

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1973
PROPOSED COMMITTEE SUBSTITUTE H1973-PCS50938-MCx-31

Short Title: Extend Various Economic Incentives Sunsets.

(Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE COMPETITIVENESS OF THE CREDIT FOR PRODUCTION COMPANIES; TO ENACT TAX INCENTIVES FOR INTERACTIVE DIGITAL MEDIA COMPANIES; TO EXPAND THE TYPES OF DATACENTERS ELIGIBLE FOR PREFERENTIAL TAX TREATMENT; TO INCREASE THE NUMBER OF INDUSTRIES ELIGIBLE FOR SALES TAX REFUNDS ON BUILDING MATERIALS FOR MAJOR INDUSTRIAL FACILITIES; TO EXTEND AND EXPAND TAX CREDITS FOR GROWING BUSINESSES; TO EXTEND SUNSETS ON EXPIRING ECONOMIC DEVELOPMENT TAX BENEFITS; TO PROVIDE ECONOMIC DEVELOPMENT BENEFITS FOR PROJECTS LOCATED IN ECO-PARKS; TO PROVIDE A SALES TAX EXEMPTION FOR CERTAIN WOOD CHIPPERS; AND TO MAKE CHANGES TO PURCHASING AND CONTRACT LAWS.

The General Assembly of North Carolina enacts:

PART I: EXPAND TAX CREDITS FOR PRODUCTION COMPANIES

SECTION 1.1. G.S. 105-130.47 reads as rewritten:

"§ 105-130.47. Credit for qualifying expenses of a production company.

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

(1) ~~Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars (\$1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.~~

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.



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1 (4) Qualifying expenses. – The sum of the following amounts spent in this State
2 by a production company in connection with a production, ~~less the amount~~
3 ~~in excess of one million dollars (\$1,000,000) paid to a highly compensated~~
4 ~~individual:~~ production:

- 5 a. Goods and services leased or purchased. For goods with a purchase
6 price of twenty-five thousand dollars (\$25,000) or more, the amount
7 included in qualifying expenses is the purchase price less the fair
8 market value of the good at the time the production is completed.
- 9 b. Compensation and wages ~~on which withholding payments are~~
10 ~~remitted to the Department of Revenue under Article 4A of this~~
11 ~~Chapter for services performed in this State.~~
- 12 c. The cost of production-related insurance coverage obtained on the
13 production. Expenses for insurance coverage purchased from a
14 related member are not qualifying expenses.
- 15 d. Employee fringe contributions, including health, pension, and
16 welfare contributions.
- 17 e. Per diems, stipends, and living allowances paid for work being
18 performed in this State.

19 (5) Related member. – Defined in G.S. 105-130.7A.

20 (b) Credit. – A taxpayer that is a production company and has qualifying expenses of at
21 least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a
22 credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~ twenty-five percent
23 (25%) of the production company's qualifying expenses. For the purposes of this section, in the
24 case of an episodic television series, an entire season of episodes is one production. The credit
25 is computed based on all of the taxpayer's qualifying expenses incurred with respect to the
26 production, not just the qualifying expenses incurred during the taxable year.

27 ~~(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this~~
28 ~~section, a taxpayer that is a production company and has qualifying expenses of at least two~~
29 ~~hundred fifty thousand dollars (\$250,000) with respect to a production may elect to take a~~
30 ~~credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the~~
31 ~~production company's qualifying expenses less the difference between the amount of tax paid~~
32 ~~on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that~~
33 ~~would have been due had the purchases been subject to the sales or use tax at the combined~~
34 ~~general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's~~
35 ~~qualifying expenses incurred with respect to the production, not just the qualifying expenses~~
36 ~~incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed~~
37 ~~under this subsection or the one allowed under subsection (b) of this section at the time the~~
38 ~~taxpayer files the return on which the credit is claimed. This election is binding.~~

39 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
40 G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does
41 not distribute the credit among any of its owners. The pass-through entity is considered the
42 taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a
43 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a
44 credit allowed under this section does not affect the entity's payment of tax on behalf of its
45 owners.

46 (d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for
47 the taxable year in which the production activities are completed. The return must state the
48 name of the production, a description of the production, and a detailed accounting of the
49 qualifying expenses with respect to which a credit is claimed.

50 (e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax
51 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the

1 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
2 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this
3 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable
4 credits are subtracted before refundable credits.

5 (f) Limitations. – The amount of credit allowed under this section with respect to a
6 production that is a feature film may not exceed ~~seven-twenty million five hundred thousand~~
7 dollars ~~(\$7,500,000).~~ (\$20,000,000). No credit is allowed under this section for any production
8 that satisfies one of the following conditions:

- 9 (1) It is political advertising.
- 10 (2) It is a television production of a news program or live sporting event.
- 11 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 12 (4) It is a radio production.

13 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and
14 make available for inspection any information or records required by the Secretary of Revenue.
15 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The
16 Secretary may consult with the North Carolina Film Office of the Department of Commerce
17 and the regional film commissions in order to determine the amount of qualifying expenses.

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

- 21 (1) The location of sites used in a production for which a credit was taken.
- 22 (2) The qualifying expenses for which a credit was taken, classified by whether
23 the expenses were for goods, services, or compensation paid by the
24 production company.
- 25 (3) The number of people employed in the State with respect to credits taken.
- 26 (4) The total cost to the General Fund of the credits taken.

27 (i) Repealed by Session Laws 2006-220, s. 2, effective for taxable years beginning on
28 or after January 1, 2007.

29 (j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the
30 Division of Tourism, Film, and Sports Development in the Department of Commerce of the
31 taxpayer's intent to claim the production tax credit. The notification must include the title of the
32 production, the name of the production company, a financial contact for the production
33 company, the proposed dates on which the production company plans to begin filming the
34 production, and any other information required by the Division. For productions that have
35 production credits, a taxpayer claiming a credit under this section must acknowledge in the
36 production credits both the North Carolina Film Office and the regional film office responsible
37 for the geographic area in which the filming of the production occurred.

38 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
39 January 1, 2014."

