

**2006**

**HOUSE SELECT  
COMMITTEE ON  
ECONOMIC  
DEVELOPMENT**

**MINUTES**

**HOUSE SELECT  
COMMITTEE  
ON  
ECONOMIC DEVELOPMENT**

**James B. Black  
Speaker**



**Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096**

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**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**

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**TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA  
HOUSE OF REPRESENTATIVES**

Section 1. The House Select Committee on Economic Development (hereinafter "Select Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6 and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

Section 2. The Select Committee shall be composed of the nine members listed below.

Representative Jim Harrell, III, Chair
Representative Bill Daughtridge, Vice Chair
Representative Bob England
Representative Pryor Gibson
Representative Bruce Goforth
Representative Earl Jones
Representative Bill Owens
Representative Earline W. Parmon
Representative Karen B. Ray

Section 3. The Select Committee may study all aspects of economic development programs.

Section 4. The Select Committee shall meet upon the call of its Chair. A quorum of the Select Committee shall be a majority of its members, including the Chair.

Section 5. Members of the Select Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1. The expenses of the Select Committee including per diem, subsistence, travel allowances for Select Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual

expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Select Committee, and clerical expenses shall be paid upon the authorization of the Chair of the Select Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 6. The members of the Select Committee serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives may dissolve the Select Committee at any time.

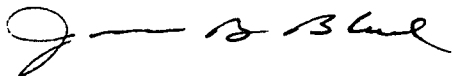
Section 7. The Legislative Services Officer shall assign professional and clerical staff to assist the Select Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Select Committee.

Section 8. The Select Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Select Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Section 9. The Select Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Select Committee in the State Legislative Building or the Legislative Office Building.

Section 10. The Select Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the House of Representatives, on or before May 1, 2006, by filing a copy of the report with the Office of the Speaker of the House of Representatives and the Legislative Library. The Select Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives, on or before December 31, 2006, by filing a copy of the report with the Office of the Speaker of the House of Representatives and the Legislative Library. The Select Committee shall terminate on December 31, 2006, or upon the filing of its final report, whichever occurs first.

Effective this 3rd day of March, 2006.

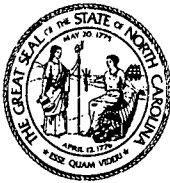


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James B. Black  
Speaker

Revised copy to reflect Representative Daughtridge as Vice Chair.





NORTH CAROLINA GENERAL ASSEMBLY  
Legislative Services Office

George R. Hall, Legislative Services Officer

*Research Division*

300 N. Salisbury Street, Suite 545  
Raleigh, NC 27603-5925  
Tel. 919-733-2578 Fax 919-715-5460

*Terrence D. Sullivan*  
Director

April 5, 2006

The Honorable Jim Harrell, III, Chair  
House Select Committee on Economic Development  
North Carolina House of Representatives  
300 North Salisbury Street, Room 403  
Raleigh, NC 27603-5925

Dear Representative Harrell:

I have asked Mr. Canaan Huie, a staff attorney with the Bill Drafting Division, to join Ms. Karen Cochrane-Brown and Ms. Cindy Avrette, as staff to the Committee.

Should you wish to contact Mr. Huie, he may be reached by telephone at (919) 733-6660.

If I may be of service to you or the Committee, please contact me.

Yours truly,

A handwritten signature in cursive script, appearing to read "Terry", written over the printed name and title.

Terrence D. Sullivan  
Director of Research

TDS/lba

cc: Hon. James B. Black, Speaker  
Mr. George Hall  
Mr. Gerry Cohen  
Ms. Karen Cochrane-Brown

Ms. Cindy Avrette  
Mr. Canaan Huie  
Mr. Brian Peck

**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT  
MEMBERSHIP LIST**

**Representative Jim Harrell, III**  
Chair  
405 Legislative Office Building  
Raleigh, NC  
jha@ncleg.net  
919-715-1883

**Representative Bill Daughtridge**  
Vice Chair  
PO Box 593  
Rocky Mount, NC 27802  
billd@ncleg.net  
252-442-5526

**Representative Bob England**  
PO Box 908  
Ellenboro, NC 28040  
bobe@ncleg.net  
828-453-8807

**Representative Pryor Gibson**  
PO Box 1010  
Wadesboro, NC 28170  
pryorg@ncleg.net  
704-694-5957

**COUNSEL:**  
Cindy Avrette  
cindya@ncleg.net

**COUNSEL:**  
Karen Cochrane-Brown  
karenc@ncleg.net

**Legislative Research Division**  
Room 543, LOB  
919-733-2578

**Representative Earl Jones**  
21 Loney Circle  
Greensboro, NC 27406  
earlj@ncleg.net  
336-273-0840

**Representative Bruce Goforth**  
137 Stonecrest Drive  
Asheville, NC 28803  
bruceg@ncleg.net  
828-298-6237

**Representative Bill Owens**  
113 Hunters Trail East  
Elizabeth City, NC 27909  
billo@ncleg.net  
252-335-0167

**Representative Earline W. Parmon**  
3873 Barkwood Drive  
Winston-Salem, NC 27105  
earlinep@ncleg.net  
336-767-7395

**Representative Karen B. Ray**  
262 Gibbs Road  
Mooresville, NC 28117  
karenr@ncleg.net  
252-354-6993

**CLERK:**

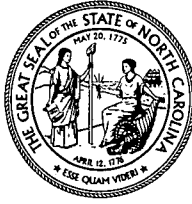
**Beth LeGrande**  
harrellla@ncleg.net  
Room 405, LOB  
919-715-1883

**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**

## 421 Legislative Office Building

**1:00 P.M.**

[illegible]



**NORTH CAROLINA GENERAL ASSEMBLY  
STATE LEGISLATIVE BUILDING  
RALEIGH, NORTH CAROLINA 27603**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
House Select Committee on Economic Development**

**March 7, 2006**

**MEMORANDUM**

**TO: Members of the House Select Committee on Economic Development**

**FROM: Representative Jim Harrell, Chair**

**RE: Notice of Committee Meetings Dates**

**COMMITTEE MEETINGS at 1:00 P.M.: MARCH 22, 2006  
APRIL 10, 2006  
APRIL 27, 2006**

**The first meeting of the House Select Committee on Economic Development will meet on Wednesday, March 22, 2006 in Room 421 of the Legislative Office Building at 1:00 P.M.**

**The March 22 meeting will be an organizational and planning meeting. We hope you will be able to attend. Please do not hesitate to let us know if you have any questions.**

**Please advise Beth LeGrande, Committee Assistant, at 715-1883, or e-mail Harrellja@ncleg.net if you are unable to attend.**

**Thank you.**

**HOUSE SELECT COMMITTEE ON  
ECONOMIC DEVELOPMENT**

Wednesday, March 22, 2006

The House Select Committee on Economic Development met on Wednesday, March 22, 2006, in Room 421 of the Legislative Office Building at 1:00 P.M. The following members were present: Representative James A. Harrell, III, Chairman; Representative Bill Daughtridge, Vice Chairman; and Representatives Bob England, Pryor Gibson, Bruce Goforth, Earl Jones, Earline W. Parmon, and Karen B. Ray.

The Visitor Registration list and the Committee Agenda are attached and made part of these minutes. (Please see exhibit #1 and #2.)

Chairman Harrell called the meeting to order with welcoming remarks. He clarified that the goal of Committee is to present a proposal to the 2006 Short Session that will address improvements and potential expansions to the William S. Lee Act encourage economic growth. Representative Harrell noted that both rural and metropolitan areas were represented and welcomed. He defined the membership as a group focused on economic development with Bill Lee Act concerns in the past and ideas on ways to improve it.

Canaan Huie, Committee Counsel, Bill Drafting Division, was recognized to review the Bill Lee Act. (Please see Exhibits #3 & #4.) ***“Overview of the Tax Incentives for New and Expanding Businesses: Article 3A of Chapter 105”*** and ***“Summary of the William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act)”***. The overview included a description of the evolution of the Bill Lee Act from when the General Assembly first created it in 1996 to where it is today. Mr. Huie explained that initially the three factors used for determining ratings were unemployment levels, poverty levels and population growth rates. He noted that the original philosophy of General Assembly was to look at which industries would have the greatest multiplying effects. The general administration, basic eligibility requirements, specific credits allowed, and accountability of the Act were reviewed in detail. Mr. Huie, in response to questions, explained that existing businesses and industries are allowed credits under the Act as long as they are growing. He further noted that 80% of the credits in the Bill Lee Act are taken by existing industries.

Chairman Harrell recognized Don Hobart, Counsel and Liaison, North Carolina Department of Commerce. Mr. Hobart acknowledged Tony Copeland, Assistant Secretary of Commerce, and Norris Tolson, Secretary of the Department of Revenue, in the audience. The Department’s support of tax credits to encourage business growth and expansion was cited. Recommendations associated with business tax credits that could improve the current tax structure were reviewed. ***“The Department of Commerce - Perspective on Business Tax Incentives”***. (Please see Exhibit #5.)

Donny Hicks, Legislative Chair, North Carolina Economic Developers Association, and Executive Director, Gaston County Economic Development Commission was recognized for remarks. Mr. Hicks explained the role of NCEDA and noted the critical importance of William S. Lee Act, as well as, NCEDA’s support in simplifying and streamlining the Act. (Please see Exhibit #6.) The need for continued competitiveness in all counties was emphasized. Members expressed concern over industries that were leaving locations to be more profitable. It was suggested that a new formula was needed for businesses that were expanding with machines and equipments but subtracting jobs; protections were needed for the mobile equipment and machinery industry in an effort to keep tax credits and jobs from going to other states; and because urban counties did not compete with non-urban counties, the importance of not weakening tax incentives in urban counties. Machine and equipment tax credits were cited as one of the most essential credits that NCEDA is able to use to keep competitive. He concluded by expressing support of wage modification to assist small business development.


Barry Eveland, President, North Carolina Citizens for Business and Industry was recognized for comments. Mr. Eveland expressed appreciation over the two year extension for recommendations to be made to the Bill Lee Act, thereby allowing time to discuss the right course of action. He stated that NCCBI was in agreement with the Department of Commerce and NCEDA. Statewide economic development, job growth and incentives not only for disadvantaged counties but also for urban counties. The negative effect that the weakening of urban counties would have on non-urban counties was emphasized. NCCBI supported small businesses and entrepreneurial development; along with a special credit to be used to attract corporate headquarters and the need for the wage standard to be re-considered and re-defined. The creation of a safety net was encouraged in the event an industry's circumstance resulted in unemployment. In conclusion, Mr. Eveland suggested looking at integrating existing programs in rural counties into the Lee Act.

Beau Mills, Director of North Carolina Metropolitan Coalition, an affiliate of the League of Municipalities; was recognized. *The State of North Carolina Urban Distressed Communities* and *North Carolina Metropolitan Coalition* (Please see Exhibits #7 & #8.) The need for urban tier counties to remain competitive and again it was stressed that urban counties did not competing with non-urban counties, but with San Francisco, Boston, and Singapore. Mr. Mills explained that economic development is a priority for mayors along with infrastructure, public safety and local flexibility. He expressed concern that urban development zones currently were not realistic and too broad. He emphasized revitalization of distressed communities applied to urban areas as well. Further concern was expressed over the poaching of jobs from the Charlotte Metro area to South Carolina. In conclusion, Mr. Mills agreed that attracting corporate headquarters is crucial to the economic development of the State.


Chairman Harrell recognized Jim Fain, Secretary, North Carolina Department of Commerce, for remarks. Secretary Fain stated that the collaborative approach was thought to be the best approach for all involved and emphasized his commitment to a consensus view.

There being no further business, Chairman Harrell adjourned the meeting at 3:15 P.M.

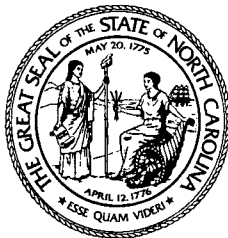
Respectfully submitted,



Representative James A. Harrell, III  
Chairman



Beth Wood LeGrande  
Committee Assistant



## HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

### AGENDA

**1:00 p.m.**

**March 22, 2006**

**Room 421 Legislative Office Building**

- I. Call to order:  
Representative James A. Harrell, III, Chairman, Presiding
- II. Introductions and Remarks
- III. **Overview of the Tax Incentives for New and Expanding Businesses:  
Article 3A of Chapter 105**  
Canaan Huie, Committee Counsel, Bill Drafting Division
- IV. **Comments on Tax Incentives for New and Expanding Businesses**  
Don Hobart, General Counsel, Department of Commerce  
Donny Hicks, Legislative Chair, North Carolina Economic Developers  
Association, and Executive Director, Gaston County Economic Development  
Commission  
Barry Eveland, President, North Carolina Citizens for Business and Industry  
Beau Mills, Director, North Carolina Metropolitan Coalition
- V. Adjournment  
Next **meeting date: April 10, 2006, at 1:00 p.m. in room 421**

## VISITOR REGISTRATION SHEET

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

1:00 P.M.

421 Legislative Office Building

March 22, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Libby Smith

Commerce

Iron Piercy

Duke Energy

David Stedman

Dept Sec of State

Becki Gray

Civitas Institute

Jay Peters

JP Assoc

Johanna Reese

DENR

Connie Wilson

SET

Elizabeth Dalton

NCCBI

Angela Williams

NCCS

Tim Fain

Commerce

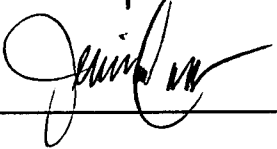


## VISITOR REGISTRATION SHEET

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

1:00 P.M.  
421 Legislative Office Building  
March 22, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BONNIE RENFRO	RANDOLPH COUNTY EDC PO BOX 2001 - Asheboro NC 27205
JOHN PETERSON	NCEDA
Donny Hides	GASTON COUNTY EDC P.O. Box 2339 Gastonia, NC 28053
	JD, A.L. PA
Sharon Miller	CUCA
Rebekah Hancock	Peace College
Dan Ettegh	NCEA
Mark Fung	University of South
Larry Keen	NCCCS
Mia Bailey	Electric Cities
Lucius PULLEN	ATTORNEY

House Pages

Name Of Committee: \_\_\_\_\_

Date: 3/22/06

1. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms1. Name: Earl Coker2. Name: Martha Gadison

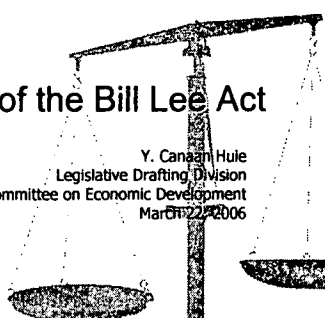
3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**Overview of the Bill Lee Act**

Y. Canaan Hule  
Legislative Drafting Division  
House Select Committee on Economic Development  
March 22, 2006



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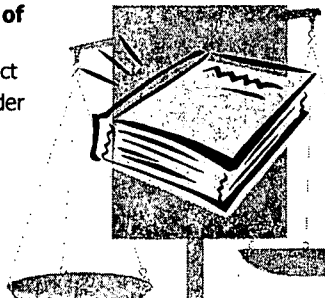
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**Overview of the Bill Lee Act**

- **Basic Overview of the Act**
- Evolution of the Act
- Accountability under the Act



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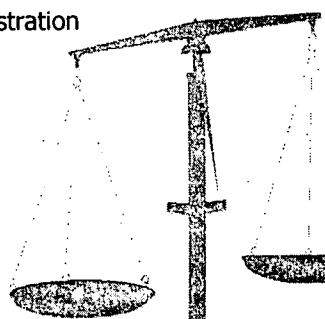
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**Basic Overview of the Bill Lee Act**

- General Administration
- Basic Eligibility
- Specific Credits



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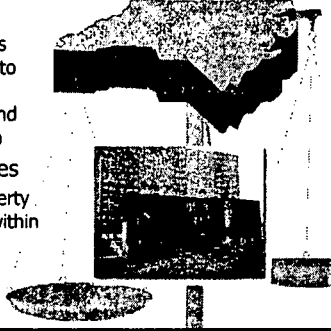
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### Bill Lee – General Administration

- Enterprise Tiers
  - Five tiers, counties ranked according to poverty level, unemployment, and population growth
- Development Zones
  - Areas of high poverty at least partially within urban areas



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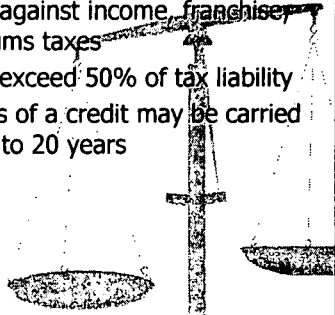
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### Bill Lee – General Administration

- Credits applied against income, franchise, or gross premiums taxes
- Credit may not exceed 50% of tax liability
- Unused portions of a credit may be carried forward from 5 to 20 years



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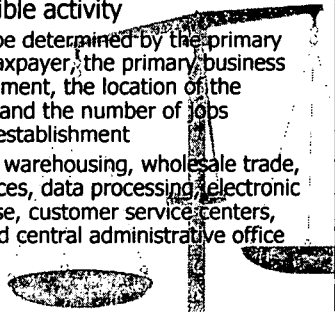
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### Bill Lee Act – Basic Eligibility

- Must be an eligible activity
  - Eligibility may be determined by the primary business of a taxpayer, the primary business of the establishment, the location of the establishment, and the number of jobs created at the establishment
  - Manufacturing, warehousing, wholesale trade, computer services, data processing, electronic mail order house, customer service centers, air couriers, and central administrative office



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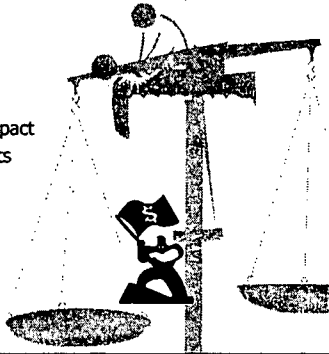
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### Bill Lee Act – Basic Eligibility

- Eligibility
  - Health Insurance
  - OSHA Record
  - Environmental Impact
  - Overdue Tax Debts
  - Wage Standard



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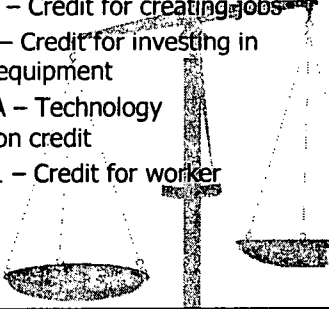
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### Bill Lee Act – Specific Credits

- G. S. 105-129.8 – Credit for creating jobs
- G.S. 105-129.9 – Credit for investing in machinery and equipment
- G.S. 105-129.9A – Technology commercialization credit
- G.S. 105-129.11 – Credit for worker training



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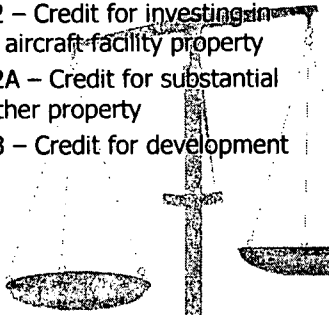
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### Bill Lee Act – Specific Credits

- G.S. 105-129.12 – Credit for investing in central office or aircraft facility property
- G.S. 105-129.12A – Credit for substantial investment in other property
- G.S. 105-129.13 – Credit for development zone projects



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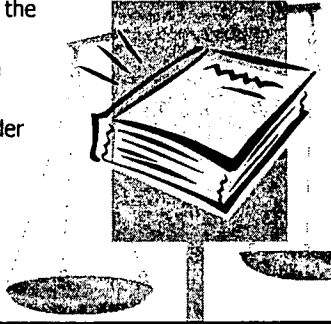
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## Overview of the Bill Lee Act

- Basic Overview of the Act
- Evolution of the Act
- Accountability under the Act



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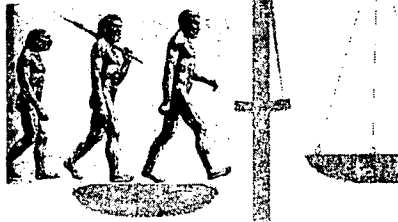
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## Bill Lee - Evolution

- The Bill Lee Act was originally enacted in 1996
- There have been significant changes to the Act each year since it was enacted



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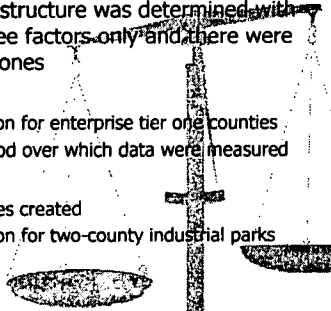
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## Bill Lee – Evolution – Tier Structure

- Originally the tier structure was determined with respect to the three factors only and there were no development zones
- 1997
  - Added an exception for enterprise tier one counties
  - Specified the period over which data were measured
- 1998
  - Development zones created
  - Added an exception for two-county industrial parks



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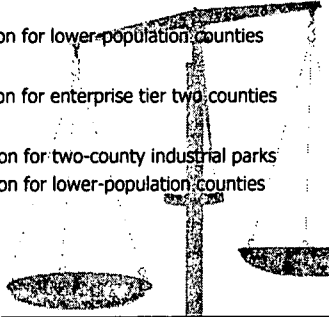
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### Bill Lee – Evolution – Tier Structure

- 1999
  - Added an exception for lower-population counties
- 2000
  - Added an exception for enterprise tier two counties
- 2001
  - Enhanced exception for two-county industrial parks
  - Enhanced exception for lower-population counties



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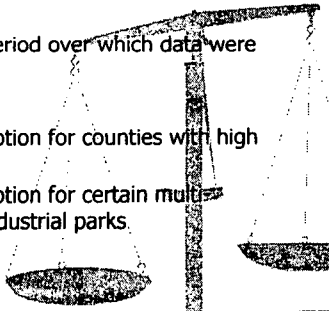
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### Bill Lee – Evolution – Tier Structure

- 2004
  - Changed the period over which data were measured
- 2005
  - Added an exception for counties with high unemployment
  - Added an exception for certain multi-jurisdictional industrial parks



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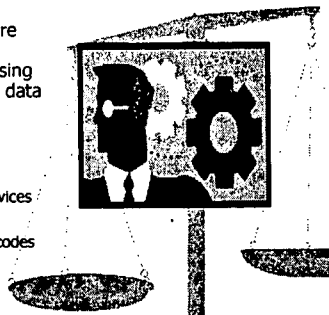
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### Bill Lee – Evolution - Industry

- Originally, the only eligible industries were manufacturing and processing, warehousing and distribution, and data processing
- 1997
  - Added central administrative offices
  - Added air courier services
- 1998
  - Converted from SIC codes to NAICS codes



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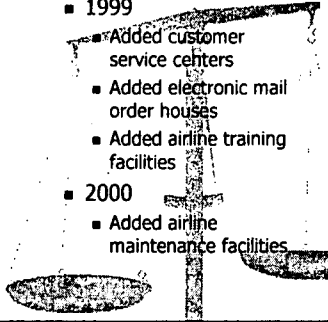
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## Bill Lee – Evolution - Industry



- 1999
  - Added customer service centers
  - Added electronic mail order houses
  - Added airline training facilities
- 2000
  - Added airline maintenance facilities



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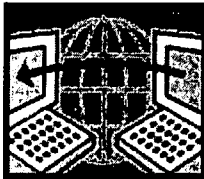
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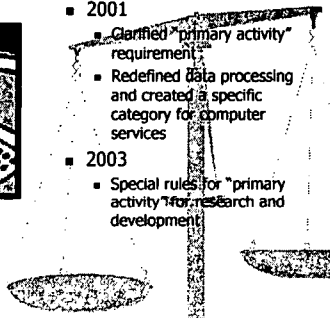
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## Bill Lee – Evolution - Industry



- 2001
  - Clarified "primary activity" requirement
  - Redefined data processing and created a specific category for computer services
- 2003
  - Special rules for "primary activity" for research and development



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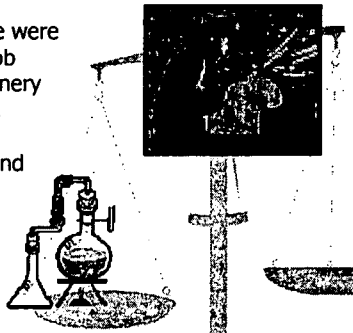
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## Bill Lee – Evolution – Credits

- Originally, there were four credits – job creation, machinery and equipment, research and development, and worker training



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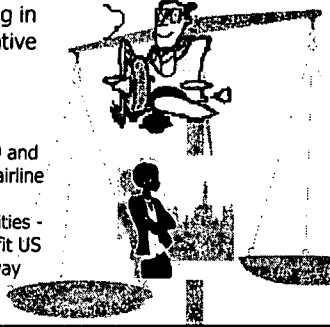
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### Bill Lee – Evolution - Credits

- Credit for investing in central administrative office and aircraft facility property
  - Created in 1997
  - Expanded in 1999 and 2000 to apply to airline training and maintenance facilities - expected to benefit US Airways and Midway



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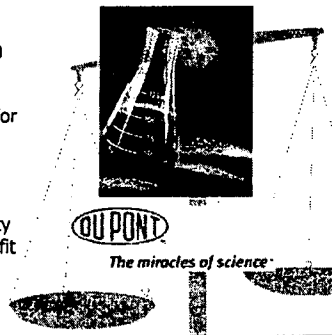
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### Bill Lee – Evolution - Credits

- Technology commercialization credit
  - Enacted in 1999
  - Enhanced credit for investment in machinery and equipment for technologies developed by a research university
  - Expected to benefit DuPont



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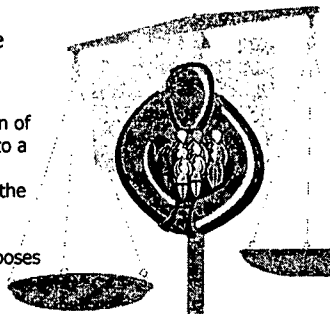
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### Bill Lee – Evolution - Credits

- Credit for development zone projects
  - Created in 1999
  - Credit for donation of cash or property to a type of nonprofit agency that uses the property for community development purposes



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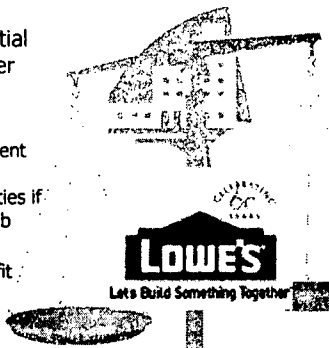
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## Bill Lee – Evolution - Credits

- Credit for substantial investment in other property
  - Enacted in 2001
  - Credit for investment in real property in lower-tiered counties if investment and job levels are met
  - Expected to benefit Lowes



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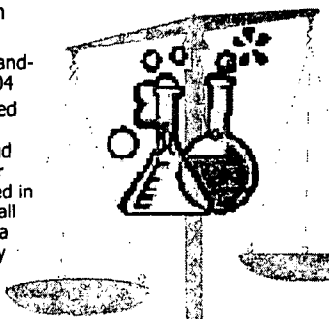
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## Bill Lee – Evolution - Credits

- Credit for research and development
  - Recodified as a stand-alone credit in 2004
  - Credit more focused on North Carolina based research and more generous for research performed in lower tiers, by small businesses, or by a research university



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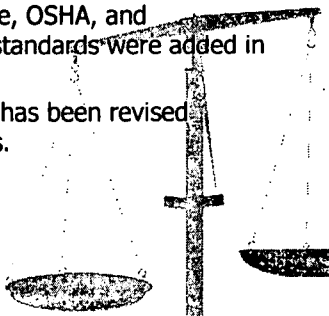
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## Bill Lee - Evolution

- Health insurance, OSHA, and environmental standards were added in 1999.
- Wage standard has been revised numerous times.



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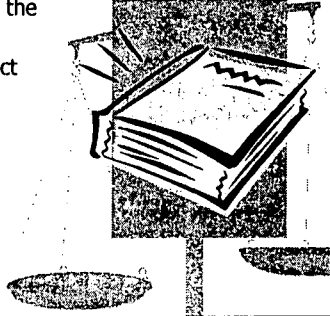
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## Overview of the Bill Lee Act

- Basic Overview of the Act
- Evolution of the Act
- **Accountability under the Act**



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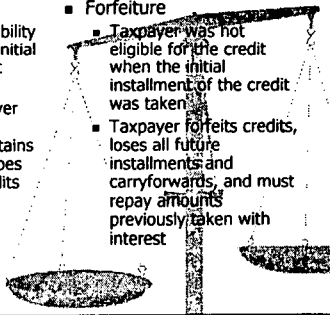
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## Bill Lee - Accountability

- Expiration
  - Taxpayer loses eligibility for credit after the initial installment of credit
  - For credits taken in installments, taxpayer loses any future installments, but retains carryforward and does not forfeit past credits

- Forfeiture
  - Taxpayer was not eligible for the credit when the initial installment of the credit was taken
  - Taxpayer forfeits credits, loses all future installments and carryforwards, and must repay amounts previously taken with interest



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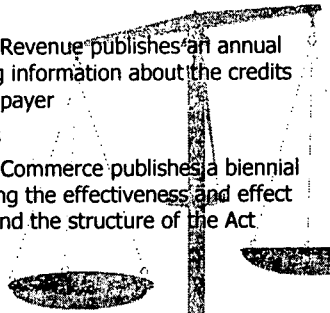
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## Bill Lee – Accountability

- Annual reports
  - Department of Revenue publishes an annual report including information about the credits itemized by taxpayer
- Biennial reports
  - Department of Commerce publishes a biennial report evaluating the effectiveness and effect of the credits and the structure of the Act



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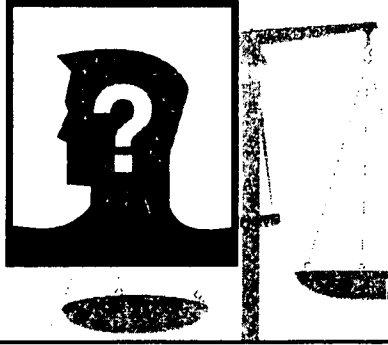
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## Questions



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## **Summary of the William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act).**

Prepared by Y. Canaan Huie  
Legislative Drafting Division, North Carolina General Assembly  
Updated October 24, 2005

The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, for worker training, and for research and development. Counties are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior, or merely provided tax reductions to businesses that would have located or expanded in any case. In 2000, the General Assembly extended the sunset on the Act until January 1, 2006. During the 2005 Regular Session, the General Assembly further extended the Act until January 1, 2008.<sup>1</sup> However, as part of the same act that extended the Bill Lee Act, the 2005 General Assembly expressed its intent to revamp the Act during the 2006 Regular Session with those changes to become effective January 1, 2007.

### **General Administration.**

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<sup>1</sup> There are several exceptions to the 2006 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least 15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least \$100 million in acquiring, constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing. Finally, certain development zone projects are allowed to claim credits for business activity that occurs on or before January 1, 2010. In order to qualify for this extension of the Act, the taxpayer must sign a letter of commitment with the Department of Commerce before January 1, 2006 describing the project, the Secretary of Commerce must make a written determination that the taxpayer will invest at least \$10 million in acquiring, constructing, and equipping the facility within a three-year period and that the taxpayer will create at least 300 new jobs with respect to the project within three years, and the taxpayer must invest at least \$4 million and create at least 20 new jobs before January 1, 2006.

By December 31 of each year, the Department of Commerce is required to assign a tier designation to each of the 100 counties in the State. In order to make these assignments, the Department of Commerce must rank all 100 counties based on the following three factors: the rank of the county in a ranking of counties by average rate of unemployment over the preceding 12 months from lowest to highest, the rank of the county in a ranking of counties by average per capita income over the preceding 12 months from highest to lowest, and the rank of the county in a ranking of counties by percentage growth in population over the preceding 12 months from highest to lowest.<sup>2</sup> Each of these factors is given equal weight. The Secretary of Commerce is required to use the latest data available in making these calculations. Counties with one of the 10 highest rankings are designated enterprise tier one, the next 15 counties are enterprise tier two, the next 25 counties are enterprise tier 3, the next 25 counties are enterprise tier 4, and the remaining counties are enterprise tier 5.

There are numerous exceptions to this formula. A county designated as enterprise tier one or two may not be designated a higher tier until it has been at its current tier for at least two consecutive years. There are also exceptions for certain lower-population counties that could result in those counties receiving a lower tier designation. There are two exceptions for establishments located in certain multi-county industrial parks. Finally, any county whose ranking in unemployment is one of the ten highest in the State is automatically designated an enterprise tier one area.

The Department of Commerce is also responsible for designating development zones. Development zones are areas of higher poverty within urban centers. In order to be designated as a development zone, the area must satisfy all of the following conditions: every census tract or block group in the zone is located in a city with a population of at least 5,000, the zone has a population of at least 1,000, more than 20% of the population of the zone is below the poverty level, every census tract or block group in the zone has more than 10% of its population below the poverty level or is immediately adjacent to a census tract or block group that has more than 20% of its population below the poverty level, and no census tract or block group in the zone is located in another development zone. Designation as a development zone is effective for two years. Location in a development zone leads to more favorable treatment for the taxpayer with respect to the wage standard, the credit for creating new jobs, the credit for investing in machinery and equipment, and the credit for worker training and could result in extending the availability of the credits if certain other criteria are met with respect to a project.

All of the credits are allowed against either the franchise tax levied in Article 3 of Chapter 105, the income taxes levied in Article 4 of Chapter 105, or the gross premiums tax levied in Article 8B of Chapter 105. In general, a taxpayer may take a credit against

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<sup>2</sup> Prior to the designations for the 2005 calendar year, these rankings were based on longer time periods. Unemployment and per capita income were averaged over three years rather than 12 months. There was no time period specified for measuring population growth, but it was the practice of the Department of Commerce to measure population growth by comparing the most recent estimates of population in the county with the figures derived from the last decennial federal census.

only one of these taxes.<sup>3</sup> The taxpayer must elect against which tax the credit will apply when filing the return on which the credit or the first installment of the credit is claimed. Once this election has been made it is irrevocable. Any carryforwards of a credit must also be claimed against the same tax.

The total amount of credits allowed under the Act to a taxpayer may not exceed 50% of the tax against which they are claimed reduced by the sum of all other credits for the taxable year. This cap applies to the cumulative amount of credits for the current year and carryforwards of credits from previous years.

In general any unused credit may be carried forward for the succeeding five years. There are numerous exceptions to this. Credits with respect to large investments may be carried forward for 15 years and credits with respect to other significant investments may be carried forward for 10 years.<sup>4</sup> Additionally, several of the specific credits have longer carryforward periods.

When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit, the taxpayer must submit a fee of \$500 for each credit the taxpayer intends to claim up to a maximum of \$1500. However, this fee is not due if the activity for which the taxpayer is claiming a credit occurred in a development zone. The fee is to be divided between the Department of Revenue and the Department of Commerce and is to be used to offset the costs of administering the Bill Lee Act.

Each taxpayer claiming a credit under the Bill Lee Act must provide any information required by the Secretary of Revenue to evaluate the eligibility of the taxpayer for the credit claimed.

The Department of Revenue and the Department of Commerce are required to make several reports on the Bill Lee Act. By each May 1, the Department of Revenue must publish information itemized by credit and by taxpayer relating to the amount and enterprise tier of new jobs, new real property, new machinery and equipment, new worker training, and new research and development. The Department of Commerce is required to make biennial reports on tax equity and the impact of the Bill Lee Act.

Bill Lee Act credits cannot be taken more than six months after the deadline for filing the tax return (including extensions) on which they are claimed. This is more restrictive than is generally the case under North Carolina law. In general, an overpayment may be refunded only if the discovery is made or the written request for a refund made within 3

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<sup>3</sup> For the technology commercialization credit allowed under G.S. 105-129.9A, the taxpayer may split the credit between any of the three taxes.

<sup>4</sup> A "large investment" is one in which the Secretary of Commerce makes a written determination that the taxpayer will invest at least \$150 million in the project within a two-year period. Though not defined as "other significant development", a taxpayer is eligible for the 10-year carryforward period if the Secretary of Commerce makes a written determination that the taxpayer will invest at least \$50 million in the project within a two-year period. For interstate air couriers and eligible major industries, the relevant time periods are seven years rather than two years.

years of the date set by statutes for filing the return or within 6 months of the date of the overpayment, whichever is later.

### **Basic Eligibility**

*Type of Business.* In order to be eligible for a credit under the Bill Lee Act, a taxpayer must meet the eligibility requirements with regard to type of business. Business-type eligibility depends of several factors including the primary business of the taxpayer as a whole, the primary activity of the particular establishment<sup>5</sup>, the location of the establishment, and the number of new jobs created. The following types of business are eligible under the Bill Lee Act:

- Air courier services, if the primary business of the taxpayer is air courier services.
- Data processing, if the primary business of the taxpayer is data processing.
- Manufacturing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is manufacturing.
- Warehousing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is warehousing, or if the primary activity of an establishment is warehousing, the establishment is located in an enterprise tier 1-3 area, and the establishment serves 25 or more establishments of the taxpayer.
- Wholesale trade, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is wholesale trade.
- Computer services, if the primary activity of the establishment is computer services.
- Electronic mail order house, if the primary activity of the establishment is an electronic mail order house and the electronic mail order house is located in an enterprise tier 1-3 area and creates at least 250 new jobs.
- Customer service center, if the primary business of the taxpayer is financial services or telecommunications, the primary activity of the establishment is a customer service center, and the center is located in an enterprise tier 1-3 area.
- Central office or aircraft facility, if the primary activity of the establishment is a central administrative office or a training or maintenance center for an interstate air passenger carrier and the establishment creates at least 40 new jobs.

*Wage Standard.* A taxpayer is eligible for a credit under the Bill Lee Act only if the jobs provided by the taxpayer meet a wage standard. Legislation in 2002 eliminated the wage standard in enterprise tier one and two areas. Since the wage standard for a business located in a development zone is the same as for tier one counties, that legislation also eliminated the wage standard for a development zone area. For enterprise tier areas three through five, the jobs provided by the taxpayer must pay at least 110% of the applicable average weekly wage. The applicable average weekly wage of the county is the lowest of

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<sup>5</sup> An "establishment" is defined by NAICS (North American Industry Classification System) as the smallest operating entity for which records provide information on the cost of resources – materials, labor, and capital – employed to produce the units of output. In the United States, an establishment is generally a single physical location; although there are many exceptions to this generality.



the following: the average weekly wage for all insured private employers in the county, the average weekly wage for all insured private employers in the State, and the average weekly wage for all insured private employers in the county multiplied by the county income/wage adjustment factor.<sup>6</sup>

For the credit for job creation, the average weekly wage of the jobs for which the credit is claimed and the average weekly wage of all jobs at the location with respect to which the credit is claimed must meet the relevant wage standard. For the other credits, the average weekly wage of all jobs at the location with respect to which the credit is claimed must meet the relevant wage standard. There is no independent wage standard test for the credit for worker training. By definition, the taxpayer may only claim a credit for worker training if the taxpayer is eligible for the credit for creating jobs or the credit for investing in machinery and equipment.

All jobs, including part-jobs, must be included in the wage standard calculation. However, part-time jobs that also provide health insurance are considered to have an average weekly wage at least equal to the relevant wage standard. For the purpose of calculating the wage standard, the weekly wage of a part-time job is converted to a full-time equivalency. All jobs that were filled for at least 1,600 hours during the year in which the taxpayer engaged in the activity for which a credit is claimed must be included in the wage standard calculation even if those jobs are not filled at the time the taxpayer claims the credit.

*Health insurance.* A taxpayer must provide health insurance for all full-time jobs associated with the project in order to be eligible for a credit under the Bill Lee Act. The taxpayer must, for all full-time employees at the location with respect to which a credit is claimed, pay at least 50% of the premiums for health insurance that meets at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee. Each year that a taxpayer claims an installment or carryforward of a credit, the taxpayer must provide certification that it continues to provide health insurance for all full-time employees. If the taxpayer ceases to provide health insurance, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

*Environmental Impact.* A taxpayer is ineligible for a credit under the Bill Lee Act if the taxpayer has any pending administrative, civil, or criminal enforcement action based on alleged significant violation of any program implemented by an agency of the Department of Environment and Natural Resources or if the taxpayer has had any final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources in the last five years. The Secretary of Environment and Natural Resources must notify the Department of Revenue of all persons who currently have any

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<sup>6</sup> The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The income/wage ratio is determined by dividing the average per capita income in the relevant jurisdiction by the annualized average wage for all insured private employers in the jurisdiction.

of these pending actions or who have had any of these final determinations in the past five years.

*Safety and Health Programs.* A taxpayer is ineligible for a credit under the Bill Lee Act if the taxpayer has any outstanding violations under the Occupational Safety and Health Act that have become a final order for "willful serious" or "failure to abate serious" violations within the past three years. The Department of Labor must notify the Department of Revenue of all employers who have had these citations become final orders in the past three years.

*Overdue Tax Debts.* A taxpayer is ineligible for a credit under the Bill Lee Act if the taxpayer has any overdue tax debts. An overdue tax debt is any part of a tax debt that remains unpaid 90 days or more after a notice of final assessment was mailed to the taxpayer. A tax debt is a final assessment after all possibilities for appeal have been exhausted.

If the Secretary of Revenue discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the assessment, the amount of tax to be assessed and any interest and penalties due. If the taxpayer disagrees with the assessment, the taxpayer has 30 days to request a hearing before the Secretary. The Secretary must then schedule a hearing to occur within 90 days of the request. Within 90 days after the hearing, the Secretary must issue a decision on the hearing. If the taxpayer does not request a hearing within the 30 days allowed, or if the Secretary finds that the tax is due after the hearing, the proposed assessment becomes a final assessment. If a taxpayer disagrees with a final assessment, the taxpayer may appeal the decision to the Tax Review Board, and then on to superior court, the Court of Appeals, and the Supreme Court.

*Expiration.* Generally, if a credit expires, the taxpayer may not continue to take installments of the credit, but may continue to take carryforwards of installments that accrued in previous years<sup>7</sup>. Credits may expire under the Act for several reasons. If the taxpayer is no longer engaged in an eligible type of business or if the number of jobs of an eligible business falls below the minimum number required, the credit expires. The credit for creating jobs and the credit for investing in machinery and equipment expire if the jobs or machinery and equipment are no longer filled or used in an eligible business. The credit does not expire if the enterprise tier designation of an eligible taxpayer changes after the credit is first claimed.

*Forfeiture.* A taxpayer forfeits a credit if the taxpayer was not eligible for the credit in the year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer forfeits a credit for technology commercialization or for substantial investment in other property if the taxpayer does not make the required level of investment in the relevant time period. Similarly, a taxpayer forfeits the large investment

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<sup>7</sup> Expiration of a credit because the taxpayer ceases to provide health insurance is an exception to this general rule. In that case, the taxpayer may not claim installments or carryforwards after the credit expires.

enhancement of a tax credit if the taxpayer does not make the required level of investment in the relevant time period. A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest. The past taxes and interest are due 30 days after the date the credit is forfeited. If a taxpayer forfeits a credit for creating jobs, a credit for investing in machinery and equipment, or a technology commercialization credit, any corresponding credit for worker training is also forfeited.

### **Specific Credits.**

*Credit for creating jobs, G.S. 105-129.8.* A taxpayer is allowed a credit for creating new jobs. In order to be eligible for this credit, the taxpayer must have five or more full-time employees in the State and hire an additional full-time employee in this State. The amount of the credit varies depending on the enterprise tier designation of the area in which the job is located. A job is located in an area if 50% or more of the employee's duties are performed in the area. The full amount of the credit may not be taken in the first year, but must instead be taken in four equal installments beginning with the taxable year following the year in which the employee was hired. Jobs transferred from one part of the State to another do not qualify for the credit. For a job that is located in a development zone the amount of the credit is increased by \$4,000. The amount of the credit is equal to the amounts in the following table based on the enterprise tier area in which the job is located:

<u>Area Enterprise Tier</u>	<u>Amount of Credit</u>
Tier One	\$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

If in one of the four years in which the installment of a credit accrues, the jobs with respect to which the credit was taken are unfilled, the credit expires and the taxpayer may not take any remaining installments of the credit. If, in one of the four years in which an installment of the credit accrues, a job that qualified for the credit is subsequently transferred to another area, the remaining installments of the credit must be calculated as if the job had been initially located in the later area.

A taxpayer that will create at least 20 new jobs in a specific area within two years<sup>8</sup> may sign a letter of commitment with the Department of Commerce in order to lock-in the current year's enterprise tier and development zone designations for the purposes of this credit. If the taxpayer creates the jobs within the two-year period, the taxpayer may compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the jobs were created. If the taxpayer does not create the jobs in the two-year period, the taxpayer may still claim a credit under the existing tier designation if the jobs are later created.

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<sup>8</sup> In the case of an interstate air courier or eligible major industry the relevant time period is seven years rather than two years.

*Credit for investing in machinery and equipment, G.S. 105-129.9.* A taxpayer is allowed a credit for the cost of the eligible investment amount of machinery and equipment placed into service during a taxable year that exceeds the applicable threshold based on the location where the machinery and equipment are placed into service. The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the net increase in eligible machinery and equipment over the base year (the year of the preceding three years in which the taxpayer had the largest amount of machinery and equipment in service in the State). The credit must be taken in seven equal installments, beginning the year after the equipment is placed in service. The amount of the credit is equal to a percentage of the eligible investment amount of the machinery and equipment in excess of the applicable threshold. If the taxpayer places eligible machinery and equipment into service in more than one establishment during a year, the threshold applies separately to each establishment. If a taxpayer places eligible machinery and equipment in service at an establishment over a two-year period, the amount of the threshold for the second year is reduced by the eligible investment amount for the previous taxable year. The following table sets out the relevant percentage and threshold for each enterprise tier area:

<u>Enterprise Tier</u>	<u>Threshold</u>	<u>Credit Percentage</u>
Tier One	\$ -0-	7%
Tier Two	100,000	7%
Tier Three	200,000	6%
Tier Four	1,000,000	5%
Tier Five	2,000,000	4%

If in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was taken are disposed of, moved out of State, or taken out of service, the credit expires and the taxpayer may not take any remaining installments of the credit unless the cost of that machinery and equipment is offset in the same taxable year by the taxpayer's new investment in machinery and equipment. If eligible machinery and equipment that qualifies for a credit is subsequently transferred to another area, the remaining installments of the credit must be calculated as if the machinery and equipment had been initially located in the later area.

A taxpayer that will place specific machinery and equipment in service at a specific location within two years<sup>9</sup> may sign a letter of commitment with the Department of Commerce in order to lock-in the current year's enterprise tier and development zone designations for the purposes of this credit. If the taxpayer places the eligible machinery and equipment in service within the two-year period, the taxpayer may compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the machinery and equipment were placed in service. If the taxpayer does not place the machinery and equipment in service in the two-year period, the taxpayer may still claim a credit under the existing tier designation if the equipment and machinery are later placed in service.

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<sup>9</sup> In the case of an interstate air courier or eligible major industry the relevant time period is seven years rather than two years.

*Technology commercialization credit, G.S. 105-129.9A.* This credit is an alternative to the credit for investing in machinery and equipment. The technology commercialization credit applies only to investments in machinery and equipment used in production based on technology licensed from a research university. In addition, to qualify, the machinery and equipment must be located in a tier one, two, or three enterprise area. Finally, the taxpayer's investment must equal at least \$10 million during the taxable year, and must total at least \$100 million over a five-year period. If the investment totals between \$100 million and \$150 million over five years, the technology commercialization credit is equal to 15% of the amount invested. If the investment equals or exceeds \$150 million over five years, the technology commercialization credit is equal to 20% of the amount invested. The technology commercialization credit remains available for 10 years of investments at a single location. The taxpayer's eligibility for the technology commercialization credit is based on the Secretary of Commerce's determination that the taxpayer will invest either \$100 or \$150 million over five years. If the taxpayer does not achieve the certified level of investment, the credit is forfeited.

The technology commercialization credit is more generous than the credit for investing in machinery and equipment in the following ways:

- The technology commercialization credit may be taken in the year the investment is placed in service. The credit for investing in machinery and equipment must be taken in seven annual installments.
- The technology commercialization credit is not required to be offset by machinery and equipment sold to another taxpayer if the new owner keeps the machinery and equipment in service in North Carolina. In addition, this new investment tax credit is not required to be offset by machinery and equipment the taxpayer takes out of service if it was in service at a separate location and was used in a business that is not competitive with the technology commercialization business.
- The technology commercialization credit may be taken against income tax, gross premiums tax, and franchise tax. The taxpayer must determine what percentage of the credit will be taken against each tax, and must maintain the same percentage for the purpose of carryforwards. If new investment is made in a second or subsequent tax year, the taxpayer may elect a different percentage with respect to the credit for each tax year. The election is binding.
- The technology commercialization credit may be carried forward for 20 years.

*Credit for research and development, G.S. 105-129.10. (Repealed effective January 1, 2006.)* The research and development tax credit uses the federal credit for research and development as its starting point. The credit is equal to 5% of the State's apportioned share of the taxpayer's expenditures for increasing research and development. The credit is based on the federal credit as of January 1, 1999. In the past, the federal credit had expired and then been renewed retroactively, creating uncertainty for taxpayers. Expiration of the federal credit would not affect the State credit. This credit has a carryforward period of 15 years rather than the standard 5-year period.

In 2004, the General Assembly voted to specifically repeal the credit for research and development under the Bill Lee Act for taxable years beginning on or after January 1,

2006. However, at the same time the General Assembly repealed this credit, the General Assembly also enacted a stand-alone credit for research and development outside of the Bill Lee Act.

*Credit for worker training, G.S. 105-129.11.* A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to the wages paid to the employee during the training. Wages paid to an employee for performing his or her job while being trained are not eligible for the credit. The maximum amount of the credit is \$1,000 per employee trained in an enterprise tier one area and \$500 per employee trained in an enterprise tier two through five area. As with the credit for creating jobs, an employee is located in an area if more than 50% of his or her duties are performed in that area. In order to be eligible for the credit, the employee must be in a full-time position not exempt under the Fair Labor Standards Act and must be either (i) in a position for the taxpayer qualifies for the credit for creating jobs or (ii) being trained to operate machinery and equipment for which the taxpayer qualifies for a credit for investing in machinery and equipment.

*Credit for investing in central office or aircraft facility property, G.S. 105-129.12.* A taxpayer who purchases or leases real property to be used as central administrative office or aircraft facility property, is eligible for a credit under the Bill Lee Act. The amount of the credit is equal to 7% of the eligible investment amount. The eligible investment amount is the lesser of: (i) the cost of the property or (ii) the cost of the taxpayer's total North Carolina property used as central administrative offices or aircraft facilities on the last day of the taxable year less the cost of the taxpayer's total North Carolina property used as central administrative offices or aircraft facilities on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property as central administrative offices or aircraft facilities in this State. For leased property, the cost of the property equals the lease payments over a seven-year period plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office or aircraft facility if the expenditures are not reimbursed or credited by the lessor. The tax credit for investing in central administrative office or aircraft facility property may not exceed \$500,000, and is taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office or aircraft facility. If the property ceases to be used as a central administrative office or aircraft facility during the seven-year period, then the credit expires and the taxpayer may not take any remaining installment of the credit.

*Credit for substantial investment in other property, G.S. 105-129.12A.* This credit is modeled upon the credit for investment in central office or aircraft facility property. There are, however, some notable differences between the two credits. This credit is available in tiers one and two only. In order for the taxpayer to claim the credit for substantial investment in other property, the Secretary of Commerce must make a written determination that the taxpayer is expected to invest at least \$10 million in real property at a location within a three-year period and that the location will create at least 200 new jobs within two years of the time that the property is first used in an eligible business.

The taxpayer may begin to claim the credit once the property is first used in an eligible business. The amount of the credit for substantial investment in other property is equal to 30% of the eligible investment amount and must be taken in installments over a seven-year period. There is no ceiling on the amount of the credit. The credit for substantial investment in other property expires if the number of people employed at the location falls below 200. The carryforward period for the credit for substantial investment in other property is 20 years, rather than the standard five-year carryforward period. A taxpayer may not claim both the credit for substantial investment in other property and the credit for investing in central office or aircraft facility property with respect to the same property.

*Credit for development zone projects, G.S. 105-129.13.* A taxpayer is allowed a credit for contributions of cash or property to certain nonprofit agencies to be used for an improvement project in a development zone. An improvement project is a project to construct or improve real property for community development purposes or to acquire real property and convert it for community development purposes. The credit allowed is 25% of the amount contributed by the taxpayer. The total amount of credits that may be allowed in a taxable year is capped at \$4 million. Taxpayers are required to apply to the Secretary of Revenue for these credits. If the total amount applied for in a year exceeds \$4 million, the Secretary will reduce each applicant's credit proportionally.

