35 Statutes is amended by adding a new section to read:

36 **"§ 143B-434.4. Travel and Tourism Capital Incentive Grant Program.**

37 (a) Program Established. – There is established the Travel and Tourism Capital
38 Incentive Grant Program. Under the program, the Travel and Tourism Grant Committee
39 established in subsection (d) of this section may award grants to the owners of qualified
40 projects for the purpose of inducing the creation of new or the expansion or renovation
41 of existing travel and tourism projects. Grant proceeds may not be distributed to any
42 private individual or entity. The Committee shall develop guidelines to be used in
43 determining whether the conditions in this section are satisfied and whether the project
44 described in the application is consistent with the grant program.

1 **(b) Owner Defined.** – For the purpose of the Travel and Tourism Capital
2 Incentive Grant Program, the owner of a qualified project is the unit of local
3 government that will own the qualified project in whole or in partnership with a private
4 individual or entity. If the qualified project is located in an enterprise tier one, two, or
5 three area, then the local government must own at least twenty-five percent (25%) of the
6 qualified project. If the qualified project is located in an enterprise tier four or five area,
7 then the local government must own at least fifty percent (50%) of the qualified project.

8 **(c) Unit of Local Government Defined.** – For the purpose of the Travel and
9 Tourism Capital Incentive Grant Program, a unit of local government means a county or
10 municipality in the State.

11 **(d) Committee.** – The Travel and Tourism Grant Committee shall consist of the
12 Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State
13 Budget and Management, the Chairperson of the North Carolina Travel and Tourism
14 Board, and three elected local government officials. One elected local government
15 official shall represent the Piedmont and shall be appointed by the General Assembly
16 upon the recommendation of the Speaker of the House of Representatives. One elected
17 local government official shall represent the Mountains and shall be appointed by the
18 Governor. One elected local government official shall represent the Coastal Plain and
19 shall be appointed by the General Assembly upon the recommendation of the President
20 Pro Tempore of the Senate. The elected local government officials may not be
21 associated with or employed by the travel and tourism industry or an entertainment
22 enterprise or be in any contractual relationship regarding the qualified project. The
23 General Assembly and Governor appointees shall serve two-year terms. The Committee
24 may act only upon a majority vote of its members.

25 It is unlawful for a member of the Committee to provide, within two years after the
26 end of service on the Committee, services for compensation, as an employee,
27 consultant, or otherwise, to any project that was awarded a grant under this section
28 while the former member was serving on the Committee or to provide services for
29 compensation to any person or entity that contracts with the project. Violation of this
30 subsection is a Class 1 misdemeanor.

31 Meetings of the Committee are subject to the open meetings requirements of Article
32 33C of Chapter 143 of the General Statutes. All documents of the Committee, including
33 applications for grants, are public records governed by Chapter 132 of the General
34 Statutes, including applicable provisions of the General Statutes protecting confidential
35 information.

36 **(e) Application and Fee.** – The owner of a qualified project may apply for a grant
37 no later than one year after the qualified project is opened to the public. When filing an
38 application under this section, the applicant must pay the Committee a fee of five
39 thousand dollars (\$5,000). The fee is due at the time the application is filed. The
40 Committee shall determine the allocation of the fee imposed by this subsection among
41 the agencies whose heads make up the Committee. The proceeds of the fee are receipts
42 of the agency to which they are credited.

43 The application must contain all information required by the Committee, including a
44 certification of the nature and cost of the tourism project, the estimated revenues to be

1 generated by the project, the estimated economic benefit to the community, and the
2 purposes for which the applicant will use the grant funds. If the tourism project is the
3 result of a public-private partnership, the grant application must set forth in detail the
4 respective rights and obligations of the parties and the specific terms of the agreement.
5 The application must be signed by the finance officer and the chair of the governing
6 body of the owner.

7 (f) Qualification. – A qualified project is a newly created travel and tourism
8 project or expansion or renovation of a travel and tourism project that the Committee
9 determines, pursuant to a feasibility study under this section, meets all of the following
10 conditions:

- 11 (1) At least twenty-five percent (25%) of the project will be financed and
12 owned by a unit of local government in which it is located if the
13 project is located in an enterprise tier one, two, or three area. At least
14 fifty percent (50%) of the project will be financed and owned by a unit
15 of local government in which it is located if the project is located in an
16 enterprise tier four or five area.
- 17 (2) A project located in an enterprise tier one, two, or three area will target
18 at least twenty-five percent (25%) of its visitors from among persons
19 who reside outside the State or more than 50 miles from the project. A
20 project located in an enterprise tier four or five area will target at least
21 thirty-five percent (35%) of its visitors from among persons who
22 reside outside the State or more than 50 miles from the project.
- 23 (3) The project has a business plan that demonstrates a positive economic
24 impact on the community in which the project is located.
- 25 (4) The applicant has provided impact projections regarding estimated
26 State and local tax revenues with respect to the project.
- 27 (5) The project will have a significant and positive economic impact on
28 the community in which the project is located, considering among
29 other factors, the extent to which the tourism project will compete
30 directly with existing tourism attractions in the area and the amount by
31 which tax revenues from the tourism project will exceed the amount of
32 the grant provided.
- 33 (6) The applicant has provided a cost-benefit analysis of the project.
- 34 (7) The applicant has provided an economic impact analysis, certified by a
35 certified public accountant, which demonstrates the employment, gross
36 State product, and personal income effects of the project over a
37 10-year period.
- 38 (8) The project will be available to the public for a minimum of 100 days
39 per year.
- 40 (9) The project will generate at least 10 new jobs in the community in
41 which the project is located.
- 42 (10) The project will have the following minimum cost based on the
43 enterprise tier in which it is located:
44