40 **SECTION 1.2.** G.S. 105-151.29 reads as rewritten:

41 "**§ 105-151.29. Credit for qualifying expenses of a production company.**

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

- 43 ~~(1) Highly compensated individual. – An individual who directly or indirectly~~
44 ~~receives compensation in excess of one million dollars (\$1,000,000) for~~
45 ~~personal services with respect to a single production. An individual receives~~
46 ~~compensation indirectly when a production company pays a personal service~~
47 ~~company or an employee leasing company that pays the individual.~~

- 48 (2) Live sporting event. – A scheduled sporting competition, game, or race that
49 is not originated by a production company, but originated solely by an
50 amateur, collegiate, or professional organization, institution, or association
51 for live or tape-delayed television or satellite broadcast. A live sporting

1 event does not include commercial advertising, an episodic television series,
2 a television pilot, a music video, a motion picture, or a documentary
3 production in which sporting events are presented through archived
4 historical footage or similar footage taken at least 30 days before it is used.

5 (3) Production company. – Defined in G.S. 105-164.3.

6 (4) Qualifying expenses. – The sum of the following amounts spent in this State
7 by a production company in connection with a production, ~~less the amount~~
8 ~~paid in excess of one million dollars (\$1,000,000) to a highly compensated~~
9 ~~individual:production:~~

10 a. Goods and services leased or purchased. For goods with a purchase
11 price of twenty-five thousand dollars (\$25,000) or more, the amount
12 included in qualifying expenses is the purchase price less the fair
13 market value of the good at the time the production is completed.

14 b. Compensation and wages ~~on which withholding payments are~~
15 ~~remitted to the Department of Revenue under Article 4A of this~~
16 ~~Chapter for services performed in this State.~~

17 c. The cost of production-related insurance coverage obtained on the
18 production. Expenses for insurance coverage purchased from a
19 related member are not qualifying expenses.

20 d. Employee fringe contributions, including health, pension, and
21 welfare contributions.

22 e. Per diems, stipends, and living allowances paid for work being
23 performed in this State.

24 (5) Related member. – Defined in G.S. 105-130.7A.

25 (b) Credit. – A taxpayer that is a production company and has qualifying expenses of at
26 least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a
27 credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~ twenty-five percent
28 (25%) of the production company's qualifying expenses. For the purposes of this section, in the
29 case of an episodic television series, an entire season of episodes is one production. The credit
30 is computed based on all of the taxpayer's qualifying expenses incurred with respect to the
31 production, not just the qualifying expenses incurred during the taxable year.

32 ~~(b1) Alternative Credit. — In lieu of the credit allowed under subsection (b) of this~~
33 ~~section, a taxpayer that is a production company and has qualifying expenses of at least two~~
34 ~~hundred fifty thousand dollars (\$250,000) with respect to a production may elect to take a~~
35 ~~credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the~~
36 ~~production company's qualifying expenses less the difference between the amount of tax paid~~
37 ~~on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that~~
38 ~~would have been due had the purchases been subject to the sales or use tax at the combined~~
39 ~~general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's~~
40 ~~qualifying expenses incurred with respect to the production, not just the qualifying expenses~~
41 ~~incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed~~
42 ~~under this subsection or the one allowed under subsection (b) of this section at the time the~~
43 ~~taxpayer files the return on which the credit is claimed. This election is binding.~~

44 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
45 G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does
46 not distribute the credit among any of its owners. The pass-through entity is considered the
47 taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a
48 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a
49 credit allowed under this section does not affect the entity's payment of tax on behalf of its
50 owners.

1 (d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for
2 the taxable year in which the production activities are completed. The return must state the
3 name of the production, a description of the production, and a detailed accounting of the
4 qualifying expenses with respect to which a credit is claimed.

5 (e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax
6 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the
7 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
8 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this
9 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable
10 credits are subtracted before refundable credits.

11 (f) Limitations. – The amount of credit allowed under this section with respect to a
12 production that is a feature film may not exceed ~~seven-twenty million five hundred thousand~~
13 ~~dollars (\$7,500,000).~~ dollars (\$20,000,000). No credit is allowed under this section for any production
14 that satisfies one of the following conditions:

- 15 (1) It is political advertising.
- 16 (2) It is a television production of a news program or live sporting event.
- 17 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 18 (4) It is a radio production.

19 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and
20 make available for inspection any information or records required by the Secretary of Revenue.
21 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The
22 Secretary may consult with the North Carolina Film Office of the Department of Commerce
23 and the regional film commissions in order to determine the amount of qualifying expenses.

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

- 27 (1) The location of sites used in a production for which a credit was taken.
- 28 (2) The qualifying expenses for which a credit was taken, classified by whether
29 the expenses were for goods, services, or compensation paid by the
30 production company.
- 31 (3) The number of people employed in the State with respect to credits taken.
- 32 (4) The total cost to the General Fund of the credits taken.

33 (i) Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on
34 and after January 1, 2007.

35 (j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the
36 Division of Tourism, Film, and Sports Development in the Department of Commerce of the
37 taxpayer's intent to claim the production tax credit. The notification must include the title of the
38 production, the name of the production company, a financial contact for the production
39 company, the proposed dates on which the production company plans to begin filming the
40 production, and any other information required by the Division. For productions that have
41 production credits, a taxpayer claiming a credit under this section must acknowledge in the
42 production credits both the North Carolina Film Office and the regional film office responsible
43 for the geographic area in which the filming of the production occurred.

44 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
45 January 1, 2014."

46 **SECTION 1.3.** The General Assembly finds that cameras, film, and props or
47 building materials used in the construction of sets which are used in the actual filming of
48 movies for sale, lease, or rental and chemicals and equipment used to develop and edit film
49 which is used to produce release prints are not taxable under Article 5F of Chapter 105 of the
50 General Statutes and are therefore subject to sales and use tax under Article 5 of Chapter 105 of
51 the General Statutes unless another exemption applies.

1 standard, health insurance, environmental impact, safety and health programs, and overdue tax
2 debts, respectively.