The credit is allowed for contributions to a development zone agency, defined as a community action agency, a community-based development organization, a community development corporation, a community development financial institution, a community housing development organization, or a local housing authority. To qualify for the credit, all of the following conditions must be met:

- The agency must contract in writing to use the contribution for an improvement project in a development zone and to repay the taxpayer with interest if the contribution is not so used.
- The Department of Commerce must certify that the agency will undertake an improvement project in a development zone.<sup>10</sup> To support this certification, the agency must provide the Department documentation establishing the identity of the agency, the nature of the project, and that the project is for a community development purpose in a development zone.
- The taxpayer must be unrelated to the agency and must not control, be controlled by, or be under common control with the agency.
- The taxpayer must not receive anything of value for the contribution.

A taxpayer forfeits the tax credit for a contribution to the extent the development zone agency uses the contribution for anything other than an improvement project in a zone. Development zone agencies are required to file with the Department of Commerce annual, audited financial statements. If the Department of Commerce finds that any part

---

<sup>10</sup> The Secretary of Commerce may not certify a development zone agency if it, any of its officers or directors, or any partner of the agency has ever used part of an improvement project contribution for any purpose other than the improvement project.

of a contribution was used for a purpose other than an improvement project, it must notify the Department of Revenue of the resulting forfeiture.

*Credit enhancements for major computer manufacturing facilities.* In 2004, the General Assembly provided that a taxpayer who is otherwise eligible for one of the tax credits under the Bill Lee Act and who qualifies for the tax credit for major computer manufacturing facilities under Article 3G of Chapter 105 of the General Statutes is eligible for the following major computer facility enhancements under the Bill Lee Act, regardless of the enterprise tier designation of the county in which it is located. The taxpayer may include employees of or investments made by related entities or strategic partners to meet its Bill Lee eligibility requirements.

- **Wage Standard.** – The wage standard does not apply to the activities of the taxpayer at the major computer facility. Under prior law, the wage standard was inapplicable only in tiers one and two or in development zones.
- **Credit for Creating Jobs.** – The amount of the credit for creating jobs is increased by \$4,000 per job for jobs at the major computer facility. This is identical to the enhancement allowed for jobs located in a development zone.
- **Credit for Investing in Machinery and Equipment.** – The threshold investment a taxpayer must meet to qualify for the credit and the amount of credit the taxpayer is allowed under the Bill Lee Act is the same as allowed under current law for a tier one county: a threshold amount of zero and a credit amount equal to 7% of the eligible investment.
- **Credit for Worker Training.** – The maximum amount of the credit is \$1,000 per worker. This is the same credit amount allowed to other taxpayers for jobs in a tier one area. If the jobs are not in a tier one area, then other taxpayers are allowed a \$500 credit for worker training.
- **Credit for Substantial Investment in Other Property.** – Under prior law, this 30% credit was available only for property located in a tier one or two area. The credit in the Act is available to a taxpayer who qualifies as a major computer manufacturing facility regardless of the enterprise tier area in which the property is located.



# **Business Tax Incentives**

## ***Department of Commerce Perspective***

Don Hobart, NC DOC

Presentation to House Select  
Committee on Economic Development  
March 22, 2006



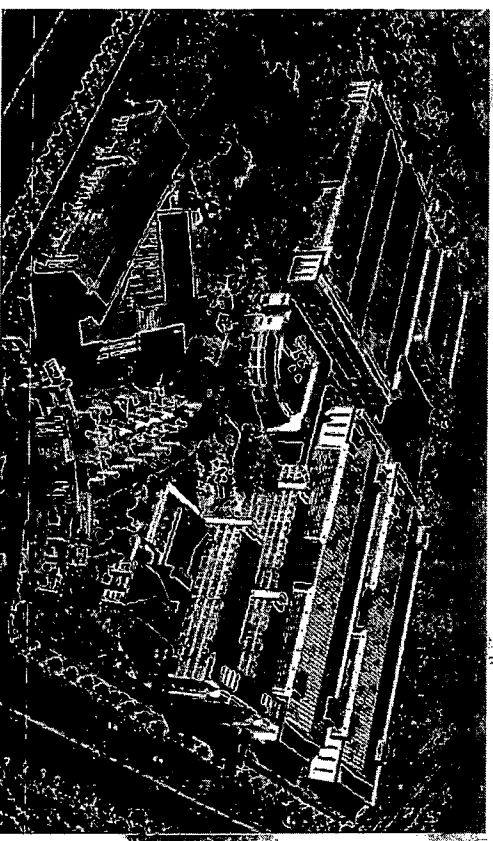
# Department of Commerce Position

- Tax Credits for Business Growth and Expansion Have Value and Should be Continued.
- Effective, consensus legislation needed to help sustain growth, aid rural NC and transition economy.



# Benefits of Business Tax Credits

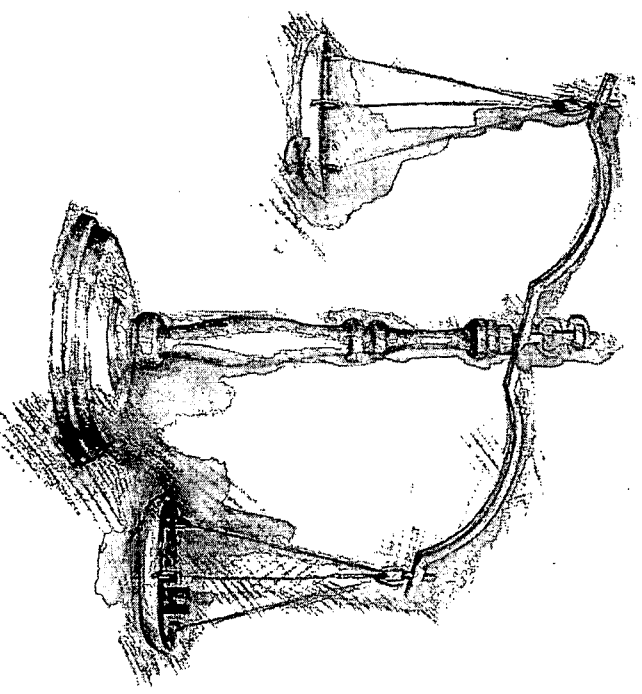
- Provide an incentive for an activity that benefits society – job growth and business expansion
- Provide an incentive to reinvest and modernize
- Provide a tool to help transition the state's economy.



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*the state of minds*

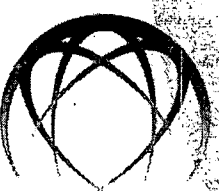
# Benefits of Business Tax Credits

- Help offset relatively high corporate income tax.
- Major incentive for existing business.
- Help economic developers recruit new industry
- Common and traditional tool in the state toolbox.



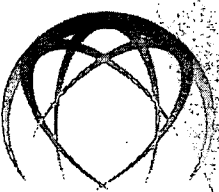
# Tax Credits Need Time to Work

- Sunset date should give any tax credit program enough time to work.
- Consider end of 2011 as sunset.
  - Gives 5 years.
  - Ends during a long session year.



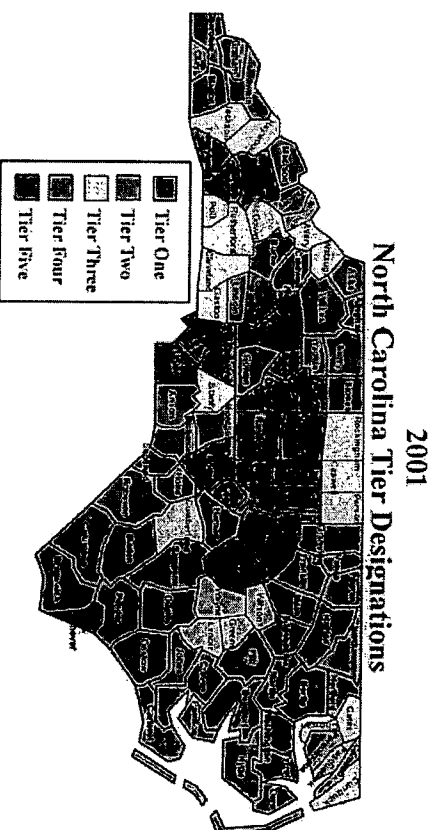
# Credits Available in All Counties

- Credits should not be restricted to certain counties.
- Value of credits may value however.



# Simplify Tier Structure

- Too much volatility.
- Need more stable and predictable system.
- Move from five tiers to three.



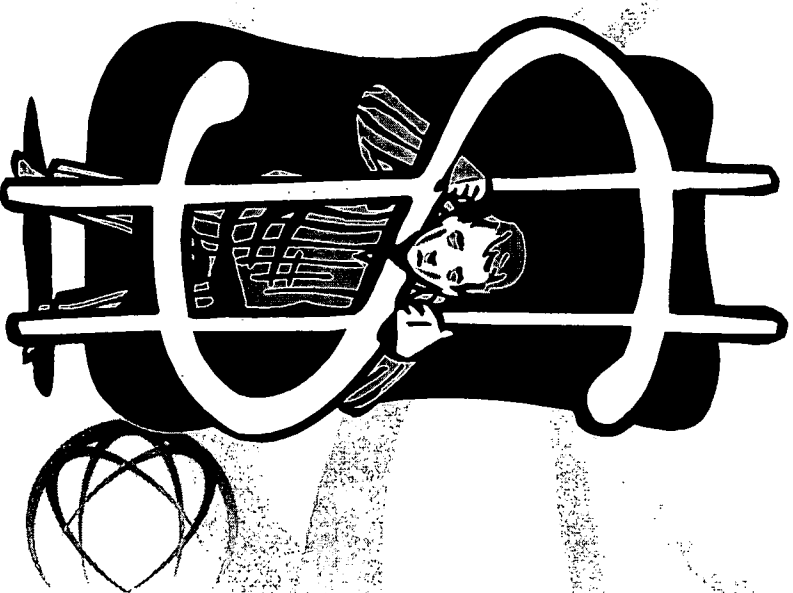
Source: North Carolina Department of Commerce Finance Center 1/91



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# Simplify Tier Structure

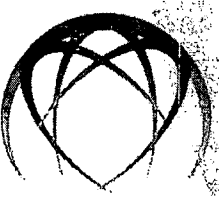
- Avoid unintended consequences





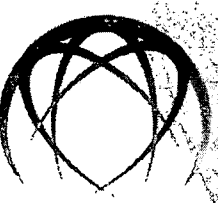
# **Simplify and Focus on Traditional Core Credits**

- Job Creation
- Business investment (M&E)
- Major Real Property Investment in Poor Counties



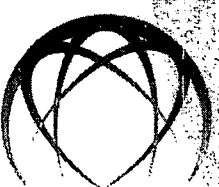
# **Maintain Lucrative Credits in Poorest Counties**

- Program should always reflect economic realities of the state.
- Should always reflect goal of One North Carolina



# Make Wage Standard Fairer

- No wage standard in poorest counties.
- Reduce wage standard to be fairer to mid-tier counties.



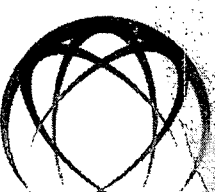
# Keep Traditional Lee Act Safeguards

- Health Insurance
- Limit to 50% of tax liability
- DENR, OSHA, Tax Debts
- Expiration of installments if growth not sustained
- Six month statute of limitations
- Clawback of forfeited credits.



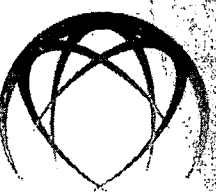
# Modify Eligibility Rules

- Eligibility should focus only on activity at facility.
- Consider additional categories of eligible businesses



# But remember...

- Core industries targeted for the Lee Act are still very broad and major targets.
  - Manufacturing
  - Distribution centers
  - Computer and software facilities
  - Call centers



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# Add Some Categories

- Pure Research facilities
- Motorsports teams
- Aircraft maintenance



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# Drop Some Credits

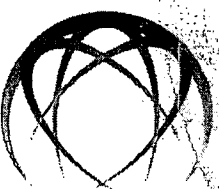
- Worker Training Credit
  - Not really needed
  - Put money into Community Colleges CIT
- Old R&D credit
  - Not needed.
- Technology Commercialization Credit
  - Not working





# Drop or Replace Central Office Credit

- Not effective as it stands
- A true HQ credit would be of value.



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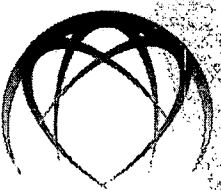
# Redesign State Development Zones

- They need to look like this.
- Not this....



# Development Zones

- Consider what sorts of programs make sense in a properly designed zone.



# JDIG Status and Goals

- Successful well-managed program
- Three years experience.
- Needs extension but not as long as tax credits
- Will recommend fine-tuning and technical changes.
- Happy to discuss it at future date.





**Donny Hick's Talking Points**  
**House Select Committee on Economic Development**  
**Wednesday, March 22, 2006**  
**Raleigh, NC**

Good afternoon.

Chairmen Harrell, Vice Chairman Bill Daughtride and members of the House Select Committee on Economic Development.

My name is Donny Hicks, Executive Director of the Gaston County Economic Development Commission and Secretary/Treasurer and Legislative Co-Chair of the North Carolina Economic Developers Association (NCEDA).

On behalf of the 600 members of the NCEDA from all of North Carolina's 100 counties, I thank you for the opportunity to speak this afternoon.

**NCEDA**

- For almost 40 years, NCEDA has been recognized as the leading economic development association in North Carolina.
- Our membership is composed of state, regional and local professional economic developers and their supporting allies from across the state. This diverse group of service providers

includes banks, utilities, contractors, engineering and architectural firms, law firms, brokers and many others.

- Our members promote North Carolina and their respective communities as places for new economic growth.
- They are on the front line of economic development in North Carolina.

### **William S. Lee Act**

- Now more than ever North Carolina needs tools like the William S. Lee Act to stay competitive and win new jobs. The William S. Lee Act has been one of our primary economic development tools with the sole purpose of job creation.
- NCEDA strongly supports the continuation of the William S. Lee Act, North Carolina's primary economic development tool.
- Created in 1996, the William S. Lee Act rewards eligible companies for expanding in or relocating to North Carolina and those that hire within the North Carolina workforce to fill positions.
- The goal of the William S. Lee Act is to promote economic development by offering tax credits to selected industries.
- In addition to being used as a recruitment tool, the William S. Lee Act has been extremely beneficial to North Carolina's existing businesses.

- It is imperative that North Carolina continues to gain the tools necessary to remain competitive regionally, nationally and globally.
- We agree with the need to simplify and streamline the existing William S. Lee Act. However, we must ensure that our state's incentive policies continue to encourage economic prosperity and job creation for all North Carolinians among ALL of North Carolina's 100 counties.
- Weakening of incentives in North Carolina's urban counties will have a negative impact on non-urban surrounding counties (as well as the entire state), which historically have benefited from proximity to successful urban growth engines.
- These counties usually compete in their own market, not against North Carolina's lower Tier counties, but on a regional, national and global level that goes beyond the geographic boundaries of North Carolina.
- For existing industry, new industry and small businesses, the wage standard continues to be a challenge to North Carolina's competitiveness in ALL 100 counties.
- Small businesses are a vital link to North Carolina's future and create approximately 75% of the net new jobs and investments in North Carolina each year. Yet small businesses are often not eligible for the same programs bigger corporations receive.
- Working together, we can keep North Carolina competitive, create new jobs and ensure that economic growth reaches all North Carolinians.

# *The State of North Carolina Urban Distressed Communities*



Authored by Allen Serkin & Stephen Whitlow  
Prepared for the North Carolina Metropolitan Coalition  
May, 2005

Exhibit 7





# The State of North Carolina Urban Distressed Communities

Allen Serkin & Stephen Whitlow

Center for Urban and Regional Studies  
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February 2005

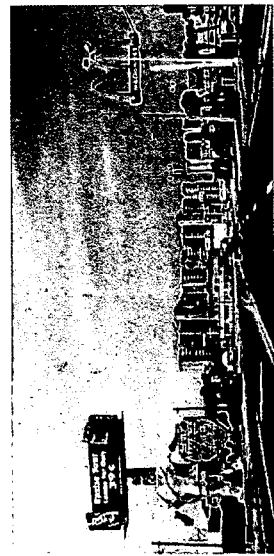
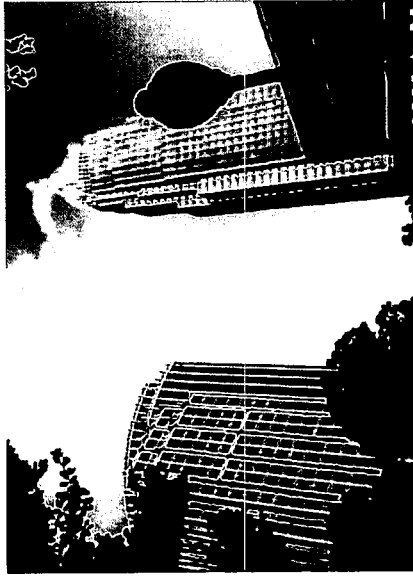
Prepared for:  
North Carolina Metropolitan Coalition  
[www.ncmetros.org](http://www.ncmetros.org)

CURS Report No. 2005-01

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# Introduction

North Carolina is a state in the midst of rapid change.<sup>1</sup> Portions of the state have recently experienced an economic economy and job losses, while others remain strong engines of wealth and job creation. Population growth continues to be strong with residents moving to North Carolina from other states and countries.

The major urban areas of North Carolina — led by the Charlotte region, the Triad, and the Triangle — have experienced rapid population growth and increasing economic prosperity in recent decades, witnessed most clearly in the continued expansion of the suburban landscape.

However, there is an often overlooked underside to the rapid development of North Carolina's urban regions: pockets of decay and neglect at the center of our largest cities.

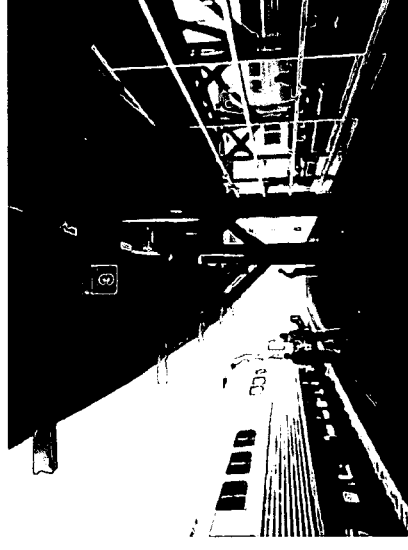
Too often these areas, in dire need of relief, are neglected by decision makers at the State level for a number of reasons: 1) they may be unaware of the extent of privation in urban communities; 2) they may assume the most intense economic and social distress is found in rural

parts of the state; or 3) they may assume that the wealth of large urban areas ameliorates the distress found in the urban core.

This report challenges all of these notions. We utilize Census data at the tract level to pinpoint distressed urban communities. We adopt this method because to truly get an accurate representation of distress, the level of analysis must be more selective than the county level. County level analyses are so broad as to statistically dilute the depth of distress in urban communities because of the surrounding suburban wealth, lending support to the incorrect assumption that economic distress in North Carolina is primarily a rural problem. We present evidence to show that there are areas of extreme privation in North Carolina cities, and that these areas rival if not surpass the conditions prevalent in rural North Carolina.

Our analysis includes the following highlights:

- What county level analyses tell us — and what they miss



- A definition of distress
- Maps of distressed areas
- Demographic characteristics of the urban distressed population
- The economic, social, and housing conditions faced in urban distressed communities
- A comparison of urban distressed areas to rural distressed areas within North Carolina

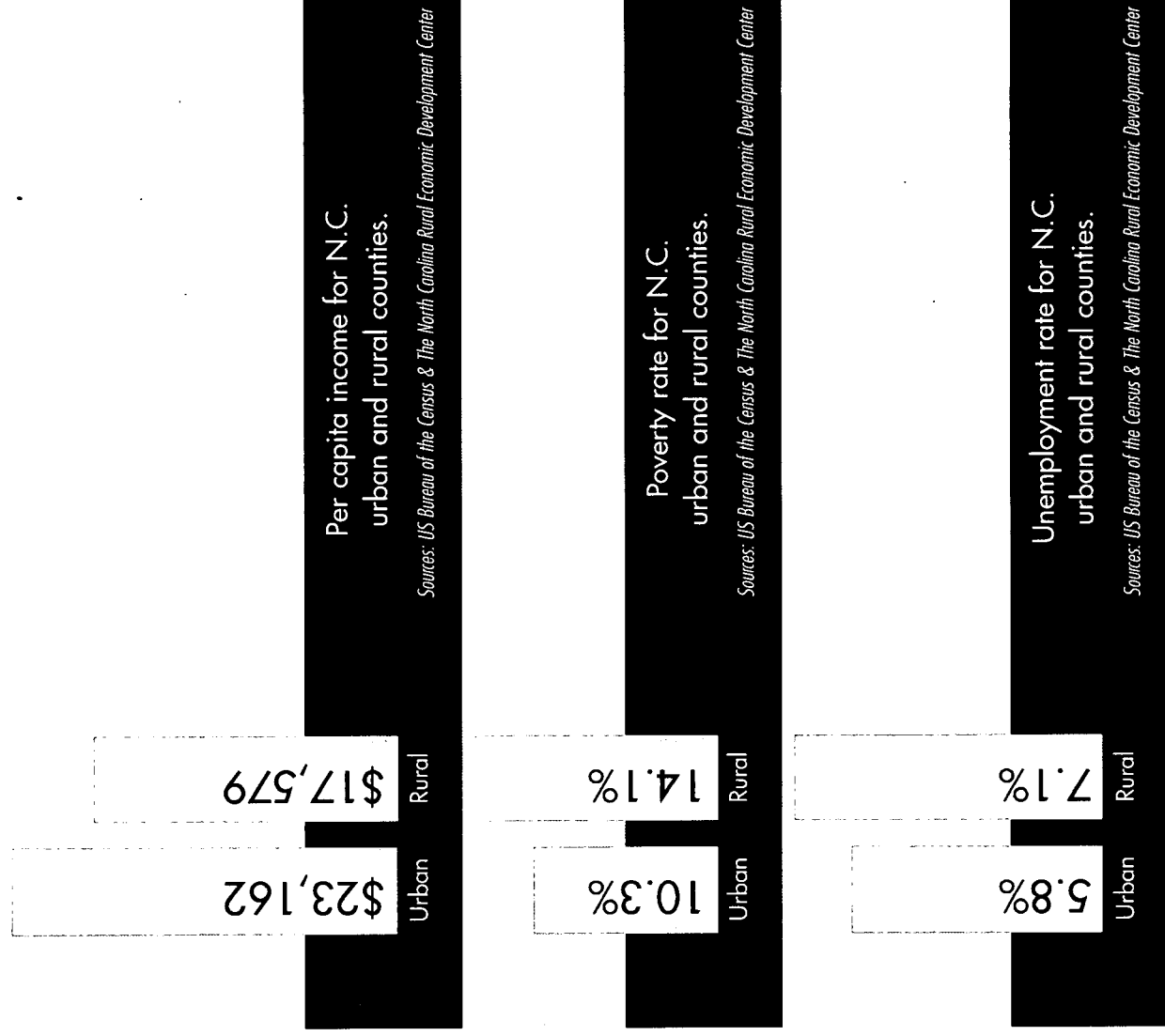
# County Comparison

Comparing North Carolina urban counties to rural counties\* suggests that rural counties are more distressed than urban counties in critical ways. Rural counties have lower per capita income and higher rates of poverty and unemployment. Rural county residents also lag urban county residents overall on a number of factors relating to educational attainment, housing quality, and access to health care (not shown).

However, an analysis utilizing data at the county level may hide pockets of distress, especially those within counties where relatively wealthy urban and suburban areas are located.

We suggest geographically highlighting these distressed urban areas to better understand their populations' position relative to North Carolina residents generally and rural North Carolina residents specifically.

\*Rural counties are defined as those counties with a population density of less than 200 per square mile based on 1990 Census figures. Urban counties are those with greater than 200 persons per square mile. Source: The North Carolina Rural Economic Development Center



# Defining Distress

Distress, in the context of this briefing, refers generally to a lack of the characteristics that most associate with producing quality of life. Among these are access to employment, education, quality housing, and health care.

There is no universally accepted standard for defining areas of distress. Most, however, include some combination of measures of income, poverty, and unemployment.<sup>2</sup>

We define distressed areas as those which met all three of the following criteria in 2000:

- Unemployment rate greater than or equal to 150% of the North Carolina average unemployment rate of 3.4% (greater than or equal to 5.1%)
- Per capita income less than or equal to 67% of the North Carolina average per capita income of \$20,307 (less than or equal to \$13,606)
- Poverty rate greater than or equal to 150% of the North Carolina average poverty rate of 12.3% (greater than or equal to 18.45%)

Our measure of distress allows us to isolate distressed urban areas at the Census tract level. The U.S. Census Bureau produces the best and most consistent data at a scale below the county level.

All North Carolina distressed tracts were then classified as Urban or Rural according to whether the tract's geographic center falls inside of Census designated Urbanized Areas. An Urbanized Area is defined as "an area consisting of a central place(s) and adjacent territory with a general population density of at least 1,000 people per square mile of land area that together have a minimum residential population of at least 50,000 people."

This method allows us to achieve a number of objectives:

- Compare the attributes of urban distressed tracts to North Carolina counties in which these tracts are located to see to what extent the wealth of urban counties overshadows the privation of distressed areas.
- Look at a number of demographic, social and economic characteristics of

residents of urban distressed areas.

- Compare characteristics of urban distressed tracts with North Carolina as a whole and with distressed rural tracts.



# Distressed Tracts

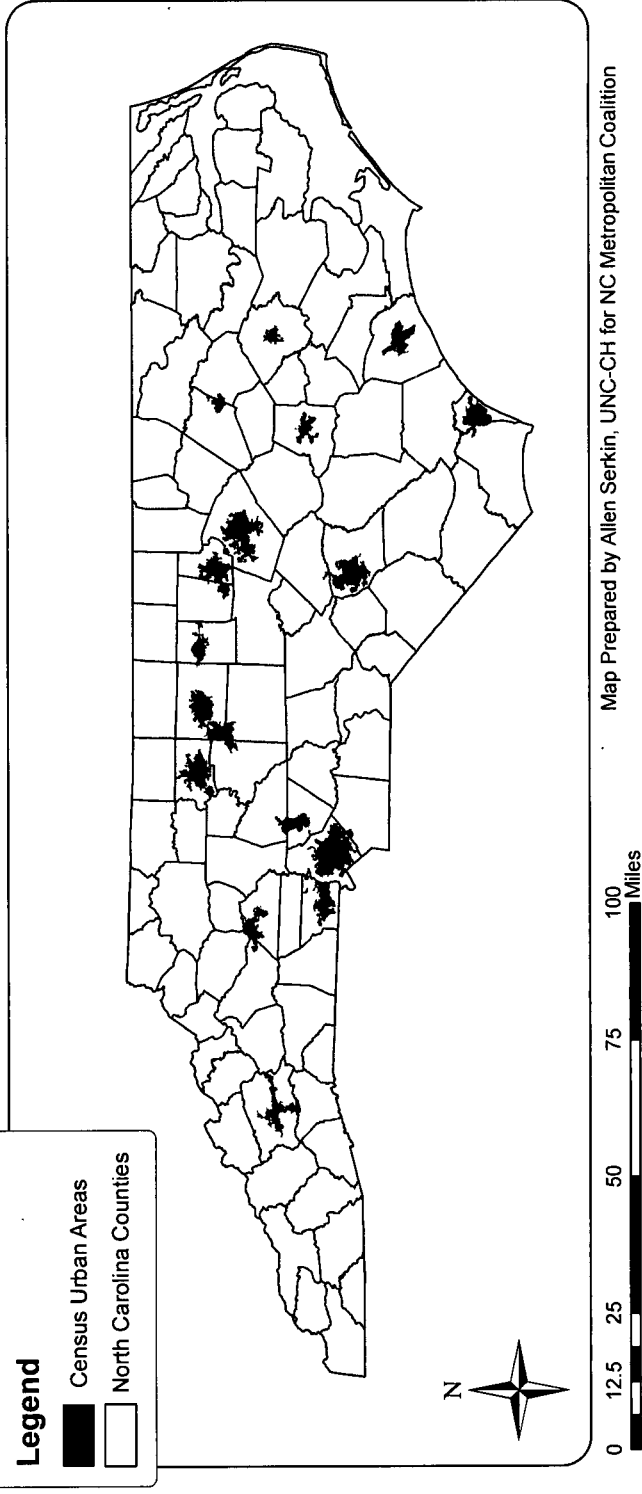
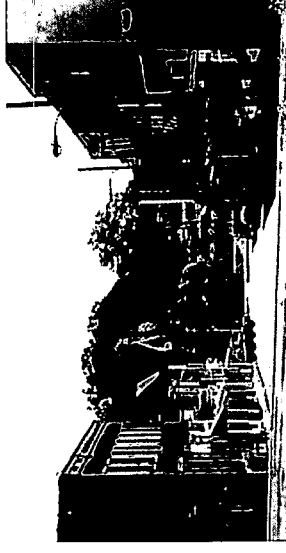
There are 17 Census designated Urban Areas in North Carolina from which our list of urban distressed tracts are drawn:

Asheville  
 Burlington  
 Charlotte  
 Durham  
 Fayetteville  
 Gastonia  
 Goldsboro  
 Greensboro  
 Greenville  
 Hickory  
 High-Point  
 Jacksonville  
 Kannapolis  
 Raleigh  
 Rocky Mount  
 Wilmington  
 Winston-Salem

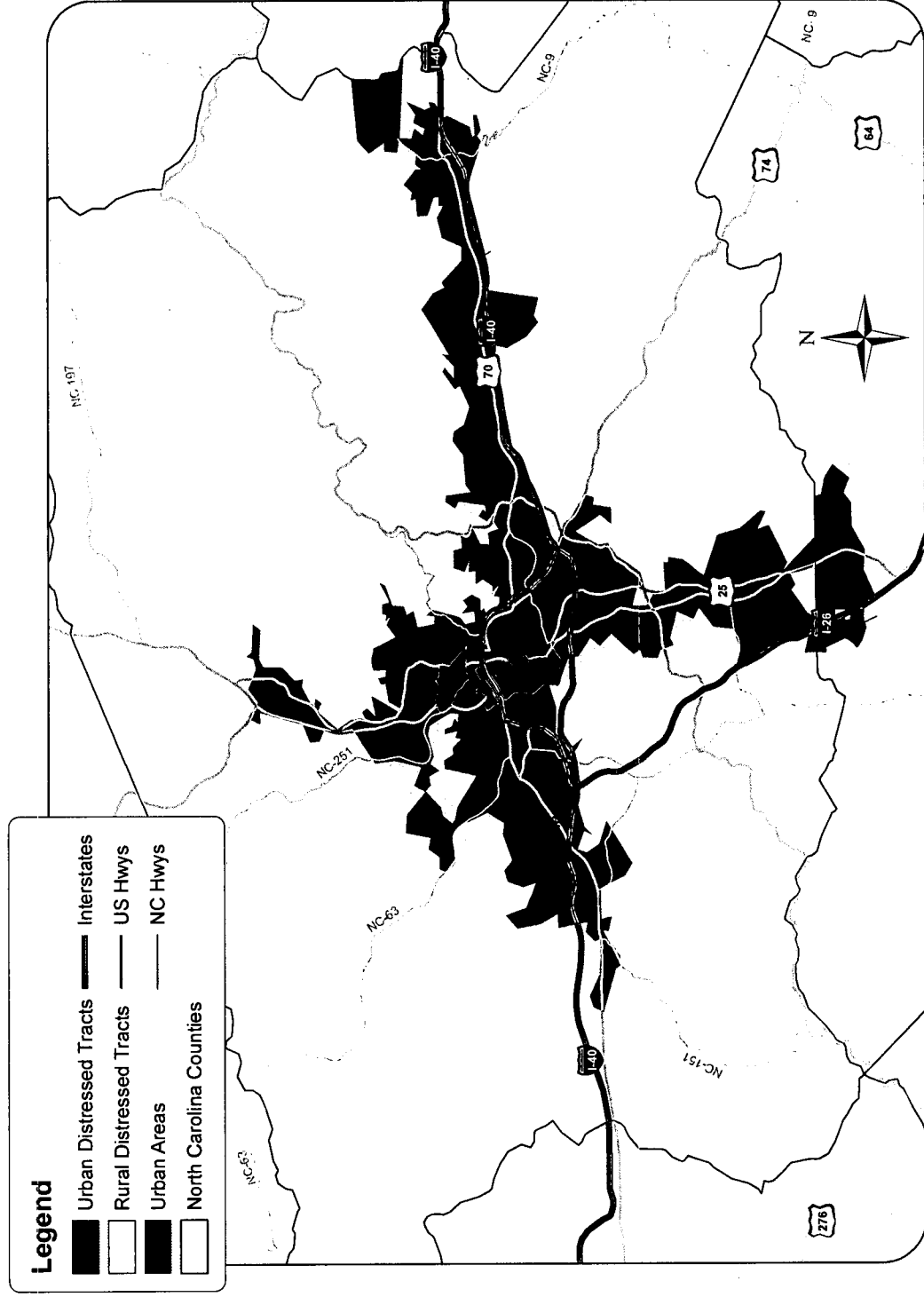
Of these urban areas, only Kannapolis had no tracts that met our criteria for distress. There are a total of 147 distressed tracts in North Carolina; 81 in urban areas and 66 in rural areas.

The following pages offer detailed maps of North Carolina urban

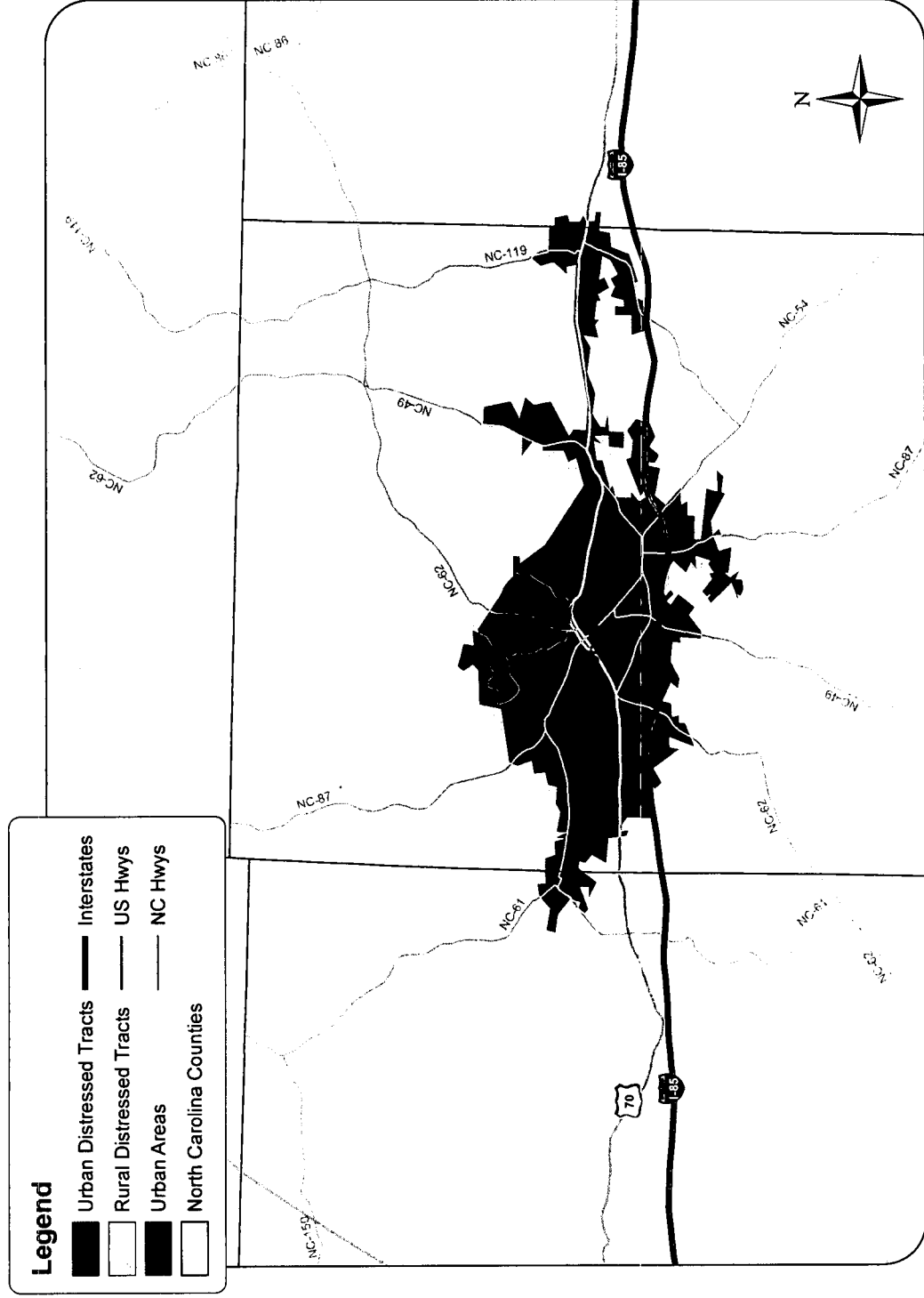
areas, urban distressed tracts within these areas, and, when possible, rural distressed tracts near these urban areas. Not all urban areas depicted below, though, have rural distressed tracts in their vicinity.



# Asheville

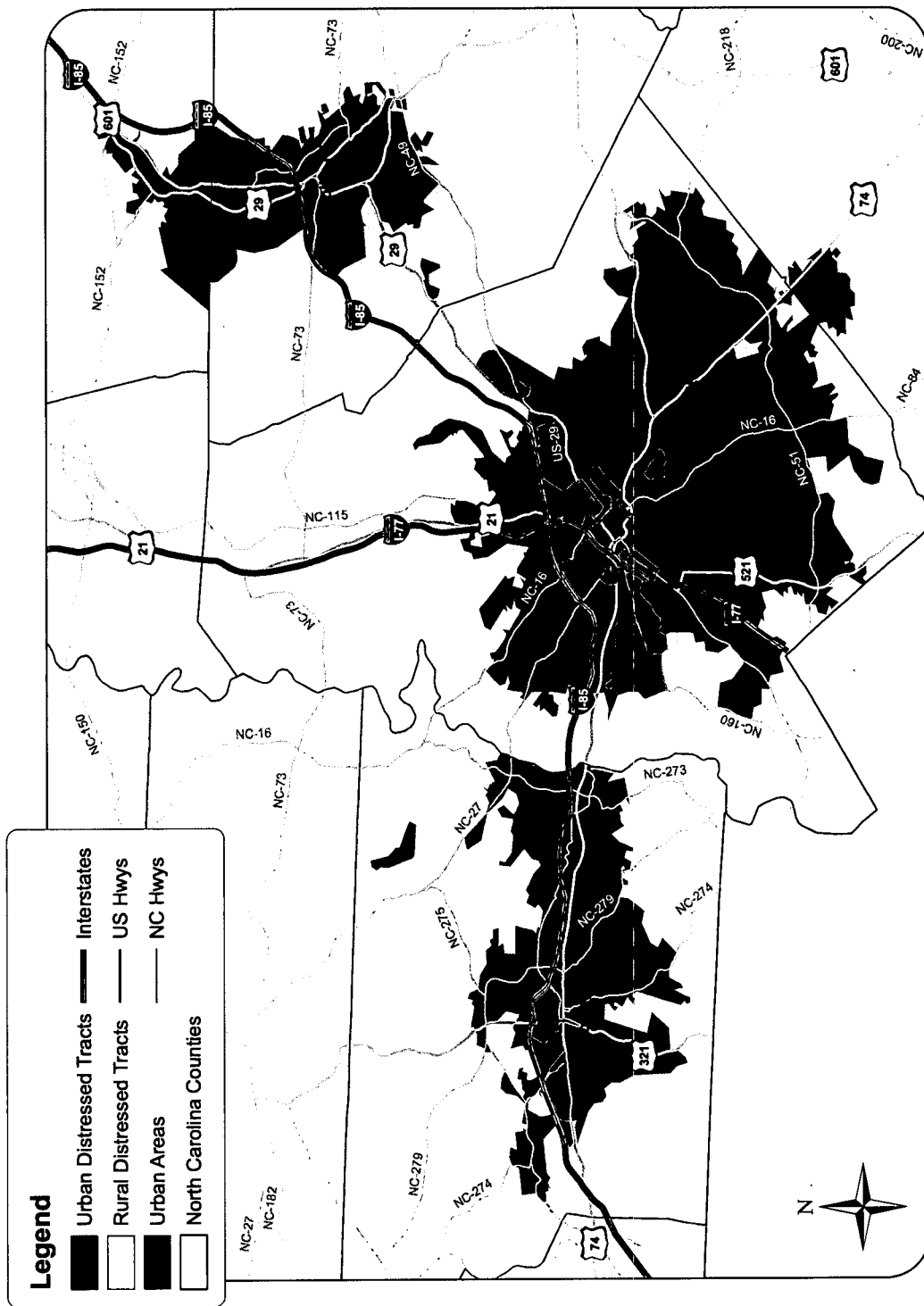


# Burlington

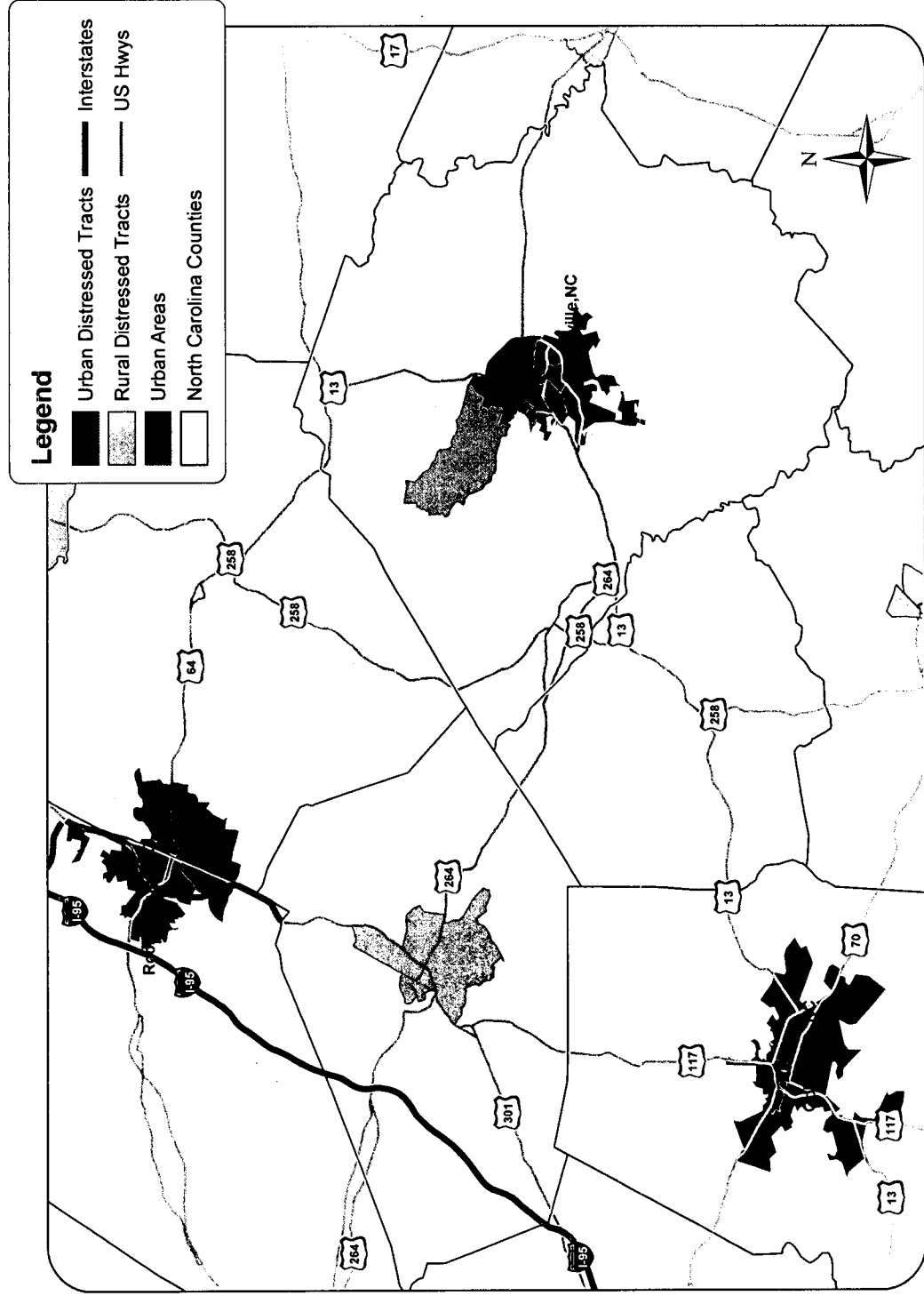




# Charlotte & Gastonia



# Greenville, Goldsboro, Rocky Mount



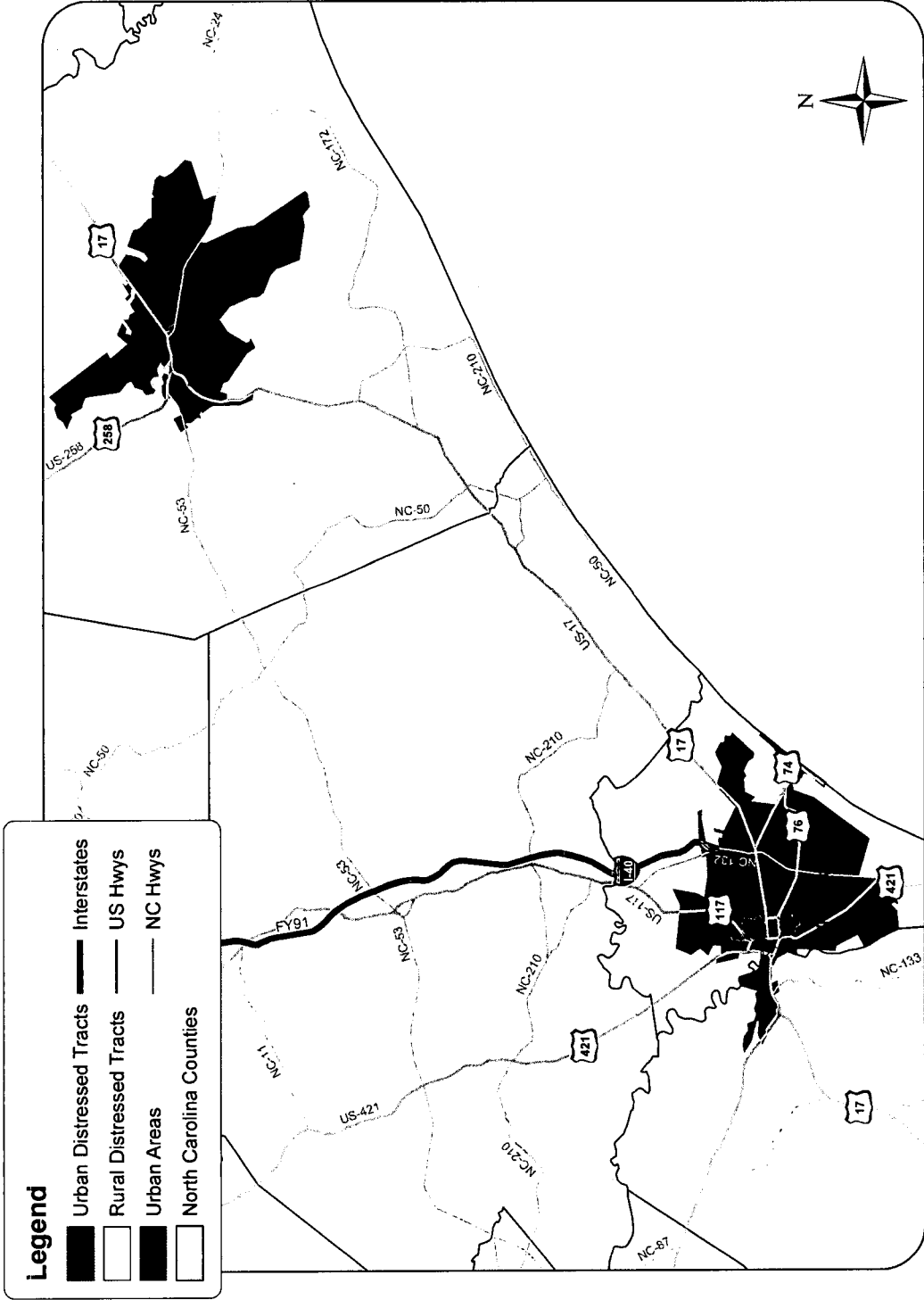
*Fayetteville*



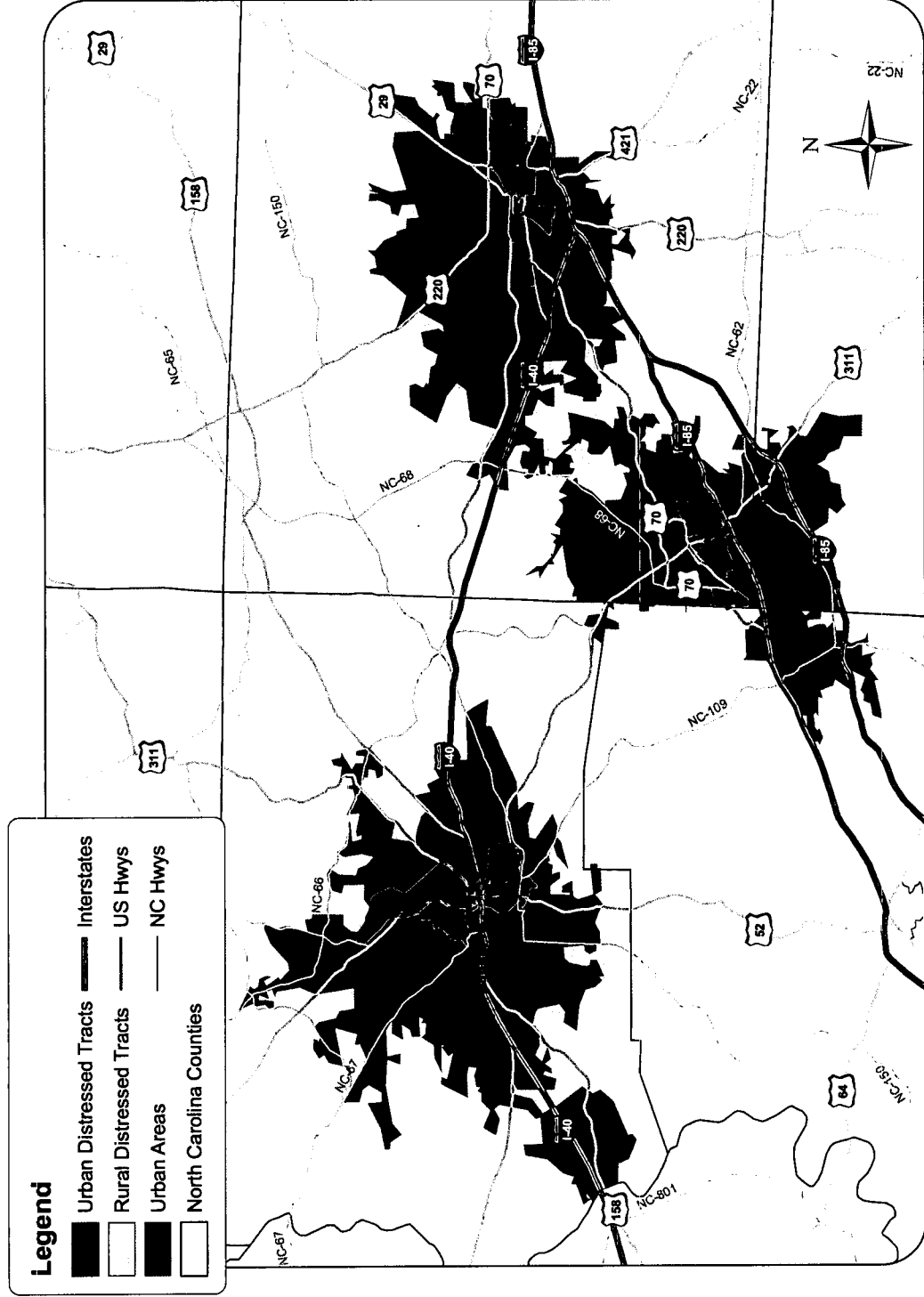
# Hickory



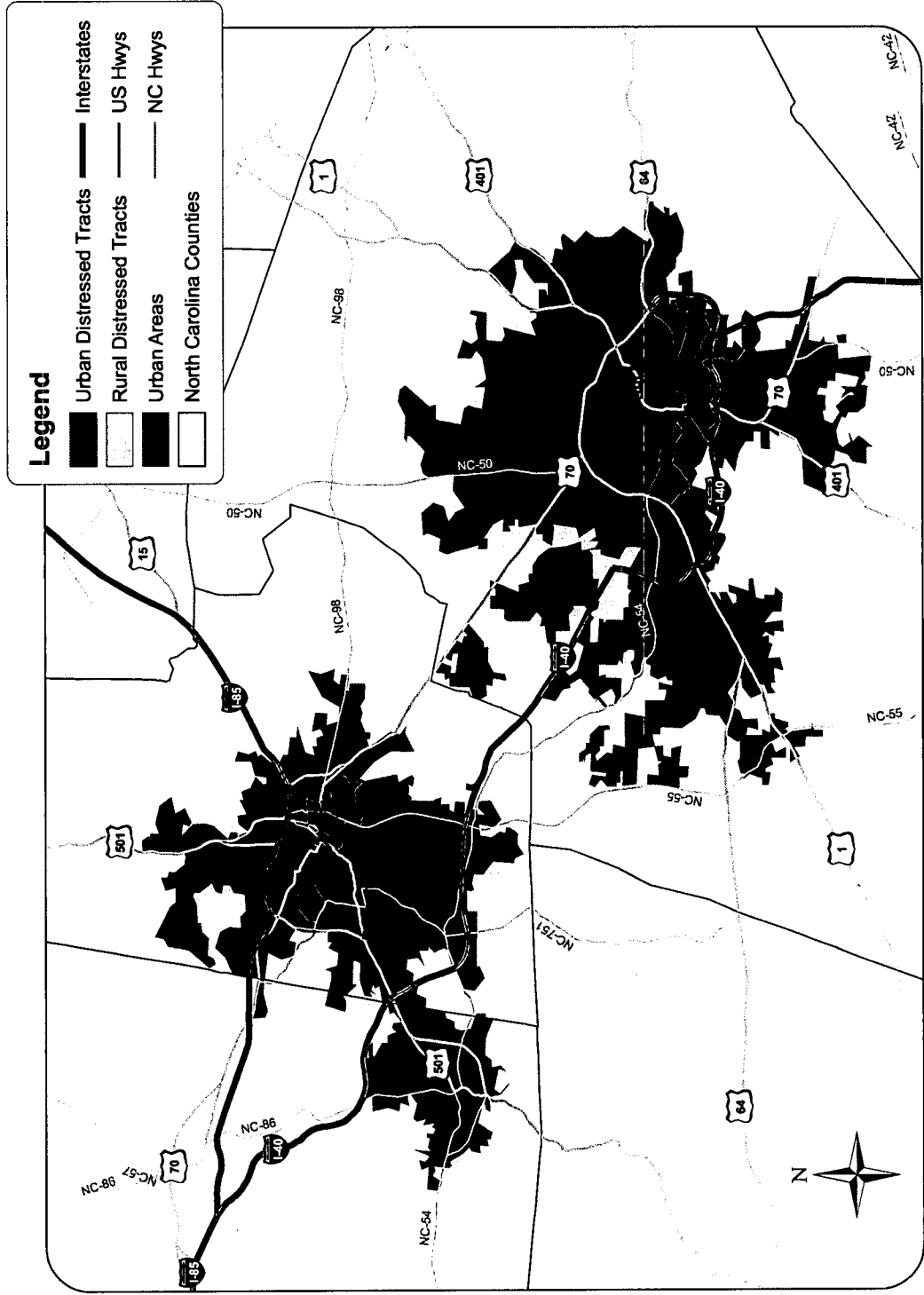
*Jacksonville & Wilmington*



# The Triad



# The Triangle



# Urban Tracts and Urban Counties

Utilizing our measure of distress, we can look at key indicators to see how the 81 urban distressed tracts differ from the counties\* in which they are located.