<u>Enterprise Tier</u>	<u>Minimum Cost</u>
------------------------	---------------------

1	<u>1 and 2</u>	<u>\$ 500,000</u>
2	<u>3</u>	<u>\$ 3,000,000</u>
3	<u>4</u>	<u>\$ 5,000,000</u>
4	<u>5</u>	<u>\$10,000,000</u>

(11) The governing body of the unit of local government has passed a resolution stating the need for and positive economic impact and enhancement of travel and tourism revenues from the project.

(12) The applicant has demonstrated by clear and convincing evidence all of the following:

- a. The project will not result in unnecessary duplication of existing services.
- b. The project will generate new visitors to the area rather than drawing visitors away from other existing tourism attractions.

(g) Feasibility Study. – The applicant must fund a feasibility study certified by a certified public accountant and coordinated solely by the Committee. The Committee shall develop a list of qualified firms to conduct the study. The Committee shall prescribe the scope of the study to cover all of the qualifications established in this section.

(h) Amount. – Subject to the maximums provided in this section, the amount of a grant with respect to a qualified project is calculated as a percentage of the total amount of the following taxes collected and retained by the State each year:

- (1) The net State sales tax collected on sales by or within the qualified project, as determined by the Department of Revenue.
- (2) The net privilege tax paid by the qualified project under G.S. 105-37.1, as determined by the Department of Revenue.

(i) Maximums. – The maximum term of a grant is 10 years. No project may receive any grant proceeds for a year that is more than 10 years beyond the date of the initial grant award.

The Committee shall set the grant percentage at the time it awards the grant. The percentage used to calculate a grant may not exceed the applicable percentage provided in the table below based on the enterprise tier, as defined in G.S. 105-129.3, in which the qualified project is located. In addition, the cumulative maximum amount of a grant may not exceed the applicable percentage of the total project cost provided in the table below based on the enterprise tier in which the qualified project is located.

<u>Enterprise Tier</u>	<u>Percentage</u>
<u>1 and 2</u>	<u>40</u>
<u>3 and 4</u>	<u>30</u>
<u>5</u>	<u>25</u>

(j) Use. – The proceeds of a grant may be used only for capital costs, including debt service, with respect to the qualified project for which the grant was awarded.

(k) Disbursement. – In order to receive grant disbursements under this section, the owner of the qualified project must provide the Department of Revenue with periodic, verified accountings of the tax collections provided in subsection (h) of this section. These reports must be made at the times and in the form prescribed by the

1 Department of Revenue. Each report must include the name, address, and tax
2 identification number of every taxpayer whose collections are included in the report and
3 any other information required by the Department of Revenue.

4 The Department of Revenue must disburse grants awarded under this section in
5 accordance with G.S. 105-269.16. Upon awarding a grant under this section, the
6 Committee must provide the following information to the Department of Revenue:

- 7 (1) The name, address, and other identifying information of the owner to
8 whom the grant was awarded.
- 9 (2) The name and address of any lessee or individual or entity who has
10 entered into a contract with the owner of the qualified project.
- 11 (3) The address and other identifying information of each facility that is
12 part of the qualified project for which the grant was awarded.
- 13 (4) The applicable percentage and the maximum cumulative amount of the
14 grant as determined in accordance with this section.
- 15 (5) Any other information included in the application, if required by the
16 Department of Revenue.

17 (l) Reports. – The Committee must report annually to the Revenue Laws Study
18 Committee concerning the applications made for grants, the grants awarded under this
19 section, and the division and use of the fee collected by the Committee under this
20 section.

21 (m) Cap. – The maximum number of projects that may be awarded grants each
22 fiscal year is 15. No more than twenty million dollars (\$20,000,000) in grants shall be
23 awarded each fiscal year. For the purpose of this maximum, the amount awarded is
24 calculated as the cumulative maximum amount of the grant divided by the number of
25 years in its term."

26 **SECTION 1F.2.** Article 9 of Chapter 105 of the General Statutes is
27 amended by adding a new section to read:

28 **"§ 105-269.16. Travel and tourism grants.**

29 The Department must annually disburse the travel and tourism grants awarded under
30 G.S. 143B-434.4. Each annual disbursement must be made by October 1 for the
31 preceding fiscal year. The amount of each grant must be calculated in accordance with
32 G.S. 143B-434.4 based on information provided to the Department by the owner of the
33 qualified project. If information necessary to calculate a portion of a grant is not
34 available, the Department must disburse only that portion for which information is
35 available. To pay for this program, the Department must draw from State sales and use
36 tax collections under Article 5 of this Chapter an amount equal to the grant funds
37 disbursed and the Department's costs of administering the grants. The Department must
38 provide the Committee an annual accounting of grant funds disbursed under this
39 section."