3 (b) Allocation. – A credit allowed under this Article may be taken against the franchise
4 tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter.
5 The taxpayer must elect the tax against which a credit will be claimed when filing the return on
6 which the credit is first claimed. This election is binding. Any carryforwards of a credit must be
7 claimed against the same tax.

8 (c) Cap. – A credit allowed under this Article may not exceed fifty percent (50%) of the
9 amount of tax against which it is claimed for the taxable year, reduced by the sum of all other
10 credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This
11 limitation applies to the cumulative amount of credit, including carryforwards, claimed by the
12 taxpayer under this Article against the tax for the taxable year. Any unused portion of a credit
13 allowed in this Article may be carried forward for the succeeding eight years.

14 (d) Limitations. – A taxpayer that claims or has claimed a credit under this Article with
15 respect to a facility is not eligible to receive a grant under Part 2G of Article 10 of Chapter
16 143B of the General Statutes (Job Development Investment Grant Program) or Part 2H of
17 Article 10 of Chapter 143B of the General Statutes (One North Carolina Fund).

18 (e) Sunset. – This Article is repealed for taxable years beginning on or after January 1,
19 2014.

20 **"§ 105-129.108. Substantiation.**

21 To claim a credit allowed by this Article, the taxpayer must provide any information
22 required by the Secretary. Every taxpayer claiming a credit under this Article must maintain
23 and make available for inspection by the Secretary any records the Secretary considers
24 necessary to determine and verify the amount of the credit to which the taxpayer is entitled.
25 The burden of proving eligibility for a credit and the amount of the credit rests upon the
26 taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or
27 to make them available for inspection.

28 **"§ 105-129.109. Reports.**

29 The Department must publish by May 1 of each year the following information, itemized
30 by credit and taxpayer, for the 12-month period ending the preceding December 31:

- 31 (1) The qualifying expenses for which a credit was claimed, classified by
32 whether the expenses were production property or compensation or wages.
- 33 (2) The number of people employed in the State with respect to credits claimed.
- 34 (3) The total cost to the General Fund of the credits claimed.

35 **"§ 105-129.110. Production credit.**

36 (a) Credit. – A taxpayer that has qualifying expenses of at least one hundred thousand
37 dollars (\$100,000) with respect to an interactive digital media production is allowed a credit
38 equal to fifteen percent (15%) of all qualifying expenses of the taxpayer for which the taxpayer
39 has not already claimed a credit under this Article. The credit is computed based on all of the
40 taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying
41 expenses incurred during the taxable year.

42 (b) Limitations. – The amount of credit allowed under this section with respect to a
43 production may not exceed seven million five hundred thousand dollars (\$7,500,000). No credit
44 is allowed under this section for any production that satisfies one of the following conditions:

- 45 (1) It is gambling or casino games.
- 46 (2) It is a project done for academic credit.
- 47 (3) It is a production that is developed internally by the taxpayer for internal use.
- 48 (4) It is political advertising.
- 49 (5) It contains material that is obscene, as defined in G.S. 14-190.1.
- 50 (6) It is an Internet site that is primarily static and primarily designed to provide
51 information about one or more persons, businesses, companies, or firms.

1 (c) No Double Credit. – A taxpayer that claims a credit under this section may not also
2 claim a credit under Article 3J of this Chapter with respect to jobs whose compensation or
3 wages are included in the calculation of the credit under this section or with respect to business
4 property, the cost of which is included in the calculation of the credit under this section.

5 **"§ 105-129.111. Headquarters credit.**

6 (a) Eligibility. – A taxpayer that is primarily engaged in the production of interactive
7 digital media is eligible for a credit under this section with respect to a company headquarters if
8 the taxpayer creates at least 20 new full-time jobs at the company headquarters within a
9 24-month period and maintains those jobs for at least three years. A taxpayer that meets this job
10 creation requirement is eligible for credits under this section with respect to jobs created during
11 the three taxable years beginning with the year in which the 24-month period in which the job
12 creation requirement is satisfied begins. A taxpayer that creates an additional 20 new full-time
13 jobs at the company headquarters in a 24-month period during a three-year eligibility period
14 does not qualify for any extended eligibility period. However, a taxpayer that creates an
15 additional 20 new full-time jobs at the company headquarters in a 24-month period after the
16 completion of a three-year eligibility period is eligible for credits with respect to the company
17 headquarters for an additional three taxable years beginning in the year in which the additional
18 job creation requirement is satisfied. A job that is a transferred job, as defined in
19 G.S. 105-129.87(e), is not a new job for purposes of this Article.

20 (b) Credit. – A taxpayer that satisfies the eligibility requirement of subsection (a) of this
21 section and has qualifying expenditures related to the production of interactive digital media in
22 this State during the taxable year is eligible for a credit for each new full-time job created at the
23 company headquarters. The credit is equal to five thousand dollars (\$5,000) for each new
24 full-time job. The entire credit is taken in the taxable year in which the job is created.

25 (c) Calculation. – The number of new jobs a taxpayer creates or maintains during the
26 taxable year is determined by subtracting the average number of full-time jobs the taxpayer had
27 in this State during the 12-month period preceding the beginning of the taxable year from the
28 average number of full-time jobs the taxpayer has in this State during the taxable year.

29 (d) Forfeiture. – A taxpayer forfeits a credit allowed under this section if the taxpayer
30 fails to maintain the job for at least three years. A taxpayer that forfeits a credit under this
31 section is liable for all past taxes avoided as a result of the credit plus interest at the rate
32 established under G.S. 105-241.21, computed from the date the taxes would have been due if
33 the credit had not been allowed. The past taxes and interest are due 30 days after the date the
34 credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is
35 subject to the penalties provided in G.S. 105-236.

36 (e) Limitations. – The maximum cumulative credit that may be claimed by a taxpayer
37 under this section is five hundred thousand dollars (\$500,000).

38 (f) No Double Credit. – A taxpayer that claims a credit under this section may not also
39 claim a job creation credit under Article 3J of this Chapter with respect to the same job."