The per capita income in urban distressed tracts is less than half that of the urban counties. The poverty rate of the population living in urban distressed tracts is three times that of the urban counties as a whole. Similarly, the unemployment rate in urban distressed tracts is nearly three times that of the urban counties.

Clearly, then, distressed urban tracts lag significantly behind their more affluent countywide neighbors. Analyses using county-level data miss the depth and intensity of the poverty in these tracts because of the great wealth in other parts of these counties. Our analysis therefore proceeds using only tract-level data in order to more accurately report the state of urban distressed tracts.

*\*There are 16 urban counties containing the 81 urban distressed tracts: Alamance, Buncombe, Catawba, Cumberland, Durham, Edgecombe, Forsyth, Gaston, Guilford, Mecklenburg, Nash, New Hanover, Onslow, Pitt, Wake, Wayne*

Per capita income for distressed urban tracts and urban counties.

Source: US Bureau of the Census

\$10,542

Tracts

\$22,365

Counties

Poverty rate for distressed urban tracts and urban counties.

Source: US Bureau of the Census

33.3%

Tracts

11%

Counties

Unemployment rate for distressed urban tracts and urban counties.

Source: US Bureau of the Census

10.1%

Tracts

3.5%

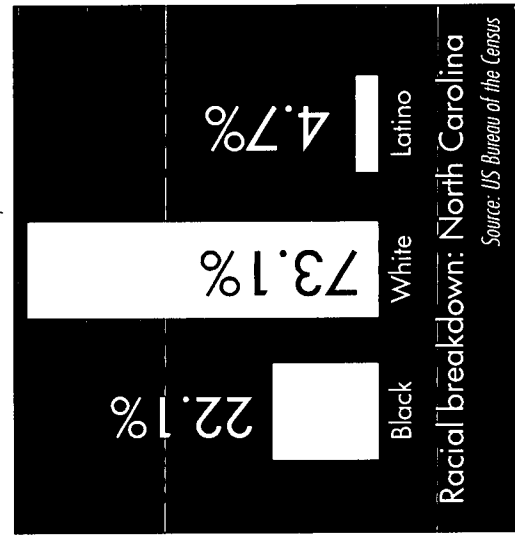
Counties



# Demographics

North Carolina has over 550 thousand residents living in distressed tracts, representing nearly seven percent of the state's population. Forty seven percent of all distressed residents live in the 81 designated 'urban' distressed tracts compared to 53 percent in 66 rural tracts.

Distress does not affect all groups of people in the state equally. Distressed tracts, urban and rural, are disproportionately black. Whereas 7 percent of all North Carolinians live in distressed tracts, nearly 19 percent of blacks do. The latino population is overrepresented in urban distressed tracts, but not in rural



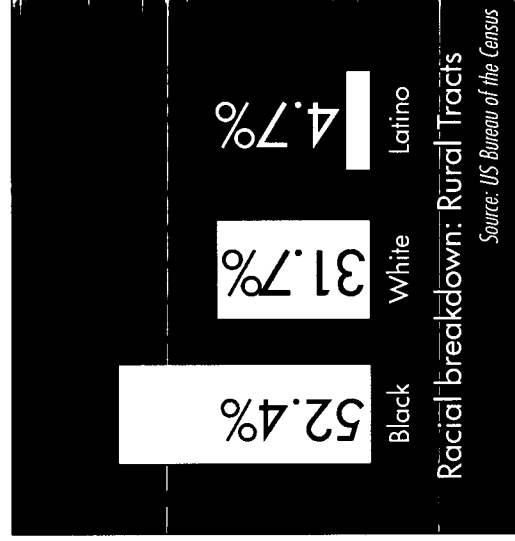
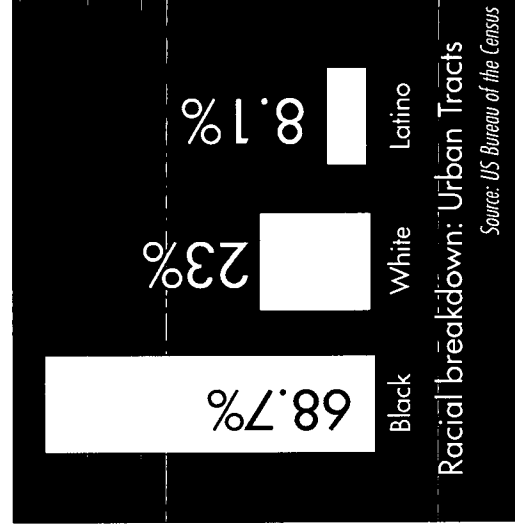
262,331 Urban Distressed Areas

293,909 Rural Distressed Areas

Total population of North Carolina urban distressed census tracts and rural distressed census tracts.

Source: US Bureau of the Census

distressed tracts. American Indians make up 11 percent of the rural distressed tract population, despite making up slightly less than 1 percent of the total North Carolina population (not shown in figures). Whites make up 73 percent of the total state population, but only represent 28 percent of the population living in distressed.



# Economic Characteristics

By most any measure of economic health, urban distressed areas lag behind North Carolina as a whole as well as their rural counterparts.

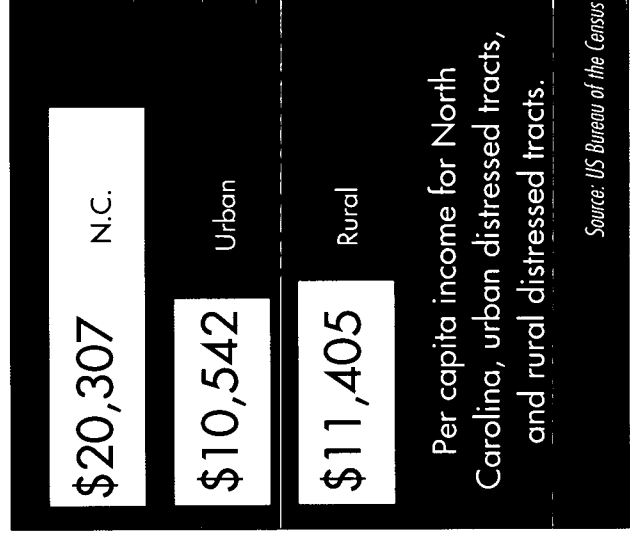
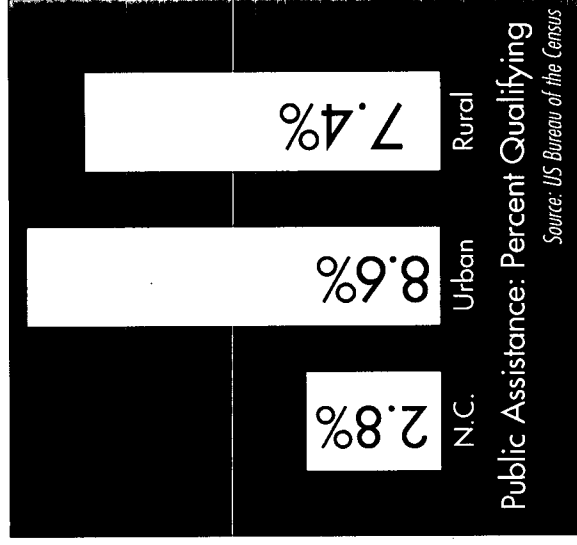
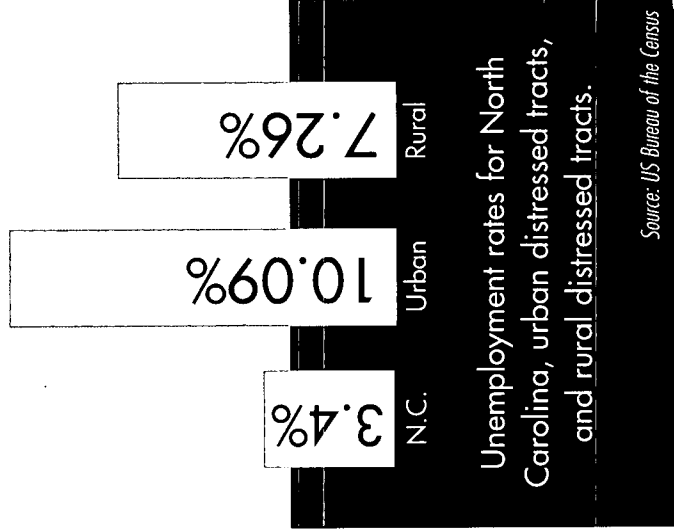
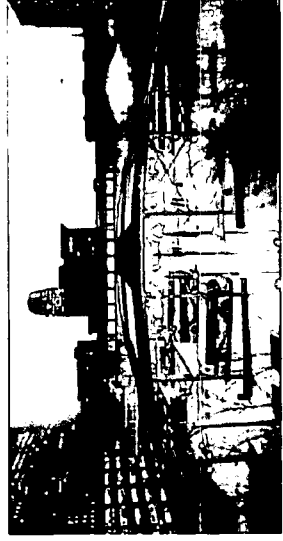
Residents of urban distressed tracts suffer from high rates of unemployment, low per capita incomes, and a rate of public assistance qualification three times that of the state as a whole.

Poverty is an especially dire prob-

lem for the distressed population. Nearly 28 percent of the distressed population lives below the poverty line.

Poverty among urban distressed residents, though, is more intense than among the rural distressed population. Over one third of the urban distressed population lives in poverty. One quarter of the elderly population (over 65) lives in poverty. For children, the problem is even worse. An astounding 44 percent of all children in urban distressed areas live below the poverty line.

Such economic instability greatly limits the life chances of residents of urban distressed areas, restricting their access to employment, education, transportation, quality housing, health care, and proper nutrition.



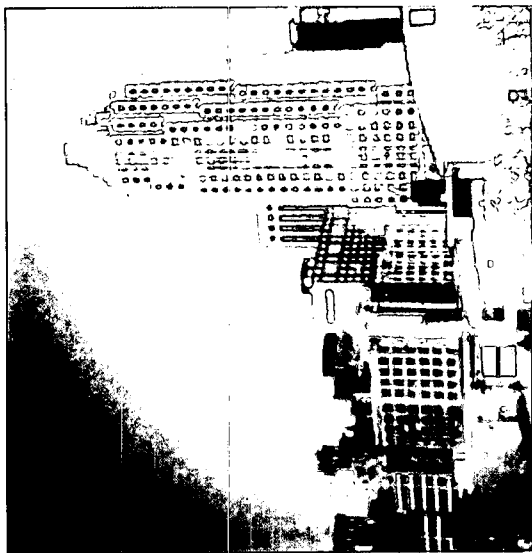
# Economic Characteristics

75,947 Urban Distressed Areas

78,798 Rural Distressed Areas

Total population in urban distressed tracts and rural distressed tracts living below the poverty line.

Source: US Bureau of the Census



12.3% N.C.

33.34% Urban

28.39% Rural

Poverty rate for North Carolina, urban distressed tracts, and rural distressed tracts.

Source: US Bureau of the Census

11% N.C.

43.5% Urban

37.6% Rural

Poverty rate for residents under 18: North Carolina, urban distressed tracts, and rural distressed tracts.

Source: US Bureau of the Census

13.2% N.C.

26.3% Urban

23.4% Rural

Poverty rate for residents over 65: North Carolina, urban distressed tracts, and rural distressed tracts.

Source: US Bureau of the Census

# Social Characteristics

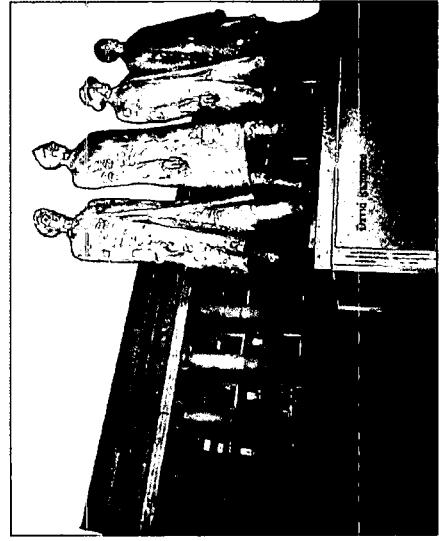
A number of varying social characteristics show additional ways in which the quality of life for distressed urban residents is threatened.

First, residents in urban distressed tracts are the least likely among the comparison groups to complete academic degrees. North Carolina residents are more than three times as likely to obtain a college degree than those in urban distressed areas. Similarly, they are 1.7 times more likely to obtain their high school diploma. Only 45 percent of the population in urban distressed areas holds this most basic degree which may greatly affect their ability to enter the workforce.

Second, urban distressed resi-

dents are 1.5 times more likely than all North Carolinians or rural distressed residents to live in a home where English is not the primary language spoken. Limited English skills can hinder the educational advancement of children and the occupational advancement of adults.

Finally, urban distressed tracts have the highest rates of single motherhood among the comparison groups. Nearly three quarters of all families in urban distressed areas are headed by women with no husband present, compared to roughly half the rural distressed area families and one quarter of all North Carolina families.



22.5% N.C.

7.01%

Urban

7.13%

Rural

College graduation rates for North Carolina, urban distressed tracts, and rural distressed tracts

Source: US Bureau of the Census

78.1% N.C.

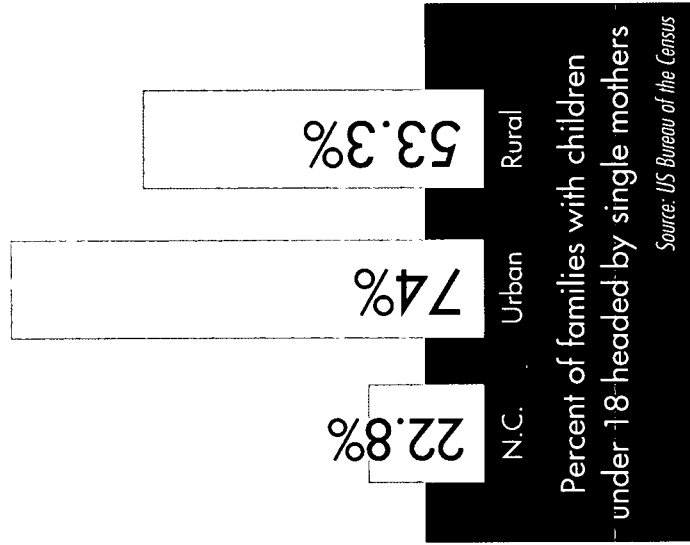
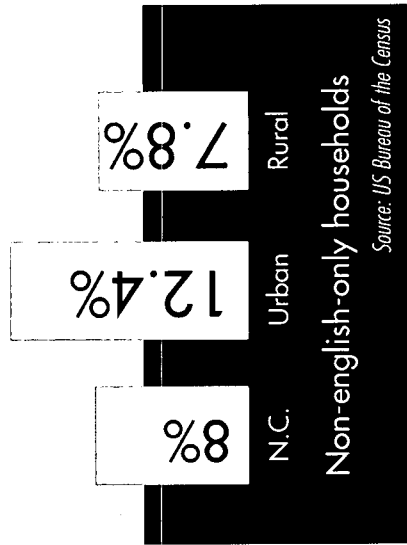
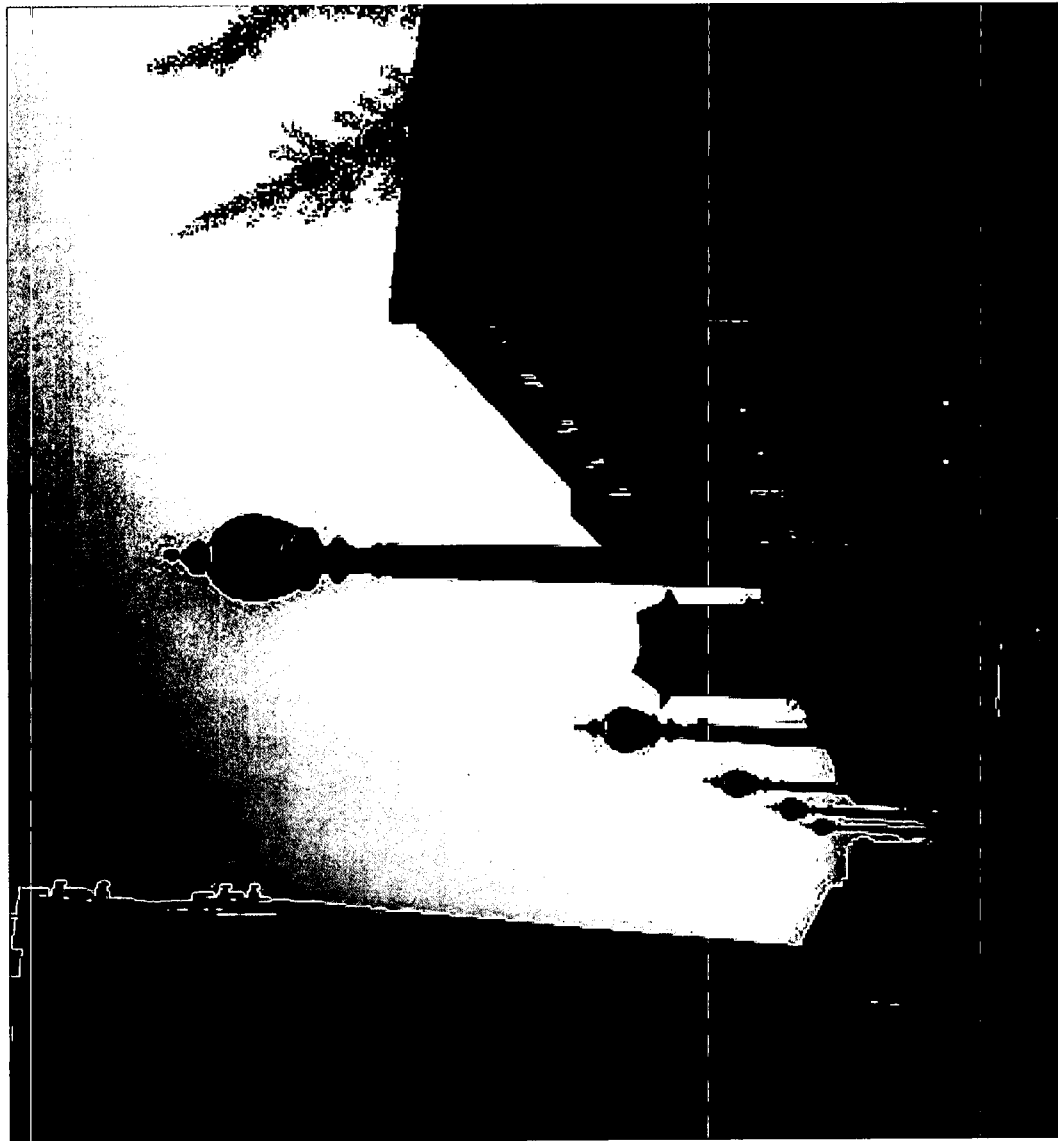
45.25% Urban

50.45% Rural

High school graduation rates for North Carolina, urban distressed tracts, and rural distressed tracts

Source: US Bureau of the Census

# Social Characteristics



# Housing Characteristics



69.4%

N.C.

32.1%

Urban

59.5%

Rural

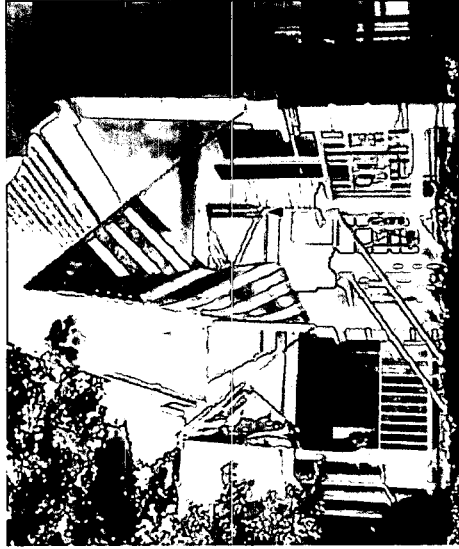
Owner occupied housing rates for North Carolina, urban distressed tracts, and rural distressed tracts.

Source: US Bureau of the Census

The urban distressed population faces substandard housing and instability in their communities.

Urban distressed residents are less likely than rural distressed residents, and half as likely as all North Carolina residents, to own their homes. Such lack of ownership is yet another indicator of the economic hardships faced in distressed urban areas and represents a barrier to wealth creation for these residents.

Distressed urban residents are more likely than their rural counterparts to have moved to a new home in the past



five years. Moving may be motivated by any number of reasons, positive and negative. Regardless, moving often disrupts important community ties — ties that are especially useful for residents living in underprivileged areas.

3%

N.C.

7.4%

Urban

8.3%

Rural

Housing units without phone service.

Source: US Bureau of the Census

43%

N.C.

56.6%

Urban

41.6%

Rural

Residents in different home from 1995

Source: US Bureau of the Census

# Conclusion

This report has highlighted the extent to which North Carolina urban areas contain within them pockets of extreme distress. Using a measure of distress based upon income, unemployment, and poverty, we find that residents in urban distressed communities face a number of social and economic constraints in their lives.

An important finding of this report is the degree to which urban distressed residents are worse off than their rural counterparts. Rural distress in North Carolina is marked by its breadth: there are, for example, more rural North Carolinians living in distressed areas and more living below the poverty line. Urban distress, however, is marked by its depth. Urban distressed residents have lower incomes, are more likely to be unemployed, are less likely to own a home, attain less education, and are more likely to qualify for public assistance than their rural counterparts.

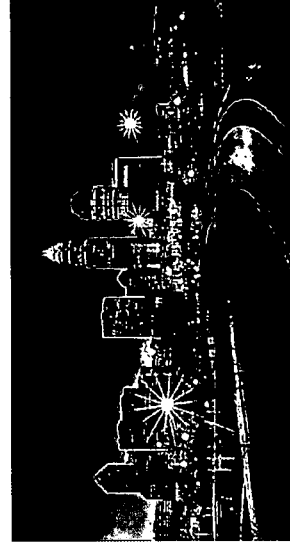
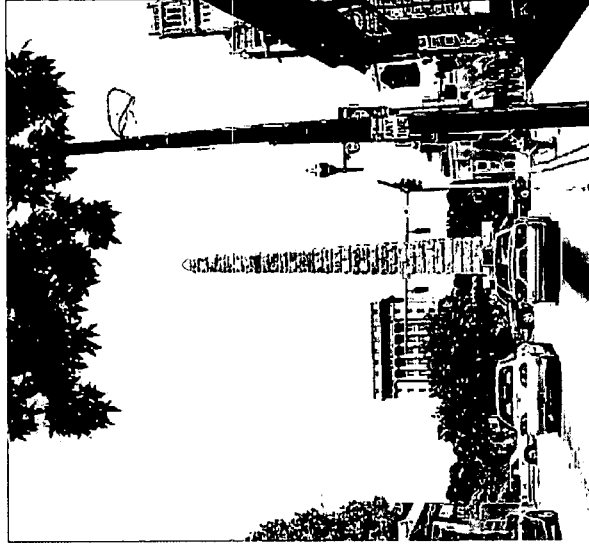
Such a conclusion does not, of course, indicate that rural distress is inconsequential. Rural areas in North Carolina continue to need significant resources devoted to their needs. Rather,

this report makes clear that the needs of residents in urban distressed areas must be addressed as well.

Our analysis represents a beginning point in better understanding the state of urban distress in North Carolina. Our results are based on one measure of distress — there are certainly additional indicators of distress that could be included to better assess the conditions present in these communities.<sup>3</sup> This report does not, for example, address issues related to health care or crime. Furthermore, our analysis was limited by the Census data available at the tract level.

In order to achieve better analyses in the future, governments and organizations should begin collecting data on a continual basis and at geographic level more specific than the county. Future analyses should consider additional sources of information, ranging from local city agencies to resident surveys.

State policy must address the economic and social isolation of underprivileged citizens. This level of data collection and analysis is necessary to achieve such a goal.



# Summary of Findings

	Unemployment rate	Per capita income	Public assistance recipients	Poverty rate	Under 18 poverty rate	Over 65 poverty rate	High school graduation rate	College graduation rate	Non-english-only households	Single-mom-headed households	Owner occupied housing	Housing without phone service	Residential move since 1995
Relative to North Carolina	—	—	—	—	—	—	—	—	—	—	—	—	—
Relative to Distressed Rural Tracts	—	—	—	—	—	—	—	—	—	—	+	—	—

+: Urban Distressed Tracts better than

—: Urban Distressed Tracts worse than



# Notes

1. For a detailed analysis of patterns of growth in North Carolina see:  
  
Brookings Institution Center on Urban and Metropolitan Policy, 2000. *Adding It Up: Growth Trends and Policies in North Carolina*.  
  
Sawicki, David S., and Patrice Flynn, 1996. Neighborhood Indicators: A Review of the Literature and an Assessment of Conceptual and Methodological Issues. *Journal of the American Planning Association* 62: pp. 165-183.  
  
Ricketts, Erol R. and Isabel V. Sawhill. 1988. "Defining and Measuring the Underclass." *Journal of Policy Analysis and Management* 7: pp. 316-325.  
  
Kasarda, John D. 1993. "Inner-City Concentrated Poverty and Neighborhood Distress: 1970-1990." *Housing Policy Debate* 4, no. 3: pp. 253-302.  
  
Mincy, Ronald B., Isabel V. Sawhill, and Douglas A. Wolf. 1990 "The Underclass Definition and Measurement." *Science* 248: pp. 450-453.
2. We adopted a measure of distress consistent with that of The Appalachian Regional Commission (see [www.arc.gov](http://www.arc.gov)) and The Delta Regional Authority (see [www.dra.gov](http://www.dra.gov)).  
  
3. For additional sources of information on selecting indicators of urban distress, see:  
  
O'Hare, William and Mark Mather, 2003. "The Growing Number of Kids in Severely Distressed Neighborhoods: Evidence from the 2000 Census." The Annie E. Casey Foundation and The Population Reference Bureau.

# Appendix A: Urban Tract Census IDs

Alamance County, Census Tract 204	Forsyth County, Census Tract 8.02	Mecklenburg County, Census Tract 47
Buncombe County, Census Tract 2	Forsyth County, Census Tract 15	Mecklenburg County, Census Tract 50
Buncombe County, Census Tract 4	Forsyth County, Census Tract 16.02	Mecklenburg County, Census Tract 51
Buncombe County, Census Tract 9	Forsyth County, Census Tract 17	Mecklenburg County, Census Tract 52
Catawba County, Census Tract 109	Forsyth County, Census Tract 18	Mecklenburg County, Census Tract 53.04
Cumberland County, Census Tract 1	Forsyth County, Census Tract 19.01	Mecklenburg County, Census Tract 56.04
Cumberland County, Census Tract 2	Gaston County, Census Tract 318	Nash County, Census Tract 102
Cumberland County, Census Tract 5	Gaston County, Census Tract 319	New Hanover County, Census Tract 101
Cumberland County, Census Tract 10	Gaston County, Census Tract 320	New Hanover County, Census Tract 110
Cumberland County, Census Tract 13	Guilford County, Census Tract 107.02	New Hanover County, Census Tract 111
Cumberland County, Census Tract 22	Guilford County, Census Tract 110	New Hanover County, Census Tract 114
Durham County, Census Tract 8.01	Guilford County, Census Tract 111.01	Onslow County, Census Tract 19
Durham County, Census Tract 9	Guilford County, Census Tract 112	Onslow County, Census Tract 20
Durham County, Census Tract 10.01	Guilford County, Census Tract 114	Pitt County, Census Tract 4
Durham County, Census Tract 11	Guilford County, Census Tract 116.02	Pitt County, Census Tract 7.01
Durham County, Census Tract 12.01	Guilford County, Census Tract 127.07	Pitt County, Census Tract 7.02
Durham County, Census Tract 12.02	Guilford County, Census Tract 139	Pitt County, Census Tract 8
Durham County, Census Tract 14	Guilford County, Census Tract 142	Wake County, Census Tract 507
Durham County, Census Tract 15.01	Guilford County, Census Tract 143	Wake County, Census Tract 508
Edgecombe County, Census Tract 201	Guilford County, Census Tract 144.08	Wake County, Census Tract 509
Edgecombe County, Census Tract 202	Mecklenburg County, Census Tract 8	Wake County, Census Tract 511
Edgecombe County, Census Tract 203	Mecklenburg County, Census Tract 9	Wake County, Census Tract 520.01
Edgecombe County, Census Tract 204	Mecklenburg County, Census Tract 23	Wake County, Census Tract 521.02
Forsyth County, Census Tract 2	Mecklenburg County, Census Tract 36	Wake County, Census Tract 522.01
Forsyth County, Census Tract 3.01	Mecklenburg County, Census Tract 37	Wake County, Census Tract 524.05
Forsyth County, Census Tract 4	Mecklenburg County, Census Tract 39.01	Wayne County, Census Tract 18
Forsyth County, Census Tract 5	Mecklenburg County, Census Tract 39.02	
Forsyth County, Census Tract 6	Mecklenburg County, Census Tract 41	
Forsyth County, Census Tract 7	Mecklenburg County, Census Tract 42	
Forsyth County, Census Tract 8.01	Mecklenburg County, Census Tract 45	

# Appendix A: Rural Tract Census IDs

Anson County, Census Tract 9804	Pitt County, Census Tract 20.01	Wilson County, Census Tract 8.02
Beaufort County, Census Tract 9903	Randolph County, Census Tract 303.02	
Bertie County, Census Tract 9603	Richmond County, Census Tract 9702	
Columbus County, Census Tract 9905	Richmond County, Census Tract 9706	
Columbus County, Census Tract 9906	Richmond County, Census Tract 9707	
Columbus County, Census Tract 9907	Robeson County, Census Tract 9601	
Columbus County, Census Tract 9912	Robeson County, Census Tract 9605	
Craven County, Census Tract 9608	Robeson County, Census Tract 9606	
Davidson County, Census Tract 614	Robeson County, Census Tract 9608	
Duplin County, Census Tract 9903	Robeson County, Census Tract 9611	
Graham County, Census Tract 9803	Robeson County, Census Tract 9617	
Halifax County, Census Tract 9901	Robeson County, Census Tract 9618	
Halifax County, Census Tract 9906	Robeson County, Census Tract 9619	
Halifax County, Census Tract 9908	Robeson County, Census Tract 9620	
Halifax County, Census Tract 9909	Rockingham County, Census Tract 402	
Halifax County, Census Tract 9910	Rowan County, Census Tract 501	
Halifax County, Census Tract 9911	Rowan County, Census Tract 504	
Hoke County, Census Tract 9704	Rowan County, Census Tract 508	
Iredell County, Census Tract 602	Scotland County, Census Tract 102	
Iredell County, Census Tract 603	Scotland County, Census Tract 103	
Lee County, Census Tract 302	Swain County, Census Tract 9601	
Lee County, Census Tract 303	Vance County, Census Tract 9606	
Lenoir County, Census Tract 102	Vance County, Census Tract 9607	
Lenoir County, Census Tract 103	Warren County, Census Tract 9502	
Lenoir County, Census Tract 104	Warren County, Census Tract 9504	
Lenoir County, Census Tract 105	Watauga County, Census Tract 9805	
Northampton County, Census Tract 9803	Wilson County, Census Tract 1	
Pasquotank County, Census Tract 9601	Wilson County, Census Tract 2	
Pasquotank County, Census Tract 9602	Wilson County, Census Tract 7	
Pasquotank County, Census Tract 9603	Wilson County, Census Tract 8.01	

## NORTH CAROLINA

## METROPOLITAN COALITION

BUILDING LIVABLE CITIES *for* NORTH CAROLINA'S FUTUREEXECUTIVE  
COMMITTEE

## CHAIR

Keith A. Holliday  
MAYOR, GREENSBORO

## VICE CHAIR

Allen Joines  
MAYOR, WINSTON-SALEM

## TREASURER

Susan W. Kluttz  
MAYOR, SALISBURY

## AT LARGE

Kevin Foy  
MAYOR, CHAPEL HILLJennifer Stultz  
MAYOR, GASTONIA

## IMMEDIATE PAST CHAIR

Patrick L. McCrory  
MAYOR, CHARLOTTE

## DIRECTOR

William A. (Beau) Mills  
BMILLS@NCLM.ORG

501(c) (4) non-profit organization consisting up of 23 cities with over 2.5 million North Carolinians in our city limits.

## City – Mayor (Population)

Charlotte	Mayor Patrick McCrory (614,330)	Raleigh	Mayor Charles Meeker (322,211)
Greensboro	Mayor Keith Holliday (231,740)	Durham	Mayor Bill Bell (203,778)
Winston-Salem	Mayor Allen Joines (190,851)	Fayetteville	Mayor Tony Chavonne (130,762)
Cary	Mayor Ernie McAlister (103,260)	Wilmington	Mayor Spence Broadhurst (94,600)
High Point	Mayor Becky Smothers (90,522)	Asheville	Mayor Terry Bellamy (70,070)
Gastonia	Mayor Jennifer Stultz (68,246)	Greenville	Mayor Don Parrott (63,477)
Concord	Mayor Scott Padgett (59,791)	Rocky Mount	Mayor Fred Turnage (57,150)
Chapel Hill	Mayor Kevin Foy (52,440)	Burlington	Mayor Stephen Ross (46,332)
Wilson	Mayor Bruce Rose (45,741)	Hickory	Mayor Rudy Wright (38,604)
Salisbury	Mayor Susan Kluttz (26,804)	Huntersville	Mayor Kim Phillips (27,984)
Apex	Mayor Keith Weatherly (26,100)	Carrboro	Mayor Mark Chilton (17,456)
Boone	Mayor Loretta Clawson (14,782)		

The North Carolina Metropolitan Coalition is an affiliate of the NC League of Municipalities. It was created in 2000 by the mayors as an outgrowth of the former NC Public Transit Coalition.

**PROMOTE STRATEGIES TO ADVANCE NORTH CAROLINA'S URBAN CENTERS**

Charter: The Coalition members work together to promote the interchange of ideas and experiences among cities and pursue policies, regulations and legislation that encourage the continued development of the urban areas of the State of North Carolina as livable, environmentally sound, and economically viable centers.

As home to our state's economic engines, cities are critical to our state's future:

- Nearly **45%** of the North Carolina's **retail sales** took place **within the borders of the 23 cities** in the Metropolitan Coalition (NC DOR, 2002).
- Over **86%** of the **total personal income** in NC is *earned within the state's 11 metropolitan regions that are anchored by our cities* (2000 census and BEA).
- Over **75%** of North Carolina's **gross product** is generated in the 11 metropolitan regions (USCM & DRI-WEFA, 2003).

But our cities have challenges:

- Of the 206,00 **unemployed** North Carolinians, 104,000 or over 50% reside in our coalition counties (Jan. 2006).
- The state's major metropolitan regions are home to nearly **70%** of the state's **unemployed citizens**, or 142,000 North Carolinians (Jan. 2006).
- Growing traffic congestion in urban areas impedes regional access to jobs and threatens air quality – **78% of urban interstates in NC are congested – 45<sup>th</sup> worst in the nation.**
- Cities have "pockets of poverty" and older industrial areas that face serious economic challenges – **nearly half of the state's population who live in "distressed communities"** are in our Metropolitan Coalition cities (2000 census).

## MEMBER CITIES

APEX  
ASHEVILLE  
BOONE  
BURLINGTON  
CARRBORO  
CARY  
CHAPEL HILL  
CHARLOTTE  
CONCORD  
DURHAM  
FAYETTEVILLE  
GASTONIA  
GREENSBORO  
GREENVILLE  
HICKORY  
HUNTERSVILLE  
HIGH POINT  
RALEIGH  
ROCKY MOUNT  
SALISBURY  
WILMINGTON  
WILSON  
WINSTON-SALEM

WWW.NCMETROS.ORG

215 N. DAWSON STREET

RALEIGH, NC 27603

P.O. BOX 3069 (27602-3069)

(919) 715-7895

FAX (919) 733-9519

# NC Metropolitan Coalition Agenda for Action - Long-Range Goals

## MISSION

Promote strategies  
to advance  
NC's urban centers

### Game Plans for:

Urban

Economic Development

Quality Growth & Infrastructure

Safe Cities & Homeland Security

Local Flexibility and Tools

### Ingredients for Success

- "Can-do" attitude for solutions & partners
- Represent over two million citizens
- Clear Focus
- Recognized need

### Ingredients for Success

- League of Municipalities
- Strong PR and media relations
- Non-partisan group
- Strong city staff

Stable, Diverse  
Revenue  
Sources

Safe Cities

Educated  
Workforce

Economic  
Prosperity

Vibrant  
Urban Centers

Destinations  
of Choice

Clean Cities

Put Urban issues  
on NC's Agenda

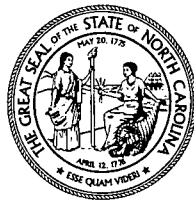
Strong, Diverse  
Communities

Local  
Control

consultants international

## Long-Range Agenda

NORTH CAROLINA GENERAL ASSEMBLY  
STATE LEGISLATIVE BUILDING  
RALEIGH 27603



March 24, 2006

**MEMORANDUM**

**TO:** Members of the  
**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**  
**FROM:** Representative Jim Harrell, III, Chair  
**SUBJECT:** Meeting Notice

There will be a meeting of the

**HOUSE SELECT COMMITTEE  
ON  
ECONOMIC DEVELOPMENT**

DAY: MONDAY TIME: 1:00 P.M.  
DATE: APRIL 10, 2006  
LOCATION: 421 LEGISLATIVE OFFICE BUILDING

Committee members, please advise Beth LeGrande, Committee Assistant, at 715-1883, or e-mail harrellla@ncleg.net if you are unable to attend.

Posted: Membership of the House Select Committee on Economic Development  
Representative Harrell, Chair

Representative Daughtride, Vice Chair  
Representative England  
Representative Gibson  
Representative Goforth  
Representative Jones

Representative Owens  
Representative Parmon  
Representative Ray

cc: Committee Record   x    
Interested Parties   x  



## HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

Monday, April 10, 2006

The House Select Committee on Economic Development met on Monday April 10, 2006, in Room 421 of the Legislative Office Building at 1:00 P.M. The following members were present: Representative James A. Harrell, III, Chairman; Representative Bill Daughtridge, Vice Chairman; and Representatives Bob England, Pryor Gibson, Bruce Goforth, Earl Jones, Earline W. Parmon, and Karen B. Ray. The Visitor Registration list and the Committee Agenda are attached and made part of these minutes. (Please See Exhibit #1 and #2.)

Chairman Harrell called the meeting to order and gave welcoming remarks. The minutes from the March 22 meeting were approved and made part of the committee record. (Please See Exhibit #3.) Canaan Huie, Committee Counsel, Legislative Bill Drafting Division, was introduced to review the Proposed Bill Draft 2005-LYx-286 [v.10] (1/31): **A BILL TO BE ENTITLED AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT.** (Please See Exhibit #4.) The Proposed Legislation was discussed by reference to the Bill Lee Act. An overview of the slide presentation is attached, *Comparison of the Proposed Legislation to the Bill Lee Act*. (Please See Exhibit #5.) The Bill Summary and Analysis for Draft 2005-LYx-286 were distributed to provide further explanation. (Please See Exhibit #6.)

Mr. Huie explained that the Proposed Legislation would replace the William S. Lee Act with the exception of several taxpayers who had been grandfathered through provisions. The exceptions listed were: FedEx Project, Dell Project in Forsyth County, the Merck Project in Durham and Cheesecake Factory and Dole Project in Gaston County.

The Proposed Legislation was compared with the Bill Lee Act with specific reference to four different areas: general administration, basic eligibility, specific credits, and related issues. The following key points were raised with respect to the general administration of the proposed legislation.

- Three development tiers would replace the five enterprise tiers.
- The number of counties in each tier would be fixed.
- Development zones would be replaced with urban progress (UP) zones having stricter requirements.

With respect to basic eligibility for credits under the proposed legislation, the following key points were raised.

- The proposed legislation would be less complex in that eligibility would be determined based on the primary activity of the establishment.
- The wage standard required under the proposed legislation would be less strict.

With respect to specific credits allowed under the proposed legislation, the following key points were raised:

- The proposed legislation contained three credits for creating jobs, investing in business property, and investing in real property.
- Credits allowed under the Bill Lee Act for technology commercialization, research and development, worker training and development zone projects would be eliminated.

Numerous concerns raised by members of the committee or public were discussed; those issues included:

- The difficulty in the transition from five enterprise tiers to three development tiers was discussed.
- The possibility of an increased appropriation for the Community College Worker Training Program was suggested as a replacement for credits for worker training.

- Adjustments to the tier designation formula were suggested for areas like Rutherford County which have unique problems because they are home to high unemployment but also high-wealth retirees
- The definition of research and development was clarified to be for scientific or technical research and not social science research.
- It was explained that the proposed legislation did not have a benefit for providing health insurance for part-time workers because part-time workers would no longer be included in the wage standard calculation

Responding to questions, it was emphasized that the interested parties involved with House Bill 947 in 2005 had all continued to successfully work together on the proposed legislation in an effort to address all issues of concern.

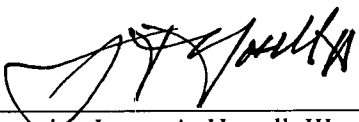
Chairman Harrell opened the committee for discussion. Don Hobart and Chris Beacham, Department of Commerce were recognized for comments and assured the Committee that the issues surrounding the tax credit program for businesses would be addressed and that a fiscal analysis would be performed on the proposed legislation and presented at the next meeting.

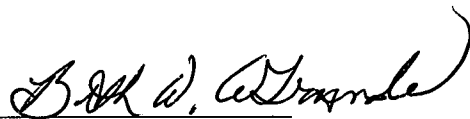
Scott Millar, President, North Carolina Economic Development Association from Catawba County emphasized the importance of all 100 counties to be competitive and expressed their support of the proposed legislation. Concern was expressed over the four million dollar threshold for the credit for investing in business property Tier Three counties had to meet. He requested examples of how the primary activity of a specific establishment would be used to determine eligibility. Donny Hicks and Scott Hamilton, Legislative Co-Chairs, NC Economic Development Association from Gaston and Henderson Counties expressed concern over meeting the wage standard, tier three counties meeting the \$4 million dollar threshold in an expanded situation and the difficulty of new industries doing phased-in projects meeting 25 job threshold. Bonnie Renfro, Co-Chair, from Randolph County emphasized the hardship of the one year investment threshold placed on a company compared to companies meeting the investment threshold in a two year period of time. Beau Mills, NC Metropolitan Coalition, expressed appreciation that the urban progress zones were included and also cited concern for the \$4 million dollar threshold, 25 jobs threshold for small business and the one year threshold.

Open discussion included the pending suits on economic development issues case out of 6th Circuit Court of Appeal. Key improvements in the Proposed Legislation to lessen confusion were listed as: primary activity of eligibility of an industry; elimination of credits that were not used; compression of tiers; and enhanced certainty to communicate with companies.

Chairman Harrell announced the next meeting date would be determined at a later time. There being no further business, the meeting was adjourned at 3:00 P.M.

Respectfully submitted,

  
Representative James A. Harrell, III  
Chairman

  
Beth Wood LeGrande  
Committee Assistant





## HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

### AGENDA

1:00 p.m.

April 10, 2006

Room 414 Legislative Office Building

- I. Call to order:  
Representative James A. Harrell, III, Chairman, Presiding
- II. Approval of the Minutes from the March 22, 2006 Meeting
- III. Proposed Bill Draft and Summary:  
**An Act to Replace the Tax Credits Generally Available Under the William S. Lee Quality Jobs and Business Expansion Act with more Narrowly Focused Credits for Job Creation and Business Investment**  
Canaan Huie, Committee Counsel, Bill Drafting Division
- IV. **Committee Discussion**  
Don Hobart and Chris Beacham, Department of Commerce  
Scott Millar, NCEDA, President (Catawba County)  
Scott Hamilton, NCEDA Legislative Co-Chair (Henderson County)  
Donny Hicks, NCEDA Legislative Co-Chair (Gaston County)  
Bonnie Renfro, NCEDA Legislative Co-Chair (Randolf County)  
Beau Mills, Metropolitan Coalition
- V. Adjournment

## VISITOR REGISTRATION SHEET

**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**

1:00 P.M.  
421 Legislative Office Building  
April 10, 2006

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME	FIRM OR AGENCY AND ADDRESS
Scott Millar	Catawba County EDC / Pres., NCEDA
Sharon Miller	CUCA
Tony Copeland	DOC
Albert Eckel	Coenine
Suzanne Dodge	Kaylor Law Firm
Jim Haag	NCDOC
Sam Niemon	NCDOC
Libby Smith	NCDOC
Stephanie Dorko	Charlotte Chamber
Paula A. Wolf	Central Park of NC

## VISITOR REGISTRATION SHEET

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

1:00 P.M.

421 Legislative Office Building

April 10, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken McIlton	D.O.R.
Mark Lanier	UNCW
DON HOBART	DOC
Michelle Goryn	Instituto for Emerging Issues
Diane Cherry	"
Linda Neal	Rep. Ray's LA
Beau Mills	NC Metro Coalition / NC League of Cities
JOHN PETERSON	NCEOR
Donny Hicks	GASTON COUNTY EDC
Scott Hamilton	Henderson County EDC
BONNIE RENFRO	RANDOLPH COUNTY EDC

## VISITOR REGISTRATION SHEET

**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**

1:00 P.M.  
421 Legislative Office Building  
April 10, 2006

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NAME	FIRM OR AGENCY AND ADDRESS
Mig Bailey	Electri Cities of NC Inc.
Lori Ann Harris	LATHA
Johanna Reese	DE NIK
<i>[Signature]</i>	<i>[Signature]</i>
Dennis Patterson	OSC
porsha. morrison	
Seemira Cra + t	
Lucius W. PULLEN	ATTORNEY NC MINING ASSOC.
Chad Hinton	Civitas Institute

House PagesHOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENTName Of Committee: \_\_\_\_\_ Date: 4/10/06

1. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms1. Name: TOM WILDER2. Name: JAMES WORTH

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

## BILL DRAFT 2005-LYx-286 [v.10] (1/31)

1 A BILL TO BE ENTITLED  
2 AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER  
3 THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT  
4 WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND  
5 BUSINESS INVESTMENT.

6 The General Assembly of North Carolina enacts:

7  
8 **PART I. REPLACEMENT OF BILL LEE ACT**

9 **SECTION 1.1.** Chapter 105 of the General Statutes is amended by adding a  
10 new Article to read:

11 "Article 3H.

12 "Tax Credits for Growing Businesses.

13 **"§ 105-129.70. Legislative findings.**

14 The General Assembly finds that:

15 (1) It is the policy of the State of North Carolina to stimulate economic  
16 activity and to create new jobs for the citizens of the State by  
17 encouraging and promoting the expansion of existing business and  
18 industry within the State and by recruiting and attracting new business  
19 and industry to the State.

20 (2) Both short-term and long-term economic trends at the State, national,  
21 and international levels have made the successful implementation of  
22 the State's economic development policy and programs both more  
23 critical and more challenging; and the decline in the State's traditional  
24 industries, and the resulting adverse impact upon the State and its  
25 citizens, have been exacerbated in recent years by adverse national and  
26 State economic trends that contribute to the reduction in the State's

1 industrial base and that inhibit the State's ability to sustain or attract  
2 new and expanding businesses.

3 (3) The economic condition of the State is not static and recent changes in  
4 the State's economic condition have created economic distress that  
5 requires a reevaluation of certain existing State programs and the  
6 enactment of a new program as provided in this Article that is  
7 designed to stimulate new economic activity and to create new jobs  
8 within the State.

9 (4) The enactment of this Article is necessary to stimulate the economy  
10 and create new jobs in North Carolina; and this Article will promote  
11 the general welfare and confer, as its primary purpose and effect,  
12 benefits on citizens throughout the State through the creation of new  
13 jobs, an enlargement of the overall tax base, an expansion and  
14 diversification of the State's industrial base, and an increase in revenue  
15 to the State and its political subdivisions.

16 (5) The purpose of this Article is to stimulate economic activity and to  
17 create new jobs within the State.

18 (6) The State is in need of a focused tax credit program that encourages  
19 and facilitates economic growth and development within the State.

20 (7) The resources of the State are not evenly distributed throughout the  
21 State and different communities have different abilities and needs in  
22 attracting and maintaining new and expanding business and industry.