40 **SECTION 1F.3.** G.S. 150B-1(d), as amended by this act, is further amended
41 by adding a new subdivision to read:

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

44 ...

1 (11) The Travel and Tourism Grant Committee in developing guidelines for
2 the Travel and Tourism Capital Incentive Grant Program under G.S.
3 143B-434.4 of the General Statutes."

4 **SECTION 1F.4.** This part becomes effective January 1, 2003, and expires
5 for grant applications filed on or after July 1, 2005.

6
7 **PART 1G. INDUSTRIAL AND POLLUTION CONTROL FACILITIES**
8 **FINANCING**

9
10 **SECTION 1G.1.** The General Assembly finds that there are small
11 manufacturing companies in the State that are eligible for industrial development bond
12 financing for capital improvements and expansions, but are not able to take advantage
13 of that financing because of the administrative costs involved. This problem can be
14 addressed by reviving the composite bond program under Chapter 159D of the General
15 Statutes, under which the North Carolina Capital Facilities Finance Agency could
16 combine several series of bonds into a single bond offering, thereby reducing
17 transaction costs and permitting eligible small manufacturers to access tax exempt
18 financing for capital investments. The composite bond program would be facilitated by
19 the changes proposed to Chapter 159D in this part that will streamline the procedures
20 for composite issues by requiring only one public hearing and align the review standard
21 for bonds issued as part of a composite bond program with the standard for bonds issued
22 by county industrial development projects.

23 **SECTION 1G.2.** G.S. 159D-7(d) reads as rewritten:

24 "~~(d) Public Hearing.~~Hearing, Generally. – The Secretary of Commerce shall not
25 approve any proposed project pursuant to this section unless the governing body of the
26 county in which the project is located has first conducted a public hearing and, at or
27 after the public hearing, approved in principle the issuance of bonds under this Article
28 for the purpose of paying all or part of the cost of the proposed project. Notice of the
29 public hearing shall be published at least once in at least one newspaper of general
30 circulation in the county not less than 14 days before the public hearing. The notice
31 shall describe generally the bonds proposed to be issued and the proposed project,
32 including its general location, and any other information the governing body considers
33 appropriate or the Secretary of Commerce prescribes for the purpose of providing the
34 Secretary with the views of the community. The notice shall also state that following the
35 public hearing the agency intends to file an application for approval of the proposed
36 project with the Secretary of Commerce.

37 (d1) Public Hearing, Multiple Projects. – Notwithstanding subsection (d) of this
38 section, in the event the bonds proposed to be issued are to finance more than one
39 project, the public hearing shall be conducted by the agency or by a hearing officer
40 designated by the agency to conduct public hearings. The public hearing may be held at
41 any location designated by the agency. Notice of the public hearing shall be published at
42 least once in at least one newspaper of general circulation in each county in which a
43 proposed project is to be located not less than 14 days before the public hearing. The
44 notice shall describe generally the bonds proposed to be issued and any proposed

1 project in that county, including its general location, and any other information the
2 agency considers appropriate or the Secretary of Commerce prescribes for the purpose
3 of providing the Secretary with the views of the community. A copy of the notice of
4 public hearing must be mailed to the board of county commissioners of any county in
5 which a proposed project is to be located and to the governing body of any municipality
6 in which a proposed project is to be located."

7 **SECTION 1G.3.** G.S. 159D-8(b) reads as rewritten:

8 "(b) In determining whether a proposed bond issue should be approved, the Local
9 Government Commission may consider, without limitation, the following:

10 (1) Whether the proposed operator and obligor have demonstrated or can
11 demonstrate the financial responsibility and capability to fulfill their
12 obligations with respect to the financing agreement. In making such
13 determination, the commission may consider the operator's experience
14 and the obligor's ratio of current assets to current liabilities, net worth,
15 earnings trends and coverage of fixed charges, the nature of the
16 industry or business involved and its stability and any additional
17 security such as credit enhancement, insurance, guaranties or property
18 to be pledged or secure such bonds.

19 (2) Whether the political subdivisions in or near which the proposed
20 project is to be located have the ability to cope satisfactorily with the
21 impact of such project and to provide, or cause to be provided, the
22 public facilities and services, including utilities, that will be necessary
23 for such project and on account of any increase in population which
24 are expected to result therefrom.

25 (3) Whether the proposed date and manner of sale will have an adverse
26 effect upon any scheduled or anticipated sale of obligations by the
27 State or any political subdivision or any agency of either of them."

28 **SECTION 1G.4.** This part becomes effective January 1, 2003.

29
30 **PART 1H. ONE-TIME INVESTMENT BY THE HEALTH AND WELLNESS**
31 **TRUST FUND COMMISSION**

32
33 **SECTION 1H.1.** G.S. 147-86.30(c) reads as rewritten:

34 "(c) Creation of Fund Reserve. – The Commission shall reserve, and shall not
35 expend, fifty percent (50%) of each annual payment allocated to the Health and
36 Wellness Trust Fund pursuant to G.S. 143-16.4 during years 2001 through 2025 to
37 create and build the Fund Reserve. During years 2001 through 2025, the Commission
38 may expend any investment earnings on the reserved funds. Beginning in year 2026,
39 and thereafter, the Commission shall not expend the reserved funds but may continue to
40 expend any investment earnings on the reserved funds.