40 **SECTION 2.2.** If House Bill 1880, 2009 General Assembly, becomes law, then
41 G.S. 105-129.109, as enacted by this act, reads as rewritten:

42 **"§ 105-129.109. Reports.**

43 The Department ~~must publish by May 1 of each year~~ must include in the economic
44 incentives report required by G.S. 105-256 the following information, itemized by credit and
45 taxpayer, for the 12-month period ending the preceding December 31; taxpayer:

- 46 (1) The qualifying expenses for which a credit was claimed, classified by
47 whether the expenses were production property or compensation or wages.
- 48 (2) The number of people employed in the State with respect to credits claimed.
- 49 (3) The total cost to the General Fund of the credits claimed."

50 **SECTION 2.3.** This part is effective for taxable years beginning on or after
51 January 1, 2011, and applies to productions commenced on or after that date.

1
2 **PART III: ENHANCE SALES TAX BENEFITS FOR DATACENTERS AND MAJOR**
3 **INDUSTRIAL FACILITIES**

4
5 **SECTION 3.1.** G.S. 105-164.3 reads as rewritten:

6 "The following definitions apply in this Article:

7 ...

8 (5c) Datacenter. – A facility that provides infrastructure for hosting or data
9 processing services and that has power and cooling systems that are created
10 and maintained to be concurrently maintainable and to include redundant
11 capacity components and multiple distribution paths serving the computer
12 equipment at the facility. Although the facility must have multiple
13 distribution paths serving the computer equipment, a single distribution path
14 may serve the computer equipment at any one time. The facility may be
15 comprised of a structure or series of structures located or to be located (i) on
16 a single parcel of land, (ii) on contiguous parcels of land that are commonly
17 owned or owned by affiliation with the operator of that facility, or (iii) on
18 noncontiguous parcels of land that are commonly owned or owned by
19 affiliation with the operator of that facility but only if the structures located
20 thereon are linked through fiber optic or similar connection and form part of
21 the same operating unit of a company. The following definitions apply in
22 this subdivision:

- 23 a. Concurrently maintainable. – Capable of having any capacity
24 component or distribution element serviced or repaired on a planned
25 basis without interrupting or impeding the performance of the
26 computer equipment.
27 b. Multiple distribution paths. – A series of distribution paths
28 configured to ensure that failure on one distribution path does not
29 interrupt or impede other distribution paths.
30 c. Redundant capacity components. – Components beyond those
31 required to support the computer equipment.

32 ...

33 (8e) Eligible Internet datacenter. – A datacenter that satisfies each of the
34 following conditions:

- 35 a. The facility is used primarily or is to be used primarily by a business
36 engaged in ~~"Internet service providers and Web search portals"~~
37 ~~industry 51811, as defined by NAICS.~~ one or more of the following:
38 1. Providing clients access to the Internet and related services.
39 Related services may include Web hosting, Web page
40 designing, and hardware or software consulting related to
41 Internet connectivity. The business may provide local,
42 regional, or national coverage for clients or provide backbone
43 services, other than telecommunications carriers, for other
44 Internet service providers. The business must have the
45 equipment and telecommunication network access required
46 for a point-of-presence on the Internet.
47 2. Publishing or communicating or both of one or more of
48 textual, audio, or video content of general or specific interest
49 to or within a Web-based community found on the Internet
50 exclusively and not in a traditional, non-Internet version.

3. Operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. The business may provide additional Internet services, including e-mail, connections to other Web sites, auctions, news, or other content, or may serve as a home base for Internet users.

b. ~~The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.~~

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility.

...."

SECTION 3.2. G.S. 105-164.14(j) reads as rewritten:

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

...

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

...

e. If the facility is primarily engaged in paper-from-pulp manufacturing, the owner of the facility creates at least 200 additional jobs, and the business pays an average weekly wage at the facility equal to or greater than the average wage of the county. In making the wage calculation, the business must include any jobs that were filled for at least 1,600 hours during the calendar year.

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

...

i. Paper-from-pulp manufacturing. – Paper-from-pulp manufacturing means an industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.

...

o. Turbine and turbine generator set units manufacturing. – Turbine and turbine generator set units manufacturing means an industry primarily engaged in manufacturing turbines (except aircraft) or complete turbine generator set units, such as steam, hydraulic, gas, and wind.

(4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this

1 subsection with respect to the facility or fails to maintain the minimum
2 number of jobs created with respect to the facility, the facility loses its
3 eligibility and the owner forfeits all refunds already received under this
4 subsection. Upon forfeiture, the owner is liable for tax under this Article
5 equal to the amount of all past taxes refunded under this subsection, plus
6 interest at the rate established in G.S. 105-241.21, computed from the date
7 each refund was issued. The tax and interest are due 30 days after the date of
8 the forfeiture. A person that fails to pay the tax and interest is subject to the
9 penalties provided in G.S. 105-236.

10"

11 **SECTION 3.3.** G.S. 105-187.50(2) reads as rewritten:

12 **"§ 105-187.50. Definitions.**

13 The definitions in G.S. 105-164.3 apply in this Article. In addition, the following
14 definitions apply in this Article:

- 15 (1) Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.
16 (2) Eligible datacenter. – A datacenter that satisfies each of the following
17 conditions:
18 a. Repealed by Session Laws 2009-451, s. 27A.3(v), effective August
19 7, 2009.
20 b. The Secretary of Commerce has made a written determination of the
21 following:
22 1. For ~~facilities~~datacenters that are located entirely in a
23 development tier one area at the time of application for the
24 written determination, that at least one hundred fifty million
25 dollars (\$150,000,000) in private funds has been or will be
26 invested in improvements to real property or installed
27 datacenter machinery and equipment, or a combination
28 thereof, within five years of the date on which the first
29 qualifying improvement is made, regardless of any
30 subsequent change in county development tier status.
31 2. For ~~facilities~~datacenters that are not located entirely in a
32 development tier one area at the time of application for the
33 written determination, that at least three hundred million
34 dollars (\$300,000,000) in private funds has been or will be
35 invested in improvements to real property or installed
36 datacenter machinery and equipment, or a combination
37 thereof, within five years of the date on which the first
38 qualifying improvement is made, regardless of any
39 subsequent change in county development tier status.
40 c. The ~~facility~~datacenter satisfies the wage standard and health
41 insurance requirements of G.S. 105-129.83."