23 **"§ 105-129.71. Definitions.**

24 The following definitions apply in this Article:

25 (1) Aircraft maintenance and repair. – The provision of specialized  
26 maintenance or repair services for commercial aircraft or the  
27 rebuilding of commercial aircraft.

28 (2) Air courier services. – The furnishing of air delivery of individually  
29 addressed letters and packages for compensation, in interstate  
30 commerce, except by the United States Postal Service.

31 (3) Business property. – Tangible personal property that is used in a  
32 business and capitalized under the Code.

33 (4) Company headquarters. – A corporate, subsidiary, or regional  
34 managing office, as defined by NAICS in United States industry  
35 551114, that is responsible for strategic or organizational planning and  
36 decisionmaking for the business on an international, national or  
37 multistate regional basis.

38 (5) Cost. – In the case of property owned by the taxpayer, cost is  
39 determined pursuant to regulations adopted under section 1012 of the  
40 Code. In the case of property the taxpayer leases from another, cost is  
41 value as determined pursuant to G.S. 105-130.4(j)(2).

42 (6) Customer service call center. – The provision of support service by a  
43 business to its customers by telephone or other electronic means to  
44 support products or services of the business. For the purposes of this

- 1 definition, an establishment is primarily engaged in providing support  
2 services by telephone or other electronic means only if at least sixty  
3 percent (60%) of its calls are incoming or at least sixty percent (60%)  
4 of its other electronic communications are initiated by its customers.
- 5 (7) Development tier. – The classification assigned to an area pursuant to  
6 G.S. 143B-437.08.
- 7 (8) Electronic shopping and mail order houses. – An industry in electronic  
8 shopping and mail order houses industry group 4541 as defined by  
9 NAICS.
- 10 (9) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on  
11 January 1, 2002.
- 12 (10) Full-time job. – A position that requires at least 1,600 hours of work  
13 per year and is intended to be held by one employee during the entire  
14 year. A full-time employee is an employee who holds a full-time job.
- 15 (11) Hub. – Defined in G.S. 105-164.3.
- 16 (12) Information technology and services. – An industry in one of the  
17 following:
- 18 a. Internet service providers, Web search portals, and data  
19 processing subsector 518 as defined by NAICS.
- 20 b. Software publishers industry group 5112 as defined by NAICS.
- 21 c. Computer systems design and related services industry group  
22 5415 as defined by NAICS.
- 23 (13) Long-term unemployed worker. --
- 24 (14) Manufacturing. – An industry in manufacturing sectors 31 through 33,  
25 as defined by NAICS, but not including quick printing or retail  
26 bakeries.
- 27 (15) Motorsports racing team. – A professional racing team primarily  
28 engaged in the research and development, design, manufacture, repair,  
29 maintenance, and operation of motor vehicles used in live motorsports  
30 racing events before a paying audience.
- 31 (16) NAICS. – The North American Industry Classification System adopted  
32 by the United States Office of Management and Budget as of  
33 December 31, 2002.
- 34 (17) New job. – A full-time job that represents a net increase in the number  
35 of the taxpayer's employees statewide. A new employee is an  
36 employee who holds a new job. The term does not include a job  
37 currently located in this State that is transferred to the business from a  
38 related member of the business.
- 39 (18) Overdue tax debt. – Defined in G.S. 105-243.1.
- 40 (19) Purchase. – Defined in section 179 of the Code.
- 41 (20) Related entity. – Defined in G.S. 105-130.7A.
- 42 (21) Research and development. – An industry in scientific research and  
43 development services industry group 5417 as defined by NAICS.



1           (22) Urban progress zone. – The classification assigned to an area pursuant  
2           to G.S. 143B-437.09.

3           (23) Warehousing. – An industry in warehousing and storage subsector 493  
4           as defined by NAICS.

5           (24) Wholesale trade. – An industry in wholesale trade sector 42 as defined  
6           by NAICS.

7   **"§ 105-129.72. Sunset; studies.**

8           (a) Sunset. – This Article is repealed effective for business activities that occur  
9           on or after January 1, 2011.

10          (b) Equity Study. – The Department of Commerce shall study the effect of the  
11          tax incentives provided in this Article on tax equity. This study shall include the  
12          following:

13               (1) Reexamining the formula in G.S. 143B-437.08 used to define  
14               development tiers, to include consideration of alternative measures for  
15               more equitable treatment of counties in similar economic  
16               circumstances.

17               (2) Considering whether the assignment of tiers and the applicable  
18               thresholds are equitable for smaller counties.

19               (3) Compiling any available data on whether expanding North Carolina  
20               businesses receive fewer benefits than out-of-State businesses that  
21               locate to North Carolina.

22          (c) Impact Study. – The Department of Commerce shall study the effectiveness  
23          of the tax incentives provided in this Article. This study shall include:

24               (1) Studying the distribution of tax incentives across new and expanding  
25               businesses and industries.

26               (2) Examining data on economic recruitment for the period from 2005  
27               through the most recent year for which data are available by county, by  
28               industry type, by size of investment, and by number of jobs, and other  
29               relevant information to determine the pattern of business locations and  
30               expansions before and after the enactment of this Article.

31               (3) Measuring the direct costs and benefits of the tax incentives.

32               (4) Compiling available information on the current use of incentives by  
33               other states and whether that use is increasing or declining.

34          (d) Report. – The Department of Commerce shall report the results of these  
35          studies and its recommendations to the General Assembly biennially with the first report  
36          due by June 1, 2009.

37   **"§ 105-129.73. Eligibility; forfeiture.**

38           (a) Eligible Business. – A taxpayer is eligible for a credit under this Article only  
39           with respect to activities occurring at an establishment whose primary activity is listed  
40           in this subsection. The primary activity of an establishment is determined based on the  
41           establishment's principal product or group of products produced or distributed, or  
42           services rendered.

43               (1) Aircraft maintenance and repair.

44               (2) Air courier services hub.

- (3) Company headquarters, but only if the establishment has created at least 75 new jobs within a twelve-month period during the previous five years.
- (4) Customer service call centers.
- (5) Electronic shopping and mail order houses.
- (6) Information technology and services.
- (7) Manufacturing.
- (8) Motorsports racing team.
- (9) Research and development.
- (10) Warehousing.
- (11) Wholesale trade.

(b) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone satisfy the wage if they pay an average weekly wage that is at least equal to ninety-five percent (95%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety-five percent (95%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

(c) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

1       (d) Environmental Impact. – A taxpayer is eligible for a credit allowed under this  
2 Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the  
3 taxpayer has no pending administrative, civil, or criminal enforcement action based on  
4 alleged significant violations of any program implemented by an agency of the  
5 Department of Environment and Natural Resources, and has had no final determination  
6 of responsibility for any significant administrative, civil, or criminal violation of any  
7 program implemented by an agency of the Department of Environment and Natural  
8 Resources within the last five years. A significant violation is a violation or alleged  
9 violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The  
10 Secretary of Environment and Natural Resources shall notify the Department of  
11 Revenue annually of every person that currently has any of these pending actions and  
12 every person that has had any of these final determinations within the last five years.

13       (e) Safety and Health Programs. – A taxpayer is eligible for a credit allowed  
14 under this Article only if the taxpayer certifies that, as of the time the taxpayer claims  
15 the credit, at the establishment with respect to which the credit is claimed, the taxpayer  
16 has no citations under the Occupational Safety and Health Act that have become a final  
17 order within the past three years for willful serious violations or for failing to abate  
18 serious violations. For the purposes of this subsection, 'serious violation' has the same  
19 meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of  
20 Revenue annually of all employers who have had these citations become final orders  
21 within the past three years.

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

26       (g) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the  
27 taxpayer was not eligible for the credit for the calendar year in which the taxpayer  
28 engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits  
29 a credit for investment in real property under G.S. 105-129.79 if the taxpayer fails to  
30 timely create the number of required new jobs or to timely make the required level of  
31 investment required under G.S. 105-129.79(b). A taxpayer that forfeits a credit under  
32 this Article is liable for all past taxes avoided as a result of the credit plus interest at the  
33 rate established under G.S. 105-241.1(i), computed from the date the taxes would have  
34 been due if the credit had not been allowed. The past taxes and interest are due 30 days  
35 after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and  
36 interest by the due date is subject to the penalties provided in G.S. 105-236.

37       (h) Change in Ownership of Business. – As used in this subsection, the term  
38 'business' means a taxpayer or an establishment. The sale, merger, consolidation,  
39 conversion, acquisition, or bankruptcy of a business, or any transaction by which an  
40 existing business reformulates itself as another business, does not create new eligibility  
41 in a succeeding business with respect to credits for which the predecessor was not  
42 eligible under this Article. A successor business may, however, take any credit or  
43 carried-over portion of a credit that its predecessor could have taken if it had a tax

1 liability. The acquisition of a business is a new investment that creates new eligibility in  
2 the acquiring taxpayer under this Article if either of the following conditions is met:

3 (1) The business closed before it was acquired.

4 (2) The business was required to file a notice of plant closing or mass  
5 layoff under the federal Worker Adjustment and Retraining  
6 Notification Act, 29 U.S.C. § 2101, before it was acquired.

7 (3) The business was acquired by its employees directly or indirectly  
8 through an acquisition company under an employee stock option  
9 transaction or another similar mechanism. For the purpose of this  
10 subdivision, 'acquired' means that as part of the initial purchase of a  
11 business by the employees, the purchase included an agreement for the  
12 employees through the employee stock option transaction or another  
13 similar mechanism to obtain one of the following:

14 a. Ownership of more than fifty percent (50%) of the business.

15 b. Ownership of not less than forty percent (40%) of the business within  
16 seven years if the business has tangible assets with a net book value in  
17 excess of one hundred million dollars (\$100,000,000) and has the  
18 majority of its operations located in an development tier one area.

19 (i) Advisory Ruling. – A taxpayer may request in writing from the Secretary of  
20 Revenue specific advice regarding eligibility for a credit under this Article.  
21 G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon  
22 advice offered by any other State or local government official or employee acting in an  
23 official capacity regarding eligibility for a credit under this Article.

24 (j) Planned Expansion. – A taxpayer that signs a letter of commitment with the  
25 Department of Commerce, after the Department has calculated the development tier  
26 designations for the next year but before the beginning of that year, to undertake  
27 specific activities at a specific site within the next two years may calculate the credit for  
28 which it qualifies based on the establishment's development tier designation in the year  
29 in which the letter of commitment was signed by the taxpayer.

30 **"§ 105-129.74. Tax election; cap; carryforwards; limitations.**

31 (a) Tax Election. – The credits provided in this Article are allowed against the  
32 franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of  
33 this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The  
34 taxpayer may divide a credit between the taxes against which it is allowed.  
35 Carryforwards of a credit may be divided between the taxes against which it is allowed  
36 without regard to the original election regarding the division of the credit.

37 (b) Cap. – The credits allowed under this Article may not exceed fifty percent  
38 (50%) of the cumulative amount of taxes against which they may be claimed for the  
39 taxable year, reduced by the sum of all other credits allowed against those taxes, except  
40 tax payments made by or on behalf of the taxpayer. This limitation applies to the  
41 cumulative amount of credit, including carryforwards, claimed by the taxpayer under  
42 this Article for the taxable year.

43 (c) Carryforward. – Unless a longer carryforward period applies, any unused  
44 portion of a credit allowed under G.S. 105-129.77 or G.S. 105-129.78 may be carried

1 forward for five years and any unused portion of a credit allowed under G.S.  
2 105-129.79 may be carried forward for 15 years. If the Secretary of Commerce makes a  
3 written determination that the taxpayer is expected to purchase or lease, and place in  
4 service in connection with an eligible business within a two-year period, at least one  
5 hundred fifty million dollars (\$150,000,000) worth of business and real property, any  
6 unused portion of a credit under this Article with respect to the establishment that  
7 satisfies that condition may be carried forward for the succeeding 20 years. If the  
8 taxpayer does not make the required level of investment, the taxpayer shall apply the  
9 five-year carryforward period rather than the 20-year carryforward period.

10 (d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer  
11 shall claim a credit under this Article within six months after the date set by statute for  
12 the filing of the return, including any extensions of that date.

13 **"§ 105-129.75. Fees and reports.**

14 (a) Fee. – When filing a return for a taxable year in which the taxpayer engaged  
15 in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer  
16 shall pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each  
17 type of credit the taxpayer claims or intends to claim with respect to an establishment.  
18 The fee is due at the time the return is due for the taxable year in which the taxpayer  
19 engaged in the activity for which the taxpayer is eligible for a credit. No credit is  
20 allowed under this Article for a taxable year until all outstanding fees have been paid.  
21 Fees collected under this section shall be credited to the General Fund.

22 (b) Reports. – The Department of Revenue shall publish by May 1 of each year  
23 the following information itemized by credit and by taxpayer for the 12-month period  
24 ending the preceding December 31:

25 (1) The number of claims for each credit allowed in this Article.

26 (2) The number and development tier area of new jobs with respect to  
27 which credits were claimed.

28 (3) The cost and development tier area of business property with respect to  
29 which credits were claimed.

30 (4) The cost and development tier area of real property investment with  
31 respect to which credits were claimed.

32 **"§ 105-129.76. Substantiation.**

33 (a) Records. – To claim a credit allowed by this Article, the taxpayer shall  
34 provide any information required by the Secretary of Revenue. Every taxpayer claiming  
35 a credit under this Article shall maintain and make available for inspection by the  
36 Secretary of Revenue any records the Secretary considers necessary to determine and  
37 verify the amount of the credit to which the taxpayer is entitled. The burden of proving  
38 eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no  
39 credit shall be allowed to a taxpayer that fails to maintain adequate records or to make  
40 them available for inspection.

41 (b) Documentation. – Each taxpayer shall provide with the tax return qualifying  
42 information for each credit claimed under this Article. The qualifying information shall  
43 be in the form prescribed by the Secretary and shall be signed and affirmed by the  
44 individual who signs the taxpayer's tax return. The information required by this

subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards, and includes the following:

- (1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the establishment.
- (2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.
- (3) Any other qualifying information related to a specific credit allowed under this Article.

**"§ 105-129.77. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone, the amount of the credit is increased by one thousand dollars (\$1,000) per job. In addition, if a job located in an urban progress zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars (\$2,000) per job.

<u>Area Development Tier</u>	<u>Amount of Credit</u>
Tier One	\$12,500
Tier Two	5,000
Tier Three	1,000

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone, the applicable threshold is the one for a development tier one area.

<u>Area Development Tier</u>	<u>Threshold</u>
Tier One	5
Tier Two	10
Tier Three	25

(c) Calculation. – A job is located in a county or urban progress zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the

1 average number of full-time employees the taxpayer has in this State during the taxable  
2 year.

3 (d) Installments. – The credit may not be taken in the taxable year in which the  
4 new jobs are created. Instead, the credit shall be taken in equal installments over the  
5 four years following the taxable year in which the new jobs were created and is  
6 conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of  
7 the four years in which the installment of a credit accrues, a job is no longer filled, the  
8 credit with respect to that job expires and the taxpayer may not take any remaining  
9 installment of the credit with respect to that job. If, in one of the years in which the  
10 installment of a credit accrues, the number of the taxpayer's full-time employees falls  
11 below the sum of the applicable threshold and the number of full-time employees the  
12 taxpayer had in the year before the year in which the taxpayer qualified for the credit,  
13 the credits with respect to all of the new jobs expire, and the taxpayer may not take any  
14 remaining installments of the credits. When a credit expires under this subsection, the  
15 taxpayer may, however, take the portion of an installment that accrued in a previous  
16 year and was carried forward to the extent permitted under G.S. 105-129.74.

17 (e) Transferred Jobs. – Jobs transferred from one area in the State to another area  
18 in the State are not considered new jobs for purposes of this section. Jobs that were  
19 located in this State and that are transferred to the taxpayer from a related member of  
20 the taxpayer are not considered new jobs for purposes of this section. If, in one of the  
21 four years in which the installment of a credit accrues, the job with respect to which the  
22 credit was claimed is moved to an area in a higher-numbered development tier or out of  
23 an urban progress zone, the remaining installments of the credit are allowed only to the  
24 extent they would have been allowed if the job was initially created in the area to which  
25 it was moved. If, in one of the years in which the installment of a credit accrues, the job  
26 with respect to which the credit was claimed is moved to an area in a lower-numbered  
27 development tier or an urban progress zone, the remaining installments of the credit  
28 shall be calculated as if the job had been created initially in the area to which it was  
29 moved.

30 (f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the  
31 wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the  
32 requirement with respect to both the new jobs, considered collectively, for which a  
33 credit is claimed and all of the jobs at the establishment, considered collectively, with  
34 respect to which a credit is claimed.

35 (g) No Double Credit. – A taxpayer may not claim a credit under this section  
36 with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

37 **"§ 105-129.78. Credit for investing in business property.**

38 (a) General Credit. – A taxpayer that meets the eligibility requirements set out in  
39 G.S. 105-129.73 and that has purchased or leased business property and placed it in  
40 service in this State during the taxable year and that has satisfied the threshold  
41 requirements of subsection (c) of this section is allowed a credit equal to the applicable  
42 percentage of the excess of the eligible investment amount over the applicable  
43 threshold. If the taxpayer places business property in service in an urban progress  
44 zone, the applicable percentage is the one for a development tier one area. Business

property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

<u>Area Development Tier</u>	<u>Applicable Percentage</u>
<u>Tier One</u>	<u>7%</u>
<u>Tier Two</u>	<u>5%</u>
<u>Tier Three</u>	<u>4%</u>

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone, the applicable threshold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>\$ -0-</u>
<u>Tier Two</u>	<u>1,000,000</u>
<u>Tier Three</u>	<u>4,000,000</u>

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In



1 determining the amount of any net reduction during the taxable year, the cost of  
2 business property the taxpayer placed in service during the taxable year and for which  
3 the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be  
4 included in the cost of all the taxpayer's eligible business property that is in service. If in  
5 a single taxable year business property with respect to two or more credits in the same  
6 county are disposed of, the net reduction in the cost of all the taxpayer's eligible  
7 business property that is in service in the same county is compared to the total cost of all  
8 the business property for which credits expired in order to determine whether the  
9 remaining installments of the credits are forfeited.

10 The expiration of a credit does not prevent the taxpayer from taking the portion of an  
11 installment that accrued in a previous year and was carried forward to the extent  
12 permitted under G.S. 105-129.74.

13 (e) Transferred Property. – If, in one of the four years in which the installment of  
14 a credit accrues, the business property with respect to which the credit was claimed is  
15 moved to a county in a higher-numbered development tier or to an urban progress zone,  
16 the remaining installments of the credit are allowed only to the extent they would have  
17 been allowed if the business property had been placed in service initially in the area to  
18 which it was moved. If, in one of the four years in which the installment of a credit  
19 accrues, the business property with respect to which a credit was claimed is moved to a  
20 county in a lower-numbered development tier or an urban progress zone, the remaining  
21 installments of the credit shall be calculated as if the business property had been placed  
22 in service initially in the area to which it was moved.

23 (f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the  
24 wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the  
25 requirement with respect to all of the jobs at the establishment, considered collectively,  
26 with respect to which a credit is claimed.

27 (g) No Double Credit. – A taxpayer may not claim a credit under this section  
28 with respect to business property for which the taxpayer claims a credit under  
29 G.S. 105-129.9 or G.S. 105-129.9A.

30 **"§ 105-129.79. Credit for investment in real property.**

31 (a) Credit. – If a taxpayer that has purchased or leased real property in a  
32 development tier one area begins to use the property in an eligible business during the  
33 taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible  
34 investment amount if all of the eligibility requirements of G.S. 105-129.73 and of  
35 subsection (b) of this section are met. For the purposes of this section, property is  
36 located in a development tier one area if the area the property is located in was a  
37 development tier one area at the time the taxpayer made a written application for the  
38 determination required under subsection (b) of this section. The eligible investment  
39 amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost  
40 of all of the real property the taxpayer is using in this State in an eligible business on the  
41 last day of the taxable year exceeds the cost of all of the real property the taxpayer was  
42 using in this State in an eligible business on the last day of the base year. The base year  
43 is that year, of the three immediately preceding taxable years, in which the taxpayer was  
44 using the most real property in this State in an eligible business. In the case of property

1 that is leased, the cost of the property is not determined as provided in G.S. 105-129.71  
2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any  
3 expenditures made by the taxpayer to improve the property before it is used by the  
4 taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire  
5 credit may not be taken for the taxable year in which the property is first used in an  
6 eligible business but shall be taken in equal installments over the seven years following  
7 the taxable year in which the property is first used in an eligible business. When part of  
8 the property is first used in an eligible business in one year and part is first used in an  
9 eligible business in a later year, separate credits may be claimed for the amount of  
10 property first used in an eligible business in each year. The basis in any real property for  
11 which a credit is allowed under this section shall be reduced by the amount of credit  
12 allowable.

13 (b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the  
14 credit allowed under this section with respect to an establishment only if the Secretary  
15 of Commerce makes a written determination that the taxpayer is expected to purchase or  
16 lease and use in an eligible business at that establishment within a three-year period at  
17 least ten million dollars (\$10,000,000) of real property and that the establishment that is  
18 the subject of the credit will create at least 200 new jobs within two years of the time  
19 that the property is first used in an eligible business. If the taxpayer fails to timely make  
20 the required level of investment or fails to timely create the required number of new  
21 jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.73.

22 (c) Mixed Use Property. – If the taxpayer uses only part of the property in an  
23 eligible business, the amount of the credit allowed under this section is reduced by  
24 multiplying it by a fraction, the numerator of which is the square footage of the property  
25 used in an eligible business and the denominator of which is the total square footage of  
26 the property.

27 (d) Expiration. – If, in one of the seven years in which the installment of a credit  
28 accrues, the property with respect to which the credit was claimed is no longer used in  
29 an eligible business, the credit expires, and the taxpayer may not take any remaining  
30 installment of the credit. If, in one of the seven years in which the installment of a credit  
31 accrues, part of the property with respect to which the credit was claimed is no longer  
32 used in an eligible business, the remaining installments of the credit shall be reduced by  
33 multiplying it by the fraction described in subsection (c) of this section. If, in one of the  
34 years in which the installment of a credit accrues and by which the taxpayer is required  
35 to have created 200 new jobs at the property, the total number of employees the  
36 taxpayer employs at the property with respect to which the credit is claimed is less than  
37 200, the credit expires, and the taxpayer may not take any remaining installment of the  
38 credit.

39 In each of these cases, the taxpayer may nonetheless take the portion of an  
40 installment that accrued in a previous year and was carried forward to the extent  
41 permitted under G.S. 105-129.74.

42 (e) No Double Credit. – A taxpayer may not claim a credit under this section  
43 with respect to real property for which a credit is claimed under G.S. 105-129.12 or  
44 G.S. 105-129.12A."

1           **SECTION 1.2.** Part 2 of Article 10 of Chapter 143B is amended by adding  
2 two new sections to read:

3 **"§ 143B-437.08. Development tier designation.**

4       (a) Tiers Defined. – A development tier one area is a county whose annual  
5 ranking is one of the 40 highest in the State. A development tier two area is a county  
6 whose annual ranking is one of the next 40 highest in the State. A development tier  
7 three area is a county that is not in a lower-numbered development tier.

8       (b) Development Factor. – Each year, on or before November 30, the Secretary  
9 of Commerce shall assign to each county in the State a development factor that is the  
10 sum of the following:

11           (1) The county's rank in a ranking of counties by average rate of  
12 unemployment from lowest to highest, for the most recent 12 months  
13 for which data are available.

14           (2) The county's rank in a ranking of counties by median household  
15 income from highest to lowest, for the most recent 12 months for  
16 which data are available.

17           (3) The county's rank in a ranking of counties by percentage growth in  
18 population from highest to lowest, for the most recent 36 months for  
19 which data are available.

20           (4) The county's rank in a ranking of counties by adjusted assessed  
21 property value per capita, from highest to lowest, for the most recent  
22 taxable year.

23       (c) Annual Ranking. – After computing the development factor as provided in  
24 this section and making the adjustments required in this section, the Secretary of  
25 Commerce shall rank all the counties within the State according to their development  
26 factor from highest to lowest. The Secretary shall then identify all the areas of the State  
27 by development tier and publish this information. A development tier designation is  
28 effective only for the calendar year following the designation.

29       (d) Data. – In measuring rates of unemployment and median household income,  
30 the Secretary shall use the latest available data published by a State or federal agency  
31 generally recognized as having expertise concerning the data. In measuring assessed  
32 property value, the Secretary shall use the tax records prepared in each county. In  
33 measuring population and population growth, the Secretary shall use the most recent  
34 estimates of population certified by the State Budget Officer. For the purposes of this  
35 section, population statistics do not include people incarcerated in federal or State  
36 prisons.

37       (e) Exception for Certain Small Counties. – Regardless of the actual  
38 development factor, any county that has a population of less than 12,000 shall  
39 automatically be ranked one of the 40 highest counties, and any county that has a  
40 population of less than 50,000 shall automatically be ranked one of the 80 highest  
41 counties.

42       (f) Exception for Development Tier One Areas. – Regardless of the actual  
43 development factor, a county designated as a development tier one area shall

1 automatically be ranked one of the 40 highest counties until it has been a development  
2 tier one area for at least two consecutive years.

3 (g) Exception for Two-County Industrial Park. – An eligible two-county  
4 industrial park has the lower development tier designation of the designations of the two  
5 counties in which it is located if it meets all of the following conditions:

- 6 (1) It is located in two contiguous counties, one of which has a lower  
7 development tier designation than the other.
- 8 (2) At least one-third of the park is located in the county with the lower  
9 tier designation.
- 10 (3) It is owned by the two counties or a joint agency of the counties.
- 11 (4) The county with the lower tier designation contributed at least the  
12 lesser of one-half of the cost of developing the park or a proportion of  
13 the cost of developing the park equal to the proportion of land in the  
14 park located in the county with the lower tier designation.

15 (h) Exception for Certain Multi-Jurisdictional Industrial Park. – An eligible  
16 industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest  
17 development tier designation of the designations of the counties in which it is located if  
18 all of the following conditions are satisfied:

- 19 (1) The industrial park is located, at one or more sites, in four or more  
20 contiguous counties.
- 21 (2) At least two of the counties in which the industrial park is located are  
22 development tier one areas.
- 23 (3) The industrial park is owned by four or more units of local government  
24 or a nonprofit corporation owned or controlled by four or more units of  
25 local government.
- 26 (4) In each county in which the industrial park is located, the park has at  
27 least 300 developable acres. For the purposes of this subdivision,  
28 'developable acres' includes acreage that is owned directly by the  
29 industrial park or its owners or that is the subject of a development  
30 agreement between the industrial park or its owners and a third-party  
31 owner.
- 32 (5) The total population of all of the counties in which the industrial park  
33 is located is less than 200,000.
- 34 (6) In each county in which the industrial park is located, at least sixteen  
35 and eight-tenths percent (16.8%) of the population was Medicaid  
36 eligible for the 2003-2004 fiscal year based on 2003 population  
37 estimates.

38 **"§ 143B-437.09. Urban progress zone designation.**

39 (a) Urban Progress Zone Defined. – An urban progress zone is an area comprised  
40 of one or more contiguous census tracts, census block groups, or both, or parts thereof,  
41 in the most recent federal decennial census that meets all conditions in this subsection.  
42 There may be no more than one urban progress zone in a municipality.

- 43 (1) All land within the zone is located in whole within the primary  
44 corporate limits of a municipality with a population of more than

1 10,000 according to the most recent annual population estimates  
2 certified by the State Budget Officer.

3 (2) Every census tract and census block group that composes part of the  
4 zone meets at least one of the following conditions:

5 a. More than twenty percent (20%) of its population is below the  
6 poverty level according to the most recent federal decennial  
7 census.

8 b. At least seventy-five percent (75%) of its area is zoned as  
9 commercial and industrial and it is adjacent to a census tract or  
10 block group of which at least twenty percent (20%) of the  
11 population is below the poverty level

12 (3) The area of the zone zoned as commercial and industrial does not  
13 exceed thirty-five percent (35%) of the total area of the zone.

14 (4) The area of the zone does not exceed more than ten percent (10%) of  
15 the total area of the municipality in which it is located.

16 (b) Designation. – Upon request of a local government, the Secretary of  
17 Commerce shall make a written determination whether an area is an urban progress  
18 zone that meets the conditions of subsection (a) of this section. A determination under  
19 this section is effective for 24 months following the determination. The Department of  
20 Commerce shall publish annually a list of all urban progress zones with a description of  
21 their boundaries.

22 (c) Parcel of Property Partially in Urban Progress Zone. – For the purposes of  
23 this section, a parcel of property that is located partially within an urban progress zone  
24 is considered entirely within the zone if all of the following conditions are satisfied:

25 (1) At least fifty percent (50%) of the parcel is located within the zone.

26 (2) The parcel was in existence and under common ownership prior to the  
27 most recent federal decennial census.

28 (3) The parcel is a portion of land made up of one or more tracts or tax  
29 parcels of land that is surrounded by a continuous perimeter boundary."

30 **SECTION 1.3. G.S. 105-129.2A(a) reads as rewritten:**

31 "(a) **Sunset. – This Article is repealed effective for business activities that occur**  
32 **on or after January 1, 2008-2007."**

33 **SECTION 1.4.** **There is appropriated from the General Fund to the**  
34 **Department of Revenue the sum of \$X for the 2006-2007 fiscal year to perform**  
35 **functions related to the administration of Article 3H of Chapter 105 of the General**  
36 **Statutes. There is appropriated from the General Fund to the Department of Commerce**  
37 **the sum of \$X for the 2006-2007 fiscal year to perform functions related to the**  
38 **administration of Article 3H of Chapter 105 of the General Statutes.**

39 **SECTION 1.4.** **Section 1.1 of this part is effective for taxable years**  
40 **beginning on or after January 1, 2007. The remainder of this part is effective when it**  
41 **becomes law.**

42  
43 **PART II. CONFORMING CHANGES**

44 **SECTION 2.1. G.S. 105-129.55(a) reads as rewritten:**

1       "(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified  
2 North Carolina research expenses for the taxable year is allowed a credit equal to a  
3 percentage of the expenses, determined as provided in this subsection. Only one credit  
4 is allowed under this subsection with respect to the same expenses. If more than one  
5 subdivision of this subsection applies to the same expenses, then the credit is equal to  
6 the higher percentage, not both percentages combined. If part of the taxpayer's qualified  
7 North Carolina research expenses qualifies under subdivision (2) of this subsection and  
8 the remainder qualifies under subdivision (3) of this subsection, the applicable  
9 percentages apply separately to each part of the expenses.

10       (1) Small business. – If the taxpayer was a small business as of the last  
11 day of the taxable year, the applicable percentage is three percent  
12 (3%).

13       (2) Low-tier research. – For expenses with respect to research performed  
14 in an enterprise tier one, two, or three ~~development tier one~~ area, the  
15 applicable percentage is three percent (3%).

16       (3) Other research. – For expenses not covered under subdivision (1) or  
17 (2) of this subsection, the percentages provided in the table below  
18 apply to the taxpayer's qualified North Carolina research expenses  
19 during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	\$50 million	1%
\$50 million	\$200 million	2%
\$200 million	–	3%"

24       **SECTION 2.2.** G.S. 105-164.14(h) reads as rewritten:

25       "(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are  
26 allowed an annual refund of sales and use taxes paid under this Article as provided in  
27 this subsection.

28       (1) Refunds. – An eligible person is allowed an annual refund of sales and  
29 use taxes paid by it under this Article at the general rate of tax on  
30 eligible machinery and equipment it purchases for use in an enterprise  
31 tier one area or an enterprise tier two area, as defined in G.S.  
32 ~~105-129.3, 105-129.3~~ or a development tier one area, as defined in  
33 G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for  
34 sales and use taxes on these items is considered tax paid by the  
35 taxpayer. A request for a refund must be in writing and must include  
36 any information and documentation required by the Secretary. A  
37 request for a refund is due within six months after the end of the State's  
38 fiscal year. Refunds applied for after the due date are barred.

39       (2) Eligibility. – A person is eligible for the refund provided in this  
40 subsection if it is engaged primarily in one of the businesses listed in  
41 G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier  
42 two area, as defined in G.S. ~~105-129.3, 105-129.3~~ or if it is engaged  
43 primarily in one of the businesses listed in G.S. 105-129.73(a) in a  
44 development tier one area, as defined in G.S. 143B-437.08.

- 1 (3) Machinery and equipment. – For the purpose of this subsection, the  
2 term 'machinery and equipment' means engines, machinery,  
3 equipment, tools, and implements used or designed to be used in one  
4 of the businesses listed in G.S. ~~105-129.4(a).~~105-129.4(a) or 105-  
5 129.73(a). Machinery and equipment are eligible for the refund  
6 provided in this subsection if the taxpayer places them in service in an  
7 enterprise tier one area or an enterprise tier two area, as defined in G.S.  
8 ~~105-129.3.~~105-129.3, or a development tier one area, as defined in  
9 G.S. 143B-437.08, capitalizes them for tax purposes under the Code,  
10 and does not lease them to another party."

11 **SECTION 2.3.** G.S. 105-164.14(j)(2) reads as rewritten:

12 "(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an  
13 annual refund of sales and use taxes as provided in this subsection.  
14

- 15 (2) Eligibility. – A facility is eligible under this subsection if it meets both  
16 of the following conditions:  
17 a. It is primarily engaged in one of the industries listed in this  
18 subsection.  
19 b. The Secretary of Commerce has certified that the owner of the  
20 facility will invest at least the required amount of private funds  
21 to construct the facility in this State. For the purpose of this  
22 subsection, costs of construction may include costs of acquiring  
23 and improving land for the facility and costs of equipment for  
24 the facility. If the facility is located in an ~~enterprise tier one,~~  
25 ~~two, or three~~development tier one area as defined in G.S.  
26 ~~105-129.3.~~G.S. 143B-437.08 the required amount is fifty  
27 million dollars (\$50,000,000). For all other facilities, the  
28 required amount is one hundred million dollars (\$100,000,000).  
29 In the case of a computer manufacturing facility, the owner may  
30 invest these funds either directly or indirectly through a related  
31 entity or strategic partner as those terms are defined in G.S.  
32 105-129.61. In the case of a computer manufacturing facility,  
33 the term 'facility' has the same meaning as under G.S.  
34 105-129.61."

35 **SECTION 2.4.** Reserved

36 **SECTION 2.5.** G.S. 143B-437.04 reads as rewritten:

37 **"§ 143B-437.04. Community development block grants.**

38 (a) The Department of Commerce shall adopt guidelines for the awarding of  
39 Community Development Block Grants to ensure that:

- 40 (1) No local match is required for grants awarded for projects located in  
41 ~~enterprise—development~~ tier one areas as defined in G.S.  
42 ~~105-129.3.~~143B-437.08.  
43 (2) To the extent practicable, priority consideration for grants is given to  
44 projects located in ~~enterprise—development~~ tier one areas as defined in

1 G.S. ~~105-129.3~~143B-437.08 or in ~~development~~ urban progress zones  
2 that have met the conditions of subsection (b) of this section.

3 (b) In order to qualify for the benefits of this section, after an area is designated a  
4 ~~development~~ urban progress zone under G.S. ~~105-129.3A~~143B-437.09 the governing  
5 body of the city in which the zone is located must adopt a strategy to improve the zone  
6 and establish a ~~development~~ urban progress zone committee to oversee the strategy.  
7 The strategy and the committee must conform with requirements established by the  
8 Secretary of Commerce."

9 **SECTION 2.6.** G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a)  
10 and reads as rewritten:

11 "(4a) ~~Enterprise-Development~~ tier. – The classification assigned to an area  
12 pursuant to G.S. ~~105-129.3~~143B-437.08."

13 **SECTION 2.7.** G.S. 143B-437.53(a) reads as rewritten:

14 "(a) Minimum Number of Eligible Positions. – A business may apply to the  
15 Committee for a grant for any project that creates the minimum number of eligible  
16 positions as set out in the table below. If the project will be located in more than one  
17 ~~enterprise-development~~ tier area, the location with the highest ~~enterprise-development~~  
18 tier area designation determines the minimum number of eligible positions that must be  
19 created.

<del>Enterprise-Development</del> Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	<del>10</del> 20
Tier Three	<del>10</del> 20
Tier Four	20
Tier Five	20"

26 **SECTION 2.8.** G.S. 143B-437.55(c)(3) reads as rewritten:

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

30 ...

31 (3) The number and ~~enterprise-development~~ tier area of eligible positions  
32 created by projects with respect to which grants were awarded."

33 **SECTION 2.9.** G.S. 143B-437.56(d) reads as rewritten:

34 "(d) The percentage established in the agreement shall be reduced by one-fourth  
35 for any eligible position that is located in an ~~enterprise-development~~ tier four or five ~~two~~  
36 or three area."

37 **SECTION 2.10.** G.S. 158-7.3(a) reads as rewritten:

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

39 (1) Development project. – A capital project that includes capital  
40 expenditures by both private persons and one or more units of local  
41 government and that increases net employment opportunities for  
42 residents of the development district or within a two-mile radius of the  
43 project, whichever is larger, and increases the local government tax  
44 base.



1 If the district in which such a project will occur is outside a city's  
2 central business district (as that district is defined by resolution of the  
3 city council, which definition is binding and conclusive), then, of the  
4 private development forecast for a development project by the  
5 development financing plan for the district in which the project will  
6 occur, a maximum of twenty percent (20%) of the plan's estimated  
7 square footage of floor space may be proposed for use in retail sales,  
8 hotels, banking, and financial services offered directly to consumers,  
9 and other commercial uses other than office space. The twenty percent  
10 (20%) limitation in the preceding sentence does not apply to  
11 development financing districts located in an ~~enterprise~~ development  
12 tier one area, as defined in G.S. ~~105-129.3.143B-437.08~~ and created  
13 primarily for tourism-related economic development, such as  
14 developments featuring facilities for exhibitions, athletic and cultural  
15 events, show and public gatherings, racing facilities, parks and  
16 recreation facilities, art galleries, museums, and art centers.

17 (2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to  
18 publish legal advertisements in the county or counties in which the unit  
19 is located.

20 (3) Unit or unit of local government. – A county, city, town, or  
21 incorporated village."

22 **SECTION 2.11.** G.S. 19A-64(c) reads as rewritten:

23 "(c) Distribution. – The Department shall make payments from the Spay/Neuter  
24 Account to eligible counties and cities who have made timely application for  
25 reimbursement within 30 days of the closing date for receipt of applications for that  
26 quarter. In the event that total requests for reimbursement exceed the amounts available  
27 in the Spay/Neuter Account for distribution, the monies available will be distributed as  
28 follows:

29 (1) Fifty percent (50%) of the monies available in the Spay/Neuter  
30 Account shall be reserved for reimbursement for eligible applicants  
31 within ~~enterprise tier one, two, and three~~ development tier one areas as  
32 defined in G.S. ~~105-129.3.143B-437.08~~ The remaining fifty percent  
33 (50%) of the funds shall be used to fund reimbursement requests from  
34 eligible applicants in ~~enterprise tier four and five~~ development tier two  
35 and three areas as defined in G.S. ~~105-129.3.143B-437.08~~.

36 (2) Among the eligible counties and cities in ~~enterprise tier one, two, and~~  
37 ~~three~~ development tier one areas, reimbursement shall be made to each  
38 eligible county or city in proportion to the number of dogs and cats  
39 that have received rabies vaccinations during the preceding fiscal year  
40 in that county or city as compared to the number of dogs and cats that  
41 have received rabies vaccinations during the preceding fiscal year by  
42 all of the eligible applicants in ~~enterprise tier one, two, or~~  
43 ~~three~~ development tier one areas.

1 (3) Among the eligible counties and cities in ~~enterprise tier four and~~  
2 ~~five~~development tier two and three areas, reimbursement shall be  
3 made to each eligible county or city in proportion to the number of  
4 dogs and cats that have received rabies vaccinations during the  
5 preceding fiscal year in that county or city as compared to the number  
6 of dogs and cats that have received rabies vaccinations during the  
7 preceding fiscal year by all of the eligible applicants in ~~enterprise tier~~  
8 ~~four and five~~development tier two and three areas.

9 (4) Should funds remain available from the fifty percent (50%) of the  
10 Spay/Neuter Account designated for ~~enterprise tier one, two, or~~  
11 ~~three~~development tier one areas after reimbursement of all claims by  
12 eligible applicants in those areas, the remaining funds shall be made  
13 available to reimburse eligible applicants in ~~enterprise tier four and~~  
14 ~~five~~development tier two and three areas."

15 **SECTION 2.12.** G.S. 106-744(c2) reads as rewritten:

16 "(c2) A county that is an ~~enterprise tier four county or an enterprise tier five~~  
17 ~~development tier two or three~~ county, as these tiers are defined in G.S.  
18 ~~105-129.3(a), G.S. 143B-437.08,~~ and that has prepared a countywide farmland  
19 protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives  
20 with county funds. A county that has not prepared a countywide farmland protection  
21 plan shall match thirty percent (30%) of the Trust Fund monies it receives with county  
22 funds. A county that is an ~~enterprise tier one county, an enterprise tier two county, or an~~  
23 ~~enterprise tier three county, as these counties are~~ development tier one county, as  
24 defined in G.S. ~~105-129.3(a), G.S. 143B-437.08,~~ and that has prepared a countywide  
25 farmland protection plan shall not be required to match any of the Trust Fund monies it  
26 receives with county funds."

27 **SECTION 2.13.** Reserved

28 **SECTION 2.14.** G.S. 146-22.3(d) reads as rewritten:

29 "(d) Application. – This section applies only to land acquired in counties  
30 designated as an ~~enterprise tier one or enterprise tier two~~ a development tier one area  
31 under G.S. ~~105-129.3, 143B-437.08."~~

32 **SECTION 2.15.** G.S. 146-22.4(c) reads as rewritten:

33 "(c) Application. – This section applies only to land acquired in counties  
34 designated as an ~~enterprise tier one or enterprise tier two~~ a development tier one area  
35 under G.S. ~~105-129.3, 143B-437.08."~~

36 **SECTION 2.16.** G.S. 146-22.5(b) reads as rewritten:

37 "(b) Application. – This section applies only to land acquired in counties  
38 designated as an ~~enterprise tier one or enterprise tier two~~ a development tier one area  
39 under G.S. ~~105-129.3, 143B-437.08."~~

40 **SECTION 2.17.** G.S. 153A-15.1 reads as rewritten:

41 "(e) Application. – This section applies only to land acquired in counties  
42 designated as an ~~enterprise tier one or enterprise tier two~~ a development tier one area  
43 under G.S. ~~105-129.3, 143B-437.08."~~

44 **SECTION 2.18.** G.S. 160A-425.1(c) reads as rewritten

1       "(c) If an inspector declares a residential building or nonresidential building or  
2 structure to be unsafe under subsection (b) of this section, the inspector must affix a  
3 notice of the unsafe character of the structure to a conspicuous place on the exterior wall  
4 of the building. For the purposes of this section, the term "community development  
5 target area" means an area that has characteristics of a ~~development zone under G.S.~~  
6 ~~105-129.3A~~, an urban progress zone under G.S. 143B-437.09, a 'nonresidential  
7 redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics  
8 designated by the city council as being in special need of revitalization for the benefit  
9 and welfare of its citizens."

10       **SECTION 2.19.** G.S. 160A-426(c) reads as rewritten:

11       (c) If an inspector declares a nonresidential building or structure to be unsafe  
12 under subsection (b) of this section, the inspector must affix a notice of the unsafe  
13 character of the structure to a conspicuous place on the exterior wall of the building. For  
14 the purposes of this section, the term "community development target area" means an  
15 area that has characteristics of a ~~development zone under G.S. 105-129.3A~~, an urban  
16 progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under  
17 G.S. 160A-503(10), or an area with similar characteristics designated by the city council  
18 as being in special need of revitalization for the benefit and welfare of its citizens."

19       **SECTION 2.20.** G.S. 105-129.51(a) reads as rewritten:

20       "(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the  
21 requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~ 105-129.73(b), (c), (d), and (e)  
22 relating to wage standard, health insurance, environmental impact, and safety and health  
23 programs, respectively."

24       **SECTION 2.21.** G.S. 105-259(b) reads as rewritten:

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

29       ...

30       (24) To furnish the Department of Commerce and the Employment Security  
31 Commission a copy of the qualifying information required in G.S.  
32 ~~105-129.7(b)~~, 105-129.7(b) or 105-129.76(b).

33       ...

34       (27) To publish the information required under G.S. 105-129.6,  
35 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A,  
36 105-129.75, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

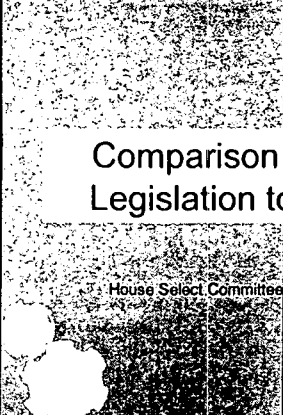
37       ...

38       (36) To furnish the Department of Commerce with the information needed  
39 to complete the studies required under G.S. 105-129.2A and G.S.  
40 105-129.72."

41       **SECTION 2.23.** This part becomes effective January 1, 2007.

42  
43       **PART III. EFFECTIVE DATES.**

1                   **SECTION 3.1.** Except as otherwise provided, this act is effective when it  
2 becomes law.



## Comparison of Proposed Legislation to Bill Lee Act

Y. Canaan Huie  
Legislative Drafting Division  
House Select Committee on Economic Development  
April 10, 2006

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## Comparison of Proposed Legislation to Bill Lee Act

- General Administration
- Basic Eligibility
- Specific Credits
- Related Issues

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## General Administration – Tier Structure

### Bill Lee Act

- 5 enterprise tiers
  - 10 counties in tier one
  - 15 counties in tier two
  - 25 counties each in tiers three, four and five
- Exceptions may move some counties lower but not higher

### Proposed Legislation

- 3 development tiers
  - 40 counties in tier one
  - 40 counties in tier two
  - 20 counties in tier three
- Exceptions may move some counties lower and some counties higher

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### General Administration – Tier Structure

- Bill Lee Act**
  - 3 factors determine initial ranking – unemployment, per capita income, population growth
  - Exceptions based on tier one or two status, population level, unemployment level, and multi-county parks

- Proposed legislation**
  - 4 factors determine initial ranking – unemployment, median household income, population growth, and assessed property value per capita
  - Same exceptions as under Bill Lee Act except for high unemployment

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### General Administration – Tier Structure

- Bill Lee**
  - Population figures include prisoners

- Proposed Legislation**
  - Population figures do not include prisoners

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### General Administration – Urban Progress Zones

- Bill Lee Act**
  - Development zones meet these conditions
    - At least partly within a city of 5,000 or more
    - Zone population of at least 1,000
    - 20% of zone population is below poverty level
    - Every census tract in zone meets certain poverty guidelines
    - Area may be in one zone

- Proposed Legislation**
  - Urban progress (UP) zones meet these conditions
    - Wholly with a city of 10,000 or more
    - Each tract must meet poverty or industrial requirements
    - Industrial tracts no more than 35% of zone
    - Zone no more than 10% of municipality

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## General Administration

- **Bill Lee Act**
  - Credit is taken against one of income, franchise, or gross premiums tax
  - Credit may not exceed 50% of tax liability
  - Carryforward period ranges from 5 years to 20 years
- **Proposed Legislation**
  - Credit is taken against income, franchise, and gross premiums taxes
  - Credit may not exceed 50% of combined tax liability
  - Carryforward period ranges from 5 years to 20 years

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## Comparison of Proposed Legislation to Bill Lee Act

- General Administration
- Basic Eligibility
- Specific Credits
- Related Issues

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## Basic Eligibility – Industry Type

- **Bill Lee Act**
  - Eligibility depended on a combination of factors including:
    - Primary activity of a taxpayer as a whole
    - Primary activity of the specific establishment
    - Enterprise tier designation of the location
    - Number of new jobs created
- **Proposed Legislation**
  - Eligibility depends solely upon the primary activity of the specific establishment



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## Basic Eligibility – Industry Type

### Bill Lee Act

- Air courier services
- Central office of aircraft facility
- Computer services
- Customer service center
- Data processing
- Electronic mail/order house
- Manufacturing
- Warehousing
- Wholesale trade

- Proposed Legislation
  - Aircraft maintenance and repair is established as a separate category
  - Central administrative office is changed to company headquarters
  - Data processing and computer services combined as information technology and services
  - Motorsports racing team added
  - Research and development added

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## Basic Eligibility – Quality Jobs

### Both Bill Lee and the Proposed Legislation have the following requirements

- Provision of Health Insurance
- OSHA Record
- Environmental Record
- No Overdue Tax Debts




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## Basic Eligibility – Wage Standard

- No wage standard in tiers one and two and development zones
- Wage standard equal to 110% of the lesser of
  - County wage
  - State wage
  - County wage adjusted by the wage/income factor
- No wage standard in tier one
- Wage standard equal to the lesser of
  - 110% of the State wage
  - 95% of the county wage
- Wage standard in UP zone is 95% of the lower wage

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### Comparison of Proposed Legislation to Bill Lee Act

<ul style="list-style-type: none"> <li>• General Administration</li> <li>• Basic Eligibility</li> <li>• <b>Specific Credits</b></li> <li>• Related Issues</li> </ul>	
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### Specific Credits

<ul style="list-style-type: none"> <li>• Bill Lee Act             <ul style="list-style-type: none"> <li>- Creating jobs</li> <li>- Investing in M&amp;E</li> <li>- Technology commercialization</li> <li>- Research &amp; development</li> <li>- Worker training</li> <li>- Central office or aircraft facility property</li> <li>- Other real property</li> <li>- Development zone projects</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Proposed Legislation             <ul style="list-style-type: none"> <li>- Creating jobs</li> <li>- Investing in business property</li> <li>- Investing in real property</li> <li>- Note: R&amp;D was recodified in 2004</li> </ul> </li> </ul>
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### Specific Credits – Creating Jobs – Bill Lee

<ul style="list-style-type: none"> <li>• Must have 5 full-time employees and create a new job</li> <li>• Credit ranges from \$500 to \$16,500 depending on enterprise tier and development zone</li> <li>• Taken over 4 years</li> </ul>	
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### Specific Credits – Creating Jobs – Proposed Legislation

Taxpayer must meet a threshold before becoming eligible for the credit:

- 5 new jobs in tier one
- 10 new jobs in tier two
- 25 new jobs in tier three
- Credit taken over 4 years
- Jobs transferred from a related member not included
- Credit varies depending on tier and UP zone
  - \$12,500 per job in tier one
  - \$5,000 per job in tier two
  - \$1,000 per job in tier three
  - Additional \$1,000 for UP zone
  - Additional \$2,000 for hiring a zone resident or long-term unemployed worker in an UP zone.