41 Notwithstanding G.S. 147-69.2, the State Treasurer shall invest up to three million
42 dollars (\$3,000,000) of the reserved funds in fiscal year 2002-2003 as directed by the
43 Commission. The Commission may direct the State Treasurer to invest the funds in

1 preferred or common stocks issued by a health related company incorporated or
2 otherwise created or located within North Carolina."

3 **SECTION 1H.2.** This part is effective when it becomes law and expires on
4 July 1, 2003.

6 **TITLE II. SPECIAL OBLIGATION SETTLEMENT BONDS**

8 **SECTION 2.1.** Title. – This title shall be known and may be cited as the
9 "Special Obligation Settlement Bonds Act of 2002".

10 **SECTION 2.2.** Findings. – The General Assembly finds:

- 11 (1) The State, together with 46 other states, has entered into the Master
12 Settlement Agreement, pursuant to which the State expects to receive
13 compensation for damages to the State on account of tobacco-related
14 illnesses as more fully described in the Master Settlement Agreement.
15 Amounts received by the State under the Master Settlement Agreement
16 will be available to fund various State programs for the health, safety,
17 and prosperity of the people of the State.
- 18 (2) Payments under the Master Settlement Agreement will be received by
19 the State over a period of years. While many of the projects and
20 programs that the State will fund from payments received under the
21 Master Settlement Agreement can be effectively funded as the
22 payments are received under the Master Settlement Agreement, more
23 immediate funding is required to finance a cancer treatment center for
24 the health and wellness of the people of the State and to finance a
25 biopharmaceutical training center to assist in the State's transition from
26 a tobacco-based economy to other industries.
- 27 (3) For these projects, it is possible for the State to access funds through
28 the issuance of bonds secured solely by, and payable solely from,
29 future payments under the Master Settlement Agreement to be credited
30 to the Settlement Reserve Fund for the Health and Wellness Trust
31 Fund and the Tobacco Trust Fund.

32 **SECTION 2.3.** Definitions. – The following definitions apply in this title:

- 33 (1) Biopharmaceutical training center. – A new
34 biopharmaceutical/bioprocess manufacturing training center to be
35 located at North Carolina State University and related training
36 facilities located at various community colleges.
- 37 (2) Bonds. – Special obligation bonds issued by the State pursuant to this
38 act.
- 39 (3) Cancer Treatment Center. – A new cancer rehabilitation and treatment
40 center to be located at the University of North Carolina Hospitals at
41 Chapel Hill.
- 42 (4) Cost. – Any of the following, without limiting or restricting any proper
43 definition of this term in financing the cost of the project as authorized
44 by this title:

- 1 a. The cost of acquiring, constructing, and equipping the project,
2 including the acquisition of rights-of-way, easements,
3 equipment, furnishings, land, and other interests in real or
4 personal property acquired or used in connection with the
5 project.
- 6 b. The cost of engineering, architectural, and other consulting
7 services in connection with the project as may be required.
- 8 c. Finance charges, reserves for debt service, and other types of
9 reserves required pursuant to the terms of the trust agreement or
10 resolution or related documents, interest before and during
11 construction or acquisition of the project and, if considered
12 advisable by the State Treasurer, for a period not exceeding two
13 years after the estimated date of completion of construction or
14 acquisition.
- 15 d. Administrative expenses and charges.
- 16 e. The cost of bond insurance, investment contracts, credit
17 facilities and liquidity facilities, interest rate swap agreements
18 or other derivative products, financial and legal consultants, and
19 related costs of the incurrence or issuance of the bonds.
- 20 f. The cost of reimbursing the State for any payments made for
21 any cost described above.
- 22 g. Any other costs and expenses necessary or incidental to the
23 purposes of this title.
- 24 (5) Credit facility. – An agreement that:
- 25 a. Is entered into by the State with a bank, savings and loan
26 association, or other banking institution, an insurance company,
27 reinsurance company, surety company or other insurance
28 institution, a corporation, investment banking firm or other
29 investment institution, or any financial institution or other
30 similar provider of a credit facility, which provider may be
31 located within or without the United States of America; and
- 32 b. Provides for prompt payment of all or any part of the principal
33 or purchase price (whether at maturity, presentment or tender
34 for purchase, redemption, or acceleration), redemption
35 premium, if any, and interest with respect to the bonds payable
36 on demand or tender by the owner in consideration of the State
37 agreeing to repay the provider of the credit facility in
38 accordance with the terms and provisions of the agreement.
- 39 (6) Fiscal year. – The fiscal year of the State beginning on July 1 of one
40 calendar year and ending on June 30 of the next calendar year.
- 41 (7) Master Settlement Agreement. – The settlement agreement among
42 certain tobacco manufacturers and certain states, including this State,
43 as incorporated in the consent decree entered in the action of State of
44 North Carolina v. Philip Morris, Incorporated, et al., 98 CVS 14377 in