42 **SECTION 3.4.** G.S. 105-187.51C(d) reads as rewritten:

43 "(d) Sunset. – This section expires for sales occurring on or after July 1, ~~2013~~2015."

44 **SECTION 3.5.** This part becomes effective July 1, 2010, and applies to sales and
45 purchases made on or after that date.

46
47 **PART IV: EXTEND AND REVISE TAX CREDITS FOR GROWING BUSINESSES**

48
49 **SECTION 4.1.** G.S. 105-129.82(a) reads as rewritten:

50 "(a) Sunset. – This Article is repealed effective for business activities that occur on or
51 after January 1, ~~2011~~2014."

1 **SECTION 4.2.** G.S. 143B-437.010(a) reads as rewritten:
2 "(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area that meets all
3 of the following conditions:

- 4 (1) It is comprised of one or more contiguous census tracts, census block
5 groups, or both, in the most recent federal decennial census.
- 6 (2) All of the area is located in whole within a county that has no municipality
7 with a population in excess of 10,000.
- 8 (3) Every census tract and census block group that comprises the area either has
9 more than twenty percent (20%) of its population below the poverty level or
10 is adjacent to another census tract or census block group in the zone that has
11 more than twenty percent (20%) of its population below the poverty level
12 according to the most recent federal decennial census.
- 13 (4) The zone as a whole has more than twenty percent (20%) of its population
14 below the poverty level according to the most recent federal decennial
15 census."

16 **SECTION 4.3.** G.S. 105-129.81 is amended by adding a new subdivision to read:

- 17 "(9a) Environmental disqualifying event. – Any of the following occurrences:
- 18 a. During the tax year in which the activity occurred for which a credit
19 is being claimed, a civil penalty was assessed against the taxpayer by
20 the Department of Environment and Natural Resources for a failure
21 to abate or remediate a violation of any program administered by the
22 Department.
 - 23 b. During the tax year in which the activity occurred for which a credit
24 is being claimed or in the prior two tax years, any of the following:
 - 25 1. A finding was made by the Department of Environment and
26 Natural Resources that the taxpayer knowingly and willfully,
27 as defined in G.S. 143-215.6B, including all limitations
28 thereto, committed a violation of any program implemented
29 by an agency of the Department.
 - 30 2. An assessment for damages to fish or wildlife pursuant to
31 G.S. 143-215.3(a)(7) was made against the taxpayer.
 - 32 3. A judicial order for injunctive relief was issued against the
33 taxpayer in connection with a violation of any program
34 implemented by an agency of the Department of Environment
35 and Natural Resources.
 - 36 c. During the tax year in which the activity occurred for which the
37 credit is being claimed or in the prior four tax years, a criminal
38 penalty was imposed on the taxpayer in connection with a violation
39 of any program implemented by an agency of the Department of
40 Environment and Natural Resources."

41 **SECTION 4.4.** G.S. 105-129.83(e) and (i) read as rewritten:

42 "(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this
43 Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, ~~the taxpayer~~
44 ~~has no pending administrative, civil, or criminal enforcement action based on alleged~~
45 ~~significant violations of any program implemented by an agency of the Department of~~
46 ~~Environment and Natural Resources and has had no final determination of responsibility for~~
47 ~~any significant administrative, civil, or criminal violation of any program implemented by an~~
48 ~~agency of the Department of Environment and Natural Resources within the last five years. A~~
49 ~~significant violation is a violation or alleged violation that does not satisfy any of the conditions~~
50 ~~of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the~~
51 ~~Department of Revenue annually of every person that currently has any of these pending~~

1 ~~actions and every person that has had any of these final determinations within the last five~~
2 ~~years.~~there has not been a final determination unfavorable to the taxpayer with respect to an
3 environmental disqualifying event. For the purposes of this section, a 'final determination
4 unfavorable to the taxpayer' occurs when there is no further opportunity for the taxpayer to seek
5 administrative or judicial appeal, review, certiorari, or rehearing of the environmental
6 disqualifying event and the disqualifying event has not been reversed or withdrawn. No later
7 than January 31 of each year, the Secretary of Environment and Natural Resources shall
8 provide an annual report to the Department listing all environmental disqualifying events for
9 which a final determination unfavorable to the taxpayer was made in the prior calendar year
10 and shall provide the name of the taxpayer involved and the date that the disqualifying event
11 occurred.

12 ...

13 (i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer
14 was not eligible for the credit for the calendar year in which the taxpayer engaged in the
15 activity for which the credit was claimed. A taxpayer forfeits a credit previously allowed under
16 this Article if a final determination unfavorable to the taxpayer with respect to an
17 environmental disqualifying event is made that is applicable to the year in which the activity
18 occurred for which the credit was claimed. In addition, a taxpayer forfeits a credit for
19 investment in real property under G.S. 105-129.89 if the taxpayer fails to timely create the
20 number of required new jobs or to timely make the required level of investment under
21 G.S. 105-129.89(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes
22 avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21,
23 computed from the date the taxes would have been due if the credit had not been allowed. The
24 past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails
25 to pay the past taxes and interest by the due date is subject to the penalties provided in
26 G.S. 105-236."

27 **SECTION 4.5.** G.S. 143B-437.02(g) reads as rewritten:

28 "(g) Environmental Impact. – A business is eligible for consideration for site
29 development under this part only if the business certifies that, at the time of the application, the
30 ~~business has no pending administrative, civil, or criminal enforcement action based on alleged~~
31 ~~significant violations of any program implemented by an agency of the Department of~~
32 ~~Environment and Natural Resources, and has had no final determination of responsibility for~~
33 ~~any significant administrative, civil, or criminal violation of any program implemented by an~~
34 ~~agency of the Department of Environment and Natural Resources within the last five years. A~~
35 ~~significant violation is a violation or alleged violation that does not satisfy any of the conditions~~
36 ~~of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources must notify the~~
37 ~~Department of Commerce annually of every person that currently has any of these pending~~
38 ~~actions and every person that has had any of these final determinations within the last five~~
39 ~~years.~~satisfies the environmental impact standard under G.S. 105-129.83."