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### Specific Credits – Investing in M&E – Bill Lee

- Credit taken in four installments
- Credit amount varies depending on enterprise tier level
  - 7% in tiers one and two
  - 6% in tier three
  - 5% in tier four
  - 4% in tier five
- M&E definition narrowly drawn
- Credit is based on the eligible investment amount above a threshold
  - \$0 in tier one
  - \$100,000 in tier two
  - \$200,000 in tier three
  - \$1,000,000 in tier four
  - \$2,000,000 in tier five

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### Specific Credits – Investing in Business Property – Proposed Legislation

- Credit taken in four installments
- Credit amount varies depending on development tier level
  - 7% in tier one
  - 5% in tier two
  - 4% in tier three
- Business property definition broadly drawn
- Credit is based on the eligible investment amount above a threshold
  - \$0 in tier one
  - \$1,000,000 in tier two
  - \$4,000,000 in tier three

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### Specific Credits – Investing in Real Property

- Both credits
  - Require activity in lower-tiered area
  - Require 200 new jobs and \$10 million investment
  - Credit equal to 30% of eligible investment amount
  - Credit taken over 7 years
  - Different carryforwards




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### Comparison of Proposed Legislation to Bill Lee Act

- General Administration
- Basic Eligibility
- Specific Credits
- Related Issues

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### Related Issues

- Numerous programs currently use the Bill Lee tier structure as an indicator of poverty or economic distress
- Some of the programs are economic development-related, but others touch on areas such as agricultural easements, clean water, unsafe buildings, and animal control




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### Related Issues



- A confusing system is set up when you have two sets of tiers that are applicable to different, but often closely related, programs
- However, current references to enterprise tiers can not always be easily translated to development tiers

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### Related Issues

- This proposal address that issue, but the solution is not perfect
  - In instances where current law refers to enterprise tier one or enterprise tiers one and two; the proposal changes that reference to development tier one
  - In instances where current law refers to enterprise tiers one, two, and three, the proposal changes that reference to development tier one

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### Related Issues

- The changes tend to benefit areas that are currently enterprise tier two
  - No local match for CDBG
- The changes tend to hurt areas that are currently enterprise tier three
  - R&D enhanced credit eligibility
  - Sales tax refunds
  - JDIG eligibility and grant reduction
  - Spay/neuter programs
  - Local match for agricultural easements

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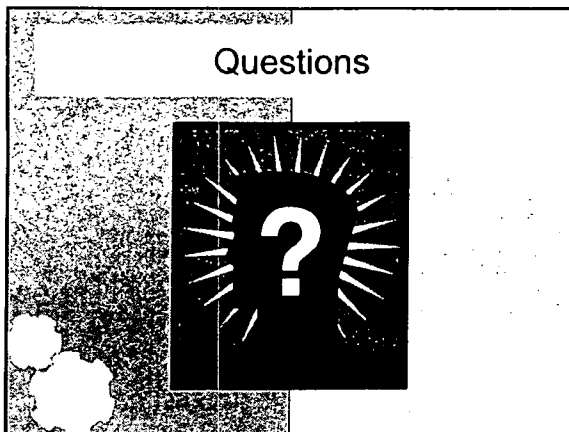
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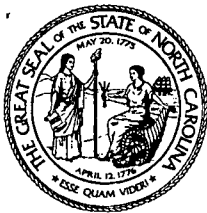
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# Draft 2005-LYx-286 Bill Lee Changes

## BILL ANALYSIS

<b>Committee:</b>	House Select Committee on Economic Development	<b>Date:</b>	April 10, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	Y. Canaan Huie
<b>Version:</b>	Draft 2005-LYx-286		Committee Counsel

**SUMMARY:** This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.

## BILL ANALYSIS:

### Part I. Tax Credits for Growing Businesses.

The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, and for worker training. Counties are divided into five enterprise tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior or merely provided tax reductions to businesses that would have located or expanded in any case. In 2000, the General Assembly extended the sunset on the act until January 1, 2006. In 2005, the General Assembly approved a two-year extension of the Act, until January 1, 2008, in order to provide additional time to study alternatives to the Act.<sup>1</sup>

This bill would create a new package of State tax incentives to replace the Bill Lee Act for most taxpayers. These incentives would become effective January 1, 2007, and would expire January 1,

<sup>1</sup> There are several exceptions to the 2008 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least 15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least \$100 million in acquiring, constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing. In addition, projects that are located in development zones are eligible for credits for business activities occurring before January 1, 2010, if all of the following conditions are met: before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce; the Secretary of Commerce makes a written determination that the taxpayer will invest \$10 million and create at least 300 new jobs at the facility within a three-year period; and the taxpayer invests at least \$4 million and creates at least 20 new jobs at the facility before January 1, 2006.

2011. Taxpayers that are eligible for the later repeal date of the Act would be able to choose to take credits under the current Act or under the proposed legislation. Many of the provisions of this proposed new Article are similar or identical to the provisions of the Bill Lee Act. There are some significant differences however.

## **General Administration.**

Under this bill, by November 30 of each year, the Department of Commerce would be required to assign a tier designation to each of the 100 counties in the State. In order to make these assignments, the Department would rank all counties based on the following factors: unemployment, median household income, percentage population growth, and per capita adjusted assessed property value. Regardless of the development factor, any county with a population of less than 12,000 would automatically be included in the counties with the 40 highest rankings and any county with a population of less than 50,000 would automatically be included in the counties with the 80 highest rankings. Regardless of the development factor, a county designated as a tier one county would be included in the counties with the 40 highest rankings. The 40 counties with the highest ranking would be designated as development tier one, the next 40 highest counties would be designated as development tier two, and the remaining counties would be designated as development tier three.

This differs in several key ways from the Bill Lee Act. First, the Bill Lee Act designation is not required until December 31. Second, in order to make the Bill Lee assignments, the Department of Commerce ranks all 100 counties based on the following three factors: unemployment, average per capita income, and percentage growth in population. The proposed legislation would substitute median household income for per capita income and add the new factor related to assessed property value per capita. Third, under the Bill Lee Act, counties are divided into five tiers rather than three. Fourth, under this proposal, the number of counties in a tier would be fixed. If one county received a lower tier designation because of the population or low-tier status exceptions, another county would be moved to a higher tier. Under the Bill Lee Act, the exceptions may move a county to a lower tier, but they do not result in any county being assigned to a higher tier.

Development zones are another key feature of the Bill Lee Act.<sup>2</sup> Development zones were intended to be areas of high poverty within cities. Over the years, it has become clear that the development zones often include areas that are neither high-poverty nor particularly urban. This bill would replace development zones with urban progress (UP) zones. UP zones are more narrowly focused than development zones. First, an UP zone must be entirely within the corporate limits of a municipality with a population of at least 10,000. Development zones are located at least partially in a municipality with a population of at least 5,000. Second, UP zones must meet more stringent guidelines with respect to poverty within the zone. Third, an UP zone may comprise no more than 10% of the area of a municipality; there is no similar restriction on development zones.

Under this bill, all of the credits would be allowed against the franchise tax levied in Article 3 of Chapter 105, the income taxes levied in Article 4 of Chapter 105, the gross premiums tax levied in

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<sup>2</sup> Under the Bill Lee Act, the Department of Commerce is also responsible for designating development zones. Development zones are areas of higher poverty within urban centers. In order to be designated as a development zone, the area must satisfy all of the following conditions: every census tract or block group in the zone is located in a city with a population of at least 5,000, the zone has a population of at least 1,000, more than 20% of the population of the zone is below the poverty level, every census tract or block group in the zone has more than 10% of its population below the poverty level or is immediately adjacent to a census tract or block group that has more than 20% of its population below the poverty level, and no census tract or block group in the zone is located in another development zone. Designation as a development zone is effective for two years. Location in a development zone leads to more favorable treatment for the taxpayer with respect to the wage standard, the credit for creating new jobs, the credit for investing in machinery and equipment, and the credit for worker training.

# Draft 2005-LYx-286

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Article 8B of Chapter 105, or a combination of these taxes. The credits allowed under the Bill Lee Act are also allowed against these taxes; however, unlike this bill, under the Bill Lee Act, a taxpayer may take a credit against only one of the three taxes.

Under this bill, the total amount of credits allowed could not exceed 50% of the cumulative amount of the taxpayer's tax liability for franchise, income, and gross premiums taxes. Under the Bill Lee Act, the credits are limited to 50% of the taxpayer's tax liability for the one tax against which the taxpayer chooses to apply it. As with the Bill Lee Act, this cap would apply to the cumulative amount of credits for the current year and carryforwards of credits from previous years. Under this bill, any unused portion of a credit with respect to the credit for creating jobs or investing in business property could be carried forward for the succeeding five years. This is also the standard carryforward period for the Bill Lee Act. Any unused portion of a credit with respect to the credit for investing in real property could be carried forward for the succeeding 15 years, as compared to the succeeding 20 years under the Bill Lee Act. Finally, as with the Bill Lee Act, credits with respect to a large investment (at least \$150 million) could be carried forward for 20 years. This draft would shorten the carryforward period for some credits and eliminates some enhanced carryforward provisions altogether.

When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit, the taxpayer would be required to submit a fee of \$500 for each type of credit the taxpayer intended to claim with respect to an establishment. The fee would be deposited in the General Fund, and the positions at the Departments of Revenue and Commerce that oversee the program would be funded through the General Fund. The Bill Lee Act contains a similar fee requirement, but under the Act the fees are kept by the Departments as departmental receipts: the positions that oversee the Bill Lee are funded by those receipts. Under the Bill Lee Act, there is a maximum fee of \$1,500 per taxable year: there would be no maximum fee under the proposed new Article.

As under the Bill Lee Act, each taxpayer claiming a credit under the proposed new Article would be required to provide any information required by the Secretary of Revenue to evaluate the eligibility of the taxpayer for the credit claimed.

As under the Bill Lee Act, the Department of Revenue and the Department of Commerce would be required to make several reports on the proposed new Article. By each May 1, the Department of Revenue would be required publish information itemized by credit and by taxpayer relating to the amount and tier designation of new jobs, new real property investment, and new business property. The Department of Commerce would be required to make biennial reports on tax equity and the impact of the proposed new Article.

As with the Bill Lee Act, credits under the proposed new Article could not be taken more than six months after the deadline for filing the tax return (including extensions) on which they were claimed. This is more restrictive than is generally the case under North Carolina law. In general, an overpayment may be refunded only if the discovery is made or the written request for a refund made within 3 years of the date set by statutes for filing the return or within 6 months of the date of the overpayment, whichever is later.

## Basic Eligibility

*Type of Business.* Under this bill, in order to be eligible for a credit under the proposed new Article, a taxpayer would be required to meet eligibility requirements with regards to type of business. Under the proposed new Article, business type would be determined solely by reference to the primary activity of



# Draft 2005-LYx-286

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the particular establishment.<sup>3</sup> The following types of businesses would be eligible for credits under the proposed new Article:

- Aircraft maintenance and repair.
- Air courier services hub.
- Corporate headquarters, but only if at least 75 new jobs were created in a 12-month period in the previous five years.
- Customer service call centers.
- Electronic shopping and mail order houses.
- Information technology and services.
- Manufacturing.
- Motorsports racing teams.
- Research and development.
- Warehousing.
- Wholesale trade.

Business-type eligibility under the proposed new Article would be substantially different than under the Bill Lee Act. Under the Bill Lee Act, business type eligibility depends on several factors including the primary business of the taxpayer as a whole, the primary activity of the particular establishment<sup>4</sup>, the location of the establishment, and the number of new jobs created. The following types of business are eligible under the Bill Lee Act:

- Air courier services, if the primary business of the taxpayer is air courier services.
- Data processing, if the primary business of the taxpayer is data processing.
- Manufacturing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is manufacturing.
- Warehousing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is warehousing, or if the primary activity of an establishment is warehousing, the establishment is located in an enterprise tier 1-3 area, and the establishment serves 25 or more establishments of the taxpayer.
- Wholesale trade, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is wholesale trade.
- Computer services, if the primary activity of the establishment is computer services.
- Electronic mail order house, if the primary activity of the establishment is an electronic mail order house and the electronic mail order house is located in an enterprise tier 1-3 area and creates at least 250 new jobs.
- Customer service center, if the primary business of the taxpayer is financial services or telecommunications, the primary activity of the establishment is a customer service center, and the center is located in an enterprise tier 1-3 area.
- Central office or aircraft facility, if the primary activity of the establishment is a central administrative office or a training or maintenance center for an interstate air passenger carrier and the establishment creates at least 40 new jobs.

<sup>3</sup> The definition of "establishment" under the proposed new Article is different from the definition of "establishment" under the Bill Lee Act. Generally, under this definition, an establishment means a single physical location whereas the Bill Lee definition revolves around accounting units, although usually it refers to a single location as well.

<sup>4</sup> An "establishment" is defined by NAICS (North American Industry Classification System) as the smallest operating entity for which records provide information on the cost of resources – materials, labor, and capital – employed to produce the units of output. In the United States, an establishment is generally a single physical location; although there are many exceptions to this generality.

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Under the proposed new Article, motorsports racing teams would be eligible for credits whereas they are not currently eligible under the Bill Lee Act. A larger group of manufacturers, warehouse, wholesalers, electronic mail order houses, and customer service centers would be eligible for credits under the proposed new Article than under the Bill Lee Act. Under the proposed new Article, credits for central administrative office facilities would be restricted to those facilities that are corporate headquarters and credits for data processing and computer services would be replaced by credits for information technology and services.

*Wage Standard.* Under this bill, a taxpayer would be eligible for a credit under the proposed new Article only if the jobs provided by the taxpayer met a wage standard. As with the Bill Lee Act, no wage standard would apply in the lower-tiered areas.<sup>5</sup> For development tiers two and three, the jobs provided by the taxpayer would be required to pay at least the lower of 95% of the average county wage or 110% of the average State wage. This differs significantly from the manner in which the wage standard is calculated under the Bill Lee Act. Under the Bill Lee Act, for enterprise tier areas three through five, the jobs provided by the taxpayer must pay at least 110% of the applicable average weekly wage. The applicable average weekly wage of the county is the lowest of the following: the average weekly wage for all insured private employers in the county, the average weekly wage for all insured private employers in the State, and the average weekly wage for all insured private employers in the county multiplied by the county income/wage adjustment factor.<sup>6</sup> Under the proposed legislation, for activities that occur in UP zones, the wage standard is lower than for activities that occur in development tiers two and three outside of UP zones. For UP zones, the wage standard is 95% of the lesser of the average county wage and the average State wage. Under the Bill Lee Act, there is no wage standard for activities occurring in development zones.

Under the proposed new Article, the wage standard would be calculated in different ways for the credit for creating jobs and the credit for investing in business property. For the credit for creating jobs, the average weekly wage of the jobs for which the credit was claimed and the average weekly wage of all jobs at the establishment with respect to which the credit was claimed would be required to meet the relevant wage standard. For the credit for investing in business property, the average weekly wage of all jobs at the establishment with respect to which the credit was claimed must meet the relevant wage standard. This is equivalent to how the wage standard is applied under the Bill Lee Act for the credits for creating jobs and for investing in machinery and equipment. As with the Bill Lee Act, there would be no wage standard for the credit for investing in real property under the proposed new Article since that credit would be available only in the lower-tiered counties where the wage standard requirement would not apply.

Under the Bill Lee Act, all jobs, including part-time jobs, must be included in the wage standard calculation. However, part-time jobs that also provide health insurance are considered to have an average weekly wage at least equal to the relevant wage standard. For the purpose of calculating the wage standard, the weekly wage of a part-time job is converted to a full-time equivalency. Under the proposed new Article, no part-time jobs would be included in the calculation of the wage standard. As under the Bill Lee Act, all jobs that were filled for at least 1600 hours during the year in which the taxpayer engaged in the activity for which a credit was claimed would be included in the wage standard

<sup>5</sup> Legislation enacted in 2002 eliminated the wage standard in enterprise tiers one and two under the Bill Lee Act. Under the proposed new Article, no wage standard would apply in development tier one. Development tier one under the proposed new Article is roughly equivalent to enterprise tiers one and two under the Bill Lee Act.

<sup>6</sup> The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The income/wage ratio is determined by dividing the average per capita income in the relevant jurisdiction by the annualized average wage for all insured private employers in the jurisdiction.

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calculation under the proposed new Article even if those jobs were not filled at the time the taxpayer claimed the credit.

*Health insurance.* As under the Bill Lee Act, a taxpayer would be required to provide health insurance for all full-time jobs at the establishment in order to be eligible for a credit under the proposed new Article. The taxpayer would be required to pay at least 50% of the premiums for health insurance that met at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee. Each year that a taxpayer claimed an installment or carryforward of a credit, the taxpayer would be required to provide certification that it continued to provide health insurance for all full-time employees. If the taxpayer ceased to provide health insurance, the credit would expire and the taxpayer would not be able to take any remaining installment or carryforward of the credit.

*Environmental Impact.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any pending administrative, civil, or criminal enforcement action based on alleged significant violation of any program implemented by an agency of the Department of Environment and Natural Resources or if the taxpayer had had any final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources in the last five years. The Secretary of Environment and Natural Resources would be required to notify the Department of Revenue of all persons who currently had any of these pending actions or who had had any of these final determinations in the past five years.

*Safety and Health Programs.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any outstanding violations under the Occupational Safety and Health Act that had become a final order for "willful serious" or "failure to abate serious" violations within the past three years. The Department of Labor would be required to notify the Department of Revenue of all employers who had had these citations become final orders in the past three years.

*Overdue Tax Debts.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any overdue tax debts. An overdue tax debt is any part of a tax debt that remains unpaid 90 days or more after a notice of final assessment was mailed to the taxpayer. A tax debt is a final assessment after all possibilities for appeal have been exhausted.

Under general existing law, if the Secretary of Revenue discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the assessment, the amount of tax to be assessed, and any interest and penalties due. If the taxpayer disagrees with the assessment, the taxpayer has 30 days to request a hearing before the Secretary. The Secretary must then schedule a hearing to occur within 90 days of the request. Within 90 days after the hearing, the Secretary must issue a decision on the hearing. If the taxpayer does not request a hearing within the 30 days allowed, or if the Secretary finds that the tax is due after the hearing, the proposed assessment becomes a final assessment. If a taxpayer disagrees with a final assessment, the taxpayer may appeal the decision to the Tax Review Board, and then on to superior court, the Court of Appeals, and the Supreme Court.

*Expiration.* Under the Bill Lee Act, credits may expire for several reasons. If the taxpayer is no longer engaged in an eligible type of business or if the number of jobs of an eligible business falls below the minimum number required, the credit expires. Generally, if a credit expires, the taxpayer may not continue to take installments of the credit, but may continue to take carryforwards of installments that

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accrued in previous years.<sup>7</sup> The credit for creating jobs and the credit for investing in machinery and equipment expire if the jobs are no longer filled or if the machinery and equipment are taken out of service used in an eligible business. The credit does not expire if the enterprise tier designation of an eligible taxpayer changes after the credit is first claimed. The credits under the proposed new Article retain these expiration provisions.

**Forfeiture.** Under the Bill Lee Act, a taxpayer forfeits a credit if the taxpayer was not eligible for the credit in the year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest. The past taxes and interest are due 30 days after the date the credit is forfeited. The credits under the proposed new Article would retain these forfeiture provisions.

## Specific Credits.

**Credit for creating jobs, G.S. 105-129.78.** Under this bill, a taxpayer would be allowed a credit for creating new full-time jobs. In order to be eligible for this credit, the taxpayer would be required to meet a job creation threshold based on the development tier designation of the location where the jobs were created.<sup>8</sup> If the taxpayer created jobs in more than one county during a year, the threshold would apply separately to each county. If the taxpayer created jobs at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. In addition, the amount of the credit would vary depending on the development tier designation of the area in which the job was located. A job would be located in an area if 50% or more of the employee's duties were performed in the area. The full amount of the credit could not be taken in the first year, but instead would be taken in four equal installments beginning with the taxable year following the year in which the employee was hired. Jobs transferred from one part of the State to another would not qualify for the credit. In addition, jobs transferred within the State from a related member of the taxpayer to the taxpayer would not qualify for the credit. The amount of the credit and the job creation threshold would be equal to the amounts in the following table based on the development tier area in which the job is located. In addition a job created in an UP zone would be eligible for an additional credit of \$1,000 and if that job were filled by a resident of the zone or a long-term unemployed worker it would be further increased by an additional \$2,000.

<u>Area Development Tier</u>	<u>Amount of Credit</u>	<u>Threshold</u>
Tier One	\$12,500	5
Tier Two	5,000	10
Tier Three	1,000	25

Under the proposed new Article, if in one of the four years in which the installment of a credit accrues, the jobs with respect to which the credit was taken were unfilled, the credit related to those specific jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credit. If, in one of the four years in which the installment of a credit accrues, the total number of jobs fell below the sum of the applicable job creation threshold and the number of jobs existing in the year before the new jobs were created, the credits with respect to all the new jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credits. If, in one of the four years in which an installment of the credit accrued, a job that qualified for the credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the job had been initially located in the later area.

<sup>7</sup> Expiration of a credit because the taxpayer ceases to provide health insurance is an exception to this general rule. In that case, the taxpayer may not claim installments or carryforwards after the credit expires.

<sup>8</sup> For jobs created in an UP zone, the threshold applicable to development tier one would apply.

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Under the proposed new Article, a taxpayer that planned to create new jobs in a specific area during the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designations for the purposes of this credit. If the taxpayer created the jobs within the next two years, the taxpayer would be allowed to compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the jobs were created. If the taxpayer did not create the jobs in the next two years, the taxpayer could still claim a credit under the existing tier designation if the jobs were later created.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same job. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are several significant differences between the proposed new credit for creating jobs and the credit that currently exists under the Bill Lee Act (G.S. 105-129.8). First, the Bill Lee Act credit does not require the taxpayer to meet a job creation threshold whereas the proposed new credit would. Second, the amount of the credit per job is more generous for some taxpayers under this proposed credit than under the existing Bill Lee Act credit.

*Credit for investing in machinery and equipment, G.S. 105-129.79.* Under this bill, a taxpayer would be allowed a credit for the amount by which the cost of the eligible investment amount of business property placed into service during a taxable year exceeds a threshold. The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the net increase in eligible business property over the base year (the year of the preceding three years in which the taxpayer had the largest amount of business property in service in the State). In order to be eligible for the credit, the taxpayer would be required to place new business property into service in excess of a threshold based on the development tier designation. The credit would be taken in four equal installments, beginning the year after the equipment was placed in service. The amount of the credit would be equal to a percentage of the eligible investment amount of the business property. If the taxpayer placed eligible business property into service in more than one county during a year, the threshold would apply separately to each county. If the taxpayer placed eligible business property into service at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. The following table sets out the relevant percentage and threshold for each development tier area:

<u>Area Development Tier</u>	<u>Threshold</u>	<u>Credit Percentage</u>
Tier One <sup>9</sup>	\$ -0-	7%
Tier Two	1,000,000	5%
Tier Three	4,000,000	4%

If in one of the four years in which the installment of a credit would accrue, the business property with respect to which the credit was taken was disposed of, moved out of State, or taken out of service, the credit would expire and the taxpayer could not take any remaining installments of the credit unless the cost of that business property was offset in the same taxable year by the taxpayer's new investment in business property. If eligible business property that qualified for a credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the business property had been initially located in the later area.

A taxpayer that planned to place specific business property in service at a specific location within the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designation for the purposes of this credit. If the taxpayer placed the

<sup>9</sup> For the purposes of this credit, investment that occurs in an UP zone is subject to the threshold and percentage applicable to activity that occurs in a development tier one area.

eligible business property in service within the next two years, the taxpayer could compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the business property was placed in service. If the taxpayer did not place the business property in service in the next two years, the taxpayer could still claim a credit under the existing tier designation if the business property was later placed in service.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same business property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are significant differences between the proposed new credit for investing in business property and the credit currently allowed under the Bill Lee Act for investing in machinery and equipment. First, the thresholds under the proposed credit differ from the thresholds under the existing credit. Second, the definition of "business property" under the proposed new credit is broader than the definition of "machinery and equipment" under the existing credit. Third, the percentage that determines the amount of the credit under the proposed new credit differs from the percentage for the existing credit for some taxpayers. Fourth, the existing Bill Lee Act credit allows a taxpayer to satisfy the threshold requirement over a two-year period when property is being phased in over two years, whereas the proposed new credit would require the threshold requirement to be satisfied in each year.

*Credit for substantial investment in other property, G.S. 105-129.79.* Under this bill, a taxpayer that is located in a development tier one area would be eligible for a credit for investment in real property. In order for the taxpayer to claim this credit, the Secretary of Commerce would be required to make a written determination that the taxpayer was expected to invest at least \$10 million in real property at a location within a three-year period and that the taxpayer would create at least 200 new jobs at the location within two years of the time that the property was first used in an eligible business. The taxpayer could begin to claim the credit once the property was first used in an eligible business. The amount of the credit would be equal to 30% of the eligible investment amount and could be taken in installments over a seven-year period. There would be no ceiling on the amount of the credit. The credit for investment in real property would expire if the number of people employed at the location fell below 200.

A taxpayer could not claim both the proposed credit for investment in real property and either of the existing Bill Lee Act credits for investment in real property with respect to the same property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

The only significant difference between the proposed credit for investment in real property and the Bill Lee Act credit for substantial investment in other property is the carryforward period. Under the Bill Lee Act, unused portions of the credit can be carried forward for up to 20 years. Under the proposed legislation, unused portions of the credit could be carried forward for up to 15 years.

*Expiring credits.* The Bill Lee Act contains five credits that do not have a counterpart in this bill. Those credits are as follows:

- *G.S. 105-129.9A. Technology commercialization credit.* The technology commercialization credit is essentially an enhanced version of the credit for investing in machinery and equipment for taxpayers that are making significant investments in certain types of machinery and equipment. There is no similar enhancement in the proposed new Article; however, the technology commercialization credit was designed with a specific project in mind that never came to fruition and therefore the credit has never been claimed.
- *G.S. 105-129.10. Credit for research and development.* The Bill Lee Act contains a credit for research and development expenditures. In 2004, the General Assembly created a new,

stand-alone credit for research and development (See Article 3G of Chapter 105 of the General Statutes). Therefore, no similar credit is included in the proposed new Article.

- *G.S. 105-129.11. Credit for worker training.* The Bill Lee Act contains a credit with which a taxpayer could offset certain worker training expenses. There is no similar credit in the proposed new Article.
- *G.S. 105-129.12. Credit for investing in central office or aircraft facility property.* The Bill Lee Act contains a credit for investing in central office or aircraft facility property. The credit was equal to 7% of the eligible investment amount and was capped at \$500,000. There is no similar credit in the proposed new Article though a business that would have been eligible for this credit under the Bill Lee Act would be eligible for the proposed credit for investing in real property if the requirements of that proposed credit are satisfied.
- *G.S. 105-129.13. Credit for development zone projects.* This credit allowed a taxpayer to claim a credit equal to 25% of a donation to a development zone agency for an improvement project in a development zone. There is no similar credit in the proposed new Article.

## **Part II. Conforming Changes.**

Part II of the proposed legislation would make a number of conforming changes to the statutes because of the changes that would be made under Part I of this proposal. Since the creation of the Bill Lee Act in 1996, many other programs have adopted the enterprise tier designation as a proxy for the economic viability or the available resources of a county. Many of these programs deal with economic development; but the tier structure has also been adopted as a proxy in such areas as animal control and wetlands mitigation. In addition, other programs refer to other aspects of the Bill Lee Act such as development zones or the wage standard. Because the Bill Lee Act would largely be replaced by the new Article in this proposal, the changes in Part II of this bill should help to lessen confusion that would be inherent in the use of two different tier systems. Because the tier structures are not equivalent, the changes in this Part will benefit some areas while reducing benefits to other areas. The changes are briefly summarized below.

- *Section 2.1.* This section would conform the credit for research and development expenses to the new tier structure. Under current law, the credit for research and development expenses is more generous if the research is conducted in an enterprise tier one, two, or three area. Under this proposal, research conducted in a development tier one area would be eligible for the more generous credit. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being eligible for a smaller credit.
- *Section 2.2.* This section would conform the sales and use tax refund for low enterprise tier machinery and equipment to the new tier structure. Under current law, a taxpayer is eligible for a refund of sales and use tax paid at the general rate on machinery and equipment put into service in enterprise tier one and two areas. This section adds a reference to development tier one. Because development tier one is expected to be roughly equivalent to, though including more counties than enterprise tiers one and two combined, this change should have limited effect.
- *Section 2.3.* This section would conform the sales and use tax refund on building materials for major eligible industrial facilities to the new tier structure. Under current law, a taxpayer must invest at least \$50 million in an eligible facility in an enterprise tier one, two, or three area or \$100 million in an eligible facility in an enterprise tier four or five area to be eligible

for the refund. This section changes the requirement so that the \$50 million threshold applies to facilities in development tier one and the \$100 million threshold applies to facilities in tiers two and three. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for a refund.

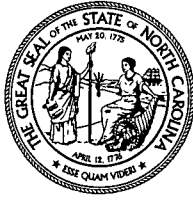
- *Section 2.4.* Reserved.
- *Section 2.5.* This section would conform the guidelines adopted by the Department of Commerce relating to community development block grant funds to the new tier structure. Under current law, those guidelines must ensure that grants award in enterprise tier one areas do not require a local match and that priority is given to projects in enterprise tier one areas and development zones. This section would change those references to development tier one areas and UP zones. Because development tier one would be larger than enterprise tier one, this change would have the effect of increasing the number of projects which receive priority consideration and for which no local match is required. On the other hand, because UP zones are more restrictive than development zones, this change could have the effect of eliminating some projects from priority consideration.
- *Section 2.6.* This section changes a definitional reference under the JDIG statutes.
- *Section 2.7.* This section would conform the JDIG job creation requirements to the new tier structure. Under current law, a business must create at least 10 new jobs in an enterprise tier one, two, or three area or 20 new jobs in an enterprise tier four or five area to be eligible for consideration for JDIG. This section would change those requirements so that a business must create at least 10 new jobs in a development tier one area or 20 new jobs in a development tier two or three area to be eligible for consideration. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for consideration for JDIG. However, as a practical matter, all businesses that have received JDIG grants have created far more jobs than the minimum required and it is therefore unlikely that this change would have any practical effect.
- *Section 2.8.* This section would conform a reference to tiers under the JDIG reporting requirements.
- *Section 2.9.* This section would conform the JDIG grant reduction requirements to the new tier structure. Under current law, a business that is located in an enterprise tier four or five area when the grant is awarded would have the amount of a grant reduced by 25%, with that reduction flowing to the Utility Account of the Industrial Development Fund rather than to the business. This section would change that reference so that it would apply in development tiers two and three. Because development tiers two and three combined would contain more counties than enterprise tiers four and five combined, this section could require a reduction in the grant amount for more businesses.
- *Section 2.10.* This section would conform a provision relating to tax increment financing to the new tier structure. This section would expand an exception created for financing districts related to tourism-related economic development projects. Under current law, this exception is allowed only in an enterprise tier one area. This section would allow that exception in a development tier one area. Because development tier one would contain more counties than enterprise tier one, this change would expand this exception.



- *Section 2.11.* This section would conform provisions dealing with the Spay/Neuter Account to the new tier structure. Under existing law, there is an account that helps offset the costs incurred by cities and counties for the spaying and neutering of animals. Fifty percent of the funds in the account are reserved for cities and counties in enterprise tiers one, two, and three. The remaining 50% is reserved for cities and counties in enterprise tiers four and five. If there are excess funds after all needs have been met in enterprise tier one, two and three areas, those funds are transferred and used in enterprise tier four and five areas. The funds designated for a group of tier areas are then allocated based on population. This section would change this breakdown so that the division would be between development tier one areas and development tier two and three areas. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some cities and counties getting more assistance and some cities and counties getting less assistance.
- *Section 2.12.* This section would conform a provision relating to agricultural easements and the Farmland Preservation Trust Fund to the new tier structure. Under current law, enterprise tier one, two, and three counties that have prepared countywide farmland protection plans are not required to match funds from the Farmland Preservation Trust Fund used to purchase agricultural easements. This section would change that reference to development tier one. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some counties being newly subject to the match requirement.
- *Section 2.13.* Reserved.
- *Section 2.14 through Section 2.17.* These sections would conform provisions dealing with wetlands mitigation to the new tier structure. Under current law, when the State purchases land for wetlands mitigation it is required to make a payment in lieu of taxes to the county in which the land is located if the county is an enterprise tier one or two area. These sections would change those references to development tier one area. Because development tier one would have slightly more counties than enterprise tiers one and two combined, this change would require the State to make these payments in more instances.
- *Section 2.18 and Section 2.19.* These sections would conform provisions dealing with condemnation of unsafe buildings to the new tier structure. Under current law, cities have more flexibility in condemning nonresidential buildings as unsafe if the building is located in a "community development target area". A community development target area is one that has characteristics of a development zone or similar characteristics. These sections would change the references from development zone to UP zone. Because of the amorphous nature of the definition of "community development target area", this change should not have any impact.
- *Section 2.20.* This section would conform eligibility requirements for the credit for research and development to the new Article. Under current law, in order to be eligible for that credit the taxpayer must satisfy the wage standard, health insurance, environmental impact and safety and health record requirements under the Bill Lee Act. This section would change the reference to those requirements under the new Article. This change could have the effect of making more taxpayers eligible for the credit because the wage standard requirement under the new Article is less strenuous than the requirement under the Bill Lee Act.

- *Section 2.21.* This section would amend the statutes relating to tax secrecy to ensure that the Department of Revenue could share information that is needed to administer the new Article with the Department of Commerce.

NORTH CAROLINA GENERAL ASSEMBLY  
STATE LEGISLATIVE BUILDING  
RALEIGH 27603



**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**

April 20, 2006

**MEMORANDUM**

**TO:** Members of the  
**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**

**FROM:** Representative James A. Harrell, III, Chairman

**SUBJECT:** Meeting Notice

There will be a meeting of the House Select Committee on Economic Development:

DAY: Thursday TIME: 1:00 P.M.  
DATE: May 4, 2006  
LOCATION: 414 LOB \*Please note the room change.

**Members:**

Please let us know if you will be unable to attend or have any questions. The May 4 meeting will replace the previously scheduled April 27 meeting. We look forward to seeing you on Thursday, May 4.

Thank you.

Beth LeGrande, Committee Assistant  
715-1883 or e-mail, harrella@ncleg.net

Posted: April 20, 2006

cc: Committee X  
Record  
Interested Parties X



**MINUTES  
HOUSE SELECT COMMITTEE ON  
ECONOMIC DEVELOPMENT**

Thursday, May 4, 2006

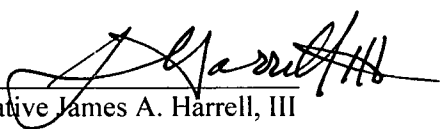
The House Select Committee on Economic Development met on Thursday May 4, 2006, in Room 414 of the Legislative Office Building at 1:00 P.M. The following members were present: Representative James A. Harrell, III, Chairman; and Representatives Bob England, Earl Jones. The Visitor Registration list and the Committee Agenda are attached and made part of these minutes. (Please See Exhibit #1 and #2.)

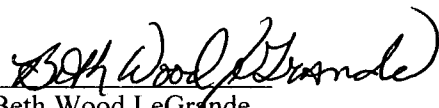
Chairman Harrell called the meeting to order and noted there was not a quorum. Canaan Huie, Committee Counsel, Legislative Bill Drafting Division, presented the *Draft Committee Report to the 2005 General Assembly of North Carolina 2006 Regular Session*. (Please See Exhibit #3.) Mr. Huie reviewed the changes that were suggested at the April 10 Meeting to the Proposed Legislation, **AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT**. The following were highlighted differences between the two drafts:

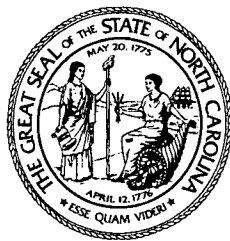
1. Page 9 of the Report. Language in reference to *Long Term Worker* was removed until the definition is finalized.
2. Page 9, lines 30 & 31 of the Report. Motor Sports Facility was added in addition to the Motor Sports Racing Teams to be eligible to credits in the Bill Lee Act.
3. Page 11, line 16 (b) of the Report. In reference to *Company Headquarters*, eligibility for credits was shortened from 5 years to 3 years.
4. Page 12, line 42 (h) of the Report. Expiration language currently in the Bill Lee Act needed to remain to be in compliance with the new eligibility for *Company Headquarters*.
5. Page 16, lines 7-9 of the Report. The additional credit of \$2000 tied to the *Long Term Worker* was removed until a definition of *Long Term Worker* is finalized.
6. Page 23 of the Report: Clarification that multiple zones in a municipality's total area cannot exceed 10% of the municipality in the Urban Progress Zones.
7. Page 23 of the Report. The term 10% of the municipality in UP Zones is defined.
8. Page 23, Section 1.4, lines 25-31. These were completed *Place Holders* from Departments of Commerce and Revenue. It was clarified that the numbers were based on one-half of a fiscal year because the new fee system would go into place first of January.

Chairman Harrell thanked Mr. Huie and announced that, in addition to the proposed legislation on changes to the Bill Lee Act, the Committee had been asked to consider legislation on both the Gas Tax and the Minimum Wage at the May 9 meeting. There being no further business the meeting was adjourned at 1:30 P.M.

Respectfully submitted,

  
Representative James A. Harrell, III  
Chairman

  
Beth Wood LeGrande  
Committee Assistant



## HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

### AGENDA

1:00 p.m.

May 4, 2006

Room 414 Legislative Office Building

- I. Call to order:  
Representative James A. Harrell, III, Chairman, Presiding
- II. Approval of the Minutes from the April 10, 2006 Meeting
- III. Review of Proposed Bill Draft and Summary:  
**An Act to Replace the Tax Credits Generally Available Under the William S. Lee Quality Jobs and Business Expansion Act with more Narrowly Focused Credits for Job Creation and Business Investment**  
Canaan Huie, Committee Counsel, Bill Drafting Division
- IV. **Committee Discussion**
- V. Adjournment

## VISITOR REGISTRATION SHEET

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

1:00 P.M.  
414 Legislative Office Building  
May 4, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Don Kuylen	Kuylen Law Firm
Loeweishacker	Triangle Business Journal
Karl Smith	Institute for Emerging Issues
JOHN PETERSON	WCEDA
Donny Hicks	GASTON COUNTY EDC
LORI ANN HARRIS	LATA
Bill McNeil	Neurosc Center
DOV HUBMAN	DOC
JIM FAIN	DOC
LARRY KEEN	NCCCS
Rita Harris	NC STATE Ports Auth

## VISITOR REGISTRATION SHEET

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

1:00 P.M.

414 Legislative Office Building

May 4, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David Huskins	GPI
Betty Huskins	Adv. West NC
Dale Carroll	Advantage West
Ed GURLINGTON	EP
JOHN GOODMAN	ALLEY ASSOCIATES
Lesley Cate	Speakers Org
PATRICK BUFFKIN	ALLEY ASSOC, INC
Stephanie Dorko	Charlotte Chamber
John Mottus	Gov Office
Beau Mills	NC metro. Conditio.
Shanon Miller	CUCA

## VISITOR REGISTRATION SHEET

**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**

1:00 P.M.  
414 Legislative Office Building  
May 4, 2006

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

[illegible]



House Pages

House Select Committee on Economic

Name Of Committee: DevelopmentDate: 5-4-06

Ren. 414

1. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

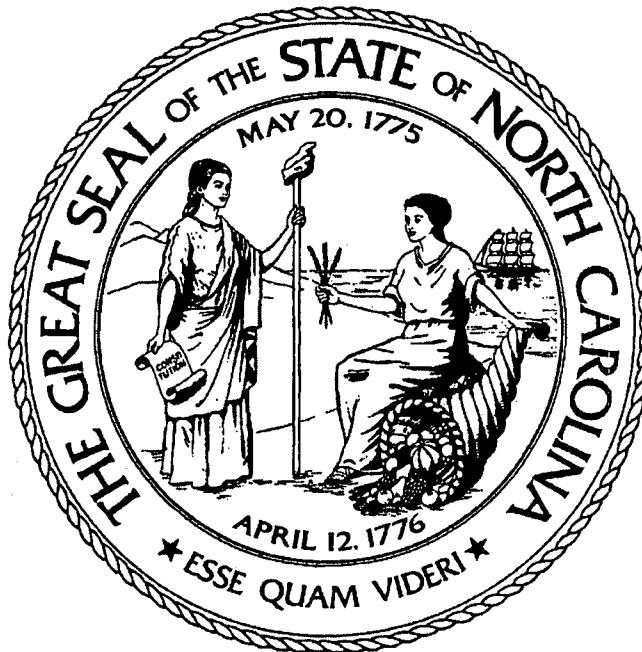
Sgt-At-Arms1. Name: TERALD PERRY2. Name: BILL FREEMAN3. Name: FRANK PERRY

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

# House Select Committee on Economic Development

**DRAFT  
FOR REVIEW ONLY**



**DRAFT  
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**REPORT TO THE 2005  
GENERAL ASSEMBLY OF NORTH CAROLINA  
2006 REGULAR SESSION**

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**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**  
*State Legislative Building*  
*Raleigh, North Carolina 27603*

**May 4, 2006**

**TO THE MEMBERS OF THE 2006 GENERAL ASSEMBLY:**

The House Select Committee on Economic Development submits to you  
for your consideration its report.

Respectfully Submitted,

---

Rep. James A. Harrell, III, Chair

2005-2006

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

MEMBERSHIP

Rep. James A. Harrell, III, Chair  
Rep. Bill Daughtridge, Vice Chair  
Rep. Bob England, M.D.  
Rep. Pryor Gibson  
Rep. Bruce Goforth  
Rep. Earl Jones  
Rep. Bill Owens  
Rep. Earline W. Parmon  
Rep. Karen B. Ray

Staff:

Beth LeGrande, Committee Clerk

Cindy Avrette, Staff Attorney  
Karen Cochrane-Brown, Staff Attorney  
Y. Canaan Huie, Staff Attorney

## COMMITTEE PROCEEDINGS

---

The House Select Committee on Economic Development met three times after the adjournment of the 2005 General Assembly on September 2, 2005. Those meetings occurred on March 22, 2006, April 10, 2006, and May 4, 2006. The only matter reviewed by the Committee was the William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act) and proposed revisions to that act. At the meeting on March 22, 2006, the Committee heard an overview of the Bill Lee Act, how that Act had changed since its inception in 1996, the Department of Commerce's suggestions for revisions to the Act, and suggestions from local economic developers and other interested parties regarding revisions to the Act. At the meeting on April 10, 2006, Committee staff presented proposed legislation that would replace the Act with a new set of tax incentives. At the meeting on May 4, 2006, the Committee reviewed changes to the proposal that was discussed at the April 10 meeting.

## COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

---

The House Select Committee on Economic Development makes the following recommendation to the 2006 General Assembly. The proposal is followed by an explanation of the proposal.

1. Bill Lee Changes.



# **LEGISLATIVE PROPOSAL #1**

---

**BILL LEE CHANGES**

---

## LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT  
TO THE 2006 GENERAL ASSEMBLY

**AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER  
THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT  
WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND  
BUSINESS INVESTMENT.**

---

**SHORT TITLE:** Bill Lee Changes

---

**SPONSORS:**

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**BRIEF OVERVIEW:** This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.

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**EFFECTIVE DATE:** This act would become effective January 1, 2007.

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A copy of the proposed legislation and bill analysis begin on the next page

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

H

D

**BILL DRAFT 2005-LYxz-286 [v.17] (1/31)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
4/28/2006 1:51:33 PM**

Short Title: Bill Lee Changes.

(Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER  
THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT  
WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND  
BUSINESS INVESTMENT.

The General Assembly of North Carolina enacts:

**PART I. REPLACEMENT OF BILL LEE ACT**

**SECTION 1.1.** Chapter 105 of the General Statutes is amended by adding a  
new Article to read:

"Article 3H.

"Tax Credits for Growing Businesses.

**"§ 105-129.70. Legislative findings.**

The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its

1 citizens, have been exacerbated in recent years by adverse national and  
2 State economic trends that contribute to the reduction in the State's  
3 industrial base and that inhibit the State's ability to sustain or attract  
4 new and expanding businesses.

5 (3) The economic condition of the State is not static and recent changes in  
6 the State's economic condition have created economic distress that  
7 requires a reevaluation of certain existing State programs and the  
8 enactment of a new program as provided in this Article that is  
9 designed to stimulate new economic activity and to create new jobs  
10 within the State.

11 (4) The enactment of this Article is necessary to stimulate the economy  
12 and create new jobs in North Carolina; and this Article will promote  
13 the general welfare and confer, as its primary purpose and effect,  
14 benefits on citizens throughout the State through the creation of new  
15 jobs, an enlargement of the overall tax base, an expansion and  
16 diversification of the State's industrial base, and an increase in revenue  
17 to the State and its political subdivisions.

18 (5) The purpose of this Article is to stimulate economic activity and to  
19 create new jobs within the State.

20 (6) The State is in need of a focused tax credit program that encourages  
21 and facilitates economic growth and development within the State.

22 (7) The resources of the State are not evenly distributed throughout the  
23 State and different communities have different abilities and needs in  
24 attracting and maintaining new and expanding business and industry.

25 **"§ 105-129.71. Definitions.**

26 The following definitions apply in this Article:

27 (1) Aircraft maintenance and repair. – The provision of specialized  
28 maintenance or repair services for commercial aircraft or the  
29 rebuilding of commercial aircraft.

30 (2) Air courier services. – The furnishing of air delivery of individually  
31 addressed letters and packages for compensation, in interstate  
32 commerce, except by the United States Postal Service.

33 (3) Business property. – Tangible personal property that is used in a  
34 business and capitalized under the Code.

35 (4) Company headquarters. – A corporate, subsidiary, or regional  
36 managing office, as defined by NAICS in United States industry  
37 551114, that is responsible for strategic or organizational planning and  
38 decisionmaking for the business on an international, national or  
39 multistate regional basis.

40 (5) Cost. – In the case of property owned by the taxpayer, cost is  
41 determined pursuant to regulations adopted under section 1012 of the  
42 Code. In the case of property the taxpayer leases from another, cost is  
43 value as determined pursuant to G.S. 105-130.4(j)(2).

- (6) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.
- (7) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.
- (8) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.
- (9) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on January 1, 2002.
- (10) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (11) Hub. – Defined in G.S. 105-164.3.
- (12) Information technology and services. – An industry in one of the following:
- a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.
  - b. Software publishers industry group 5112 as defined by NAICS.
  - c. Computer systems design and related services industry group 5415 as defined by NAICS.
- (13) Reserved.
- (14) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.
- (15) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.
- (16) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.
- (17) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.
- (18) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.
- (19) Overdue tax debt. – Defined in G.S. 105-243.1.

- 1           (20) Purchase. – Defined in section 179 of the Code.  
2           (21) Related entity. – Defined in G.S. 105-130.7A.  
3           (22) Research and development. – An industry in scientific research and  
4               development services industry group 5417 as defined by NAICS.  
5           (23) Urban progress zone. – The classification assigned to an area pursuant  
6               to G.S. 143B-437.09.  
7           (24) Warehousing. – An industry in warehousing and storage subsector 493  
8               as defined by NAICS.  
9           (25) Wholesale trade. – An industry in wholesale trade sector 42 as defined  
10               by NAICS.

11 **"§ 105-129.72. Sunset; studies.**

12       (a) Sunset. – This Article is repealed effective for business activities that occur  
13 on or after January 1, 2011.

14       (b) Equity Study. – The Department of Commerce shall study the effect of the  
15 tax incentives provided in this Article on tax equity. This study shall include the  
16 following:

- 17           (1) Reexamining the formula in G.S. 143B-437.08 used to define  
18 development tiers, to include consideration of alternative measures for  
19 more equitable treatment of counties in similar economic  
20 circumstances.  
21           (2) Considering whether the assignment of tiers and the applicable  
22 thresholds are equitable for smaller counties.  
23           (3) Compiling any available data on whether expanding North Carolina  
24 businesses receive fewer benefits than out-of-State businesses that  
25 locate to North Carolina.

26       (c) Impact Study. – The Department of Commerce shall study the effectiveness  
27 of the tax incentives provided in this Article. This study shall include:

- 28           (1) Studying the distribution of tax incentives across new and expanding  
29 businesses and industries.  
30           (2) Examining data on economic recruitment for the period from 2005  
31 through the most recent year for which data are available by county, by  
32 industry type, by size of investment, and by number of jobs, and other  
33 relevant information to determine the pattern of business locations and  
34 expansions before and after the enactment of this Article.  
35           (3) Measuring the direct costs and benefits of the tax incentives.  
36           (4) Compiling available information on the current use of incentives by  
37 other states and whether that use is increasing or declining.

38       (d) Report. – The Department of Commerce shall report the results of these  
39 studies and its recommendations to the General Assembly biennially with the first report  
40 due by June 1, 2009.

41 **"§ 105-129.73. Eligibility; forfeiture.**

42       (a) Eligible Business. – A taxpayer is eligible for a credit under this Article only  
43 with respect to activities occurring at an establishment whose primary activity is listed  
44 in this subsection. The primary activity of an establishment is determined based on the

1 establishment's principal product or group of products produced or distributed, or  
2 services rendered.

3 (1) Aircraft maintenance and repair.

4 (2) Air courier services hub.

5 (3) Company headquarters, but only if the additional eligibility  
6 requirements of subsection (b) of this section are satisfied.

7 (4) Customer service call centers.

8 (5) Electronic shopping and mail order houses.

9 (6) Information technology and services.

10 (7) Manufacturing.

11 (8) Motorsports facility.

12 (9) Motorsports racing team.

13 (10) Research and development.

14 (11) Warehousing.

15 (12) Wholesale trade.

16 (b) Company Headquarters Eligibility. – A taxpayer is eligible or a credit under  
17 this Article with respect to a company headquarters only if the taxpayer creates at least  
18 75 new jobs at the company headquarters within a 12-month period. A taxpayer that  
19 meets this job creation requirement is eligible for credits under this Article with respect  
20 to the company headquarters for three taxable years beginning with the year in which  
21 the job creation requirement is satisfied. A taxpayer that creates an additional 75 new  
22 jobs at the company headquarters in a 12-month period during a three-year eligibility  
23 period does not qualify for any extended eligibility period. However, a taxpayer that  
24 creates an additional 75 new jobs at the company headquarters in a 12-month period  
25 after the completion of a three-year eligibility period is eligible for credits with respect  
26 to the company headquarters for an additional three taxable years beginning in the year  
27 in which the additional job creation requirement is satisfied.

28 (c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a  
29 development tier two or three area only if the taxpayer satisfies a wage standard. The  
30 taxpayer is not required to satisfy a wage standard if the activity occurs in a  
31 development tier one area. Jobs that are located within an urban progress zone satisfy  
32 the wage if they pay an average weekly wage that is at least equal to ninety-five percent  
33 (95%) of the lesser of the average wage for all insured private employers in the State  
34 and the average wage for all insured private employers in the county. All other jobs  
35 satisfy the wage standard if they pay an average weekly wage that is at least equal to the  
36 lesser of one hundred ten percent (110%) of the average wage for all insured private  
37 employers in the State and ninety-five percent (95%) of the average wage for all insured  
38 private employers in the county. The Department of Commerce shall annually publish  
39 the wage standard for each county.

40 In making the wage calculation, the taxpayer shall include any jobs that were filled  
41 for at least 1,600 hours during the calendar year the taxpayer engages in the activity that  
42 qualifies for the credit even if those jobs are not filled at the time the taxpayer claims  
43 the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer

1 shall use the wage standard for the calendar year in which the taxable year begins. Only  
2 full-time jobs are included when making the wage calculation.

3 (d) Health Insurance. – A taxpayer is eligible for a credit under this Article only  
4 if the taxpayer provides health insurance for all of the full-time jobs at the establishment  
5 with respect to which the credit is claimed when the taxpayer engages in the activity  
6 that qualifies for the credit. For the purposes of this subsection, a taxpayer provides  
7 health insurance if it pays at least fifty percent (50%) of the premiums for health care  
8 coverage that equals or exceeds the minimum provisions of the basic health care plan of  
9 coverage recommended by the Small Employer Carrier Committee pursuant to  
10 G.S. 58-50-125.

11 Each year that a taxpayer claims a credit or carryforward of a credit allowed under  
12 this Article, the taxpayer shall provide with the tax return the taxpayer's certification  
13 that the taxpayer continues to provide health insurance for all the jobs at the  
14 establishment with respect to which the credit was claimed. If the taxpayer ceases to  
15 provide health insurance for the jobs during a taxable year, the credit expires and the  
16 taxpayer may not take any remaining installment or carryforward of the credit.

17 (e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this  
18 Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the  
19 taxpayer has no pending administrative, civil, or criminal enforcement action based on  
20 alleged significant violations of any program implemented by an agency of the  
21 Department of Environment and Natural Resources, and has had no final determination  
22 of responsibility for any significant administrative, civil, or criminal violation of any  
23 program implemented by an agency of the Department of Environment and Natural  
24 Resources within the last five years. A significant violation is a violation or alleged  
25 violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The  
26 Secretary of Environment and Natural Resources shall notify the Department of  
27 Revenue annually of every person that currently has any of these pending actions and  
28 every person that has had any of these final determinations within the last five years.

29 (f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed  
30 under this Article only if the taxpayer certifies that, as of the time the taxpayer claims  
31 the credit, at the establishment with respect to which the credit is claimed, the taxpayer  
32 has no citations under the Occupational Safety and Health Act that have become a final  
33 order within the past three years for willful serious violations or for failing to abate  
34 serious violations. For the purposes of this subsection, 'serious violation' has the same  
35 meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of  
36 Revenue annually of all employers who have had these citations become final orders  
37 within the past three years.

38 (g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under  
39 this Article if, at the time the taxpayer claims the credit or an installment or  
40 carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and  
41 that overdue tax debt has not been satisfied or otherwise resolved.