- 1 the General Court of Justice, Superior Court Division, Wake County,
2 North Carolina.
- 3 (8) Par formula. – A provision or formula adopted by the State to provide
4 for the adjustment, from time to time, of the interest rate or rates
5 borne or provided for by any bonds including any of the following:
6 a. A provision providing for an adjustment so that the purchase
7 price of the bonds in the open market would be as close to par
8 as possible.
9 b. A provision providing for an adjustment based upon a
10 percentage or percentages of a prime rate or base rate, which
11 percentages may vary or be applied for different periods of
12 time.
13 c. Any provision that the State Treasurer determines is consistent
14 with this title and will not materially and adversely affect the
15 financial position of the State and the marketing of bonds at a
16 reasonable interest cost to the State.
- 17 (9) Pledged settlement receipts. – The portion of the settlement receipts
18 credited periodically to the Settlement Reserve Fund, but in no event
19 more than twenty-five million dollars (\$25,000,000) per fiscal year,
20 that have been pledged under the resolution or trust agreement
21 authorizing and securing any bonds, all as authorized by this title.
- 22 (10) Project. – The acquisition, construction, and equipping of the Cancer
23 Treatment Center and the Biopharmaceutical Training Center.
- 24 (11) Settlement receipts. – The amount the Settlement Reserve Fund
25 actually receives each year from payments under the Master
26 Settlement Agreement in accordance with the terms of the Master
27 Settlement Agreement.
- 28 (12) Settlement Reserve Fund. – The restricted reserve in the General
29 Fund created in G.S. 143-16.4.
- 30 (13) State. – The State of North Carolina, including any State agency.
- 31 (14) State agency. – Any agency, institution, board, commission, bureau,
32 council, department, division, officer, or employee of the State. The
33 term does not include counties, municipal corporations, political
34 subdivisions, local boards of education, or other local public bodies.
- 35 (15) State Treasurer. – The incumbent Treasurer, from time to time, of the
36 State.
- 37 (16) Trust agreement. – Any trust agreement or similar instrument or
38 agreement authorizing and securing bonds issued under this title.

39 **SECTION 2.4.** Authorization. – The State Treasurer may, by and with the
40 consent of the Council of State, issue and sell special obligation bonds of the State to
41 pay the cost of the project, in a total principal amount not to exceed one hundred
42 seventy-five million dollars (\$175,000,000). In addition, no more than one hundred
43 thirty million dollars (\$130,000,000) aggregate principal amount of bonds may be
44 issued to fund costs of the cancer treatment center and no more than forty-five million

1 dollars (\$45,000,000) aggregate principal amount of bonds may be issued to fund costs
2 of the biopharmaceutical training center. The principal of, premium, if any, and interest
3 on the bonds shall be payable solely from the pledged settlement receipts in accordance
4 with the terms of the resolution or trust agreement authorizing and securing the bonds.

5 **SECTION 2.5.** Terms and conditions. – The bonds may be issued from time
6 to time in one or more series. The bonds shall be dated, and may be made redeemable
7 before maturity at the option of the State at any price or prices and upon any terms and
8 conditions, as may be determined by the State Treasurer at the time of sale of the bonds.
9 The bonds also may be made payable from time to time on demand or tender for
10 purchase by the owner upon any terms and conditions as may be determined by the
11 State Treasurer. The bonds shall bear interest at any rate or rates (whether fixed or
12 variable, or any combination thereof, and including, without limitation, any variations
13 as may be permitted pursuant to a par formula) as may be determined by the State
14 Treasurer. Bonds shall mature at any time or times not exceeding 40 years from their
15 date or dates, as may be determined by the Council of State, subject to the limitations
16 provided in this title. The Council of State shall determine the form and manner of
17 execution of the bonds, and shall fix the denominations and the places of payment of
18 principal and interest, which may be any bank or trust company within or without the
19 State. If an officer whose signature or a facsimile of whose signature appears on any
20 bonds ceases to be that officer before the delivery of the bonds, the signature or
21 facsimile is nevertheless valid for all purposes as if the officer had remained in office
22 until the delivery. The Council of State may also provide for the authentication of the
23 bonds by a trustee or fiscal agent. The Council of State may also provide for any other
24 terms, conditions, or matters not inconsistent with the provisions of this title.

25 Bonds may be sold in any manner, either at public or private sale, and for any
26 price as the State Treasurer determines to be for the best interests of the State and to
27 effectuate best the purposes of this title as long as the sale has been approved by the
28 Council of State. The State Treasurer may authorize, execute, obtain, or otherwise
29 provide for bond insurance, investment agreements, credit and liquidity facilities,
30 interest rate swap agreements and other derivative products, and any other related
31 instruments as the State Treasurer determines are desirable in connection with the
32 issuance of bonds under this title. The State Treasurer is authorized to employ and
33 designate any financial consultants, underwriters, and bond attorneys to be associated
34 with any bond issue under this title. The proceeds of any bonds shall be used solely for
35 the purposes for which they are issued and shall be disbursed in any manner and under
36 any restrictions the Council of State may provide in the resolution authorizing the
37 issuance of, or any trust agreement securing, the bonds.