40 **SECTION 4.6.** G.S. 143B-437.012(h) reads as rewritten:

41 "(h) Environmental Impact. – A business is eligible for consideration for a grant under
42 this section only if the business ~~has no pending administrative, civil, or criminal enforcement~~
43 ~~action based on alleged significant violations of any program implemented by an agency of the~~
44 ~~Department of Environment and Natural Resources and has had no final determination of~~
45 ~~responsibility for any significant administrative, civil, or criminal violation of any program~~
46 ~~implemented by an agency of the Department of Environment and Natural Resources within~~
47 ~~the last three years with respect to the location for which the grant is made. For the purposes of~~
48 ~~this subsection, a significant violation is a violation or alleged violation that does not satisfy~~
49 ~~any of the conditions of G.S. 143-215.6B(d).~~certifies that, at the time of the application, the
50 business satisfies the environmental impact standard under G.S. 105-129.83."

1 **SECTION 4.7.** This part is effective January 1, 2011, and applies to taxable years
2 beginning on or after that date.

3
4 **PART V: EXTEND EXISTING TAX BENEFITS FOR ECONOMIC DEVELOPMENT**

5
6 **SECTION 5.1.** G.S. 105-129.16D(d) reads as rewritten:

7 "**§ 105-129.16D. Credit for constructing renewable fuel facilities.**

8 ...

9 (d) Sunset. – This section is repealed effective for facilities placed in service on or after
10 January 1, ~~2011~~2014."

11 **SECTION 5.2.** G.S. 105-129.16F(b) reads as rewritten:

12 "**§ 105-129.16F. Credit for biodiesel producers.**

13 ...

14 (b) Sunset. – This section is repealed for taxable years beginning on or after January 1,
15 ~~2010~~2014."

16 **SECTION 5.3.** G.S. 105-164.14 reads as rewritten:

17 "**§ 105-164.14. Certain refunds authorized.**

18 ...

19 (a1) Passenger Plane Maximum. – An interstate passenger air carrier is allowed a refund
20 of the net amount of sales and use tax paid by it in this State on fuel during a calendar year in
21 excess of two million five hundred thousand dollars (\$2,500,000). The "net amount of sales and
22 use tax paid" is the amount paid less the refund allowed under subsection (a) of this section. A
23 request for a refund must be in writing and must include any information and documentation
24 the Secretary requires. A request for a refund is due within six months after the end of the
25 calendar year for which the refund is claimed. The refund allowed by this subsection is in
26 addition to the refund allowed in subsection (a) of this section. This subsection is repealed for
27 purchases made on or after January 1, ~~2011~~2014.

28 ...

29 (l) Aviation Fuel for Motorsports Events. – A professional motorsports racing team or
30 a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this
31 State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel
32 to a motorsports event in another state from a location in this State, or to travel to this State
33 from a motorsports event in another state. For the purposes of this subsection, a "motorsports
34 event" includes a motorsports race, a motorsports sponsor event, and motor sports testing. A
35 request for a refund must be in writing and must include any information and documentation
36 the Secretary requires. A request for a refund is due within six months after the end of the
37 State's fiscal year. Refunds applied for after the due date are barred. This subsection is repealed
38 for purchases made on or after January 1, ~~2011~~2014.

39"

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

41
42 **PART VI: CREATE ECONOMIC DEVELOPMENT INCENTIVES FOR ECO-PARKS**

43
44 **SECTION 6.1.** G.S. 143B-437.08 is amended by adding a new subsection to read:

45 "(j) Exception for Eco-Industrial Park. – An Eco-Industrial Park has a development tier
46 one designation. An Eco-Industrial Park is an industrial park that the Secretary of Commerce
47 has certified meets the following requirements:

48 (1) It has at least 100 developable acres.

49 (2) It is located in a county that is not required under G.S. 143-215.107A to
50 perform motor vehicles emissions inspections.

1 (3) Each building located in the industrial park is constructed in accordance with
2 energy-efficiency and water-use standards established in G.S. 143-135.37
3 for construction of a major facility.

4 (4) Each business located in the park is in a clean-industry sector according to
5 the Toxic Release Inventory by the United States Environmental Protection
6 Agency."

7 **SECTION 6.2.** G.S. 143B-437.4 reads as rewritten:

8 "**§ 143B-437.4. NC Green Business Fund ~~established as a special revenue fund and grant~~**
9 **program.**

10 (a) ~~Establishment.~~—Fund. – The NC Green Business Fund is established as a special
11 revenue fund in the Department of Commerce, and the Department shall be responsible for
12 administering the Fund.

13 (b) Purposes. – Moneys in the NC Green Business Fund shall be allocated pursuant to
14 this subsection. The Department of Commerce shall make grants from the Fund to private
15 businesses with less than 100 employees, nonprofit organizations, local governments, and State
16 agencies to encourage the expansion of small to medium size businesses with less than 100
17 employees to help grow a green economy in the State. Moneys in the NC Green Business Fund
18 shall be used for projects that will focus on the following three priority ~~areas:~~areas listed in this
19 subsection. In selecting between projects that are within a priority area, a project that is located
20 in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable
21 project that is not located in a certified Eco-Industrial Park. The priority areas are:

22 (1) To encourage the development of the biofuels industry in the State. The
23 Department of Commerce may make grants available to maximize
24 development, production, distribution, retail infrastructure, and consumer
25 purchase of biofuels in North Carolina, including grants to enhance biofuels
26 workforce development.

27 (2) To encourage the development of the green building industry in the State.
28 The Department of Commerce may make grants available to assist in the
29 development and growth of a market for environmentally conscious and
30 energy efficient green building processes. Grants may support the
31 installation, certification, or distribution of green building materials; energy
32 audits; and marketing and sales of green building technology in North
33 Carolina, including grants to enhance workforce development for green
34 building processes.