42 (h) Expiration. – If, during the period that installments of a credit under this  
43 Article accrue, the taxpayer is no longer engaged in one of the types of business  
44 described in subsection (a) of this section, the credit expires. If, during the period that



1 installments of a credit under this Article accrue, the number of jobs of an eligible  
2 business falls below the minimum number required under subsection (a) of this section,  
3 any credit associated with that business expires. When a credit expires, the taxpayer  
4 may not take any remaining installments of the credit. The taxpayer may, however, take  
5 the portion of an installment that accrued in a previous year and was carried forward to  
6 the extent permitted under G.S. 105-129.74. A change in the development tier  
7 designation of the location of an establishment does not result in expiration of a credit  
8 under this Article.

9 (i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the  
10 taxpayer was not eligible for the credit for the calendar year in which the taxpayer  
11 engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits  
12 a credit for investment in real property under G.S. 105-129.79 if the taxpayer fails to  
13 timely create the number of required new jobs or to timely make the required level of  
14 investment required under G.S. 105-129.79(b). A taxpayer that forfeits a credit under  
15 this Article is liable for all past taxes avoided as a result of the credit plus interest at the  
16 rate established under G.S. 105-241.1(i), computed from the date the taxes would have  
17 been due if the credit had not been allowed. The past taxes and interest are due 30 days  
18 after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and  
19 interest by the due date is subject to the penalties provided in G.S. 105-236.

20 (j) Change in Ownership of Business. – As used in this subsection, the term  
21 'business' means a taxpayer or an establishment. The sale, merger, consolidation,  
22 conversion, acquisition, or bankruptcy of a business, or any transaction by which an  
23 existing business reformulates itself as another business, does not create new eligibility  
24 in a succeeding business with respect to credits for which the predecessor was not  
25 eligible under this Article. A successor business may, however, take any credit or  
26 carried-over portion of a credit that its predecessor could have taken if it had a tax  
27 liability. The acquisition of a business is a new investment that creates new eligibility in  
28 the acquiring taxpayer under this Article if either of the following conditions is met:

29 (1) The business closed before it was acquired.

30 (2) The business was required to file a notice of plant closing or mass  
31 layoff under the federal Worker Adjustment and Retraining  
32 Notification Act, 29 U.S.C. § 2101, before it was acquired.

33 (3) The business was acquired by its employees directly or indirectly  
34 through an acquisition company under an employee stock option  
35 transaction or another similar mechanism. For the purpose of this  
36 subdivision, 'acquired' means that as part of the initial purchase of a  
37 business by the employees, the purchase included an agreement for the  
38 employees through the employee stock option transaction or another  
39 similar mechanism to obtain one of the following:

40 a. Ownership of more than fifty percent (50%) of the business.

41 b. Ownership of not less than forty percent (40%) of the business  
42 within seven years if the business has tangible assets with a net  
43 book value in excess of one hundred million dollars

1 (\$100,000,000) and has the majority of its operations located in  
2 an development tier one area.

3 (k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of  
4 Revenue specific advice regarding eligibility for a credit under this Article.  
5 G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon  
6 advice offered by any other State or local government official or employee acting in an  
7 official capacity regarding eligibility for a credit under this Article.

8 (l) Planned Expansion. – A taxpayer that signs a letter of commitment with the  
9 Department of Commerce, after the Department has calculated the development tier  
10 designations for the next year but before the beginning of that year, to undertake  
11 specific activities at a specific site within the next two years may calculate the credit for  
12 which it qualifies based on the establishment's development tier designation and urban  
13 progress zone designation in the year in which the letter of commitment was signed by  
14 the taxpayer. If the taxpayer does not engage in the activities within the two-year  
15 period, the taxpayer does not qualify for the credit; however, if the taxpayer later  
16 engages in the activities, the taxpayer qualifies for the credit based on the development  
17 tier and urban progress zone designations in effect at that time.

18 **"§ 105-129.74. Tax election; cap; carryforwards; limitations.**

19 (a) Tax Election. – The credits provided in this Article are allowed against the  
20 franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of  
21 this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The  
22 taxpayer may divide a credit between the taxes against which it is allowed.  
23 Carryforwards of a credit may be divided between the taxes against which it is allowed  
24 without regard to the original election regarding the division of the credit.

25 (b) Cap. – The credits allowed under this Article may not exceed fifty percent  
26 (50%) of the cumulative amount of taxes against which they may be claimed for the  
27 taxable year, reduced by the sum of all other credits allowed against those taxes, except  
28 tax payments made by or on behalf of the taxpayer. This limitation applies to the  
29 cumulative amount of credit, including carryforwards, claimed by the taxpayer under  
30 this Article for the taxable year.

31 (c) Carryforward. – Unless a longer carryforward period applies, any unused  
32 portion of a credit allowed under G.S. 105-129.77 or G.S. 105-129.78 may be carried  
33 forward for five years and any unused portion of a credit allowed under G.S.  
34 105-129.79 may be carried forward for 15 years. If the Secretary of Commerce makes a  
35 written determination that the taxpayer is expected to purchase or lease, and place in  
36 service in connection with an eligible business within a two-year period, at least one  
37 hundred fifty million dollars (\$150,000,000) worth of business and real property, any  
38 unused portion of a credit under this Article with respect to the establishment that  
39 satisfies that condition may be carried forward for the succeeding 20 years. If the  
40 taxpayer does not make the required level of investment, the taxpayer shall apply the  
41 five-year carryforward period rather than the 20-year carryforward period.

42 (d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer  
43 shall claim a credit under this Article within six months after the date set by statute for  
44 the filing of the return, including any extensions of that date.

1 **"§ 105-129.75. Fees and reports.**

2 (a) Fee. – When filing a return for a taxable year in which the taxpayer engaged  
3 in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer  
4 shall pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each  
5 type of credit the taxpayer claims or intends to claim with respect to an establishment.  
6 The fee is due at the time the return is due for the taxable year in which the taxpayer  
7 engaged in the activity for which the taxpayer is eligible for a credit. No credit is  
8 allowed under this Article for a taxable year until all outstanding fees have been paid.  
9 Fees collected under this section shall be credited to the General Fund.

10 (b) Reports. – The Department of Revenue shall publish by May 1 of each year  
11 the following information itemized by credit and by taxpayer for the 12-month period  
12 ending the preceding December 31:

13 (1) The number of claims for each credit allowed in this Article.

14 (2) The number and development tier area of new jobs with respect to  
15 which credits were claimed.

16 (3) The cost and development tier area of business property with respect to  
17 which credits were claimed.

18 (4) The cost and development tier area of real property investment with  
19 respect to which credits were claimed.

20 **"§ 105-129.76. Substantiation.**

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

29 (b) Documentation. – Each taxpayer shall provide with the tax return qualifying  
30 information for each credit claimed under this Article. The qualifying information shall  
31 be in the form prescribed by the Secretary and shall be signed and affirmed by the  
32 individual who signs the taxpayer's tax return. The information required by this  
33 subsection is information demonstrating that the taxpayer has met the conditions for  
34 qualifying for a credit and any carryforwards, and includes the following:

35 (1) The physical location of the jobs and investment with respect to which  
36 the credit is claimed, including the street address and the development  
37 tier designation of the establishment.

38 (2) The type of business with respect to which the credit is claimed and  
39 the average weekly wage at the establishment with respect to which  
40 the credit is claimed.

41 (3) Any other qualifying information related to a specific credit allowed  
42 under this Article.

43 **"§ 105-129.77. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone, the amount of the credit is increased by one thousand dollars (\$1,000) per job. In addition, if a job located in an urban progress zone is filled by a resident of that zone, the amount of the credit is increased by an additional two thousand dollars (\$2,000) per job.

<u>Area Development Tier</u>	<u>Amount of Credit</u>
<u>Tier One</u>	<u>\$12,500</u>
<u>Tier Two</u>	<u>5,000</u>
<u>Tier Three</u>	<u>1,000</u>

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone, the applicable threshold is the one for a development tier one area.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>5</u>
<u>Tier Two</u>	<u>10</u>
<u>Tier Three</u>	<u>25</u>

(c) Calculation. – A job is located in a county or urban progress zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit,

1 the credits with respect to all of the new jobs expire, and the taxpayer may not take any  
2 remaining installments of the credits. When a credit expires under this subsection, the  
3 taxpayer may, however, take the portion of an installment that accrued in a previous  
4 year and was carried forward to the extent permitted under G.S. 105-129.74.

5 (e) Transferred Jobs. – Jobs transferred from one area in the State to another area  
6 in the State are not considered new jobs for purposes of this section. Jobs that were  
7 located in this State and that are transferred to the taxpayer from a related member of  
8 the taxpayer are not considered new jobs for purposes of this section. If, in one of the  
9 four years in which the installment of a credit accrues, the job with respect to which the  
10 credit was claimed is moved to an area in a higher-numbered development tier or out of  
11 an urban progress zone, the remaining installments of the credit are allowed only to the  
12 extent they would have been allowed if the job was initially created in the area to which  
13 it was moved. If, in one of the years in which the installment of a credit accrues, the job  
14 with respect to which the credit was claimed is moved to an area in a lower-numbered  
15 development tier or an urban progress zone, the remaining installments of the credit  
16 shall be calculated as if the job had been created initially in the area to which it was  
17 moved.

18 (f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the  
19 wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the  
20 requirement with respect to both the new jobs, considered collectively, for which a  
21 credit is claimed and all of the jobs at the establishment, considered collectively, with  
22 respect to which a credit is claimed.

23 (g) No Double Credit. – A taxpayer may not claim a credit under this section  
24 with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

25 **"§ 105-129.78. Credit for investing in business property.**

26 (a) General Credit. – A taxpayer that meets the eligibility requirements set out in  
27 G.S. 105-129.73 and that has purchased or leased business property and placed it in  
28 service in this State during the taxable year and that has satisfied the threshold  
29 requirements of subsection (c) of this section is allowed a credit equal to the applicable  
30 percentage of the excess of the eligible investment amount over the applicable  
31 threshold. If the taxpayer places business property in service in an urban progress  
32 zone, the applicable percentage is the one for a development tier one area. Business  
33 property is eligible if it is not leased to another party. The credit may not be taken for  
34 the taxable year in which the business property is placed in service but shall be taken in  
35 equal installments over the four years following the taxable year in which it is placed in  
36 service. The applicable percentage is as follows:

<u>Area Development Tier</u>	<u>Applicable Percentage</u>
Tier One	7%
Tier Two	5%
Tier Three	4%

41 (b) Eligible Investment Amount. – The eligible investment amount is the lesser  
42 of (i) the cost of the eligible business property and (ii) the amount by which the cost of  
43 all of the taxpayer's eligible business property that is in service in this State on the last  
44 day of the taxable year exceeds the cost of all of the taxpayer's eligible business

1 property that was in service in this State on the last day of the base year. The base year  
2 is that year, of the three immediately preceding taxable years, in which the taxpayer had  
3 the most eligible business property in service in this State.

4 (c) Threshold. – The applicable threshold is the appropriate amount set out in the  
5 following table based on the development tier where the eligible business property is  
6 placed in service during the taxable year. If the taxpayer places business property in  
7 service in an urban progress zone, the applicable threshold is the one for a  
8 development tier one area. If the taxpayer places eligible business property in service at  
9 more than one establishment in a county during the taxable year, the threshold applies to  
10 the aggregate amount of eligible business property placed in service during the taxable  
11 year at all establishments in the county. If the taxpayer places eligible business property  
12 in service at establishments in different counties, the threshold applies separately to the  
13 aggregate amount of eligible business property placed in service in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>\$ -0-</u>
<u>Tier Two</u>	<u>1,000,000</u>
<u>Tier Three</u>	<u>4,000,000</u>

18 (d) Expiration. – As used in this subsection, the term 'disposed of' means  
19 disposed of, taken out of service, or moved out of State. If, in one of the four years in  
20 which the installment of a credit accrues, the business property with respect to which  
21 the credit was claimed is disposed of, the credit expires and the taxpayer may not take  
22 any remaining installment of the credit for that business property unless the cost of that  
23 business property is offset in the same taxable year by the taxpayer's new investment in  
24 eligible business property placed in service in the same county, as provided in this  
25 subsection. If, during the taxable year, the taxpayer disposed of the business property  
26 for which installments remain, there has been a net reduction in the cost of all the  
27 taxpayer's eligible business property that are in service in the same county as the  
28 business property that was disposed of, and the amount of this reduction is greater than  
29 twenty percent (20%) of the cost of the business property that was disposed of, then the  
30 credit for the business property that was disposed of expires. If the amount of the net  
31 reduction is equal to twenty percent (20%) or less of the cost of the business property  
32 that was disposed of, or if there is no net reduction, then the credit does not expire. In  
33 determining the amount of any net reduction during the taxable year, the cost of  
34 business property the taxpayer placed in service during the taxable year and for which  
35 the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be  
36 included in the cost of all the taxpayer's eligible business property that is in service. If in  
37 a single taxable year business property with respect to two or more credits in the same  
38 county are disposed of, the net reduction in the cost of all the taxpayer's eligible  
39 business property that is in service in the same county is compared to the total cost of all  
40 the business property for which credits expired in order to determine whether the  
41 remaining installments of the credits are forfeited.

42 The expiration of a credit does not prevent the taxpayer from taking the portion of an  
43 installment that accrued in a previous year and was carried forward to the extent  
44 permitted under G.S. 105-129.74.

1       (e) Transferred Property. – If, in one of the four years in which the installment of  
2 a credit accrues, the business property with respect to which the credit was claimed is  
3 moved to a county in a higher-numbered development tier or to an urban progress zone,  
4 the remaining installments of the credit are allowed only to the extent they would have  
5 been allowed if the business property had been placed in service initially in the area to  
6 which it was moved. If, in one of the four years in which the installment of a credit  
7 accrues, the business property with respect to which a credit was claimed is moved to a  
8 county in a lower-numbered development tier or an urban progress zone, the remaining  
9 installments of the credit shall be calculated as if the business property had been placed  
10 in service initially in the area to which it was moved.

11       (f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the  
12 wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the  
13 requirement with respect to all of the jobs at the establishment, considered collectively,  
14 with respect to which a credit is claimed.

15       (g) No Double Credit. – A taxpayer may not claim a credit under this section  
16 with respect to business property for which the taxpayer claims a credit under  
17 G.S. 105-129.9 or G.S. 105-129.9A.

18 **"§ 105-129.79. Credit for investment in real property.**

19       (a) Credit. – If a taxpayer that has purchased or leased real property in a  
20 development tier one area begins to use the property in an eligible business during the  
21 taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible  
22 investment amount if all of the eligibility requirements of G.S. 105-129.73 and of  
23 subsection (b) of this section are met. For the purposes of this section, property is  
24 located in a development tier one area if the area the property is located in was a  
25 development tier one area at the time the taxpayer made a written application for the  
26 determination required under subsection (b) of this section. The eligible investment  
27 amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost  
28 of all of the real property the taxpayer is using in this State in an eligible business on the  
29 last day of the taxable year exceeds the cost of all of the real property the taxpayer was  
30 using in this State in an eligible business on the last day of the base year. The base year  
31 is that year, of the three immediately preceding taxable years, in which the taxpayer was  
32 using the most real property in this State in an eligible business. In the case of property  
33 that is leased, the cost of the property is not determined as provided in G.S. 105-129.71  
34 but is considered to be the taxpayer's lease payments over a seven-year period, plus any  
35 expenditures made by the taxpayer to improve the property before it is used by the  
36 taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire  
37 credit may not be taken for the taxable year in which the property is first used in an  
38 eligible business but shall be taken in equal installments over the seven years following  
39 the taxable year in which the property is first used in an eligible business. When part of  
40 the property is first used in an eligible business in one year and part is first used in an  
41 eligible business in a later year, separate credits may be claimed for the amount of  
42 property first used in an eligible business in each year. The basis in any real property for  
43 which a credit is allowed under this section shall be reduced by the amount of credit  
44 allowable.

1       (b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the  
2 credit allowed under this section with respect to an establishment only if the Secretary  
3 of Commerce makes a written determination that the taxpayer is expected to purchase or  
4 lease and use in an eligible business at that establishment within a three-year period at  
5 least ten million dollars (\$10,000,000) of real property and that the establishment that is  
6 the subject of the credit will create at least 200 new jobs within two years of the time  
7 that the property is first used in an eligible business. If the taxpayer fails to timely make  
8 the required level of investment or fails to timely create the required number of new  
9 jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.73.

10       (c) Mixed Use Property. – If the taxpayer uses only part of the property in an  
11 eligible business, the amount of the credit allowed under this section is reduced by  
12 multiplying it by a fraction, the numerator of which is the square footage of the property  
13 used in an eligible business and the denominator of which is the total square footage of  
14 the property.

15       (d) Expiration. – If, in one of the seven years in which the installment of a credit  
16 accrues, the property with respect to which the credit was claimed is no longer used in  
17 an eligible business, the credit expires, and the taxpayer may not take any remaining  
18 installment of the credit. If, in one of the seven years in which the installment of a credit  
19 accrues, part of the property with respect to which the credit was claimed is no longer  
20 used in an eligible business, the remaining installments of the credit shall be reduced by  
21 multiplying it by the fraction described in subsection (c) of this section. If, in one of the  
22 years in which the installment of a credit accrues and by which the taxpayer is required  
23 to have created 200 new jobs at the property, the total number of employees the  
24 taxpayer employs at the property with respect to which the credit is claimed is less than  
25 200, the credit expires, and the taxpayer may not take any remaining installment of the  
26 credit.

27       In each of these cases, the taxpayer may nonetheless take the portion of an  
28 installment that accrued in a previous year and was carried forward to the extent  
29 permitted under G.S. 105-129.74.

30       (e) No Double Credit. – A taxpayer may not claim a credit under this section  
31 with respect to real property for which a credit is claimed under G.S. 105-129.12 or  
32 G.S. 105-129.12A."

33       **SECTION 1.2.** Part 2 of Article 10 of Chapter 143B is amended by adding  
34 two new sections to read:

35 **"§ 143B-437.08. Development tier designation.**

36       (a) Tiers Defined. – A development tier one area is a county whose annual  
37 ranking is one of the 40 highest in the State. A development tier two area is a county  
38 whose annual ranking is one of the next 40 highest in the State. A development tier  
39 three area is a county that is not in a lower-numbered development tier.

40       (b) Development Factor. – Each year, on or before November 30, the Secretary  
41 of Commerce shall assign to each county in the State a development factor that is the  
42 sum of the following:



- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.
- (2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.
- (4) The county's rank in a ranking of counties by adjusted assessed property value per capita, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring assessed property value, the Secretary shall use the tax records prepared in each county. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Exception for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, and any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties.

(f) Exception for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

- (1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.
- (2) At least one-third of the park is located in the county with the lower tier designation.
- (3) It is owned by the two counties or a joint agency of the counties.

1           (4) The county with the lower tier designation contributed at least the  
2 lesser of one-half of the cost of developing the park or a proportion of  
3 the cost of developing the park equal to the proportion of land in the  
4 park located in the county with the lower tier designation.

5           (h) Exception for Certain Multi-Jurisdictional Industrial Park. – An eligible  
6 industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest  
7 development tier designation of the designations of the counties in which it is located if  
8 all of the following conditions are satisfied:

9           (1) The industrial park is located, at one or more sites, in four or more  
10 contiguous counties.

11          (2) At least two of the counties in which the industrial park is located are  
12 development tier one areas.

13          (3) The industrial park is owned by four or more units of local government  
14 or a nonprofit corporation owned or controlled by four or more units of  
15 local government.

16          (4) In each county in which the industrial park is located, the park has at  
17 least 300 developable acres. For the purposes of this subdivision,  
18 'developable acres' includes acreage that is owned directly by the  
19 industrial park or its owners or that is the subject of a development  
20 agreement between the industrial park or its owners and a third-party  
21 owner.

22          (5) The total population of all of the counties in which the industrial park  
23 is located is less than 200,000.

24          (6) In each county in which the industrial park is located, at least sixteen  
25 and eight-tenths percent (16.8%) of the population was Medicaid  
26 eligible for the 2003-2004 fiscal year based on 2003 population  
27 estimates.

28 **"§ 143B-437.09. Urban progress zone designation.**

29          (a) Urban Progress Zone Defined. – An urban progress zone is an area comprised  
30 of one or more contiguous census tracts, census block groups, or both, or parts thereof,  
31 in the most recent federal decennial census that meets all conditions in this subsection.

32          (1) All land within the zone is located in whole within the primary  
33 corporate limits of a municipality with a population of more than  
34 10,000 according to the most recent annual population estimates  
35 certified by the State Budget Officer.

36          (2) Every census tract and census block group that composes part of the  
37 zone meets at least one of the following conditions:

38           a. More than twenty percent (20%) of its population is below the  
39 poverty level according to the most recent federal decennial  
40 census.

41           b. At least seventy-five percent (75%) of its area is zoned as  
42 commercial and industrial and it is adjacent to a census tract or  
43 block group of which at least twenty percent (20%) of the  
44 population is below the poverty level

1           (3) The area of the zone zoned as commercial and industrial does not  
2           exceed thirty-five percent (35%) of the total area of the zone.

3           (4) The combined area of all zones in the municipality less the smallest  
4           census tract included in the zones does not exceed ten percent (10%)  
5           of the total area of the municipality in which the zones are located.

6           (5) No census tract or block group may be in more than one zone.

7           (b) Designation. – Upon request of a local government, the Secretary of  
8           Commerce shall make a written determination whether an area is an urban progress  
9           zone that meets the conditions of subsection (a) of this section. A determination under  
10          this section is effective until December 31 of the year following the year in which the  
11          determination is made. The Department of Commerce shall publish annually a list of all  
12          urban progress zones with a description of their boundaries.

13          (c) Parcel of Property Partially in Urban Progress Zone. – For the purposes of  
14          this section, a parcel of property that is located partially within an urban progress zone  
15          is considered entirely within the zone if all of the following conditions are satisfied:

16               (1) At least fifty percent (50%) of the parcel is located within the zone.

17               (2) The parcel was in existence and under common ownership prior to the  
18               most recent federal decennial census.

19               (3) The parcel is a portion of land made up of one or more tracts or tax  
20               parcels of land that is surrounded by a continuous perimeter  
21               boundary."

22          **SECTION 1.3.** G.S. 105-129.2A(a) reads as rewritten:

23          "(a) Sunset. – This Article is repealed effective for business activities that occur  
24          on or after January 1, 2008-2007."

25          **SECTION 1.4.** There is appropriated from the General Fund to the  
26 Department of Revenue the sum of one hundred twenty thousand dollars (\$120,000) for  
27 the 2006-2007 fiscal year to perform functions related to the administration of Article  
28 3H of Chapter 105 of the General Statutes. There is appropriated from the General  
29 Fund to the Department of Commerce the sum of forty thousand dollars (\$40,000) for  
30 the 2006-2007 fiscal year to perform functions related to the administration of Article  
31 3H of Chapter 105 of the General Statutes.

32          **SECTION 1.5.** Section 1.1 of this part is effective for taxable years  
33 beginning on or after January 1, 2007. The remainder of this part is effective when it  
34 becomes law.

## 35 36 **PART II. CONFORMING CHANGES**

37          **SECTION 2.1.** G.S. 105-129.55(a) reads as rewritten:

38          "(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified  
39          North Carolina research expenses for the taxable year is allowed a credit equal to a  
40          percentage of the expenses, determined as provided in this subsection. Only one credit  
41          is allowed under this subsection with respect to the same expenses. If more than one  
42          subdivision of this subsection applies to the same expenses, then the credit is equal to  
43          the higher percentage, not both percentages combined. If part of the taxpayer's qualified  
44          North Carolina research expenses qualifies under subdivision (2) of this subsection and

1 the remainder qualifies under subdivision (3) of this subsection, the applicable  
2 percentages apply separately to each part of the expenses.

- 3 (1) Small business. – If the taxpayer was a small business as of the last  
4 day of the taxable year, the applicable percentage is three percent  
5 (3%).  
6 (2) Low-tier research. – For expenses with respect to research performed  
7 in an enterprise tier one, two, or three development tier one area, the  
8 applicable percentage is three percent (3%).  
9 (3) Other research. – For expenses not covered under subdivision (1) or  
10 (2) of this subsection, the percentages provided in the table below  
11 apply to the taxpayer's qualified North Carolina research expenses  
12 during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	\$50 million	1%
\$50 million	\$200 million	2%
\$200 million	–	3%"

17 **SECTION 2.2.** G.S. 105-164.14(h) reads as rewritten:

18 "(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are  
19 allowed an annual refund of sales and use taxes paid under this Article as provided in  
20 this subsection.

- 21 (1) Refunds. – An eligible person is allowed an annual refund of sales and  
22 use taxes paid by it under this Article at the general rate of tax on  
23 eligible machinery and equipment it purchases for use in an enterprise  
24 tier one area or an enterprise tier two area, as defined in G.S.  
25 405-129.3.105-129.3 or a development tier one area, as defined in  
26 G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for  
27 sales and use taxes on these items is considered tax paid by the  
28 taxpayer. A request for a refund must be in writing and must include  
29 any information and documentation required by the Secretary. A  
30 request for a refund is due within six months after the end of the State's  
31 fiscal year. Refunds applied for after the due date are barred.  
32 (2) Eligibility. – A person is eligible for the refund provided in this  
33 subsection if it is engaged primarily in one of the businesses listed in  
34 G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier  
35 two area, as defined in G.S. 405-129.3.105-129.3 or if it is engaged  
36 primarily in one of the businesses listed in G.S. 105-129.73(a) in a  
37 development tier one area, as defined in G.S. 143B-437.08.  
38 (3) Machinery and equipment. – For the purpose of this subsection, the  
39 term 'machinery and equipment' means engines, machinery,  
40 equipment, tools, and implements used or designed to be used in one  
41 of the businesses listed in G.S. 405-129.4(a).105-129.4(a) or 105-  
42 129.73(a). Machinery and equipment are eligible for the refund  
43 provided in this subsection if the taxpayer places them in service in an  
44 enterprise tier one area or an enterprise tier two area, as defined in G.S.

1                   ~~105-129.3,~~105-129.3, or a development tier one area, as defined in  
2                   G.S. 143B-437.08, capitalizes them for tax purposes under the Code,  
3                   and does not lease them to another party."

4                   **SECTION 2.3.** G.S. 105-164.14(j)(2) reads as rewritten:

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

7                   ...

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

10                  a.     It is primarily engaged in one of the industries listed in this  
11                  subsection.

12                  b.     The Secretary of Commerce has certified that the owner of the  
13                  facility will invest at least the required amount of private funds  
14                  to construct the facility in this State. For the purpose of this  
15                  subsection, costs of construction may include costs of acquiring  
16                  and improving land for the facility and costs of equipment for  
17                  the facility. If the facility is located in an ~~enterprise tier one,~~  
18                  ~~two, or three~~development tier one area as defined in ~~G.S.~~  
19                  ~~105-129.3,~~G.S. 143B-437.08 the required amount is fifty  
20                  million dollars (\$50,000,000). For all other facilities, the  
21                  required amount is one hundred million dollars (\$100,000,000).  
22                  In the case of a computer manufacturing facility, the owner may  
23                  invest these funds either directly or indirectly through a related  
24                  entity or strategic partner as those terms are defined in G.S.  
25                  105-129.61. In the case of a computer manufacturing facility,  
26                  the term 'facility' has the same meaning as under G.S.  
27                  105-129.61."

28                   **SECTION 2.4.** Reserved

29                   **SECTION 2.5.** G.S. 143B-437.04 reads as rewritten:

30                   **"§ 143B-437.04. Community development block grants.**

31                   (a)    The Department of Commerce shall adopt guidelines for the awarding of  
32                   Community Development Block Grants to ensure that:

33                   (1)    No local match is required for grants awarded for projects located in  
34                   ~~enterprise—development~~ tier one areas as defined in ~~G.S.~~  
35                   ~~105-129.3,~~143B-437.08.

36                   (2)    To the extent practicable, priority consideration for grants is given to  
37                   projects located in ~~enterprise—development~~ tier one areas as defined in  
38                   ~~G.S. 105-129.3~~143B-437.08 or in ~~development—urban progress~~ zones  
39                   that have met the conditions of subsection (b) of this section.

40                   (b)    In order to qualify for the benefits of this section, after an area is designated a  
41                   ~~development~~an urban progress zone under ~~G.S. 105-129.3A,~~143B-437.09 the governing  
42                   body of the city in which the zone is located must adopt a strategy to improve the zone  
43                   and establish a ~~development~~an urban progress zone committee to oversee the strategy.

1 The strategy and the committee must conform with requirements established by the  
2 Secretary of Commerce."

3 **SECTION 2.6.** G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a)  
4 and reads as rewritten:

5 "(4a) Enterprise-Development tier. – The classification assigned to an area  
6 pursuant to G.S. ~~105-129.3~~ 143B-437.08."

7 **SECTION 2.7.** G.S. 143B-437.53(a) reads as rewritten:

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

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

20 **SECTION 2.8.** G.S. 143B-437.55(c)(3) reads as rewritten:

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

24 ...  
25 (3) The number and enterprise-development tier area of eligible positions  
26 created by projects with respect to which grants were awarded."

27 **SECTION 2.9.** G.S. 143B-437.56(d) reads as rewritten:

28 "(d) The percentage established in the agreement shall be reduced by one-fourth  
29 for any eligible position that is located in an enterprise-development tier ~~four or five~~ two  
30 or three area."

31 **SECTION 2.10.** G.S. 158-7.3(a) reads as rewritten:

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

33 (1) Development project. – A capital project that includes capital  
34 expenditures by both private persons and one or more units of local  
35 government and that increases net employment opportunities for  
36 residents of the development district or within a two-mile radius of the  
37 project, whichever is larger, and increases the local government tax  
38 base.

39 If the district in which such a project will occur is outside a city's  
40 central business district (as that district is defined by resolution of the  
41 city council, which definition is binding and conclusive), then, of the  
42 private development forecast for a development project by the  
43 development financing plan for the district in which the project will  
44 occur, a maximum of twenty percent (20%) of the plan's estimated

1 square footage of floor space may be proposed for use in retail sales,  
2 hotels, banking, and financial services offered directly to consumers,  
3 and other commercial uses other than office space. The twenty percent  
4 (20%) limitation in the preceding sentence does not apply to  
5 development financing districts located in ~~an enterprise~~ a development  
6 tier one area, as defined in G.S. ~~105-129.3, 143B-437.08~~ and created  
7 primarily for tourism-related economic development, such as  
8 developments featuring facilities for exhibitions, athletic and cultural  
9 events, show and public gatherings, racing facilities, parks and  
10 recreation facilities, art galleries, museums, and art centers.

11 (2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to  
12 publish legal advertisements in the county or counties in which the unit  
13 is located.

14 (3) Unit or unit of local government. – A county, city, town, or  
15 incorporated village."

16 **SECTION 2.11.** G.S. 19A-64(c) reads as rewritten:

17 "(c) Distribution. – The Department shall make payments from the Spay/Neuter  
18 Account to eligible counties and cities who have made timely application for  
19 reimbursement within 30 days of the closing date for receipt of applications for that  
20 quarter. In the event that total requests for reimbursement exceed the amounts available  
21 in the Spay/Neuter Account for distribution, the monies available will be distributed as  
22 follows:

23 (1) Fifty percent (50%) of the monies available in the Spay/Neuter  
24 Account shall be reserved for reimbursement for eligible applicants  
25 within ~~enterprise tier one, two, and three~~ development tier one areas as  
26 defined in G.S. ~~105-129.3, 143B-437.08~~ The remaining fifty percent  
27 (50%) of the funds shall be used to fund reimbursement requests from  
28 eligible applicants in ~~enterprise tier four and five~~ development tier two  
29 and three areas as defined in G.S. ~~105-129.3, 143B-437.08~~.

30 (2) Among the eligible counties and cities in ~~enterprise tier one, two, and~~  
31 ~~three~~ development tier one areas, reimbursement shall be made to each  
32 eligible county or city in proportion to the number of dogs and cats  
33 that have received rabies vaccinations during the preceding fiscal year  
34 in that county or city as compared to the number of dogs and cats that  
35 have received rabies vaccinations during the preceding fiscal year by  
36 all of the eligible applicants in ~~enterprise tier one, two, or~~  
37 ~~three~~ development tier one areas.

38 (3) Among the eligible counties and cities in ~~enterprise tier four and~~  
39 ~~five~~ development tier two and three areas, reimbursement shall be  
40 made to each eligible county or city in proportion to the number of  
41 dogs and cats that have received rabies vaccinations during the  
42 preceding fiscal year in that county or city as compared to the number  
43 of dogs and cats that have received rabies vaccinations during the

preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~ development tier two and three areas.

- (4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~ development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~ development tier two and three areas."

**SECTION 2.12.** G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is an ~~enterprise tier four county or an enterprise tier five~~ development tier two or three county, as these tiers are defined in G.S. ~~105-129.3(a), G.S. 143B-437.08,~~ and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an ~~enterprise tier one county, an enterprise tier two county, or an enterprise tier three county,~~ as these counties are development tier one county, as defined in G.S. ~~105-129.3(a), G.S. 143B-437.08,~~ and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

**SECTION 2.13.** Reserved

**SECTION 2.14.** G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as an ~~enterprise tier one or enterprise tier two~~ development tier one area under G.S. ~~105-129.3, 143B-437.08.~~"

**SECTION 2.15.** G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as an ~~enterprise tier one or enterprise tier two~~ development tier one area under G.S. ~~105-129.3, 143B-437.08.~~"

**SECTION 2.16.** G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as an ~~enterprise tier one or enterprise tier two~~ development tier one area under G.S. ~~105-129.3, 143B-437.08.~~"

**SECTION 2.17.** G.S. 153A-15.1 reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as an ~~enterprise tier one or enterprise tier two~~ development tier one area under G.S. ~~105-129.3, 143B-437.08.~~"

**SECTION 2.18.** G.S. 160A-425.1(c) reads as rewritten

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of a ~~development zone under G.S. 105-129.3A,~~ an urban progress zone under G.S. 143B-437.09, a 'nonresidential



1 redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics  
2 designated by the city council as being in special need of revitalization for the benefit  
3 and welfare of its citizens."

4 **SECTION 2.19.** G.S. 160A-426(c) reads as rewritten:

5 (c) If an inspector declares a nonresidential building or structure to be unsafe  
6 under subsection (b) of this section, the inspector must affix a notice of the unsafe  
7 character of the structure to a conspicuous place on the exterior wall of the building. For  
8 the purposes of this section, the term "community development target area" means an  
9 area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~ an urban  
10 progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under  
11 G.S. 160A-503(10), or an area with similar characteristics designated by the city council  
12 as being in special need of revitalization for the benefit and welfare of its citizens."

13 **SECTION 2.20.** G.S. 105-129.51(a) reads as rewritten:

14 "(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the  
15 requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~ 105-129.73(c), (d), (e), and (f)  
16 relating to wage standard, health insurance, environmental impact, and safety and health  
17 programs, respectively."

18 **SECTION 2.21.** G.S. 105-259(b) reads as rewritten:

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

23 ...  
24 (24) To furnish the Department of Commerce and the Employment Security  
25 Commission a copy of the qualifying information required in G.S.  
26 ~~105-129.7(b),~~ 105-129.7(b) or 105-129.76(b).

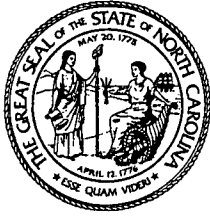
27 ...  
28 (27) To publish the information required under G.S. 105-129.6,  
29 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A,  
30 105-129.75, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

31 ...  
32 (36) To furnish the Department of Commerce with the information needed  
33 to complete the studies required under G.S. 105-129.2A and G.S.  
34 105-129.72."

35 **SECTION 2.22.** This part becomes effective January 1, 2007.

36  
37 **PART III. EFFECTIVE DATES.**

38 **SECTION 3.1.** Except as otherwise provided, this act is effective when it  
39 becomes law.  
40



## Draft 2005-LYx-286 Bill Lee Changes

### BILL ANALYSIS

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<b>Committee:</b>	House Select Committee on Economic Development	<b>Date:</b>	April 28, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	Y. Canaan Huie Committee Counsel
<b>Version:</b>	Draft 2005-LYx-286 [v.17]		

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**SUMMARY:** This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.

### BILL ANALYSIS:

#### Part I. Tax Credits for Growing Businesses.

The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, and for worker training. Counties are divided into five enterprise tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior or merely provided tax reductions to businesses that would have located or expanded in any case. In 2000, the General Assembly extended the sunset on the act until January 1, 2006. In 2005, the General Assembly approved a two-year extension of the Act, until January 1, 2008, in order to provide additional time to study alternatives to the Act.<sup>1</sup>

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<sup>1</sup> There are several exceptions to the 2008 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least 15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least \$100 million in acquiring,

This bill would create a new package of State tax incentives to replace the Bill Lee Act for most taxpayers. These incentives would become effective January 1, 2007, and would expire January 1, 2011. Taxpayers that are eligible for the later repeal date of the Act would be able to choose to take credits under the current Act or under the proposed legislation. Many of the provisions of this proposed new Article are similar or identical to the provisions of the Bill Lee Act. There are some significant differences however.

**General Administration.**

Under this bill, by November 30 of each year, the Department of Commerce would be required to assign a tier designation to each of the 100 counties in the State. In order to make these assignments, the Department would rank all counties based on the following factors: unemployment, median household income, percentage population growth, and per capita adjusted assessed property value. Regardless of the development factor, any county with a population of less than 12,000 would automatically be included in the counties with the 40 highest rankings and any county with a population of less than 50,000 would automatically be included in the counties with the 80 highest rankings. Regardless of the development factor, a county designated as a tier one county would be included in the counties with the 40 highest rankings. The 40 counties with the highest ranking would be designated as development tier one, the next 40 highest counties would be designated as development tier two, and the remaining counties would be designated as development tier three.

This differs in several key ways from the Bill Lee Act. First, the Bill Lee Act designation is not required until December 31. Second, in order to make the Bill Lee assignments, the Department of Commerce ranks all 100 counties based on the following three factors: unemployment, average per capita income, and percentage growth in population. The proposed legislation would substitute median household income for per capita income and add the new factor related to assessed property value per capita. Third, under the Bill Lee Act, counties are divided into five tiers rather than three. Fourth, under this proposal, the number of counties in a tier would be fixed. If one county received a lower tier designation because of the population or low-tier status exceptions, another county would be moved to a higher tier. Under the Bill Lee Act, the exceptions may move a county to a lower tier, but they do not result in any county being assigned to a higher tier.

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constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing. In addition, projects that are located in development zones are eligible for credits for business activities occurring before January 1, 2010, if all of the following conditions are met: before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce; the Secretary of Commerce makes a written determination that the taxpayer will invest \$10 million and create at least 300 new jobs at the facility within a three-year period; and the taxpayer invests at least \$4 million and creates at least 20 new jobs at the facility before January 1, 2006.

Development zones are another key feature of the Bill Lee Act.<sup>2</sup> Development zones were intended to be areas of high poverty within cities. Over the years, it has become clear that the development zones often include areas that are neither high-poverty nor particularly urban. This bill would replace development zones with urban progress (UP) zones. UP zones are more narrowly focused than development zones. First, an UP zone must be entirely within the corporate limits of a municipality with a population of at least 10,000. Development zones are located at least partially in a municipality with a population of at least 5,000. Second, UP zones must meet more stringent guidelines with respect to poverty within the zone. Third, the total area of all UP zones in a municipality, less the smallest census tract included in the zones, may comprise no more than 10% of the area of a municipality: there is no similar restriction on development zones.

Under this bill, all of the credits would be allowed against the franchise tax levied in Article 3 of Chapter 105, the income taxes levied in Article 4 of Chapter 105, the gross premiums tax levied in Article 8B of Chapter 105, or a combination of these taxes. The credits allowed under the Bill Lee Act are also allowed against these taxes; however, unlike this bill, under the Bill Lee Act, a taxpayer may take a credit against only one of the three taxes.

Under this bill, the total amount of credits allowed could not exceed 50% of the cumulative amount of the taxpayer's tax liability for franchise, income, and gross premiums taxes. Under the Bill Lee Act, the credits are limited to 50% of the taxpayer's tax liability for the one tax against which the taxpayer chooses to apply it. As with the Bill Lee Act, this cap would apply to the cumulative amount of credits for the current year and carryforwards of credits from previous years. Under this bill, any unused portion of a credit with respect to the credit for creating jobs or investing in business property could be carried forward for the succeeding five years. This is also the standard carryforward period for the Bill Lee Act. Any unused portion of a credit with respect to the credit for investing in real property could be carried forward for the succeeding 15 years, as compared to the succeeding 20 years under the Bill Lee Act. Finally, as with the Bill Lee Act, credits with respect to a large investment (at least \$150 million) could be carried forward for 20 years. This draft would shorten the carryforward period for some credits and eliminates some enhanced carryforward provisions altogether.

When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit, the taxpayer would be required to submit a fee of \$500 for each type of credit the taxpayer intended to claim with respect to an establishment. The fee would be deposited in the General Fund, and the positions at the

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<sup>2</sup> Under the Bill Lee Act, the Department of Commerce is also responsible for designating development zones. Development zones are areas of higher poverty within urban centers. In order to be designated as a development zone, the area must satisfy all of the following conditions: every census tract or block group in the zone is located in a city with a population of at least 5,000, the zone has a population of at least 1,000, more than 20% of the population of the zone is below the poverty level, every census tract or block group in the zone has more than 10% of its population below the poverty level or is immediately adjacent to a census tract or block group that has more than 20% of its population below the poverty level, and no census tract or block group in the zone is located in another development zone. Designation as a development zone is effective for two years. Location in a development zone leads to more favorable treatment for the taxpayer with respect to the wage standard, the credit for creating new jobs, the credit for investing in machinery and equipment, and the credit for worker training.

Departments of Revenue and Commerce that oversee the program would be funded through the General Fund. The Bill Lee Act contains a similar fee requirement, but under the Act the fees are kept by the Departments as departmental receipts: the positions that oversee the Bill Lee are funded by those receipts. Under the Bill Lee Act, there is a maximum fee of \$1,500 per taxable year: there would be no maximum fee under the proposed new Article.

As under the Bill Lee Act, each taxpayer claiming a credit under the proposed new Article would be required to provide any information required by the Secretary of Revenue to evaluate the eligibility of the taxpayer for the credit claimed.

As under the Bill Lee Act, the Department of Revenue and the Department of Commerce would be required to make several reports on the proposed new Article. By each May 1, the Department of Revenue would be required publish information itemized by credit and by taxpayer relating to the amount and tier designation of new jobs, new real property investment, and new business property. The Department of Commerce would be required to make biennial reports on tax equity and the impact of the proposed new Article.

As with the Bill Lee Act, credits under the proposed new Article could not be taken more than six months after the deadline for filing the tax return (including extensions) on which they were claimed. This is more restrictive than is generally the case under North Carolina law. In general, an overpayment may be refunded only if the discovery is made or the written request for a refund made within 3 years of the date set by statutes for filing the return or within 6 months of the date of the overpayment, whichever is later.

### **Basic Eligibility**

*Type of Business.* Under this bill, in order to be eligible for a credit under the proposed new Article, a taxpayer would be required to meet eligibility requirements with regards to type of business. Under the proposed new Article, business type would be determined solely by reference to the primary activity of the particular establishment.<sup>3</sup> The following types of businesses would be eligible for credits under the proposed new Article:

- Aircraft maintenance and repair.
- Air courier services hub.
- Corporate headquarters, but only if additional eligibility requirements are satisfied.
- Customer service call centers.
- Electronic shopping and mail order houses.
- Information technology and services.
- Manufacturing.
- Motorsports facilities.
- Motorsports racing teams.
- Research and development.
- Warehousing.

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<sup>3</sup> The definition of "establishment" under the proposed new Article is different from the definition of "establishment" under the Bill Lee Act. Generally, under this definition, an establishment means a single physical location whereas the Bill Lee definition revolves around accounting units, although usually it refers to a single location as well.

- Wholesale trade.

Business-type eligibility under the proposed new Article would be substantially different than under the Bill Lee Act. Under the Bill Lee Act, business type eligibility depends on several factors including the primary business of the taxpayer as a whole, the primary activity of the particular establishment<sup>4</sup>, the location of the establishment, and the number of new jobs created. The following types of business are eligible under the Bill Lee Act:

- Air courier services, if the primary business of the taxpayer is air courier services.
- Data processing, if the primary business of the taxpayer is data processing.
- Manufacturing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is manufacturing.
- Warehousing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is warehousing, or if the primary activity of an establishment is warehousing, the establishment is located in an enterprise tier 1-3 area, and the establishment serves 25 or more establishments of the taxpayer.
- Wholesale trade, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is wholesale trade.
- Computer services, if the primary activity of the establishment is computer services.
- Electronic mail order house, if the primary activity of the establishment is an electronic mail order house and the electronic mail order house is located in an enterprise tier 1-3 area and creates at least 250 new jobs.
- Customer service center, if the primary business of the taxpayer is financial services or telecommunications, the primary activity of the establishment is a customer service center, and the center is located in an enterprise tier 1-3 area.
- Central office or aircraft facility, if the primary activity of the establishment is a central administrative office or a training or maintenance center for an interstate air passenger carrier and the establishment creates at least 40 new jobs.

Under the proposed new Article, motorsports facilities and motorsports racing teams would be eligible for credits whereas they are not currently eligible under the Bill Lee Act. A larger group of manufacturers, warehouseers, wholesale traders, electronic mail order houses, and customer service centers would be eligible for credits under the proposed new Article than under the Bill Lee Act. Under the proposed new Article, credits for central administrative office facilities would be restricted to those facilities that are corporate headquarters and credits for data processing and computer services would be replaced by credits for information technology and services.

In order for a corporate headquarters to qualify for credits under the proposed legislation, the establishment would be required to create at least 75 new jobs within a 12-month

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<sup>4</sup> An "establishment" is defined by NAICS (North American Industry Classification System) as the smallest operating entity for which records provide information on the cost of resources – materials, labor, and capital – employed to produce the units of output. In the United States, an establishment is generally a single physical location; although there are many exceptions to this generality.

period. A taxpayer that satisfied this job creation requirement would be eligible for credits in the year in which the requirement was satisfied and the two succeeding years. A taxpayer that later created an additional 75 new jobs in a 12-month period could be eligible for an additional three-year period of eligibility, but only if the job creation occurred outside of any other period for eligibility.

*Wage Standard.* Under this bill, a taxpayer would be eligible for a credit under the proposed new Article only if the jobs provided by the taxpayer met a wage standard. As with the Bill Lee Act, no wage standard would apply in the lower-tiered areas.<sup>5</sup> For development tiers two and three, the jobs provided by the taxpayer would be required to pay at least the lower of 95% of the average county wage or 110% of the average State wage. This differs significantly from the manner in which the wage standard is calculated under the Bill Lee Act. Under the Bill Lee Act, for enterprise tier areas three through five, the jobs provided by the taxpayer must pay at least 110% of the applicable average weekly wage. The applicable average weekly wage of the county is the lowest of the following: the average weekly wage for all insured private employers in the county, the average weekly wage for all insured private employers in the State, and the average weekly wage for all insured private employers in the county multiplied by the county income/wage adjustment factor.<sup>6</sup> Under the proposed legislation, for activities that occur in UP zones, the wage standard is lower than for activities that occur in development tiers two and three outside of UP zones. For UP zones, the wage standard is 95% of the lesser of the average county wage and the average State wage. Under the Bill Lee Act, there is no wage standard for activities occurring in development zones.

Under the proposed new Article, the wage standard would be calculated in different ways for the credit for creating jobs and the credit for investing in business property. For the credit for creating jobs, the average weekly wage of the jobs for which the credit was claimed and the average weekly wage of all jobs at the establishment with respect to which the credit was claimed would be required to meet the relevant wage standard. For the credit for investing in business property, the average weekly wage of all jobs at the establishment with respect to which the credit was claimed must meet the relevant wage standard. This is equivalent to how the wage standard is applied under the Bill Lee Act for the credits for creating jobs and for investing in machinery and equipment. As with the Bill Lee Act, there would be no wage standard for the credit for investing in real property under the proposed new Article since that credit would be available only in the lower-tiered counties where the wage standard requirement would not apply.

Under the Bill Lee Act, all jobs, including part-time jobs, must be included in the wage standard calculation. However, part-time jobs that also provide health insurance are considered to have an average weekly wage at least equal to the relevant wage standard. For the purpose of calculating the wage standard, the weekly wage of a part-time job is

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<sup>5</sup> Legislation enacted in 2002 eliminated the wage standard in enterprise tiers one and two under the Bill Lee Act. Under the proposed new Article, no wage standard would apply in development tier one. Development tier one under the proposed new Article is roughly equivalent to enterprise tiers one and two under the Bill Lee Act.

<sup>6</sup> The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The income/wage ratio is determined by dividing the average per capita income in the relevant jurisdiction by the annualized average wage for all insured private employers in the jurisdiction.

converted to a full-time equivalency. Under the proposed new Article, no part-time jobs would be included in the calculation of the wage standard. As under the Bill Lee Act, all jobs that were filled for at least 1600 hours during the year in which the taxpayer engaged in the activity for which a credit was claimed would be included in the wage standard calculation under the proposed new Article even if those jobs were not filled at the time the taxpayer claimed the credit.

*Health insurance.* As under the Bill Lee Act, a taxpayer would be required to provide health insurance for all full-time jobs at the establishment in order to be eligible for a credit under the proposed new Article. The taxpayer would be required to pay at least 50% of the premiums for health insurance that met at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee. Each year that a taxpayer claimed an installment or carryforward of a credit, the taxpayer would be required to provide certification that it continued to provide health insurance for all full-time employees. If the taxpayer ceased to provide health insurance, the credit would expire and the taxpayer would not be able to take any remaining installment or carryforward of the credit.

*Environmental Impact.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any pending administrative, civil, or criminal enforcement action based on alleged significant violation of any program implemented by an agency of the Department of Environment and Natural Resources or if the taxpayer had had any final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources in the last five years. The Secretary of Environment and Natural Resources would be required to notify the Department of Revenue of all persons who currently had any of these pending actions or who had had any of these final determinations in the past five years.

*Safety and Health Programs.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any outstanding violations under the Occupational Safety and Health Act that had become a final order for "willful serious" or "failure to abate serious" violations within the past three years. The Department of Labor would be required to notify the Department of Revenue of all employers who had had these citations become final orders in the past three years.

*Overdue Tax Debts.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any overdue tax debts. An overdue tax debt is any part of a tax debt that remains unpaid 90 days or more after a notice of final assessment was mailed to the taxpayer. A tax debt is a final assessment after all possibilities for appeal have been exhausted.

Under general existing law, if the Secretary of Revenue discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the assessment, the amount of tax to be assessed, and any interest and penalties due. If the taxpayer disagrees with the assessment, the taxpayer has 30 days to request a hearing before the Secretary. The Secretary must then schedule a hearing to occur within 90 days of the request. Within 90 days after the hearing, the Secretary must issue a decision on the hearing. If



the taxpayer does not request a hearing within the 30 days allowed, or if the Secretary finds that the tax is due after the hearing, the proposed assessment becomes a final assessment. If a taxpayer disagrees with a final assessment, the taxpayer may appeal the decision to the Tax Review Board, and then on to superior court, the Court of Appeals, and the Supreme Court.

*Expiration.* Under the Bill Lee Act, credits may expire for several reasons. If the taxpayer is no longer engaged in an eligible type of business or if the number of jobs of an eligible business falls below the minimum number required, the credit expires. Generally, if a credit expires, the taxpayer may not continue to take installments of the credit, but may continue to take carryforwards of installments that accrued in previous years.<sup>7</sup> The credit for creating jobs and the credit for investing in machinery and equipment expire if the jobs are no longer filled or if the machinery and equipment are taken out of service used in an eligible business. The credit does not expire if the enterprise tier designation of an eligible taxpayer changes after the credit is first claimed. The credits under the proposed new Article retain these expiration provisions.

*Forfeiture.* Under the Bill Lee Act, a taxpayer forfeits a credit if the taxpayer was not eligible for the credit in the year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest. The past taxes and interest are due 30 days after the date the credit is forfeited. The credits under the proposed new Article would retain these forfeiture provisions.