38 Except as otherwise expressly provided in this title, bonds may be issued
39 under this title without obtaining the consent of any department, division, commission,
40 board, body, bureau, or agency of the State, and without any other proceedings or the
41 happening of any conditions or things other than those proceedings, conditions, or
42 things that are specifically required by this title and the provisions of the resolution
43 authorizing the issuance of, or any trust agreement securing, the bonds.

1 **SECTION 2.6.** Trust agreement or resolution. – Any bonds issued under the
2 provisions of this title may be secured by a trust agreement by and between the State
3 and a corporate trustee, which may be any trust company or bank having the powers of
4 a trust company within or without the State. The resolution or trust agreement
5 authorizing and securing the bonds shall, subject to the limitations set forth in this title,
6 specify the pledged settlement receipts and shall pledge or assign these pledged
7 settlement receipts to pay the principal of, premium, if any, or interest on the bonds in
8 the manner provided by this title. The resolution or trust agreement may contain any
9 provisions for protecting and enforcing the rights and remedies of the holders of any
10 bonds as may be reasonable and proper and not in violation of law, including covenants
11 setting forth the duties of the State in relation to the purposes to which bond proceeds
12 may be applied, the disposition or pledging of the pledged settlement receipts, the terms
13 and conditions for the issuance of additional bonds, and the custody, safeguarding, and
14 application of all moneys.

15 Any resolution or trust agreement may restrict the individual right of action
16 by an individual owner of bonds. In addition to the foregoing, any resolution or trust
17 agreement may contain any other provisions as the Council of State considers
18 reasonable and proper for the security of the holders of any bonds. Expenses incurred by
19 the State in carrying out the provisions of the resolution or trust agreement may be paid
20 from the pledged settlement receipts as provided for in the resolution or trust agreement.

21 **SECTION 2.7.** Pledge of settlement receipts; limited obligations. – The
22 State is authorized to pledge a portion of the settlement receipts credited periodically to
23 the Settlement Reserve Fund to the payment of the principal of, premium, if any, and
24 interest on bonds issued under this title as they become due and payable, and to create
25 and maintain any reserves therefor, and to fulfill the terms of any agreements made with
26 the holders of bonds issued under this title. The maximum amount that may be so
27 pledged is twenty-five million dollars (\$25,000,000) per fiscal year. Notwithstanding
28 the foregoing, any pledged settlement receipts not required to pay the principal of,
29 premium, if any, and interest on the bonds secured by the pledged settlement receipts as
30 they become due and payable, or to create and maintain any reserves for them, or to
31 fulfill the terms of any agreements made with the holders of bonds issued under this
32 title, shall be available to the State for expenditure for any lawful purpose, subject to the
33 terms and provisions of any resolution or trust agreement authorizing and securing the
34 bonds.

35 Any pledge of the settlement receipts credited to the Settlement Reserve Fund
36 made by the State under the provisions of this title shall be set forth in the resolution or
37 trust agreement authorizing the issuance of the bonds. The pledge of these settlement
38 receipts made by the State shall be valid and binding from the time when the pledge is
39 made. All settlement receipts so pledged and thereafter received by the State are
40 immediately subject to the lien of the pledge without any physical delivery or further
41 act, and the lien of the pledge is valid and binding as against all parties having claims of
42 any kind in tort, contract, or otherwise against the State, irrespective of whether the
43 parties have notice of the lien. The resolution or trust agreement by which a pledge is
44 created need not be filed or recorded except in the records of the Council of State.

1 All bonds issued under this title shall be equally and ratably secured by a
2 pledge, charge, and lien upon the pledged settlement receipts pledged to the payment of
3 those bonds, without priority by reason of number, or of dates of bonds, execution, or
4 delivery, in accordance with the provisions of this title and of the resolution or trust
5 agreement authorizing and securing the bonds; except that the State may provide in the
6 resolution or trust agreement that the bonds shall, to the extent and in the manner
7 prescribed in the resolution or trust agreement, be subordinated and junior in standing
8 with respect to the payment of principal of, premium, if any, and interest on any other
9 bonds.

10 All bonds issued under this title shall be special obligations of the State. The
11 principal of, premium, if any, and interest on the bonds shall not be payable from the
12 general funds of the State, nor shall they constitute a legal or equitable pledge, charge,
13 lien, or encumbrance upon any of its property or upon any of its income, receipts, or
14 revenues, except the pledged settlement receipts. Neither the credit nor the taxing power
15 of the State is pledged for the payment of the principal of, premium, if any, or interest
16 on the bonds, and no holder of bonds has the right to compel the exercise of the taxing
17 power by the State or the forfeiture of any of its property in connection with any default
18 on the bonds, except for the pledged settlement receipts. Every bond issued under this
19 title shall recite in substance that the principal of, premium, if any, and interest on the
20 bond is payable solely from the pledged settlement receipts and that the State is not
21 obligated to pay the principal, premium, or interest, except from these settlement
22 receipts so pledged.