35 (3) To attract and leverage private-sector investments and entrepreneurial
36 growth in environmentally conscious clean technology and renewable
37 energy products and businesses, including grants to enhance workforce
38 development in such businesses.

39 (c) Cap and Matching Funds. – The Department of Commerce may set a cap on a grant
40 from the NC Green Business Fund and may require a private business to provide matching
41 funds for a grant from the Fund. A grant to a project located in an Eco-Industrial Park certified
42 under G.S. 143B-437.08 is not subject to a cap or a requirement to provide matching funds."

43 **SECTION 6.3.** G.S. 143B-437.52(b) reads as rewritten:

44 "(b) ~~Cap.~~—Cap and Priority. – The maximum number of grants the Committee may
45 award in each calendar year is 25. In selecting between applicants, a project that is located in an
46 Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project
47 that is not located in a certified Eco-Industrial Park."

48 **SECTION 6.4.** G.S. 105-129.16A(c)(1) reads as rewritten:

49 "(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings
50 provided in this subsection.

- 1 (1) Nonresidential Property. – A ceiling of two million five hundred thousand
 2 dollars (\$2,500,000) per installation applies to renewable energy property
 3 that is placed in service outside an Eco-Industrial Park certified under
 4 G.S. 143B-437.08 and is for any purpose other than residential. A ceiling of
 5 five million dollars (\$5,000,000) per installation applies to renewable energy
 6 property that is placed in service in a certified Eco-Industrial Park and is for
 7 any purpose other than residential."

8 **SECTION 6.5.** G.S. 105-129.55 reads as rewritten:

9 **"§ 105-129.55. Credit for North Carolina research and development.**

10 (a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North
 11 Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the
 12 expenses, determined as provided in this ~~subsection~~section. Only one credit is allowed under
 13 this ~~subsection~~section with respect to the same expenses. If more than one subdivision of this
 14 ~~subsection~~section applies to the same expenses, then the credit is equal to the higher
 15 percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina
 16 research expenses qualifies under more than one subdivision (2) of this ~~subsection~~and the
 17 ~~remainder qualifies under subdivision (3) of this subsection~~, section, the applicable percentages
 18 apply separately to each part of the expenses.

- 19 (1) Small business. – If the taxpayer was a small business as of the last day of
 20 the taxable year, the applicable percentage is three and one-quarter percent
 21 (3.25%).
 22 (2) Low-tier research. – For expenses with respect to research performed in a
 23 development tier one area, the applicable percentage is three and one-quarter
 24 percent (3.25%).
 25 (2a) University research. – For North Carolina university research expenses, the
 26 applicable percentage is twenty percent (20%).
 27 (2b) Eco-Industrial Park. – For expenses with respect to research performed in an
 28 Eco-Industrial Park certified under G.S. 143B-437.08, the applicable
 29 percentage is thirty-five percent (35%).
 30 (3) Other research. – For expenses not covered under another subdivision (1) ~~or~~
 31 (2) of this ~~subsection~~section, the percentages provided in the table below
 32 apply to the taxpayer's qualified North Carolina research expenses during the
 33 taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	\$50 million	1.25%
\$50 million	\$200 million	2.25%
\$200 million	–	3.25%

38 (b) ~~North Carolina University Research Expenses. – A taxpayer that has North Carolina~~
 39 ~~university research expenses for the taxable year is allowed a credit equal to twenty percent~~
 40 ~~(20%) of the expenses."~~

41 **SECTION 6.6.** Sections 6.4 and 6.5 of this act are effective for taxable years
 42 beginning on or after January 1, 2011. The remainder of this part is effective when it becomes
 43 law. Sections 6.2 and 6.3 of this act apply to grant applications submitted on or after July 1,
 44 2010.

45
 46 **PART VII: TREAT WOOD CHIPPERS LIKE OTHER COMMERCIAL LOGGING**
 47 **EQUIPMENT**

49 **SECTION 7.1.** G.S. 105-164.13 is amended by adding a new subdivision to read:

50 **"§ 105-164.13. Retail sales and use tax.**

1 The sale at retail and the use, storage, or consumption in this State of the following tangible
2 personal property, digital property, and services are specifically exempted from the tax imposed
3 by this Article:

4 ...

5 (4g) Sales of wood chipping machinery to which is assigned a 17-digit vehicle
6 identification number specified by the National Highway Transportation
7 Safety Association. For the purpose of this section, "wood chipping
8 machinery" is machinery used to convert raw forest products into wood
9 chips.

10"

11 **SECTION 7.2.** This part becomes effective July 1, 2010, and applies to sales made
12 on or after that date.

13 **PART VIII: PURCHASING AND CONTRACT CHANGES TO BENEFIT NORTH** 14 **CAROLINA BUSINESSES**

15 **SECTION 8.1.** G.S. 143-59 reads as rewritten:

16 **"§ 143-59. Preference given to North Carolina products and citizens, and articles**
17 **manufactured by State agencies; North Carolina businesses; reciprocal**
18 **preferences.**

19 (a) Preference. – The Secretary of Administration and any State agency authorized to
20 purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods,
21 supplies, materials, equipment, printing or services give preference as far as may be practicable
22 to such products or services manufactured or produced in North Carolina or furnished by or
23 through citizens of North Carolina: Provided, however, that in giving such preference no
24 sacrifice or loss in price or quality shall be permitted; and provided further, that preference in
25 all cases shall be given to surplus products or articles produced and manufactured by other
26 State departments, institutions, or agencies which are available for distribution.

27 (b) Reciprocal Preference. – For the purpose only of determining the low bidder on all
28 contracts for equipment, materials, supplies, and services valued over twenty-five thousand
29 dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is
30 equal to the percent of increase, if any, that the state in which the bidder is a resident adds to
31 bids from bidders who do not reside in that state. Any amount due under a contract awarded to
32 a nonresident bidder shall not be increased by the amount of the increase added by this
33 subsection. On or before January 1 of each year, the Secretary of Administration shall
34 electronically publish a list of states that give preference to in-State bidders and the amount of
35 the percent increase added to out-of-state bids. All departments, institutions, and agencies of
36 the State shall use this list when evaluating bids. If the reciprocal preference causes the
37 nonresident bidder to no longer be the lowest bidder, the Secretary of Administration may, after
38 consultation with the Board of Awards, waive the reciprocal preference. In determining
39 whether to waive the reciprocal preference, the Secretary of Administration and the Board of
40 Awards shall consider factors that include competition, price, product origination, and available
41 resources.