### **Specific Credits.**

*Credit for creating jobs, G.S. 105-129.78.* Under this bill, a taxpayer would be allowed a credit for creating new full-time jobs. In order to be eligible for this credit, the taxpayer would be required to meet a job creation threshold based on the development tier designation of the location where the jobs were created.<sup>8</sup> If the taxpayer created jobs in more than one county during a year, the threshold would apply separately to each county. If the taxpayer created jobs at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. In addition, the amount of the credit would vary depending on the development tier designation of the area in which the job was located. A job would be located in an area if 50% or more of the employee's duties were performed in the area. The full amount of the credit could not be taken in the first year, but instead would be taken in four equal installments beginning with the taxable year following the year in which the employee was hired. Jobs transferred from one part of the State to another would not qualify for the credit. In addition, jobs transferred within the State from a related member of the taxpayer to the taxpayer would not qualify for the credit. The amount of the credit and the job creation threshold would be equal to the amounts in the following table based on the development tier area in which the job is located. In addition a job created in an UP zone would be eligible for an additional credit of \$1,000 and if that job were filled by a resident of the zone it would be further increased by an additional \$2,000.

<u>Area Development Tier</u>	<u>Amount of Credit</u>	<u>Threshold</u>
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<sup>7</sup> Expiration of a credit because the taxpayer ceases to provide health insurance is an exception to this general rule. In that case, the taxpayer may not claim installments or carryforwards after the credit expires.

<sup>8</sup> For jobs created in an UP zone, the threshold applicable to development tier one would apply.

Tier One	\$12,500	5
Tier Two	5,000	10
Tier Three	1,000	25

Under the proposed new Article, if in one of the four years in which the installment of a credit accrues, the jobs with respect to which the credit was taken were unfilled, the credit related to those specific jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credit. If, in one of the four years in which the installment of a credit accrues, the total number of jobs fell below the sum of the applicable job creation threshold and the number of jobs existing in the year before the new jobs were created, the credits with respect to all the new jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credits. If, in one of the four years in which an installment of the credit accrued, a job that qualified for the credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the job had been initially located in the later area.

Under the proposed new Article, a taxpayer that planned to create new jobs in a specific area during the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designations for the purposes of this credit. If the taxpayer created the jobs within the next two years, the taxpayer would be allowed to compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the jobs were created. If the taxpayer did not create the jobs in the next two years, the taxpayer could still claim a credit under the existing tier designation if the jobs were later created.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same job. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are several significant differences between the proposed new credit for creating jobs and the credit that currently exists under the Bill Lee Act (G.S. 105-129.8). First, the Bill Lee Act credit does not require the taxpayer to meet a job creation threshold whereas the proposed new credit would. Second, the amount of the credit per job is more generous for some taxpayers under this proposed credit than under the existing Bill Lee Act credit.

*Credit for investing in machinery and equipment, G.S. 105-129.79.* Under this bill, a taxpayer would be allowed a credit for the amount by which the cost of the eligible investment amount of business property placed into service during a taxable year exceeds a threshold. The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the net increase in eligible business property over the base year (the year of the preceding three years in which the taxpayer had the largest amount of business property in service in the State). In order to be eligible for the credit, the taxpayer would be required to place new business property into service in excess of a threshold based on the development tier designation. The credit would be taken in four equal installments, beginning the year after the equipment was placed in service. The amount of the credit would be equal to a percentage of the eligible investment amount of the business property. If the taxpayer placed eligible business property into service in

more than one county during a year, the threshold would apply separately to each county. If the taxpayer placed eligible business property into service at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. The following table sets out the relevant percentage and threshold for each development tier area:

<u>Area Development Tier</u>	<u>Threshold</u>	<u>Credit Percentage</u>
Tier One <sup>9</sup>	\$ -0-	7%
Tier Two	1,000,000	5%
Tier Three	4,000,000	4%

If in one of the four years in which the installment of a credit would accrue, the business property with respect to which the credit was taken was disposed of, moved out of State, or taken out of service, the credit would expire and the taxpayer could not take any remaining installments of the credit unless the cost of that business property was offset in the same taxable year by the taxpayer's new investment in business property. If eligible business property that qualified for a credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the business property had been initially located in the later area

A taxpayer that planned to place specific business property in service at a specific location within the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designation for the purposes of this credit. If the taxpayer placed the eligible business property in service within the next two years, the taxpayer could compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the business property was placed in service. If the taxpayer did not place the business property in service in the next two years, the taxpayer could still claim a credit under the existing tier designation if the business property was later placed in service.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same business property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are significant differences between the proposed new credit for investing in business property and the credit currently allowed under the Bill Lee Act for investing in machinery and equipment. First, the thresholds under the proposed credit differ from the thresholds under the existing credit. Second, the definition of "business property" under the proposed new credit is broader than the definition of "machinery and equipment" under the existing credit. Third, the percentage that determines the amount of the credit under the proposed new credit differs from the percentage for the existing credit for some taxpayers. Fourth, the existing Bill Lee Act credit allows a taxpayer to satisfy the threshold requirement over a two-year period when property is being phased in over two years, whereas the proposed new credit would require the threshold requirement to be satisfied in each year.

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<sup>9</sup> For the purposes of this credit, investment that occurs in an UP zone is subject to the threshold and percentage applicable to activity that occurs in a development tier one area.

*Credit for substantial investment in other property, G.S. 105-129.79.* Under this bill, a taxpayer that is located in a development tier one area would be eligible for a credit for investment in real property. In order for the taxpayer to claim this credit, the Secretary of Commerce would be required to make a written determination that the taxpayer was expected to invest at least \$10 million in real property at a location within a three-year period and that the taxpayer would create at least 200 new jobs at the location within two years of the time that the property was first used in an eligible business. The taxpayer could begin to claim the credit once the property was first used in an eligible business. The amount of the credit would be equal to 30% of the eligible investment amount and could be taken in installments over a seven-year period. There would no ceiling on the amount of the credit. The credit for investment in real property would expire if the number of people employed at the location fell below 200.

A taxpayer could not claim both the proposed credit for investment in real property and either of the existing Bill Lee Act credits for investment in real property with respect to the same property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

The only significant difference between the proposed credit for investment in real property and the Bill Lee Act credit for substantial investment in other property is the carryforward period. Under the Bill Lee Act, unused portions of the credit can be carried forward for up to 20 years. Under the proposed legislation, unused portions of the credit could be carried forward for up to 15 years.

*Expiring credits.* The Bill Lee Act contains five credits that do not have a counterpart in this bill. Those credits are as follows:

- *G.S. 105-129.9A. Technology commercialization credit.* The technology commercialization credit is essentially an enhanced version of the credit for investing in machinery and equipment for taxpayers that are making significant investments in certain types of machinery and equipment. There is no similar enhancement in the proposed new Article; however, the technology commercialization credit was designed with a specific project in mind that never came to fruition and therefore the credit has never been claimed.
- *G.S. 105-129.10. Credit for research and development.* The Bill Lee Act contains a credit for research and development expenditures. In 2004, the General Assembly created a new, stand-alone credit for research and development (See Article 3G of Chapter 105 of the General Statutes). Therefore, no similar credit is included in the proposed new Article.
- *G.S. 105-129.11. Credit for worker training.* The Bill Lee Act contains a credit with which a taxpayer could offset certain worker training expenses. There is no similar credit in the proposed new Article.
- *G.S. 105-129.12. Credit for investing in central office or aircraft facility property.* The Bill Lee Act contains a credit for investing in central office or aircraft facility property. The credit was equal to 7% of the eligible investment amount and was capped at \$500,000. There is no similar credit in the proposed new Article though a business that would have been eligible for

this credit under the Bill Lee Act would be eligible for the proposed credit for investing in real property if the requirements of that proposed credit are satisfied.

- *G.S. 105-129.13. Credit for development zone projects.* This credit allowed a taxpayer to claim a credit equal to 25% of a donation to a development zone agency for an improvement project in a development zone. There is no similar credit in the proposed new Article.

## **Part II. Conforming Changes.**

Part II of the proposed legislation would make a number of conforming changes to the statutes because of the changes that would be made under Part I of this proposal. Since the creation of the Bill Lee Act in 1996, many other programs have adopted the enterprise tier designation as a proxy for the economic viability or the available resources of a county. Many of these programs deal with economic development; but the tier structure has also been adopted as a proxy in such areas as animal control and wetlands mitigation. In addition, other programs refer to other aspects of the Bill Lee Act such as development zones or the wage standard. Because the Bill Lee Act would largely be replaced by the new Article in this proposal, the changes in Part II of this bill should help to lessen confusion that would be inherent in the use of two different tier systems. Because the tier structures are not equivalent, the changes in this Part will benefit some areas while reducing benefits to other areas. The changes are briefly summarized below.

- *Section 2.1.* This section would conform the credit for research and development expenses to the new tier structure. Under current law, the credit for research and development expenses is more generous if the research is conducted in an enterprise tier one, two, or three area. Under this proposal, research conducted in a development tier one area would be eligible for the more generous credit. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being eligible for a smaller credit.
- *Section 2.2.* This section would conform the sales and use tax refund for low enterprise tier machinery and equipment to the new tier structure. Under current law, a taxpayer is eligible for a refund of sales and use tax paid at the general rate on machinery and equipment put into service in enterprise tier one and two areas. This section adds a reference to development tier one. Because development tier one is expected to be roughly equivalent to, though including more counties than enterprise tiers one and two combined, this change should have limited effect.
- *Section 2.3.* This section would conform the sales and use tax refund on building materials for major eligible industrial facilities to the new tier structure. Under current law, a taxpayer must invest at least \$50 million in an eligible facility in an enterprise tier one, two, or three area or \$100 million in an eligible facility in an enterprise tier four or five area to be eligible for the refund. This section changes the requirement so that the \$50 million threshold applies to facilities in development tier one and the \$100 million threshold applies to facilities in tiers two and three. Because development tier one will

contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for a refund.

- *Section 2.4.* Reserved.
- *Section 2.5.* This section would conform the guidelines adopted by the Department of Commerce relating to community development block grant funds to the new tier structure. Under current law, those guidelines must ensure that grants award in enterprise tier one areas do not require a local match and that priority is given to projects in enterprise tier one areas and development zones. This section would change those references to development tier one areas and UP zones. Because development tier one would be larger than enterprise tier one, this change would have the effect of increasing the number of projects which receive priority consideration and for which no local match is required. On the other hand, because UP zones are more restrictive than development zones, this change could have the effect of eliminating some projects from priority consideration.
- *Section 2.6.* This section changes a definitional reference under the JDIG statutes.
- *Section 2.7.* This section would conform the JDIG job creation requirements to the new tier structure. Under current law, a business must create at least 10 new jobs in an enterprise tier one, two, or three area or 20 new jobs in an enterprise tier four or five area to be eligible for consideration for JDIG. This section would change those requirements so that a business must create at least 10 new jobs in a development tier one area or 20 new jobs in a development tier two or three area to be eligible for consideration. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for consideration for JDIG. However, as a practical matter, all businesses that have received JDIG grants have created far more jobs than the minimum required and it is therefore unlikely that this change would have any practical effect.
- *Section 2.8.* This section would conform a reference to tiers under the JDIG reporting requirements.
- *Section 2.9.* This section would conform the JDIG grant reduction requirements to the new tier structure. Under current law, a business that is located in an enterprise tier four or five area when the grant is awarded would have the amount of a grant reduced by 25%, with that reduction flowing to the Utility Account of the Industrial Development Fund rather than to the business. This section would change that reference so that it would apply in development tiers two and three. Because development tiers two and three combined would contain more counties than enterprise tiers four and five combined, this section could require a reduction in the grant amount for more businesses.

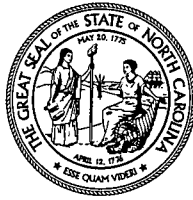
- *Section 2.10.* This section would conform a provision relating to tax increment financing to the new tier structure. This section would expand an exception created for financing districts related to tourism-related economic development projects. Under current law, this exception is allowed only in an enterprise tier one area. This section would allow that exception in a development tier one area. Because development tier one would contain more counties than enterprise tier one, this change would expand this exception.
- *Section 2.11.* This section would conform provisions dealing with the Spay/Neuter Account to the new tier structure. Under existing law, there is an account that helps offset the costs incurred by cities and counties for the spaying and neutering of animals. Fifty percent of the funds in the account are reserved for cities and counties in enterprise tiers one, two, and three. The remaining 50% is reserved for cities and counties in enterprise tiers four and five. If there are excess funds after all needs have been met in enterprise tier one, two and three areas, those funds are transferred and used in enterprise tier four and five areas. The funds designated for a group of tier areas are then allocated based on population. This section would change this breakdown so that the division would be between development tier one areas and development tier two and three areas. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some cities and counties getting more assistance and some cities and counties getting less assistance.
- *Section 2.12.* This section would conform a provision relating to agricultural easements and the Farmland Preservation Trust Fund to the new tier structure. Under current law, enterprise tier one, two, and three counties that have prepared countywide farmland protection plans are not required to match funds from the Farmland Preservation Trust Fund used to purchase agricultural easements. This section would change that reference to development tier one. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some counties being newly subject to the match requirement.
- *Section 2.13.* Reserved.
- *Section 2.14 through Section 2.17.* These sections would conform provisions dealing with wetlands mitigation to the new tier structure. Under current law, when the State purchases land for wetlands mitigation it is required to make a payment in lieu of taxes to the county in which the land is located if the county is an enterprise tier one or two area. These sections would change those references to development tier one area. Because development tier one would have slightly more counties than enterprise tiers one and two combined, this change would require the State to make these payments in more instances.
- *Section 2.18 and Section 2.19.* These sections would conform provisions dealing with condemnation of unsafe buildings to the new tier structure. Under current law, cities have more flexibility in condemning nonresidential buildings as unsafe if the building is located in a "community development

target area". A community development target area is one that has characteristics of a development zone or similar characteristics. These sections would change the references from development zone to UP zone. Because of the amorphous nature of the definition of "community development target area", this change should not have any impact.

- *Section 2.20.* This section would conform eligibility requirements for the credit for research and development to the new Article. Under current law, in order to be eligible for that credit the taxpayer must satisfy the wage standard, health insurance, environmental impact and safety and health record requirements under the Bill Lee Act. This section would change the reference to those requirements under the new Article. This change could have the effect of making more taxpayers eligible for the credit because the wage standard requirement under the new Article is less strenuous than the requirement under the Bill Lee Act.
- *Section 2.21.* This section would amend the statutes relating to tax secrecy to ensure that the Department of Revenue could share information that is needed to administer the new Article with the Department of Commerce.



NORTH CAROLINA GENERAL ASSEMBLY  
STATE LEGISLATIVE BUILDING  
RALEIGH 27603



May 4, 2006

**MEMORANDUM**

**TO:** Members of the  
**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**  
**FROM:** Representative Jim Harrell, III, Chair  
**SUBJECT:** Meeting Notice

There will be a meeting of the

**HOUSE SELECT COMMITTEE  
ON  
ECONOMIC DEVELOPMENT**

DAY: WEDNESDAY TIME: 11:00 A.M.  
DATE: MAY 9, 2006  
LOCATION: 414 LEGISLATIVE OFFICE BUILDING

Committee members, please advise Beth LeGrande, Committee Assistant, at 715-1883, or e-mail harrellla@ncleg.net if you are unable to attend.

Posted: Membership of the House Select Committee on Economic Development

Representative Harrell, Chair

Representative Daughtridge, Vice Chair  
Representative England  
Representative Gibson  
Representative Goforth

Representative Jones  
Representative Owens  
Representative Parmon  
Representative Ray

cc: Committee Record   x    
Interested Parties   x  



**MINUTES  
HOUSE SELECT COMMITTEE ON  
ECONOMIC DEVELOPMENT**

May 9, 2006

The House Select Committee on Economic Development met on May 9, 2006, in Room 414 of the Legislative Office Building at 1:00 P.M. The following members were present: Representative James A. Harrell, III, Chairman; and Representatives Bob England, Earl Jones, Bill Owens, and Earline W. Parmon.

The Visitor Registration list and the Committee Agenda are attached and made part of these minutes. (Please See Exhibit #1 and #2.)

Chairman Harrell called the meeting to order and noting there was not a quorum. Canaan Huie, Committee Counsel, Legislative Bill Drafting Division, presented the *Draft Committee Report to the 2005 General Assembly of North Carolina 2006 Regular Session*. (Please See Exhibit #3.) Mr. Huie reviewed the changes that were suggested at the April 10 Meeting to the Proposed Legislation, **AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT**. The following were highlighted differences between the two drafts:

1. Please see on Page 9 of the Report. Language in reference to *Long Term Worker* was removed until the definition is finalized.
2. Please see on Page 9, lines 30 & 31 of the Report. Motor Sports Facility was added in addition to the Motor Sports Racing Teams to be eligible to credits in the Bill Lee Act.
3. Please see on Page 11, line 16 (b) of the Report. In reference to *Company Headquarters*, eligibility for credits was shortened from 5 years to 3 years.
4. Please see on Page 12, line 42 (h) of the Report. Expiration language currently in the Bill Lee Act needed to remain to be in compliance with the new eligibility for *Company Headquarters*.
5. Please see on Page 16, lines 7-9 of the Report. The additional credit of \$2000 tied to the *Long Term Worker* was removed until a definition of *Long Term Worker* is finalized.
6. Please see on Page 23 of the Report. Clarification that multiple zones in a municipality's total area cannot exceed 10% of the municipality in the Urban Progress Zones.
7. Please see on Page 23 of the Report. The term 10% of the municipality in UP Zones is defined.
8. Please see on Page 23, Section 1.4, lines 25-31. These were completed *Place Holders* from Departments of Commerce and Revenue. It was clarified that the numbers were based on one-half of a fiscal year because the new fee system would go into place on the first of January.

Chairman Harrell thanked Mr. Huie and opened the meeting for discussion. Representative Parmon requested the bill be amended and sent forth a proposed amendment. (Please see Exhibit # 4.) Discussion by committee members ensued. Upon

House Select Committee on Economic Development  
May 9, 2006  
Page Two

consensus Chairman Harrell announced that the additional proposed legislation, not being revenue neutral, would therefore be voted on as separate entities from the proposed revisions to Bill Lee Act.

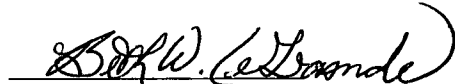
Upon motion by Representative Owens the proposed legislation, *Bill Lee Changes*, received a favorable vote. Upon motion by Representative Parmon the proposed legislation, *Elimination of Sales and Excise Tax on Electricity and Natural Gas for Manufacturers*, received a favorable vote. Upon motion by Representative Goforth, *An Act to Raise the Minimum Wage in North Carolina* (see page 47), received a favorable report. Upon motion by Representative Daughtridge, an *Act to Reduce and Cap Gas Tax* (see page 51), received a favorable report.

Without further discussion and there being no further business, Chairman Harrell adjourned the meeting.

Respectfully submitted,



Representative James A. Harrell, III  
Chairman



Beth Wood LeGrande  
Committee Assistant



## HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

### AGENDA

10:30 p.m.

April 10, 2006

Room 414 Legislative Office Building

- I. Call to order:  
Representative James A. Harrell, III, Chairman, Presiding
- II. Approval of the Minutes from the April 10, 2006 and May 4, 2006 Meeting
- III. Review of Legislative Proposal:
  - **An Act to Replace the Tax Credits Generally Available Under the William S. Lee Quality Jobs and Business Expansion Act with more Narrowly Focused Credits for Job Creation and Business Investment**  
Canaan Huie, Committee Counsel, Bill Drafting Division
  - **An Act to Raise the Minimum Wage in North Carolina**  
Canaan Huie, Committee Counsel, Bill Drafting Division
  - **An Act to Reduce the Tax on Motor Fuels and to Cap the Variable Component of the Rate**  
Canaan Huie, Committee Counsel, Bill Drafting Division
- IV. **Committee Discussion and Approval of Final Report**
- V. Adjournment

## VISITOR REGISTRATION SHEET

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

10:30 a.m.  
414 Legislative Office Building  
May 9, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

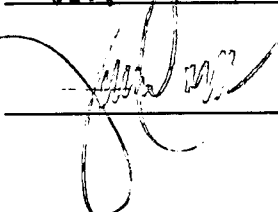
NAME	FIRM OR AGENCY AND ADDRESS
Chad Hinton	Civitas Institute
JAMES L. FORTE	OSA
BOB ORR	NCICL
Mark Lannier	UNCW
Iron Piercy	Duke Energy
Kathy Hawkins	Progress Energy
Matt Season	Beacon Court Affairs
Lennie Collins	DOR
Jeff Mixon	Civitas Institute
Claudia Rochers	Self
John Peter	NCEOD

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NAME	FIRM OR AGENCY AND ADDRESS
Mary B. McMillan	NC AFL-CIO PO Box 10805 27571
N. Carrell Robinson	NC Black Leadership Caucus
Soren Schmidt	NC Justice Center
Jarvis Hall	NC NAACP
Elm Byrd	Southerners For Economic Justice
Ed TURLINGTON	BP
DAVID DUNN	UNC CHARTER
Johnny Tillett	Mr. Big, INC.
Ken Melton	D.O.P.
PATRICK BUFFKIN	ALLEY ASSOC
	SDM, PA

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NAME	FIRM OR AGENCY AND ADDRESS
Sharon Miller	Carolina Utility Customers Association, Inc.
BRENT LANE	UNC CENTER for COMPETITIVE ECONOMICS
Deborah Watts	E-NC
But Merrill	NC Bond Center
Daniel Huskins	LRO Directors Assoc.
Betty Huskins	Advantage West NC
Rich KAISER	SELF
FRAN PRESTON	NCRMA
TERESS YOUNG	Food Lion
ANDY ELLEN	NCRMA
ELIZABETH DALTON	NCRMA

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NAME	FIRM OR AGENCY AND ADDRESS
Dw Kaylor	Kaylor Law Firm
Elizabeth Self	NC Sierra Club
Jim FAIN	NC DOC
Kristina Bennett	NC Policy watch
Doug Miskew	Capstrat
Susanm Stech	NC Restaurant Assoc.
Ron OTTAVIO	Wachovia
Jonetta Allen	Wachovia
Stephanie Lynum	NC Realtors
Libby Smith	DOC
James West	West law offices, PC



**HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

[illegible]

House Pages

House Select Committee  
Name Of Committee: Economic  
Development

Date: 5-9-06

1. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

2. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Sgt-At-Arms

1. Name: JAMES WORTH

2. Name: EARL COKER

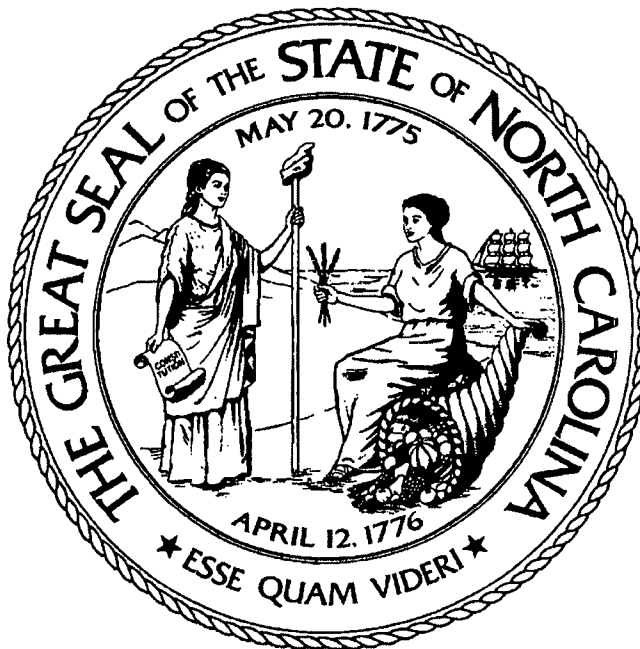
3. Name: NELL CASPER

4. Name: Jerald PERRY

5. Name: -

**House Select Committee on  
Economic Development**

**DRAFT  
FOR REVIEW ONLY**



**DRAFT  
FOR REVIEW ONLY**

**REPORT TO THE 2005  
GENERAL ASSEMBLY OF NORTH CAROLINA  
2006 REGULAR SESSION**

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***HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT***  
***State Legislative Building***  
***Raleigh, North Carolina 27603***

**May 9, 2006**

**TO THE MEMBERS OF THE 2006 GENERAL ASSEMBLY:**

The House Select Committee on Economic Development submits to you  
for your consideration its report.

Respectfully Submitted,

---

Rep. James A. Harrell, III, Chair

2005-2006

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

MEMBERSHIP

Rep. James A. Harrell, III, Chair  
Rep. Bill Daughtridge, Vice Chair  
Rep. Bob England, M.D.  
Rep. Pryor Gibson  
Rep. Bruce Goforth  
Rep. Earl Jones  
Rep. Bill Owens  
Rep. Earline W. Parmon  
Rep. Karen B. Ray

Staff:

Beth LeGrande, Committee Clerk

Cindy Avrette, Staff Attorney  
Karen Cochrane-Brown, Staff Attorney  
Y. Canaan Huie, Staff Attorney

## COMMITTEE PROCEEDINGS

---

The House Select Committee on Economic Development met four times after the adjournment of the 2005 General Assembly on September 2, 2005. Those meetings occurred on March 22, 2006, April 10, 2006, May 4, 2006, and May 9, 2006. For the first three meetings, the only matter reviewed by the Committee was the William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act) and proposed revisions to that act. At the meeting on March 22, 2006, the Committee heard an overview of the Bill Lee Act, how that Act had changed since its inception in 1996, the Department of Commerce's suggestions for revisions to the Act, and suggestions from local economic developers and other interested parties regarding revisions to the Act. At the meeting on April 10, 2006, Committee staff presented proposed legislation that would replace the Act with a new set of tax incentives. At the meeting on May 4, 2006, the Committee reviewed changes to the proposal that was discussed at the April 10 meeting. At the meeting on May 9, 2006, the committee discussed two new proposals dealing with an increase in the State minimum wage and capping the variable component of the motor fuels tax rate.



## COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

---

The House Select Committee on Economic Development makes the following recommendations to the 2006 General Assembly. Each proposal is followed by an explanation of the proposal.

1. Bill Lee Changes.
2. Raise Minimum Wage.
3. Reduce and Cap Gas Tax.

# LEGISLATIVE PROPOSAL #1

---

**BILL LEE CHANGES**

---

## LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT  
TO THE 2006 GENERAL ASSEMBLY

**AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER  
THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT  
WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND  
BUSINESS INVESTMENT.**

---

**SHORT TITLE:** Bill Lee Changes

---

**SPONSORS:**

---

**BRIEF OVERVIEW:** This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.

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**EFFECTIVE DATE:** This act would become effective January 1, 2007.

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A copy of the proposed legislation and bill analysis begin on the next page

1

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

D

BILL DRAFT 2005-LYxz-286 [v.17] (1/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
4/28/2006 1:51:33 PM

Short Title: Bill Lee Changes. (Public)  
Sponsors: Representative.  
Referred to:

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A BILL TO BE ENTITLED  
AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER  
THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT  
WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND  
BUSINESS INVESTMENT.  
The General Assembly of North Carolina enacts:  
  
**PART I. REPLACEMENT OF BILL LEE ACT**  
**SECTION 1.1.** Chapter 105 of the General Statutes is amended by adding a  
new Article to read:  

"Article 3H.  
"Tax Credits for Growing Businesses.

**"§ 105-129.70. Legislative findings.**  
The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its

citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Article that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina; and this Article will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Article is to stimulate economic activity and to create new jobs within the State.

(6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.

(7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry.

**"§ 105-129.71. Definitions.**

The following definitions apply in this Article:

(1) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.

(2) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

(3) Business property. – Tangible personal property that is used in a business and capitalized under the Code.

(4) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decisionmaking for the business on an international, national or multistate regional basis.

(5) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

- (6) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.
- (7) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.
- (8) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.
- (9) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on January 1, 2002.
- (10) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (11) Hub. – Defined in G.S. 105-164.3.
- (12) Information technology and services. – An industry in one of the following:
  - a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.
  - b. Software publishers industry group 5112 as defined by NAICS.
  - c. Computer systems design and related services industry group 5415 as defined by NAICS.
- (13) Reserved.
- (14) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.
- (15) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.
- (16) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.
- (17) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.
- (18) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.
- (19) Overdue tax debt. – Defined in G.S. 105-243.1.

- (20) Purchase. – Defined in section 179 of the Code.
- (21) Related entity. – Defined in G.S. 105-130.7A.
- (22) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.
- (23) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.
- (24) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.
- (25) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.

**"§ 105-129.72. Sunset; studies.**

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

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

- (1) Reexamining the formula in G.S. 143B-437.08 used to define development tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
- (2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.
- (3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

- (1) Studying the distribution of tax incentives across new and expanding businesses and industries.
- (2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.
- (3) Measuring the direct costs and benefits of the tax incentives.
- (4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009.

**"§ 105-129.73. Eligibility; forfeiture.**

(a) Eligible Business. – A taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is listed in this subsection. The primary activity of an establishment is determined based on the

1 establishment's principal product or group of products produced or distributed, or  
2 services rendered.

3 (1) Aircraft maintenance and repair.

4 (2) Air courier services hub.

5 (3) Company headquarters, but only if the additional eligibility  
6 requirements of subsection (b) of this section are satisfied.

7 (4) Customer service call centers.

8 (5) Electronic shopping and mail order houses.

9 (6) Information technology and services.

10 (7) Manufacturing.

11 (8) Motorsports facility.

12 (9) Motorsports racing team.

13 (10) Research and development.

14 (11) Warehousing.

15 (12) Wholesale trade.

16 (b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under  
17 this Article with respect to a company headquarters only if the taxpayer creates at least  
18 75 new jobs at the company headquarters within a 12-month period. A taxpayer that  
19 meets this job creation requirement is eligible for credits under this Article with respect  
20 to the company headquarters for three taxable years beginning with the year in which  
21 the job creation requirement is satisfied. A taxpayer that creates an additional 75 new  
22 jobs at the company headquarters in a 12-month period during a three-year eligibility  
23 period does not qualify for any extended eligibility period. However, a taxpayer that  
24 creates an additional 75 new jobs at the company headquarters in a 12-month period  
25 after the completion of a three-year eligibility period is eligible for credits with respect  
26 to the company headquarters for an additional three taxable years beginning in the year  
27 in which the additional job creation requirement is satisfied.

28 (c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a  
29 development tier two or three area only if the taxpayer satisfies a wage standard. The  
30 taxpayer is not required to satisfy a wage standard if the activity occurs in a  
31 development tier one area. Jobs that are located within an urban progress zone satisfy  
32 the wage if they pay an average weekly wage that is at least equal to ninety-five percent  
33 (95%) of the lesser of the average wage for all insured private employers in the State  
34 and the average wage for all insured private employers in the county. All other jobs  
35 satisfy the wage standard if they pay an average weekly wage that is at least equal to the  
36 lesser of one hundred ten percent (110%) of the average wage for all insured private  
37 employers in the State and ninety-five percent (95%) of the average wage for all insured  
38 private employers in the county. The Department of Commerce shall annually publish  
39 the wage standard for each county.

40 In making the wage calculation, the taxpayer shall include any jobs that were filled  
41 for at least 1,600 hours during the calendar year the taxpayer engages in the activity that  
42 qualifies for the credit even if those jobs are not filled at the time the taxpayer claims  
43 the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer



1 shall use the wage standard for the calendar year in which the taxable year begins. Only  
2 full-time jobs are included when making the wage calculation.

3 (d) Health Insurance. – A taxpayer is eligible for a credit under this Article only  
4 if the taxpayer provides health insurance for all of the full-time jobs at the establishment  
5 with respect to which the credit is claimed when the taxpayer engages in the activity  
6 that qualifies for the credit. For the purposes of this subsection, a taxpayer provides  
7 health insurance if it pays at least fifty percent (50%) of the premiums for health care  
8 coverage that equals or exceeds the minimum provisions of the basic health care plan of  
9 coverage recommended by the Small Employer Carrier Committee pursuant to  
10 G.S. 58-50-125.

11 Each year that a taxpayer claims a credit or carryforward of a credit allowed under  
12 this Article, the taxpayer shall provide with the tax return the taxpayer's certification  
13 that the taxpayer continues to provide health insurance for all the jobs at the  
14 establishment with respect to which the credit was claimed. If the taxpayer ceases to  
15 provide health insurance for the jobs during a taxable year, the credit expires and the  
16 taxpayer may not take any remaining installment or carryforward of the credit.

17 (e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this  
18 Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the  
19 taxpayer has no pending administrative, civil, or criminal enforcement action based on  
20 alleged significant violations of any program implemented by an agency of the  
21 Department of Environment and Natural Resources, and has had no final determination  
22 of responsibility for any significant administrative, civil, or criminal violation of any  
23 program implemented by an agency of the Department of Environment and Natural  
24 Resources within the last five years. A significant violation is a violation or alleged  
25 violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The  
26 Secretary of Environment and Natural Resources shall notify the Department of  
27 Revenue annually of every person that currently has any of these pending actions and  
28 every person that has had any of these final determinations within the last five years.

29 (f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed  
30 under this Article only if the taxpayer certifies that, as of the time the taxpayer claims  
31 the credit, at the establishment with respect to which the credit is claimed, the taxpayer  
32 has no citations under the Occupational Safety and Health Act that have become a final  
33 order within the past three years for willful serious violations or for failing to abate  
34 serious violations. For the purposes of this subsection, 'serious violation' has the same  
35 meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of  
36 Revenue annually of all employers who have had these citations become final orders  
37 within the past three years.

38 (g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under  
39 this Article if, at the time the taxpayer claims the credit or an installment or  
40 carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and  
41 that overdue tax debt has not been satisfied or otherwise resolved.

42 (h) Expiration. – If, during the period that installments of a credit under this  
43 Article accrue, the taxpayer is no longer engaged in one of the types of business  
44 described in subsection (a) of this section, the credit expires. If, during the period that

installments of a credit under this Article accrue, the number of jobs of an eligible business falls below the minimum number required under subsection (a) of this section, any credit associated with that business expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.79 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment required under G.S. 105-129.79(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(j) Change in Ownership of Business. – As used in this subsection, the term 'business' means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any credit or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if either of the following conditions is met:

- (1) The business closed before it was acquired.
- (2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, before it was acquired.
- (3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, 'acquired' means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:
  - a. Ownership of more than fifty percent (50%) of the business.
  - b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars

1                   (\$100,000,000) and has the majority of its operations located in  
2                   an development tier one area.

3       (k)   Advisory Ruling. – A taxpayer may request in writing from the Secretary of  
4   Revenue specific advice regarding eligibility for a credit under this Article.  
5   G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon  
6   advice offered by any other State or local government official or employee acting in an  
7   official capacity regarding eligibility for a credit under this Article.

8       (l)   Planned Expansion. – A taxpayer that signs a letter of commitment with the  
9   Department of Commerce, after the Department has calculated the development tier  
10   designations for the next year but before the beginning of that year, to undertake  
11   specific activities at a specific site within the next two years may calculate the credit for  
12   which it qualifies based on the establishment's development tier designation and urban  
13   progress zone designation in the year in which the letter of commitment was signed by  
14   the taxpayer. If the taxpayer does not engage in the activities within the two-year  
15   period, the taxpayer does not qualify for the credit; however, if the taxpayer later  
16   engages in the activities, the taxpayer qualifies for the credit based on the development  
17   tier and urban progress zone designations in effect at that time.

18   **"§ 105-129.74. Tax election; cap; carryforwards; limitations.**

19       (a)   Tax Election. – The credits provided in this Article are allowed against the  
20   franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of  
21   this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The  
22   taxpayer may divide a credit between the taxes against which it is allowed.  
23   Carryforwards of a credit may be divided between the taxes against which it is allowed  
24   without regard to the original election regarding the division of the credit.

25       (b)   Cap. – The credits allowed under this Article may not exceed fifty percent  
26   (50%) of the cumulative amount of taxes against which they may be claimed for the  
27   taxable year, reduced by the sum of all other credits allowed against those taxes, except  
28   tax payments made by or on behalf of the taxpayer. This limitation applies to the  
29   cumulative amount of credit, including carryforwards, claimed by the taxpayer under  
30   this Article for the taxable year.

31       (c)   Carryforward. – Unless a longer carryforward period applies, any unused  
32   portion of a credit allowed under G.S. 105-129.77 or G.S. 105-129.78 may be carried  
33   forward for five years and any unused portion of a credit allowed under G.S.  
34   105-129.79 may be carried forward for 15 years. If the Secretary of Commerce makes a  
35   written determination that the taxpayer is expected to purchase or lease, and place in  
36   service in connection with an eligible business within a two-year period, at least one  
37   hundred fifty million dollars (\$150,000,000) worth of business and real property, any  
38   unused portion of a credit under this Article with respect to the establishment that  
39   satisfies that condition may be carried forward for the succeeding 20 years. If the  
40   taxpayer does not make the required level of investment, the taxpayer shall apply the  
41   five-year carryforward period rather than the 20-year carryforward period.

42       (d)   Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer  
43   shall claim a credit under this Article within six months after the date set by statute for  
44   the filing of the return, including any extensions of that date.

1 **"§ 105-129.75. Fees and reports.**

2 (a) Fee. – When filing a return for a taxable year in which the taxpayer engaged  
3 in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer  
4 shall pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each  
5 type of credit the taxpayer claims or intends to claim with respect to an establishment.  
6 The fee is due at the time the return is due for the taxable year in which the taxpayer  
7 engaged in the activity for which the taxpayer is eligible for a credit. No credit is  
8 allowed under this Article for a taxable year until all outstanding fees have been paid.  
9 Fees collected under this section shall be credited to the General Fund.

10 (b) Reports. – The Department of Revenue shall publish by May 1 of each year  
11 the following information itemized by credit and by taxpayer for the 12-month period  
12 ending the preceding December 31:

- 13 (1) The number of claims for each credit allowed in this Article.  
14 (2) The number and development tier area of new jobs with respect to  
15 which credits were claimed.  
16 (3) The cost and development tier area of business property with respect to  
17 which credits were claimed.  
18 (4) The cost and development tier area of real property investment with  
19 respect to which credits were claimed.

20 **"§ 105-129.76. Substantiation.**

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

29 (b) Documentation. – Each taxpayer shall provide with the tax return qualifying  
30 information for each credit claimed under this Article. The qualifying information shall  
31 be in the form prescribed by the Secretary and shall be signed and affirmed by the  
32 individual who signs the taxpayer's tax return. The information required by this  
33 subsection is information demonstrating that the taxpayer has met the conditions for  
34 qualifying for a credit and any carryforwards, and includes the following:

- 35 (1) The physical location of the jobs and investment with respect to which  
36 the credit is claimed, including the street address and the development  
37 tier designation of the establishment.  
38 (2) The type of business with respect to which the credit is claimed and  
39 the average weekly wage at the establishment with respect to which  
40 the credit is claimed.  
41 (3) Any other qualifying information related to a specific credit allowed  
42 under this Article.

43 **"§ 105-129.77. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone, the amount of the credit is increased by one thousand dollars (\$1,000) per job. In addition, if a job located in an urban progress zone is filled by a resident of that zone, the amount of the credit is increased by an additional two thousand dollars (\$2,000) per job.

<u>Area Development Tier</u>	<u>Amount of Credit</u>
Tier One	\$12,500
Tier Two	5,000
Tier Three	1,000

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone, the applicable threshold is the one for a development tier one area.

<u>Area Development Tier</u>	<u>Threshold</u>
Tier One	5
Tier Two	10
Tier Three	25

(c) Calculation. – A job is located in a county or urban progress zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit,

the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

**"§ 105-129.78. Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

<u>Area Development Tier</u>	<u>Applicable Percentage</u>
<u>Tier One</u>	<u>7%</u>
<u>Tier Two</u>	<u>5%</u>
<u>Tier Three</u>	<u>4%</u>

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business

property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone, the applicable threshold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
Tier One	\$ -0-
Tier Two	1,000,000
Tier Three	4,000,000

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to business property for which the taxpayer claims a credit under G.S. 105-129.9 or G.S. 105-129.9A.

**"§ 105-129.79. Credit for investment in real property.**

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.73 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.71 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.



(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars (\$10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.73.

(c) Mixed Use Property. – If the taxpayer uses only part of the property in an eligible business, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property used in an eligible business and the denominator of which is the total square footage of the property.

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires, and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (c) of this section. If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, the credit expires, and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) No Double Credit. – A taxpayer may not claim a credit under this section with respect to real property for which a credit is claimed under G.S. 105-129.12 or G.S. 105-129.12A."

**SECTION 1.2.** Part 2 of Article 10 of Chapter 143B is amended by adding two new sections to read:

**"§ 143B-437.08. Development tier designation.**

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.
- (2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.
- (4) The county's rank in a ranking of counties by adjusted assessed property value per capita, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring assessed property value, the Secretary shall use the tax records prepared in each county. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Exception for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, and any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties.

(f) Exception for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

- (1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.
- (2) At least one-third of the park is located in the county with the lower tier designation.
- (3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multi-Jurisdictional Industrial Park. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in four or more contiguous counties.

(2) At least two of the counties in which the industrial park is located are development tier one areas.

(3) The industrial park is owned by four or more units of local government or a nonprofit corporation owned or controlled by four or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 300 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

**"§ 143B-437.09. Urban progress zone designation.**

(a) Urban Progress Zone Defined. – An urban progress zone is an area comprised of one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

(1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than 10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:

a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. At least seventy-five percent (75%) of its area is zoned as commercial and industrial and it is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level

(3) The area of the zone zoned as commercial and industrial does not exceed thirty-five percent (35%) of the total area of the zone.

(4) The combined area of all zones in the municipality less the smallest census tract included in the zones does not exceed ten percent (10%) of the total area of the municipality in which the zones are located.

(5) No census tract or block group may be in more than one zone.

(b) Designation. – Upon request of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that meets the conditions of subsection (a) of this section. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(c) Parcel of Property Partially in Urban Progress Zone. – For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

**SECTION 1.3.** G.S. 105-129.2A(a) reads as rewritten:

"(a) **Sunset.** – This Article is repealed effective for business activities that occur on or after January 1, 2008.~~2007.~~"

**SECTION 1.4.** There is appropriated from the General Fund to the Department of Revenue the sum of one hundred twenty thousand dollars (\$120,000) for the 2006-2007 fiscal year to perform functions related to the administration of Article 3H of Chapter 105 of the General Statutes. There is appropriated from the General Fund to the Department of Commerce the sum of forty thousand dollars (\$40,000) for the 2006-2007 fiscal year to perform functions related to the administration of Article 3H of Chapter 105 of the General Statutes.

**SECTION 1.5.** Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. The remainder of this part is effective when it becomes law.

## **PART II. CONFORMING CHANGES**

**SECTION 2.1.** G.S. 105-129.55(a) reads as rewritten:

"(a) **Qualified North Carolina Research Expenses.** – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this subsection. Only one credit is allowed under this subsection with respect to the same expenses. If more than one subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of this subsection and

the remainder qualifies under subdivision (3) of this subsection, the applicable percentages apply separately to each part of the expenses.

- (1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three percent (3%).
- (2) Low-tier research. – For expenses with respect to research performed in an ~~enterprise tier one, two, or three~~ development tier one area, the applicable percentage is three percent (3%).
- (3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	\$50 million	1%
\$50 million	\$200 million	2%
\$200 million	–	3%"

**SECTION 2.2.** G.S. 105-164.14(h) reads as rewritten:

"(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

- (1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3, 105-129.3~~ or a development tier one area, as defined in G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.
- (2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3, 105-129.3~~ or if it is engaged primarily in one of the businesses listed in G.S. 105-129.73(a) in a development tier one area, as defined in G.S. 143B-437.08.
- (3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. ~~105-129.4(a), 105-129.4(a)~~ or 105-129.73(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S.

1                   ~~105-129.3, 105-129.3,~~ or a development tier one area, as defined in  
2                   G.S. 143B-437.08, capitalizes them for tax purposes under the Code,  
3                   and does not lease them to another party."

4                   **SECTION 2.3.** G.S. 105-164.14(j)(2) reads as rewritten:

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

7                   ...

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

10                  a.     It is primarily engaged in one of the industries listed in this  
11                  subsection.

12                  b.     The Secretary of Commerce has certified that the owner of the  
13                  facility will invest at least the required amount of private funds  
14                  to construct the facility in this State. For the purpose of this  
15                  subsection, costs of construction may include costs of acquiring  
16                  and improving land for the facility and costs of equipment for  
17                  the facility. If the facility is located in an ~~enterprise tier one,~~  
18                  ~~two, or three~~ development tier one area as defined in G.S.  
19                  ~~105-129.3, G.S. 143B-437.08~~ the required amount is fifty  
20                  million dollars (\$50,000,000). For all other facilities, the  
21                  required amount is one hundred million dollars (\$100,000,000).  
22                  In the case of a computer manufacturing facility, the owner may  
23                  invest these funds either directly or indirectly through a related  
24                  entity or strategic partner as those terms are defined in G.S.  
25                  105-129.61. In the case of a computer manufacturing facility,  
26                  the term 'facility' has the same meaning as under G.S.  
27                  105-129.61."

28                   **SECTION 2.4.** Reserved

29                   **SECTION 2.5.** G.S. 143B-437.04 reads as rewritten:

30                   **"§ 143B-437.04. Community development block grants.**

31                   (a)    The Department of Commerce shall adopt guidelines for the awarding of  
32                   Community Development Block Grants to ensure that:

33                   (1)    No local match is required for grants awarded for projects located in  
34                   ~~enterprise—development~~ tier one areas as defined in G.S.  
35                   ~~105-129.3, 143B-437.08.~~

36                   (2)    To the extent practicable, priority consideration for grants is given to  
37                   projects located in ~~enterprise—development~~ tier one areas as defined in  
38                   G.S. ~~105-129.3, 143B-437.08~~ or in ~~development—urban progress~~ zones  
39                   that have met the conditions of subsection (b) of this section.

40                   (b)    In order to qualify for the benefits of this section, after an area is designated a  
41                   ~~development~~ an urban progress zone under G.S. ~~105-129.3A, 143B-437.09~~ the governing  
42                   body of the city in which the zone is located must adopt a strategy to improve the zone  
43                   and establish a ~~development~~ an urban progress zone committee to oversee the strategy.

1 The strategy and the committee must conform with requirements established by the  
2 Secretary of Commerce."

3 **SECTION 2.6.** G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a)  
4 and reads as rewritten:

5 "(4a) ~~Enterprise-Development~~ tier. – The classification assigned to an area  
6 pursuant to G.S. ~~105-129.3.143B-437.08.~~"

7 **SECTION 2.7.** G.S. 143B-437.53(a) reads as rewritten:

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

<del>Enterprise-Development</del> Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	<del>10</del> 20
Tier Three	<del>10</del> 20
Tier Four	20
Tier Five	20"

20 **SECTION 2.8.** G.S. 143B-437.55(c)(3) reads as rewritten:

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

24 ...

25 (3) The number and ~~enterprise-development~~ tier area of eligible positions  
26 created by projects with respect to which grants were awarded."

27 **SECTION 2.9.** G.S. 143B-437.56(d) reads as rewritten:

28 "(d) The percentage established in the agreement shall be reduced by one-fourth  
29 for any eligible position that is located in an ~~enterprise-development~~ tier ~~four or five~~two  
30 or three area."

31 **SECTION 2.10.** G.S. 158-7.3(a) reads as rewritten:

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

33 (1) Development project. – A capital project that includes capital  
34 expenditures by both private persons and one or more units of local  
35 government and that increases net employment opportunities for  
36 residents of the development district or within a two-mile radius of the  
37 project, whichever is larger, and increases the local government tax  
38 base.

39 If the district in which such a project will occur is outside a city's  
40 central business district (as that district is defined by resolution of the  
41 city council, which definition is binding and conclusive), then, of the  
42 private development forecast for a development project by the  
43 development financing plan for the district in which the project will  
44 occur, a maximum of twenty percent (20%) of the plan's estimated

1 square footage of floor space may be proposed for use in retail sales,  
2 hotels, banking, and financial services offered directly to consumers,  
3 and other commercial uses other than office space. The twenty percent  
4 (20%) limitation in the preceding sentence does not apply to  
5 development financing districts located in ~~an enterprise-a development~~  
6 tier one area, as defined in G.S. ~~105-129.3, 143B-437.08~~ and created  
7 primarily for tourism-related economic development, such as  
8 developments featuring facilities for exhibitions, athletic and cultural  
9 events, show and public gatherings, racing facilities, parks and  
10 recreation facilities, art galleries, museums, and art centers.

11 (2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to  
12 publish legal advertisements in the county or counties in which the unit  
13 is located.

14 (3) Unit or unit of local government. – A county, city, town, or  
15 incorporated village."

16 **SECTION 2.11.** G.S. 19A-64(c) reads as rewritten:

17 "(c) Distribution. – The Department shall make payments from the Spay/Neuter  
18 Account to eligible counties and cities who have made timely application for  
19 reimbursement within 30 days of the closing date for receipt of applications for that  
20 quarter. In the event that total requests for reimbursement exceed the amounts available  
21 in the Spay/Neuter Account for distribution, the monies available will be distributed as  
22 follows:

23 (1) Fifty percent (50%) of the monies available in the Spay/Neuter  
24 Account shall be reserved for reimbursement for eligible applicants  
25 within ~~enterprise tier one, two, and three~~development tier one areas as  
26 defined in G.S. ~~105-129.3, 143B-437.08~~ The remaining fifty percent  
27 (50%) of the funds shall be used to fund reimbursement requests from  
28 eligible applicants in ~~enterprise tier four and five~~development tier two  
29 ~~and three~~ areas as defined in G.S. ~~105-129.3, 143B-437.08~~.

30 (2) Among the eligible counties and cities in ~~enterprise tier one, two, and~~  
31 ~~three~~development tier one areas, reimbursement shall be made to each  
32 eligible county or city in proportion to the number of dogs and cats  
33 that have received rabies vaccinations during the preceding fiscal year  
34 in that county or city as compared to the number of dogs and cats that  
35 have received rabies vaccinations during the preceding fiscal year by  
36 all of the eligible applicants in ~~enterprise tier one, two, or~~  
37 ~~three~~development tier one areas.

38 (3) Among the eligible counties and cities in ~~enterprise tier four and~~  
39 ~~five~~development tier two and three areas, reimbursement shall be  
40 made to each eligible county or city in proportion to the number of  
41 dogs and cats that have received rabies vaccinations during the  
42 preceding fiscal year in that county or city as compared to the number  
43 of dogs and cats that have received rabies vaccinations during the



preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~ development tier two and three areas.

- (4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~ development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~ development tier two and three areas."

**SECTION 2.12.** G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is an ~~enterprise tier four county or an enterprise tier five~~ development tier two or three county, as these tiers are defined in G.S. ~~105-129.3(a), G.S. 143B-437.08,~~ and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an ~~enterprise tier one county, an enterprise tier two county, or an enterprise tier three county,~~ as ~~these counties area~~ development tier one county, as defined in G.S. ~~105-129.3(a), G.S. 143B-437.08,~~ and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

**SECTION 2.13.** Reserved

**SECTION 2.14.** G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as an ~~enterprise tier one or enterprise tier two~~ development tier one area under G.S. ~~105-129.3, 143B-437.08.~~"

**SECTION 2.15.** G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as an ~~enterprise tier one or enterprise tier two~~ development tier one area under G.S. ~~105-129.3, 143B-437.08.~~"

**SECTION 2.16.** G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as an ~~enterprise tier one or enterprise tier two~~ development tier one area under G.S. ~~105-129.3, 143B-437.08.~~"

**SECTION 2.17.** G.S. 153A-15.1 reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as an ~~enterprise tier one or enterprise tier two~~ development tier one area under G.S. ~~105-129.3, 143B-437.08.~~"

**SECTION 2.18.** G.S. 160A-425.1(c) reads as rewritten

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of a ~~development zone under G.S. 105-129.3A,~~ an urban progress zone under G.S. 143B-437.09, a 'nonresidential

1 redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics  
2 designated by the city council as being in special need of revitalization for the benefit  
3 and welfare of its citizens."

4 **SECTION 2.19.** G.S. 160A-426(c) reads as rewritten:

5 (c) If an inspector declares a nonresidential building or structure to be unsafe  
6 under subsection (b) of this section, the inspector must affix a notice of the unsafe  
7 character of the structure to a conspicuous place on the exterior wall of the building. For  
8 the purposes of this section, the term "community development target area" means an  
9 area that has characteristics of ~~a development zone under G.S. 105-129.3A, an urban~~  
10 ~~progress zone under G.S. 143B-437.09,~~ a 'nonresidential redevelopment area' under  
11 G.S. 160A-503(10), or an area with similar characteristics designated by the city council  
12 as being in special need of revitalization for the benefit and welfare of its citizens."