23 **SECTION 2.8.** Agreement of the State. – The State pledges to and agrees
24 with the holders of any bonds issued by the State pursuant to this title that as long as any
25 of the bonds are outstanding and unpaid, the State will not limit or alter the rights vested
26 in the State at the time of issuance of the bonds to collect and apply the pledged
27 settlement receipts in the manner provided in the resolution or trust agreement
28 authorizing and securing the bonds to pay the principal of, premium, if any, and interest
29 on the bonds as they become due and payable, and to create and maintain any reserves
30 for payment, and to fulfill the terms of any agreements made with the holders of the
31 bonds. The State will not in any way impair the rights and remedies of the holders of
32 the bonds until the bonds and all costs and expenses in connection with any action or
33 proceedings by or on behalf of the holders of the bonds are fully paid, met, and
34 discharged.

35 **SECTION 2.9.** Trust funds. – Notwithstanding any other provisions of law
36 to the contrary, all moneys received pursuant to the authority of this title, including
37 proceeds of the bonds and the pledged settlement receipts, are trust funds to be held and
38 applied solely as provided in this title. The resolution authorizing the issuance of, or
39 any trust agreement securing, any bonds issued under this title may provide that any of
40 these moneys may be temporarily invested pending their disbursement and shall provide
41 that any officer with whom, or any bank or trust company with which, the moneys are
42 deposited shall act as trustee of the moneys and shall hold and apply them for the
43 purposes of this title, subject to any limitations this title and the resolution or trust

1 agreement provide. These moneys may be invested in any investment authorized by
2 law for investment of trust funds held by the State Treasurer.

3 **SECTION 2.10.** Remedies. – Any holder of bonds issued under the
4 provisions of this title, and the trustee under any resolution or trust agreement
5 authorizing and securing the bonds, except to the extent the rights given in this title may
6 be restricted by the resolution or trust agreement, may, either at law or in equity, by suit,
7 action, mandamus, or other proceeding, protect and enforce any and all rights under the
8 laws of the State or granted under this title or under the resolution or trust agreement, or
9 under any other contract executed by the Council of State or the State Treasurer
10 pursuant to this title, and may enforce and compel the performance of all duties required
11 by this title or by the resolution or trust agreement to be performed by the State or by
12 any officer of the State.

13 **SECTION 2.11.** Investment securities. – All bonds and interest coupons
14 appertaining to them issued under this title are investment securities within the meaning
15 of and for all the purposes of Article 8 of Chapter 25 of the General Statutes, whether or
16 not they are of the form and character as to be investment securities under that act,
17 subject only to the provisions of the bonds pertaining to registration.

18 **SECTION 2.12.** Bonds eligible for investment. – Bonds issued under the
19 provisions of this title are securities or obligations in which all of the following may
20 invest, including capital in their control or belonging to them: public officers, agencies,
21 and public bodies of the State and its political subdivisions; insurance companies, trust
22 companies, investment companies, banks, savings banks, savings and loan associations,
23 credit unions, pension or retirement funds, and other financial institutions engaged in
24 business in the State; and executors, administrators, trustees, and other fiduciaries.
25 Bonds issued under the provisions of this title are securities or obligations that may
26 properly and legally be deposited with and received by any officer or agency of the
27 State or political subdivision of the State for any purpose for which the deposit of
28 bonds, notes, or obligations of the State or any political subdivision is now or may later
29 be authorized by law.

30 **SECTION 2.13.** Refunding bonds. – By and with the consent of the Council
31 of State, the State Treasurer is authorized to issue and sell refunding bonds for the
32 purpose of refunding any bonds issued under this title and then outstanding, including
33 the payment of any redemption premium on them and any interest accrued or to accrue
34 to the date of redemption of the refunded bonds. Refunding bonds may be issued at any
35 time prior to the final maturity of the debt or obligation to be refunded. The principal
36 of, premium, if any, and interest on the refunding bonds shall be payable solely from
37 funds provided under this title for payment of bonds.

38 The proceeds from the sale of any refunding bonds shall be applied to the
39 immediate payment and retirement of the obligations being refunded or, if not required
40 for the immediate payment of the obligations being refunded, the proceeds shall be
41 deposited in trust to provide for the payment and retirement of the obligations being
42 refunded and to pay any expenses incurred in connection with the refunding. Money in
43 a trust fund may be invested in (i) direct obligations of the United States government,
44 (ii) obligations the principal of and interest on which are guaranteed by the United

1 States government, (iii) to the extent then permitted by law, obligations of any agency
2 or instrumentality of the United States government, or (iv) certificates of deposit issued
3 by a bank or trust company located in the State if the certificates are secured by a pledge
4 of the obligations described in (i), (ii), or (iii) above having an aggregate market value,
5 exclusive of accrued interest, equal at least to the principal amount of the certificates so
6 secured. This section does not limit the duration of any deposit in trust for the retirement
7 of obligations being refunded but that have not matured and are not presently
8 redeemable or, if presently redeemable, have not been called for redemption.

9 The issuance of refunding bonds, their maturities and other details, the rights
10 of their holders, and the rights, duties, and obligations of the State in respect of them,
11 shall be governed by the provisions of this title that relate to the issuance of bonds,
12 insofar as those provisions are appropriate.