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

43 (1) Resident bidder. – A bidder that has paid unemployment taxes or income
44 taxes in this State and whose principal place of business is located in this
45 State.

46 (2) Nonresident bidder. – A bidder that is not a resident bidder as defined in
47 subdivision (1) of this subsection.

48 (3) Principal place of business. – The principal place from which the trade or
49 business of the bidder is directed or managed.
50
51

1 (d) Exemptions. – Subsection (b) of this section shall not apply to contracts entered into
2 under G.S. 143-53(a)(5) or G.S. 143-57.

3 (e) When a contract is awarded by the Secretary using the provisions of subsection (b)
4 of this section, a report of the nature of the contract, the bids received, and the award to the
5 successful bidder shall be posted on the Internet as soon as practicable.

6 (f) Resident Bidder Notification. – When the Secretary puts a contract up for
7 competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who
8 have expressed an interest in bidding on contracts of that nature. The Secretary may opt to
9 provide notice under this section by electronic means only.

10 (g) Low Bidder Matching. – Notwithstanding any other provision of law, when State
11 agencies, campuses of The University of North Carolina system and its General
12 Administration, and the Department of Community Colleges are procuring supplies, materials,
13 equipment, and other tangible personal property or construction or architectural services
14 through any procurement process in which award of the contract is to be made to the lowest
15 responsive and responsible bidder and the lowest bid is that of a responsible and responsive
16 nonresident bidder and the bid of a responsible and responsive resident bidder is within five
17 percent (5%) or within ten thousand dollars (\$10,000), whichever is less (the match zone), of
18 the nonresident bidder's bid, then the resident bidder shall be offered the option of matching the
19 nonresident bidder's bid, and, if otherwise qualified, being awarded the contract at the lower
20 price. If the lowest resident bidder declines to match the lower price, each responsible and
21 responsive resident bidder whose bid is within the match zone shall in turn be offered the
22 opportunity to match the lower price."

23 **SECTION 8.2.** G.S. 44A-26(a) reads as rewritten:

24 "(a) When the total amount of construction contracts awarded for any one project
25 exceeds ~~three~~five hundred thousand dollars (~~\$300,000~~),(\$500,000), a performance and
26 payment bond as set forth in (1) and (2) is required by the contracting body from any contractor
27 or construction manager at risk with a contract more than fifty thousand dollars (\$50,000). In
28 the discretion of the contracting body, a performance and payment bond may be required on
29 any construction contract as follows:

- 30 (1) A performance bond in the amount of one hundred percent (100%) of the
31 construction contract amount, conditioned upon the faithful performance of
32 the contract in accordance with the plans, specifications and conditions of
33 the contract. Such bond shall be solely for the protection of the contracting
34 body that is constructing the project.
- 35 (2) A payment bond in the amount of one hundred percent (100%) of the
36 construction contract amount, conditioned upon the prompt payment for all
37 labor or materials for which a contractor or subcontractor is liable. The
38 payment bond shall be solely for the protection of the persons furnishing
39 materials or performing labor for which a contractor, subcontractor, or
40 construction manager at risk is liable."

41 **SECTION 8.3.** Chapter 143 of the General Statutes is amended by adding a new
42 section to read:

43 **"§ 143-131.1. Small project bidding by State agencies, boards, commissions, and**
44 **institutions.**

45 (a) All contracts for construction or repair work involving the expenditure of public
46 money in the amount of thirty thousand dollars (\$30,000) or more, but less than the limits
47 prescribed in G.S. 143-129, made by State agencies, boards, commissions, and institutions shall
48 be made after informal bids have been secured. Informal solicitation for informal bids shall
49 include small resident bidders to the extent practicable. A 'small resident bidder' is a bidder that
50 meets the requirements for a resident bidder under G.S. 143-59(c) and that can certify that its

1 gross revenues for its last completed fiscal year did not exceed one million five hundred
2 thousand dollars (\$1,500,000).

3 (b) The Department of Administration may identify projects or classes of projects
4 within its control that are likely to attract substantial participation by small resident bidders and
5 to restrict solicitation and award of contracts on those projects to small resident bidders.

6 (c) All contracts let pursuant to this section shall be awarded to the lowest responsible,
7 responsive bidder, taking into consideration quality, performance, and the time specified in the
8 bids for the performance of the contract.

9 (d) The Department of Administration may waive any bonding requirements of Chapter
10 44A of the General Statutes for contracts let under this section."

11 **SECTION 8.4.(a)** The General Assembly makes the following findings:

12 (1) A multiple award schedule contract is one that allows multiple vendors to be
13 awarded a State contract for goods or services by providing their total
14 catalogue for lines of equipment and attachments to eligible purchasers,
15 including State agencies, departments, institutions, public school districts,
16 political subdivisions, and higher education facilities.

17 (2) A multiple award schedule contract allows multiple vendors to compete and
18 be awarded a contract based upon the value of their products or services.

19 (3) A properly administered multiple award schedule contract allows the State to
20 evaluate vendors based on a variety of factors, including discounts, total life
21 cycle costs, service, warranty, distribution channel, and past vendor
22 performance.

23 (4) Under appropriate circumstances, multiple award schedule contracts result in
24 competitive pricing, transparency, administrative savings, expedited
25 procurement, and flexibility for State purchasers.

26 **SECTION 8.4.(b)** The North Carolina Department of Administration is strongly
27 encouraged to consider the use of multiple award schedule contracts when issuing requests for
28 proposals for State term contracts.

29 **SECTION 8.5.** This part becomes effective July 1, 2010.

30
31 **PART IX: EFFECTIVE DATE**

32
33 **SECTION 9.1.** Except as otherwise provided, this act is effective when it becomes
34 law.