13 **SECTION 2.20.** G.S. 105-129.51(a) reads as rewritten:

14 "(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the  
15 requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~ 105-129.73(c), (d), (e), and (f)  
16 relating to wage standard, health insurance, environmental impact, and safety and health  
17 programs, respectively."

18 **SECTION 2.21.** G.S. 105-259(b) reads as rewritten:

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

23 ...  
24 (24) To furnish the Department of Commerce and the Employment Security  
25 Commission a copy of the qualifying information required in G.S.  
26 ~~105-129.7(b).~~ 105-129.7(b) or 105-129.76(b).

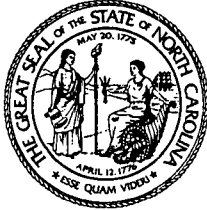
27 ...  
28 (27) To publish the information required under G.S. 105-129.6,  
29 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A,  
30 105-129.75, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

31 ...  
32 (36) To furnish the Department of Commerce with the information needed  
33 to complete the studies required under G.S. 105-129.2A and G.S.  
34 105-129.72."

35 **SECTION 2.22.** This part becomes effective January 1, 2007.

### 36 **PART III. EFFECTIVE DATES.**

37 **SECTION 3.1.** Except as otherwise provided, this act is effective when it  
38 becomes law.  
39  
40



## Draft 2005-LYx-286 Bill Lee Changes

### BILL ANALYSIS

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<b>Committee:</b>	House Select Committee on Economic Development	<b>Date:</b>	April 28, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	Y. Canaan Huie
<b>Version:</b>	Draft 2005-LYx-286 [v.17]		Committee Counsel

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**SUMMARY:** This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.

### BILL ANALYSIS:

#### Part I. Tax Credits for Growing Businesses.

The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, and for worker training. Counties are divided into five enterprise tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior or merely provided tax reductions to businesses that would have located or expanded in any case. In 2000, the General Assembly extended the sunset on the act until January 1, 2006. In 2005, the General Assembly approved a two-year extension of the Act, until January 1, 2008, in order to provide additional time to study alternatives to the Act.<sup>1</sup>

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<sup>1</sup> There are several exceptions to the 2008 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least 15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least \$100 million in acquiring,

This bill would create a new package of State tax incentives to replace the Bill Lee Act for most taxpayers. These incentives would become effective January 1, 2007, and would expire January 1, 2011. Taxpayers that are eligible for the later repeal date of the Act would be able to choose to take credits under the current Act or under the proposed legislation. Many of the provisions of this proposed new Article are similar or identical to the provisions of the Bill Lee Act. There are some significant differences however.

**General Administration.**

Under this bill, by November 30 of each year, the Department of Commerce would be required to assign a tier designation to each of the 100 counties in the State. In order to make these assignments, the Department would rank all counties based on the following factors: unemployment, median household income, percentage population growth, and per capita adjusted assessed property value. Regardless of the development factor, any county with a population of less than 12,000 would automatically be included in the counties with the 40 highest rankings and any county with a population of less than 50,000 would automatically be included in the counties with the 80 highest rankings. Regardless of the development factor, a county designated as a tier one county would be included in the counties with the 40 highest rankings. The 40 counties with the highest ranking would be designated as development tier one, the next 40 highest counties would be designated as development tier two, and the remaining counties would be designated as development tier three.

This differs in several key ways from the Bill Lee Act. First, the Bill Lee Act designation is not required until December 31. Second, in order to make the Bill Lee assignments, the Department of Commerce ranks all 100 counties based on the following three factors: unemployment, average per capita income, and percentage growth in population. The proposed legislation would substitute median household income for per capita income and add the new factor related to assessed property value per capita. Third, under the Bill Lee Act, counties are divided into five tiers rather than three. Fourth, under this proposal, the number of counties in a tier would be fixed. If one county received a lower tier designation because of the population or low-tier status exceptions, another county would be moved to a higher tier. Under the Bill Lee Act, the exceptions may move a county to a lower tier, but they do not result in any county being assigned to a higher tier.

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constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing. In addition, projects that are located in development zones are eligible for credits for business activities occurring before January 1, 2010, if all of the following conditions are met: before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce; the Secretary of Commerce makes a written determination that the taxpayer will invest \$10 million and create at least 300 new jobs at the facility within a three-year period; and the taxpayer invests at least \$4 million and creates at least 20 new jobs at the facility before January 1, 2006.

Development zones are another key feature of the Bill Lee Act.<sup>2</sup> Development zones were intended to be areas of high poverty within cities. Over the years, it has become clear that the development zones often include areas that are neither high-poverty nor particularly urban. This bill would replace development zones with urban progress (UP) zones. UP zones are more narrowly focused than development zones. First, an UP zone must be entirely within the corporate limits of a municipality with a population of at least 10,000. Development zones are located at least partially in a municipality with a population of at least 5,000. Second, UP zones must meet more stringent guidelines with respect to poverty within the zone. Third, the total area of all UP zones in a municipality, less the smallest census tract included in the zones, may comprise no more than 10% of the area of a municipality: there is no similar restriction on development zones.

Under this bill, all of the credits would be allowed against the franchise tax levied in Article 3 of Chapter 105, the income taxes levied in Article 4 of Chapter 105, the gross premiums tax levied in Article 8B of Chapter 105, or a combination of these taxes. The credits allowed under the Bill Lee Act are also allowed against these taxes; however, unlike this bill, under the Bill Lee Act, a taxpayer may take a credit against only one of the three taxes.

Under this bill, the total amount of credits allowed could not exceed 50% of the cumulative amount of the taxpayer's tax liability for franchise, income, and gross premiums taxes. Under the Bill Lee Act, the credits are limited to 50% of the taxpayer's tax liability for the one tax against which the taxpayer chooses to apply it. As with the Bill Lee Act, this cap would apply to the cumulative amount of credits for the current year and carryforwards of credits from previous years. Under this bill, any unused portion of a credit with respect to the credit for creating jobs or investing in business property could be carried forward for the succeeding five years. This is also the standard carryforward period for the Bill Lee Act. Any unused portion of a credit with respect to the credit for investing in real property could be carried forward for the succeeding 15 years, as compared to the succeeding 20 years under the Bill Lee Act. Finally, as with the Bill Lee Act, credits with respect to a large investment (at least \$150 million) could be carried forward for 20 years. This draft would shorten the carryforward period for some credits and eliminates some enhanced carryforward provisions altogether.

When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit, the taxpayer would be required to submit a fee of \$500 for each type of credit the taxpayer intended to claim with respect to an establishment. The fee would be deposited in the General Fund, and the positions at the

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<sup>2</sup> Under the Bill Lee Act, the Department of Commerce is also responsible for designating development zones. Development zones are areas of higher poverty within urban centers. In order to be designated as a development zone, the area must satisfy all of the following conditions: every census tract or block group in the zone is located in a city with a population of at least 5,000, the zone has a population of at least 1,000, more than 20% of the population of the zone is below the poverty level, every census tract or block group in the zone has more than 10% of its population below the poverty level or is immediately adjacent to a census tract or block group that has more than 20% of its population below the poverty level, and no census tract or block group in the zone is located in another development zone. Designation as a development zone is effective for two years. Location in a development zone leads to more favorable treatment for the taxpayer with respect to the wage standard, the credit for creating new jobs, the credit for investing in machinery and equipment, and the credit for worker training.

Departments of Revenue and Commerce that oversee the program would be funded through the General Fund. The Bill Lee Act contains a similar fee requirement, but under the Act the fees are kept by the Departments as departmental receipts: the positions that oversee the Bill Lee are funded by those receipts. Under the Bill Lee Act, there is a maximum fee of \$1,500 per taxable year: there would be no maximum fee under the proposed new Article.

As under the Bill Lee Act, each taxpayer claiming a credit under the proposed new Article would be required to provide any information required by the Secretary of Revenue to evaluate the eligibility of the taxpayer for the credit claimed.

As under the Bill Lee Act, the Department of Revenue and the Department of Commerce would be required to make several reports on the proposed new Article. By each May 1, the Department of Revenue would be required publish information itemized by credit and by taxpayer relating to the amount and tier designation of new jobs, new real property investment, and new business property. The Department of Commerce would be required to make biennial reports on tax equity and the impact of the proposed new Article.

As with the Bill Lee Act, credits under the proposed new Article could not be taken more than six months after the deadline for filing the tax return (including extensions) on which they were claimed. This is more restrictive than is generally the case under North Carolina law. In general, an overpayment may be refunded only if the discovery is made or the written request for a refund made within 3 years of the date set by statutes for filing the return or within 6 months of the date of the overpayment, whichever is later.

### **Basic Eligibility**

*Type of Business.* Under this bill, in order to be eligible for a credit under the proposed new Article, a taxpayer would be required to meet eligibility requirements with regards to type of business. Under the proposed new Article, business type would be determined solely by reference to the primary activity of the particular establishment.<sup>3</sup> The following types of businesses would be eligible for credits under the proposed new Article:

- Aircraft maintenance and repair.
- Air courier services hub.
- Corporate headquarters, but only if additional eligibility requirements are satisfied.
- Customer service call centers.
- Electronic shopping and mail order houses.
- Information technology and services.
- Manufacturing.
- Motorsports facilities.
- Motorsports racing teams.
- Research and development.
- Warehousing.

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<sup>3</sup> The definition of "establishment" under the proposed new Article is different from the definition of "establishment" under the Bill Lee Act. Generally, under this definition, an establishment means a single physical location whereas the Bill Lee definition revolves around accounting units, although usually it refers to a single location as well.

- Wholesale trade.

Business-type eligibility under the proposed new Article would be substantially different than under the Bill Lee Act. Under the Bill Lee Act, business type eligibility depends on several factors including the primary business of the taxpayer as a whole, the primary activity of the particular establishment<sup>4</sup>, the location of the establishment, and the number of new jobs created. The following types of business are eligible under the Bill Lee Act:

- Air courier services, if the primary business of the taxpayer is air courier services.
- Data processing, if the primary business of the taxpayer is data processing.
- Manufacturing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is manufacturing.
- Warehousing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is warehousing, or if the primary activity of an establishment is warehousing, the establishment is located in an enterprise tier 1-3 area, and the establishment serves 25 or more establishments of the taxpayer.
- Wholesale trade, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is wholesale trade.
- Computer services, if the primary activity of the establishment is computer services.
- Electronic mail order house, if the primary activity of the establishment is an electronic mail order house and the electronic mail order house is located in an enterprise tier 1-3 area and creates at least 250 new jobs.
- Customer service center, if the primary business of the taxpayer is financial services or telecommunications, the primary activity of the establishment is a customer service center, and the center is located in an enterprise tier 1-3 area.
- Central office or aircraft facility, if the primary activity of the establishment is a central administrative office or a training or maintenance center for an interstate air passenger carrier and the establishment creates at least 40 new jobs.

Under the proposed new Article, motorsports facilities and motorsports racing teams would be eligible for credits whereas they are not currently eligible under the Bill Lee Act. A larger group of manufacturers, warehouseers, wholesale traders, electronic mail order houses, and customer service centers would be eligible for credits under the proposed new Article than under the Bill Lee Act. Under the proposed new Article, credits for central administrative office facilities would be restricted to those facilities that are corporate headquarters and credits for data processing and computer services would be replaced by credits for information technology and services.

In order for a corporate headquarters to qualify for credits under the proposed legislation, the establishment would be required to create at least 75 new jobs within a 12-month

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<sup>4</sup> An "establishment" is defined by NAICS (North American Industry Classification System) as the smallest operating entity for which records provide information on the cost of resources – materials, labor, and capital – employed to produce the units of output. In the United States, an establishment is generally a single physical location; although there are many exceptions to this generality.

period. A taxpayer that satisfied this job creation requirement would be eligible for credits in the year in which the requirement was satisfied and the two succeeding years. A taxpayer that later created an additional 75 new jobs in a 12-month period could be eligible for an additional three-year period of eligibility, but only if the job creation occurred outside of any other period for eligibility.

*Wage Standard.* Under this bill, a taxpayer would be eligible for a credit under the proposed new Article only if the jobs provided by the taxpayer met a wage standard. As with the Bill Lee Act, no wage standard would apply in the lower-tiered areas.<sup>5</sup> For development tiers two and three, the jobs provided by the taxpayer would be required to pay at least the lower of 95% of the average county wage or 110% of the average State wage. This differs significantly from the manner in which the wage standard is calculated under the Bill Lee Act. Under the Bill Lee Act, for enterprise tier areas three through five, the jobs provided by the taxpayer must pay at least 110% of the applicable average weekly wage. The applicable average weekly wage of the county is the lowest of the following: the average weekly wage for all insured private employers in the county, the average weekly wage for all insured private employers in the State, and the average weekly wage for all insured private employers in the county multiplied by the county income/wage adjustment factor.<sup>6</sup> Under the proposed legislation, for activities that occur in UP zones, the wage standard is lower than for activities that occur in development tiers two and three outside of UP zones. For UP zones, the wage standard is 95% of the lesser of the average county wage and the average State wage. Under the Bill Lee Act, there is no wage standard for activities occurring in development zones.

Under the proposed new Article, the wage standard would be calculated in different ways for the credit for creating jobs and the credit for investing in business property. For the credit for creating jobs, the average weekly wage of the jobs for which the credit was claimed and the average weekly wage of all jobs at the establishment with respect to which the credit was claimed would be required to meet the relevant wage standard. For the credit for investing in business property, the average weekly wage of all jobs at the establishment with respect to which the credit was claimed must meet the relevant wage standard. This is equivalent to how the wage standard is applied under the Bill Lee Act for the credits for creating jobs and for investing in machinery and equipment. As with the Bill Lee Act, there would be no wage standard for the credit for investing in real property under the proposed new Article since that credit would be available only in the lower-tiered counties where the wage standard requirement would not apply.

Under the Bill Lee Act, all jobs, including part-time jobs, must be included in the wage standard calculation. However, part-time jobs that also provide health insurance are considered to have an average weekly wage at least equal to the relevant wage standard. For the purpose of calculating the wage standard, the weekly wage of a part-time job is

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<sup>5</sup> Legislation enacted in 2002 eliminated the wage standard in enterprise tiers one and two under the Bill Lee Act. Under the proposed new Article, no wage standard would apply in development tier one. Development tier one under the proposed new Article is roughly equivalent to enterprise tiers one and two under the Bill Lee Act.

<sup>6</sup> The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The income/wage ratio is determined by dividing the average per capita income in the relevant jurisdiction by the annualized average wage for all insured private employers in the jurisdiction.



converted to a full-time equivalency. Under the proposed new Article, no part-time jobs would be included in the calculation of the wage standard. As under the Bill Lee Act, all jobs that were filled for at least 1600 hours during the year in which the taxpayer engaged in the activity for which a credit was claimed would be included in the wage standard calculation under the proposed new Article even if those jobs were not filled at the time the taxpayer claimed the credit.

*Health insurance.* As under the Bill Lee Act, a taxpayer would be required to provide health insurance for all full-time jobs at the establishment in order to be eligible for a credit under the proposed new Article. The taxpayer would be required to pay at least 50% of the premiums for health insurance that met at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee. Each year that a taxpayer claimed an installment or carryforward of a credit, the taxpayer would be required to provide certification that it continued to provide health insurance for all full-time employees. If the taxpayer ceased to provide health insurance, the credit would expire and the taxpayer would not be able to take any remaining installment or carryforward of the credit.

*Environmental Impact.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any pending administrative, civil, or criminal enforcement action based on alleged significant violation of any program implemented by an agency of the Department of Environment and Natural Resources or if the taxpayer had had any final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources in the last five years. The Secretary of Environment and Natural Resources would be required to notify the Department of Revenue of all persons who currently had any of these pending actions or who had had any of these final determinations in the past five years.

*Safety and Health Programs.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any outstanding violations under the Occupational Safety and Health Act that had become a final order for "willful serious" or "failure to abate serious" violations within the past three years. The Department of Labor would be required to notify the Department of Revenue of all employers who had had these citations become final orders in the past three years.

*Overdue Tax Debts.* As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any overdue tax debts. An overdue tax debt is any part of a tax debt that remains unpaid 90 days or more after a notice of final assessment was mailed to the taxpayer. A tax debt is a final assessment after all possibilities for appeal have been exhausted.

Under general existing law, if the Secretary of Revenue discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the assessment, the amount of tax to be assessed, and any interest and penalties due. If the taxpayer disagrees with the assessment, the taxpayer has 30 days to request a hearing before the Secretary. The Secretary must then schedule a hearing to occur within 90 days of the request. Within 90 days after the hearing, the Secretary must issue a decision on the hearing. If

the taxpayer does not request a hearing within the 30 days allowed, or if the Secretary finds that the tax is due after the hearing, the proposed assessment becomes a final assessment. If a taxpayer disagrees with a final assessment, the taxpayer may appeal the decision to the Tax Review Board, and then on to superior court, the Court of Appeals, and the Supreme Court.

*Expiration.* Under the Bill Lee Act, credits may expire for several reasons. If the taxpayer is no longer engaged in an eligible type of business or if the number of jobs of an eligible business falls below the minimum number required, the credit expires. Generally, if a credit expires, the taxpayer may not continue to take installments of the credit, but may continue to take carryforwards of installments that accrued in previous years.<sup>7</sup> The credit for creating jobs and the credit for investing in machinery and equipment expire if the jobs are no longer filled or if the machinery and equipment are taken out of service used in an eligible business. The credit does not expire if the enterprise tier designation of an eligible taxpayer changes after the credit is first claimed. The credits under the proposed new Article retain these expiration provisions.

*Forfeiture.* Under the Bill Lee Act, a taxpayer forfeits a credit if the taxpayer was not eligible for the credit in the year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest. The past taxes and interest are due 30 days after the date the credit is forfeited. The credits under the proposed new Article would retain these forfeiture provisions.

### **Specific Credits.**

*Credit for creating jobs, G.S. 105-129.78.* Under this bill, a taxpayer would be allowed a credit for creating new full-time jobs. In order to be eligible for this credit, the taxpayer would be required to meet a job creation threshold based on the development tier designation of the location where the jobs were created.<sup>8</sup> If the taxpayer created jobs in more than one county during a year, the threshold would apply separately to each county. If the taxpayer created jobs at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. In addition, the amount of the credit would vary depending on the development tier designation of the area in which the job was located. A job would be located in an area if 50% or more of the employee's duties were performed in the area. The full amount of the credit could not be taken in the first year, but instead would be taken in four equal installments beginning with the taxable year following the year in which the employee was hired. Jobs transferred from one part of the State to another would not qualify for the credit. In addition, jobs transferred within the State from a related member of the taxpayer to the taxpayer would not qualify for the credit. The amount of the credit and the job creation threshold would be equal to the amounts in the following table based on the development tier area in which the job is located. In addition a job created in an UP zone would be eligible for an additional credit of \$1,000 and if that job were filled by a resident of the zone it would be further increased by an additional \$2,000.

<u>Area Development Tier</u>	<u>Amount of Credit</u>	<u>Threshold</u>
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<sup>7</sup> Expiration of a credit because the taxpayer ceases to provide health insurance is an exception to this general rule. In that case, the taxpayer may not claim installments or carryforwards after the credit expires.

<sup>8</sup> For jobs created in an UP zone, the threshold applicable to development tier one would apply.

Tier One	\$12,500	5
Tier Two	5,000	10
Tier Three	1,000	25

Under the proposed new Article, if in one of the four years in which the installment of a credit accrues, the jobs with respect to which the credit was taken were unfilled, the credit related to those specific jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credit. If, in one of the four years in which the installment of a credit accrues, the total number of jobs fell below the sum of the applicable job creation threshold and the number of jobs existing in the year before the new jobs were created, the credits with respect to all the new jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credits. If, in one of the four years in which an installment of the credit accrued, a job that qualified for the credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the job had been initially located in the later area.

Under the proposed new Article, a taxpayer that planned to create new jobs in a specific area during the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designations for the purposes of this credit. If the taxpayer created the jobs within the next two years, the taxpayer would be allowed to compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the jobs were created. If the taxpayer did not create the jobs in the next two years, the taxpayer could still claim a credit under the existing tier designation if the jobs were later created.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same job. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are several significant differences between the proposed new credit for creating jobs and the credit that currently exists under the Bill Lee Act (G.S. 105-129.8). First, the Bill Lee Act credit does not require the taxpayer to meet a job creation threshold whereas the proposed new credit would. Second, the amount of the credit per job is more generous for some taxpayers under this proposed credit than under the existing Bill Lee Act credit.

*Credit for investing in machinery and equipment, G.S. 105-129.79.* Under this bill, a taxpayer would be allowed a credit for the amount by which the cost of the eligible investment amount of business property placed into service during a taxable year exceeds a threshold. The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the net increase in eligible business property over the base year (the year of the preceding three years in which the taxpayer had the largest amount of business property in service in the State). In order to be eligible for the credit, the taxpayer would be required to place new business property into service in excess of a threshold based on the development tier designation. The credit would be taken in four equal installments, beginning the year after the equipment was placed in service. The amount of the credit would be equal to a percentage of the eligible investment amount of the business property. If the taxpayer placed eligible business property into service in

more than one county during a year, the threshold would apply separately to each county. If the taxpayer placed eligible business property into service at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. The following table sets out the relevant percentage and threshold for each development tier area:

<u>Area Development Tier</u>	<u>Threshold</u>	<u>Credit Percentage</u>
Tier One <sup>9</sup>	\$ -0-	7%
Tier Two	1,000,000	5%
Tier Three	4,000,000	4%

If in one of the four years in which the installment of a credit would accrue, the business property with respect to which the credit was taken was disposed of, moved out of State, or taken out of service, the credit would expire and the taxpayer could not take any remaining installments of the credit unless the cost of that business property was offset in the same taxable year by the taxpayer's new investment in business property. If eligible business property that qualified for a credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the business property had been initially located in the later area

A taxpayer that planned to place specific business property in service at a specific location within the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designation for the purposes of this credit. If the taxpayer placed the eligible business property in service within the next two years, the taxpayer could compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the business property was placed in service. If the taxpayer did not place the business property in service in the next two years, the taxpayer could still claim a credit under the existing tier designation if the business property was later placed in service.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same business property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are significant differences between the proposed new credit for investing in business property and the credit currently allowed under the Bill Lee Act for investing in machinery and equipment. First, the thresholds under the proposed credit differ from the thresholds under the existing credit. Second, the definition of "business property" under the proposed new credit is broader than the definition of "machinery and equipment" under the existing credit. Third, the percentage that determines the amount of the credit under the proposed new credit differs from the percentage for the existing credit for some taxpayers. Fourth, the existing Bill Lee Act credit allows a taxpayer to satisfy the threshold requirement over a two-year period when property is being phased in over two years, whereas the proposed new credit would require the threshold requirement to be satisfied in each year.

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<sup>9</sup> For the purposes of this credit, investment that occurs in an UP zone is subject to the threshold and percentage applicable to activity that occurs in a development tier one area.

*Credit for substantial investment in other property, G.S. 105-129.79.* Under this bill, a taxpayer that is located in a development tier one area would be eligible for a credit for investment in real property. In order for the taxpayer to claim this credit, the Secretary of Commerce would be required to make a written determination that the taxpayer was expected to invest at least \$10 million in real property at a location within a three-year period and that the taxpayer would create at least 200 new jobs at the location within two years of the time that the property was first used in an eligible business. The taxpayer could begin to claim the credit once the property was first used in an eligible business. The amount of the credit would be equal to 30% of the eligible investment amount and could be taken in installments over a seven-year period. There would be no ceiling on the amount of the credit. The credit for investment in real property would expire if the number of people employed at the location fell below 200.

A taxpayer could not claim both the proposed credit for investment in real property and either of the existing Bill Lee Act credits for investment in real property with respect to the same property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

The only significant difference between the proposed credit for investment in real property and the Bill Lee Act credit for substantial investment in other property is the carryforward period. Under the Bill Lee Act, unused portions of the credit can be carried forward for up to 20 years. Under the proposed legislation, unused portions of the credit could be carried forward for up to 15 years.

*Expiring credits.* The Bill Lee Act contains five credits that do not have a counterpart in this bill. Those credits are as follows:

- *G.S. 105-129.9A. Technology commercialization credit.* The technology commercialization credit is essentially an enhanced version of the credit for investing in machinery and equipment for taxpayers that are making significant investments in certain types of machinery and equipment. There is no similar enhancement in the proposed new Article; however, the technology commercialization credit was designed with a specific project in mind that never came to fruition and therefore the credit has never been claimed.
- *G.S. 105-129.10. Credit for research and development.* The Bill Lee Act contains a credit for research and development expenditures. In 2004, the General Assembly created a new, stand-alone credit for research and development (See Article 3G of Chapter 105 of the General Statutes). Therefore, no similar credit is included in the proposed new Article.
- *G.S. 105-129.11. Credit for worker training.* The Bill Lee Act contains a credit with which a taxpayer could offset certain worker training expenses. There is no similar credit in the proposed new Article.
- *G.S. 105-129.12. Credit for investing in central office or aircraft facility property.* The Bill Lee Act contains a credit for investing in central office or aircraft facility property. The credit was equal to 7% of the eligible investment amount and was capped at \$500,000. There is no similar credit in the proposed new Article though a business that would have been eligible for

this credit under the Bill Lee Act would be eligible for the proposed credit for investing in real property if the requirements of that proposed credit are satisfied.

- *G.S. 105-129.13. Credit for development zone projects.* This credit allowed a taxpayer to claim a credit equal to 25% of a donation to a development zone agency for an improvement project in a development zone. There is no similar credit in the proposed new Article.

## **Part II. Conforming Changes.**

Part II of the proposed legislation would make a number of conforming changes to the statutes because of the changes that would be made under Part I of this proposal. Since the creation of the Bill Lee Act in 1996, many other programs have adopted the enterprise tier designation as a proxy for the economic viability or the available resources of a county. Many of these programs deal with economic development; but the tier structure has also been adopted as a proxy in such areas as animal control and wetlands mitigation. In addition, other programs refer to other aspects of the Bill Lee Act such as development zones or the wage standard. Because the Bill Lee Act would largely be replaced by the new Article in this proposal, the changes in Part II of this bill should help to lessen confusion that would be inherent in the use of two different tier systems. Because the tier structures are not equivalent, the changes in this Part will benefit some areas while reducing benefits to other areas. The changes are briefly summarized below.

- *Section 2.1.* This section would conform the credit for research and development expenses to the new tier structure. Under current law, the credit for research and development expenses is more generous if the research is conducted in an enterprise tier one, two, or three area. Under this proposal, research conducted in a development tier one area would be eligible for the more generous credit. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being eligible for a smaller credit.
- *Section 2.2.* This section would conform the sales and use tax refund for low enterprise tier machinery and equipment to the new tier structure. Under current law, a taxpayer is eligible for a refund of sales and use tax paid at the general rate on machinery and equipment put into service in enterprise tier one and two areas. This section adds a reference to development tier one. Because development tier one is expected to be roughly equivalent to, though including more counties than enterprise tiers one and two combined, this change should have limited effect.
- *Section 2.3.* This section would conform the sales and use tax refund on building materials for major eligible industrial facilities to the new tier structure. Under current law, a taxpayer must invest at least \$50 million in an eligible facility in an enterprise tier one, two, or three area or \$100 million in an eligible facility in an enterprise tier four or five area to be eligible for the refund. This section changes the requirement so that the \$50 million threshold applies to facilities in development tier one and the \$100 million threshold applies to facilities in tiers two and three. Because development tier one will

contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for a refund.

- *Section 2.4.* Reserved.
- *Section 2.5.* This section would conform the guidelines adopted by the Department of Commerce relating to community development block grant funds to the new tier structure. Under current law, those guidelines must ensure that grants award in enterprise tier one areas do not require a local match and that priority is given to projects in enterprise tier one areas and development zones. This section would change those references to development tier one areas and UP zones. Because development tier one would be larger than enterprise tier one, this change would have the effect of increasing the number of projects which receive priority consideration and for which no local match is required. On the other hand, because UP zones are more restrictive than development zones, this change could have the effect of eliminating some projects from priority consideration.
- *Section 2.6.* This section changes a definitional reference under the JDIG statutes.
- *Section 2.7.* This section would conform the JDIG job creation requirements to the new tier structure. Under current law, a business must create at least 10 new jobs in an enterprise tier one, two, or three area or 20 new jobs in an enterprise tier four or five area to be eligible for consideration for JDIG. This section would change those requirements so that a business must create at least 10 new jobs in a development tier one area or 20 new jobs in a development tier two or three area to be eligible for consideration. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for consideration for JDIG. However, as a practical matter, all businesses that have received JDIG grants have created far more jobs than the minimum required and it is therefore unlikely that this change would have any practical effect.
- *Section 2.8.* This section would conform a reference to tiers under the JDIG reporting requirements.
- *Section 2.9.* This section would conform the JDIG grant reduction requirements to the new tier structure. Under current law, a business that is located in an enterprise tier four or five area when the grant is awarded would have the amount of a grant reduced by 25%, with that reduction flowing to the Utility Account of the Industrial Development Fund rather than to the business. This section would change that reference so that it would apply in development tiers two and three. Because development tiers two and three combined would contain more counties than enterprise tiers four and five combined, this section could require a reduction in the grant amount for more businesses.

- *Section 2.10.* This section would conform a provision relating to tax increment financing to the new tier structure. This section would expand an exception created for financing districts related to tourism-related economic development projects. Under current law, this exception is allowed only in an enterprise tier one area. This section would allow that exception in a development tier one area. Because development tier one would contain more counties than enterprise tier one, this change would expand this exception.
- *Section 2.11.* This section would conform provisions dealing with the Spay/Neuter Account to the new tier structure. Under existing law, there is an account that helps offset the costs incurred by cities and counties for the spaying and neutering of animals. Fifty percent of the funds in the account are reserved for cities and counties in enterprise tiers one, two, and three. The remaining 50% is reserved for cities and counties in enterprise tiers four and five. If there are excess funds after all needs have been met in enterprise tier one, two and three areas, those funds are transferred and used in enterprise tier four and five areas. The funds designated for a group of tier areas are then allocated based on population. This section would change this breakdown so that the division would be between development tier one areas and development tier two and three areas. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some cities and counties getting more assistance and some cities and counties getting less assistance.
- *Section 2.12.* This section would conform a provision relating to agricultural easements and the Farmland Preservation Trust Fund to the new tier structure. Under current law, enterprise tier one, two, and three counties that have prepared countywide farmland protection plans are not required to match funds from the Farmland Preservation Trust Fund used to purchase agricultural easements. This section would change that reference to development tier one. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some counties being newly subject to the match requirement.
- *Section 2.13.* Reserved.
- *Section 2.14 through Section 2.17.* These sections would conform provisions dealing with wetlands mitigation to the new tier structure. Under current law, when the State purchases land for wetlands mitigation it is required to make a payment in lieu of taxes to the county in which the land is located if the county is an enterprise tier one or two area. These sections would change those references to development tier one area. Because development tier one would have slightly more counties than enterprise tiers one and two combined, this change would require the State to make these payments in more instances.
- *Section 2.18 and Section 2.19.* These sections would conform provisions dealing with condemnation of unsafe buildings to the new tier structure. Under current law, cities have more flexibility in condemning nonresidential buildings as unsafe if the building is located in a "community development



target area". A community development target area is one that has characteristics of a development zone or similar characteristics. These sections would change the references from development zone to UP zone. Because of the amorphous nature of the definition of "community development target area", this change should not have any impact.

- *Section 2.20.* This section would conform eligibility requirements for the credit for research and development to the new Article. Under current law, in order to be eligible for that credit the taxpayer must satisfy the wage standard, health insurance, environmental impact and safety and health record requirements under the Bill Lee Act. This section would change the reference to those requirements under the new Article. This change could have the effect of making more taxpayers eligible for the credit because the wage standard requirement under the new Article is less strenuous than the requirement under the Bill Lee Act.
- *Section 2.21.* This section would amend the statutes relating to tax secrecy to ensure that the Department of Revenue could share information that is needed to administer the new Article with the Department of Commerce.

# **LEGISLATIVE PROPOSAL #2**

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**RAISE MINIMUM WAGE**

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## LEGISLATIVE PROPOSAL #2

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON ECONOMIC  
DEVELOPMENT  
TO THE 2006 GENERAL ASSEMBLY

### AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA.

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**SHORT TITLE:** Raise Minimum Wage

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**SPONSORS:**

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**BRIEF OVERVIEW:** This bill would raise the minimum wage to \$6.15 per hour effective January 1, 2007.

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**EFFECTIVE DATE:** This act would become effective January 1, 2007.

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A copy of the proposed legislation and bill analysis begin on the next page

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

H

D

**BILL DRAFT 2005-LYz-325 [v.1] (5/4)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
5/4/2006 12:13:47 PM**

Short Title: Raise Minimum Wage.

(Public)

Sponsors: Representative.

Referred to:

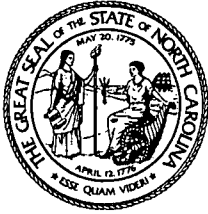
A BILL TO BE ENTITLED  
AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time,~~ six dollars and fifteen cents (\$6.15) per hour, except as otherwise provided in this section."

**SECTION 2.** This act becomes effective January 1, 2007.



## **DRAFT 2005-LYz-325: Raise Minimum Wage**

### **BILL ANALYSIS**

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<b>Committee:</b>	House Select Committee on Economic Development	<b>Date:</b>	May 4, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	Y. Canaan Huie
<b>Version:</b>	Draft 2005-LYz-325 [v.1]		Committee Counsel

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**SUMMARY:** *This proposal would raise the minimum wage to \$6.15 per hour effective January 1, 2007.*

**BILL ANALYSIS:** This proposal would increase the State minimum wage from \$5.15 an hour to \$6.15 an hour, effective January 1, 2007. Currently the State minimum wage is set at the same rate as the federal minimum wage. This proposal would amend the State minimum wage by deleting the provision that sets the State minimum wage at the same level as the federal minimum wage and substitute a minimum wage of \$6.15. The General Assembly linked the State minimum wage to the federal minimum wage in 1997. The federal minimum wage amount has not changed since 1997.

*H0325Draft-SMLY-LYz-325*

# **LEGISLATIVE PROPOSAL #3**

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**REDUCE AND CAP GAS TAX**

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# LEGISLATIVE PROPOSAL #3

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON ECONOMIC  
DEVELOPMENT  
TO THE 2006 GENERAL ASSEMBLY

## AN ACT TO REDUCE THE TAX ON MOTOR FUELS AND TO CAP THE VARIABLE COMPONENT OF THE RATE.

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**SHORT TITLE:** Reduce and Cap Gas Tax

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**SPONSORS:**

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**BRIEF OVERVIEW:** This bill would reduce the motor fuels tax rate to 27.1 cents per gallon, the rate in effect for the period of July through December 2005, and cap the variable component of the rate so that the tax could not exceed this amount.

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**EFFECTIVE DATE:** This act would become effective July 1, 2006.

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A copy of the proposed legislation and bill analysis begin on the next page

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

H

D

**BILL DRAFT 2005-LYz-327 [v.4] (5/4)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
5/8/2006 12:55:42 PM**

Short Title: Reduce and Cap Gas Tax.

(Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE TAX ON MOTOR FUELS AND TO CAP THE  
VARIABLE COMPONENT OF THE RATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢) a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. In no case may the variable wholesale component be greater than nine and six-tenths cents (9.6¢) a gallon.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

**SECTION 2.** This act becomes effective July 1, 2006.





## DRAFT 2005-LYz-327: Reduce and Cap Gas Tax

### BILL ANALYSIS

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<b>Committee:</b>	House Select Committee on Economic Development	<b>Date:</b>	May 8, 2006
<b>Introduced by:</b>		<b>Summary by:</b>	Y. Canaan Huie Committee Counsel
<b>Version:</b>	Draft 2005-LYz-327[v.4]		

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**SUMMARY:** *This draft would cap the variable component of the motor fuels tax rate at 9.6 cents per gallon effective July 1, 2006.*

**CURRENT LAW:** The motor fuel excise tax rate has two components: a flat rate and a variable rate. The flat rate is 17.5¢ per gallon. The variable component may change every six months. It is added to the flat rate. The variable component is equal to the greater of 3.5¢ a gallon or 7% of the weighted average wholesale price of gasoline and No. 2 diesel fuel for the most recent six-month base period. The base period is the six-month period that ends three months before the taxing period. The current motor fuel tax rate is 29.9¢ a gallon. Due to increases in the weighted wholesale price of these motor fuels, the tax has increased during each of the last seven six-month periods and is now at its highest point ever.

One-half cent a gallon of the motor fuel tax revenue is dedicated to the two underground storage tank funds and the water and air quality account. Seventy-five percent (75%) of the remainder of the revenue generated by this tax is allocated to the Highway Fund and the remaining 25% is credited to the Highway Trust Fund.

**BILL ANALYSIS:** This proposal would cap the variable component of the motor fuels tax rate at 9.6¢ per gallon. The variable component is currently 12.4¢ per gallon.

*H0327rpt-SMLY-LYz-327v4*



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT

Bill \_\_\_\_\_

AMENDMENT NO. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

\_\_\_\_\_ALY-89 [v.2]

Page 1 of 2

Date \_\_\_\_\_, 2005

Comm. Sub. [NO]  
Amends Title [NO]  
Draft

Representative Parmon

1 moves to amend the report on page 7, line 6 by rewriting that line to read:

2 "BUSINESS INVESTMENT AND TO EXEMPT FROM TAXATION ELECTRICITY  
3 AND PIPED NATURAL GAS SOLD TO A MANUFACTURER.";

4  
5 and on page 29, lines 37-39, by rewriting those lines to read:

6 **"PART III. MANUFACTURERS' ENERGY TAX EXEMPTIONS**

7 **SECTION 3.1.** G.S. 105-164.4(1f)b. is repealed.

8 **SECTION 3.2.** G.S. 105-164.4(1h) is repealed.

9 **SECTION 3.3.** G.S. 105-164.13 is amended by adding a new subdivision to  
10 read:

11 **'§ 105-164.13. Retail sales and use tax.**

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

15 ...

16 (54) Electricity sold to a manufacturer for use in connection with the  
17 operation of the manufacturing facility.'

18 **SECTION 3.4.** G.S. 105-187.41(c) reads as rewritten:

19 '(c) Gas City Exemption. – The tax imposed by this section does not apply to  
20 pipd-the following:

21 (1) Piped natural gas received by a gas city for consumption by that ~~city or~~  
22 ~~to piped city.~~

23 (2) Piped natural gas delivered by a gas city to a sales or transportation  
24 customer of the gas city.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT

Bill \_\_\_\_\_

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

\_\_\_\_\_ALY-89 [v.2]

Page 2 of 2

1           (3)   Piped natural gas received by a manufacturer for use in connection  
2               with the operation of the manufacturing facility.'

3           **SECTION 3.5.** This part becomes effective July 1, 2006. Sections 3.1  
4 through 3.3 of this act apply to sales made on or after that date and Section 3.4 of this act  
5 applies to deliveries made on or after that date.

6  
7 **PART IV. EFFECTIVE DATES**

8           **SECTION 4.1.** Except as otherwise provided, this act is effective when it  
9 becomes law."

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

**SUMMARY:** *This proposal would exempt from the sales and use taxes electricity sold to a manufacturer for use in the manufacturing process. The proposal would also exempt from taxation piped natural gas sold to a manufacturer.*

**CURRENT LAW:** Generally, electricity that is sold to a manufacturer for use at a manufacturing facility and is separately metered or measured is subject to the sales and use tax at a rate of 2.83%. Most other sales of electricity are taxed at the rate of 3%. In 2001, the General Assembly reduced to 0.17% the sales tax rate on electricity sold to manufacturers that use more than 900,000 megawatt-hours of electricity annually, effective January 1, 2002. In 2004, the reduced rate for those manufacturers using more than 900,000 megawatt-hours of electricity annual was replaced by a provision that allows that lower tax rate for electricity sold to an aluminum smelting facility for use in connection with the operation of that facility and measured by a separate meter or measuring device would be taxable at 0.17%. The provision establishing the lower rate for an aluminum smelting facility sunsets for sales made on or after October 1, 2007. At the time the 2004 legislation was enacted, the State did not have an aluminum smelting facility.

North Carolina exempts sales of piped natural gas from the sales and use taxes. In place of the sales and use tax, most sales of piped natural gas are subject to an excise tax measured by the therm<sup>1</sup> of gas delivered.

**BILL ANALYSIS:** This proposal would exempt from the sales and use taxes electricity sold to a manufacturer for use in the manufacturing process. The proposal would also exempt from taxation piped natural gas sold to a manufacturer.

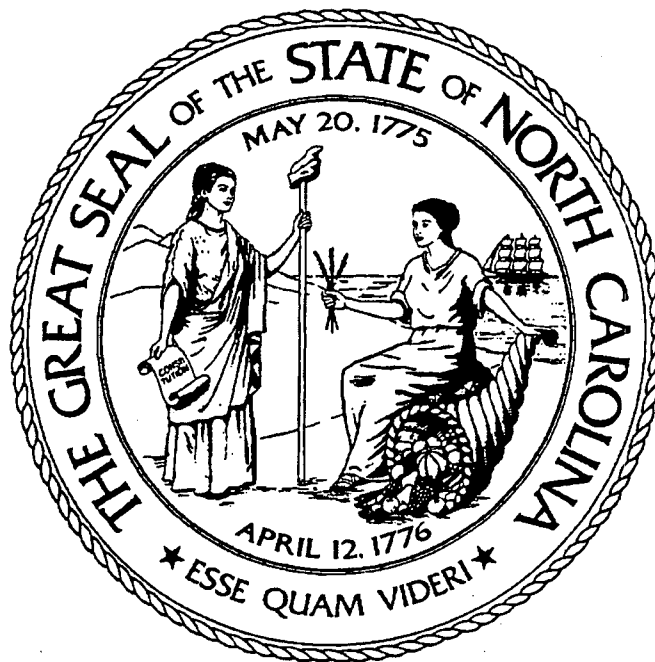
**EFFECTIVE DATE:** This proposal would become effective July 1, 2006.

*H0330e2-SMLY-LYz-330*

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<sup>1</sup> A therm is a unit of energy equal to 100,000 BTU. At normal pressure, this is equal to about 100 cubic feet of natural gas.

# House Select Committee on Economic Development



REPORT TO THE 2005  
GENERAL ASSEMBLY OF NORTH CAROLINA  
2006 REGULAR SESSION

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## **NCCBI Presents Positions on Potential Incentives Act Changes**

*Reprinted with permission from the April edition of NORTH CAROLINA magazine, official publication of North Carolina Citizens for Business and Industry (NCCBI).*

President/CEO Barry Eveland presented NCCBI's positions on potential changes to the Bill Lee Act at a meeting of the House Select Committee on Economic Development on March 22 in Raleigh. On behalf of NCCBI members, he made recommendations as to how the Act should be strengthened when the General Assembly takes up the issue during its 2006 Short Session set to convene May 9.

The Bill Lee Act, enacted in 1996, is a package of state tax incentives for eligible businesses. The incentives come primarily in the form of tax credits for investments in machinery, equipment and real property; job creation; worker training; and research and development. They are applied against either franchise, income or gross premiums taxes.

Last year, the General Assembly extended the Act, which was set to expire Jan. 1, 2006, until Jan. 1, 2008. (NCCBI and its members were instrumental in winning the extension.) As part of the legislation that delayed the sunset of the Act, however, lawmakers expressed their intent to make changes to the incentives package to take effect Jan. 1, 2007.

In citing NCCBI's number-one priority—economic development—Eveland stressed that North Carolina needs the best economic development “toolbox” in the country and described the Bill Lee Act as “central to that toolbox.” He urged committee members and their colleagues not to weaken the act, particularly incentives in urban areas, because doing so would negatively impact non-urban surrounding counties and thus the state as a whole.

“We must ensure that our incentives policies continue to encourage economic prosperity and job creation in all of North Carolina's 100 counties to make the state more competitive,” Eveland said.

The Bill Lee Act is based on a system of Enterprise Tiers with more generous incentives going to lower-Tier counties. Counties are placed in Tiers after being evaluated based on unemployment rates, per capita income, and population growth. (Exceptions are also applied based on considerations such as Tier history, lower population and an extremely high unemployment rate.)

Eveland also suggested that lawmakers consider re-defining the wage standard within the Act, echoing one committee member's comment that “any job is better than no job.” (Currently, unless they are located in the lowest two of five Tiers, a taxpayer is only eligible for a credit if jobs created meet a wage standard.)

Eveland drew on his personal experience as a state executive with IBM when he advocated that a special credit for location of corporate headquarters within the state be maintained. He explained not only that this is the place where key business expansion decisions are made, but also that attracting corporate headquarters will often facilitate a supply chain that will positively impact numerous counties in regions where these central offices are located.

Finally, Eveland asked lawmakers to identify opportunities to enhance rural growth and consider "safety net" provisions to address scenarios where an override of thresholds might be necessary for businesses to manage extenuating circumstances such as spikes in unemployment.

Other interested parties commenting on potential changes to the Bill Lee Act were Don Hobart, general counsel for the Dept. of Commerce; Donny Hicks, legislative chair for the N.C. Economic Developers Association and executive director of the Gaston County Economic Development Commission; and Beau Mills, director of the N.C. Metropolitan Coalition.

In his comments to the committee, Hicks was supportive of NCCBI's suggestion that the wage standard in the Act be examined and re-defined. He pointed out that in Gaston County, at \$16 per hour, it is too high. He noted that it is too complicated and needs to be made fairer, explaining that the standard is defined using data from professional salaries and then applied to manufacturers. He also agreed that incentives should not be weakened in urban areas, explaining that Charlotte needs to be able to compete with big cities in other southeastern states such as Tampa.

Mills made similar remarks in regard to maintaining or strengthening incentives in metropolitan areas, calling urban centers "doors to the global economy." He told the committee that North Carolina must continue to compete and that incentives are going to continue to be an important part of that. "We do not compete with rural North Carolina," he explained. "We compete with Singapore."

Hobart explained that the Bill Lee Act helps offset what is a relatively high corporate tax rate compared to others in the southeast. He also suggested that the wage standard be reduced in mid-Tier counties, but suggested numerous modifications to the Act, including the following: 1) Change the five-Tier system to a three-Tier system. 2) Focus on the "core" credits for job creation, machinery and equipment investment, and major real property investment. 3) Drop some credits, such as the worker training, research and development, technology commercialization, and central office credits (perhaps replacing the latter with a "true headquarters" credit). 4) Modify eligibility rules to focus only on activity at the specific location relevant to the credit sought and not on overall activity of the taxpayer, and consider additional categories of eligible businesses.

Rep. Jim Harrell serves as chairman of the committee and Rep. Bill Daughtride is vice chairman. Other members of the committee are Reps. Earline Parmon, Karen Ray, Bruce Goforth, Bob England, Pryor Gibson, Earl Jones and Bill Owens.

--Sherry Melton



# High court upholds Ohio incentives

Justices say taxpayers had no standing to oppose \$300 million in tax breaks given to lure Jeep plant.

BY PETE YOST  
THE ASSOCIATED PRESS

**WASHINGTON** — In a victory for U.S. businesses, the Supreme Court on Monday rebuffed the efforts of a group of Toledo, Ohio, taxpayers to challenge nearly \$300 million in tax breaks for DaimlerChrysler AG's new Jeep plant.

Chief Justice John Roberts said in the 9-0 decision that the alleged injury to the taxpayers was mere conjecture and that they had no standing to challenge tax or spending decisions "simply by virtue of their status as taxpayers."

DaimlerChrysler called the ruling "a big win for America," and said Congress and the states should seek legislation to reinforce the ability to use tax incentives to compete for investment and jobs.

The message from the ruling is that states "will not be held hostage to lawsuits" brought by people with "no direct connection to the issue at hand," said W. Frank Fountain, DaimlerChrysler's senior vice president for government affairs and public policy.

Herman Blankenship, whose Toledo auto shop was torn down

SEE INCENTIVES, PAGE 2D

## N.C. INCENTIVES

The Supreme Court ruling on incentives comes less than a week after a Wake County Superior Court judge dismissed a lawsuit that challenged North Carolina's offering Dell \$279 million to build a computer factory in Winston-Salem.

Despite the legal setbacks, the advocacy group that sued because of the Dell incentives plans to appeal its case to the N.C. Supreme Court. That court has not been as restrictive as federal courts on when taxpayers can "challenge the constitutionality of government expenditures," said Bob Orr, executive director of the N.C. Institute for Constitutional Law, which brought the lawsuit on behalf of seven individuals.

Orr said that he is optimistic his group will prevail in its legal fight.

But the appeal faces an uphill battle that became even more difficult with the Supreme Court ruling Monday, said Burley Mitchell, a lawyer who represented Dell.

"It's not decisive, but it certainly adds weight to the state of North Carolina's and Dell's arguments in this case," Mitchell said. "It's one more positive for those who would try to bring better jobs to North Carolina at a time when they're desperately needed."

Mitchell is a former chief justice of the N.C. Supreme Court, and Orr is a former justice on that court.

ALAN M. WOLF

# INCENTIVES

CONTINUED FROM PAGE 1D

to make way for the Jeep plant, said that he hoped the challenge had made people more aware of how much money government gives to business.

"It seems to me that the government wants to tax us for everything, and that the corporate world is controlling the government," said Blankenship, who was among neighbors in the area of the plant who joined in the lawsuit.

Business groups and lawmakers in several states said in friend-of-the-court filings that a ruling against Ohio and DaimlerChrysler would hurt economic development

throughout the nation and put U.S. manufacturing at a disadvantage against foreign competitors.

Peter Enrich, an attorney for the taxpayers, said the decision "simply sends us back to the Ohio state courts, where we began six years ago." Enrich, a Northeastern University law professor, said "tax giveaways" similar to Toledo's cost states and municipalities around the country billions of dollars that could be better spent on education and other publicly financed programs.

In an earlier ruling in favor of the taxpayers, the 6th U.S. Circuit Court of Appeals struck down Ohio's tax credit on new equipment, saying the practice hinders interstate commerce because the

incentives are available only to businesses that invest in Ohio.

To lure a \$1.2 billion Jeep assembly plant to the area, the city of Toledo and two local school districts gave the company a 10-year exemption from property taxes, and the company received additional investment tax credits against the state's corporate franchise tax.

The court disagreed with the taxpayers' argument that their local and state tax burdens were increased by the tax breaks.

"A taxpayer-plaintiff has no right to insist that the government dispose of any increased revenue it might experience as a result of his suit by decreasing his tax liability or bolstering pro-

grams that benefit him," the chief justice wrote. "To the contrary, the decision of how to allocate any such savings is the very epitome of a policy judgment."

A core constitutional concept is that someone filing a lawsuit must allege personal injury that is traceable to the defendant's allegedly unlawful conduct and is likely to be redressed by the requested relief.

The Toledo taxpayers claimed standing by virtue of being municipal taxpayers, but such an argument is "yet another level of conjecture to their already hypothetical claim of injury," Roberts wrote.

In all, DaimlerChrysler received nearly \$300 million in property and investment tax benefits.



North Carolina  
Department of Commerce

Michael F. Easley, Governor

James T. Fain III, Secretary

December 29, 2006

The Honorable Jim Harrell  
North Carolina General Assembly  
Chairman, Joint Legislative Economic Development Oversight Committee  
Raleigh, North Carolina

Dear Representative Harrell:

This letter is to request an extension of the date by which the Department of Commerce is due to publish its Economic Development Strategies for Tier 1 Distressed Counties study required under G.S. § 105-129.2A. By the terms of the recently enacted statute, the report is due to be published on January 1, 2007 and submitted to the Joint Legislative Economic Development Oversight Committee. This is a new report required under the statute.

The Department was charged to develop and report on additional strategies to enhance economic growth and development in economically distressed areas. Over the last five months we have worked closely with the NC Rural Center, Tier 1 county leaders and economic development specialists and other economic development partners to develop a full range of innovative options for improving economic conditions in distressed areas. We learned a great deal in our listening tour across the state and have worked carefully to assimilate and present the best options to you.

While we have completed the report, we would like to request additional time to work with our partners and provide you with a more thoughtful and substantive document on this important issue.

I anticipate that we will have the report ready for publication by January 19, 2007. In the event that you or any members of the Committee have need of specific data from the report before that time, Chris Beacham, Assistant Secretary for Policy Research and Strategic Planning, would be happy to provide it. He may be reached at (919) 733-3454.

Sincerely,

A handwritten signature in black ink, appearing to read "J. T. Fain III".

James T. Fain III

cc: The Honorable Marc Basnight  
The Honorable James B. Black

*North Carolina: The State of Minds*

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