13 **SECTION 2.14.** Officers and employees not liable. – No member of the
14 Council of State or officer or employee of the State shall be subject to any personal
15 liability or accountability by reason of the execution or issuance of any bonds under this
16 title.

17 **SECTION 2.15.** Tax exemption. – Any bonds issued by the State under the
18 provisions of this title shall at all times be free from taxation by the State or any
19 political subdivision or any of their agencies, excepting estate, inheritance, and gift
20 taxes; income taxes on the gain from the transfer of the bonds; and franchise taxes.
21 Interest on the bonds is not subject to taxation as income.

22 **SECTION 2.16.** Allocation of funds. – G.S. 143-16.4 reads as rewritten:
23 "**§ 143-16.4. Settlement Reserve Fund.**

24 (a) The "Settlement Reserve Fund" is established as a restricted reserve in the
25 General Fund. Except as otherwise provided in this section, funds shall be expended
26 from the Settlement Reserve Fund only by specific appropriation by the General
27 Assembly.

28 (a1) A Health Trust Account is established in the Settlement Reserve Fund. The
29 portion of each Master Settlement Agreement payment identified in Section 6(3) of S.L.
30 1999-2 shall be credited to the Health Trust Account. If part of these Master Settlement
31 Agreement receipts have been pledged to secure the payment of bonds issued under the
32 Special Obligation Settlement Bonds Act of 2002, funds in the account (i) are subject to
33 the lien of the pledge as provided in that act, (ii) shall be expended only in accordance
34 with any resolution or trust agreement authorizing and securing the bonds, and (iii) shall
35 not be released from the account until their release is authorized by any resolution or
36 trust agreement authorizing and securing the bonds. Subject to the restrictions of any
37 applicable resolution or trust agreement under the Special Obligation Settlement Bonds
38 Act of 2002, the The State Controller shall transfer all—any unrestricted funds in the
39 Health Trust Account to the Health and Wellness Trust Fund created in Article 6C of
40 Chapter 147 of the General Statutes.

41 (a2) A Tobacco Trust Account is established in the Settlement Reserve Fund. The
42 portion of each Master Settlement Agreement payment identified in Section 6(2) of S.L.
43 1999-2 shall be credited to the Tobacco Trust Account. If all or part of these Master
44 Settlement Agreement receipts have been pledged to secure the payment of bonds

1 issued under the Special Obligation Settlement Bonds Act of 2002, funds in the account
2 (i) are subject to the lien of the pledge as provided in that act, (ii) shall be expended
3 only in accordance with any resolution or trust agreement authorizing and securing the
4 bonds, and (iii) shall not be released from the account until their release is authorized by
5 any resolution or trust agreement authorizing and securing the bonds. Subject to the
6 restrictions of any applicable resolution or trust agreement under the Special Obligation
7 Settlement Bonds Act of 2002, the ~~The~~ State Controller shall transfer ~~all~~ any
8 unrestricted funds in the Tobacco Trust Account to the Tobacco Trust Fund created in
9 Article 75 of Chapter 143 of the General Statutes.

10 (b) Unless prohibited by federal law, federal funds provided to the State by block
11 grant or otherwise as part of federal legislation implementing a settlement between
12 United States tobacco companies and the states shall be credited to the Settlement
13 Reserve Fund. Unless otherwise encumbered or distributed under a settlement
14 agreement or final order or judgment of the court, funds paid to the State or a State
15 agency pursuant to a tobacco litigation settlement agreement, or a final order or
16 judgment of a court in litigation between tobacco companies and the states, shall be
17 credited to the Settlement Reserve Fund."

18 **SECTION 2.17.(a)** Interpretation of Title - Additional Method. – This title
19 provides an additional and alternative method for the doing of the things authorized by
20 this title and shall be regarded as supplemental and additional to powers conferred by
21 other laws. Except where expressly provided, this title shall not be regarded as in
22 derogation of any powers now existing. The authority granted in this title is in addition
23 to other laws now or hereinafter enacted authorizing the State to issue or incur
24 indebtedness.

25 **SECTION 2.17.(b)** Statutory References. – References in this title to
26 specific sections or Chapters of the General Statutes are intended to be references to
27 those sections or Chapters as they may be amended from time to time by the General
28 Assembly.

29 **SECTION 2.17.(c)** Liberal Construction. – This title, being necessary for the
30 health and welfare of the people of the State, shall be liberally construed to effect its
31 purposes.

32 **SECTION 2.17.(d)** Severability. – If any provision of this title or its
33 application to any person or circumstance is held invalid, that invalidity does not affect
34 other provisions or applications of the title that can be given effect without the invalid
35 provision or application, and to this end the provisions of this title are severable.

36 **SECTION 2.18.** Effective Date. – This title is effective when it becomes
37 law.

38 **TITLE III. GENERAL PROVISIONS**

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41 **SECTION 3.1.** The provisions of this act are severable. If any provision of
42 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
43 other provisions of the act that can be given effect without the invalid provision.

1 **SECTION 3.2.** Except as otherwise provided, this act is effective when it
2 becomes law.