

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1569*
Finance Committee Substitute Adopted 6/18/98

Short Title: Economic Opportunity Act of 1998.

(Public)

Sponsors:

Referred to:

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO FURTHER PROMOTE DEVELOPMENT IN ALL AREAS OF THE
3 STATE BY MODIFYING THE WILLIAM S. LEE QUALITY JOBS AND
4 BUSINESS EXPANSION ACT, CREATING STATE DEVELOPMENT ZONES,
5 PROVIDING FUNDS FOR INFRASTRUCTURE IN RURAL AND LESS
6 PROSPEROUS AREAS, ENCOURAGING DEVELOPMENT OF AIR COURIER
7 HUBS, AND ENCOURAGING DEVELOPMENT OF THE RECYCLING
8 INDUSTRY IN TIER ONE COUNTIES.

9 The General Assembly of North Carolina enacts:

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16 **PART I. BILL LEE ACT/DEVELOPMENT ZONES**

17 Section 1. Article 3A of Chapter 105 of the General Statutes reads as
18 rewritten:

19 **"ARTICLE 3A.**

"TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES.**[REPEALED EFFECTIVE JANUARY 1, 2002]****"§ 105-129.2. (Repealed effective January 1, 2002 – see note) Definitions.**

The following definitions apply in this Article:

- (1) ~~Air courier services. — Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget. A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.~~
- (1a) ~~Central administrative office. — Defined in the Standard Industrial Classification Manual issued North American Industry Classification System adopted by the United States Office of Management and Budget.~~
- (1b) ~~Cost. — Determined 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).~~
- (2) ~~Data processing. — Defined in the Standard Industrial Classification Manual issued North American Industry Classification System adopted by the United States Office of Management and Budget.~~
- (2a) ~~Development zone. — An area designated as a development zone pursuant to G.S. 105-129.3A.~~
- (3) ~~Enterprise tier. — The classification assigned to an area pursuant to G.S. 105-129.3.~~
- (4) ~~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.~~
- (4a) ~~Reserved.~~
- (4b) ~~Large investment. — Defined in G.S. 105-129.4(b1).~~
- (5) ~~Machinery and equipment. — Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.~~
- (6) ~~Manufacturing and processing. Manufacturing. — Defined in the Standard Industrial Classification Manual issued North American Industry Classification System adopted by the United States Office of Management and Budget.~~
- (7) ~~Purchase. — Defined in section 179 of the Code.~~
- (8) ~~Warehousing and distribution. — Defined in the Standard Industrial Classification Manual issued wholesale trade. — Defined in the North~~

1 American Industry Classification System adopted by the United States
2 Office of Management and Budget.

3 **"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

4 (a) Tiers Defined. – An enterprise tier one area is a county whose enterprise factor
5 is one of the 10 highest in the State. An enterprise tier two area is a county whose
6 enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is
7 a county whose enterprise factor is one of the next 25 highest in the State. An enterprise
8 tier four area is a county whose enterprise factor is one of the next 25 highest in the State.
9 An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

10 (b) Annual Designation. – Each year, on or before December 31, the Secretary of
11 Commerce shall assign to each county in the State an enterprise factor that is the sum of
12 the following:

13 (1) The county's rank in a ranking of counties by average rate of
14 unemployment from lowest to highest, for the preceding three years.

15 (2) The county's rank in a ranking of counties by average per capita income
16 from highest to lowest, for the preceding three years.

17 (3) The county's rank in a ranking of counties by percentage growth in
18 population from highest to lowest.

19 The Secretary of Commerce shall then rank all the counties within the State according
20 to their enterprise factor from highest to lowest, identify all the areas of the State by
21 enterprise tier, and provide this information to the Secretary of Revenue. An enterprise
22 tier designation is effective only for the calendar year following the designation.

23 In measuring rates of unemployment and per capita income, the Secretary shall use
24 the latest available data published by a State or federal agency generally recognized as
25 having expertise concerning the data. In measuring population growth, the Secretary shall
26 use the most recent estimates of population certified by the State Planning Officer.

27 (c) Exception for Enterprise Tier One Areas. – Notwithstanding the provisions of
28 this section, an enterprise tier one area may not be redesignated as a higher-numbered
29 enterprise tier area until it has been an enterprise tier one area for at least two consecutive
30 years.

31 **"§ 105-129.3A. Development zone designation.**

32 (a) Development Zone Defined. – A development zone is an area comprised of
33 one or more contiguous census tracts and census block groups in the most recent federal
34 decennial census that meets all of the following conditions:

35 (1) It is located in whole or in part in a city with a population of more than
36 5,000 according to the most recent annual population estimates certified
37 by the State Planning Officer.

38 (2) It has a population of 1,000 or more according to the most recent annual
39 population estimates certified by the State Planning Officer.

40 (3) More than twenty percent (20%) of its population is below the poverty
41 level according to the most recent federal decennial census.

42 (b) Designation. – Upon request of a taxpayer or a local government, the Secretary
43 of Commerce shall designate whether an area is a development zone that meets the

1 conditions of subsection (a) of this section. A development zone designation is effective
2 for 48 months following the designation.

3 (c) Relationship With Enterprise Tiers. – For the purpose of the wage standard
4 requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment
5 allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11,
6 a development zone is considered an enterprise tier one area. For all other purposes, a
7 development zone has the same enterprise tier designation as the county in which it is
8 located.

9 **"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.**

10 (a) Type of Business. – A taxpayer is eligible for a credit allowed by G.S. 105-
11 129.12 if the real property for which the credit is claimed is used for a central
12 administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other
13 credits allowed by this Article if the taxpayer engages in one of the following types of
14 businesses and the jobs with respect to which a credit is claimed are created in that
15 business, the machinery and equipment with respect to which a credit is claimed are used
16 in that business, and the research and development for which a credit is claimed are
17 carried out as part of that business:

- 18 (1) Air courier services.
- 19 (2) Central administrative office that creates at least 40 new jobs.
- 20 (3) Data processing.
- 21 (4) ~~Manufacturing or processing.~~ Manufacturing.
- 22 (5) ~~Warehousing or distribution.~~ wholesale trade.

23 (a1) Central Administrative Office. – A central administrative office creates at least
24 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central~~
25 ~~administrative office, if the taxpayer hires at least 40 additional full-time employees to~~
26 ~~fill new positions at the office.~~ office either in the year the taxpayer first uses the property
27 as a central administrative office or in the preceding 24 months while using temporary
28 space for the central administrative office functions during completion of the
29 administrative office property. Jobs transferred from one area in the State to another area
30 in the State are not considered new jobs for purposes of this subsection.

31 (b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the
32 credit for worker training if the jobs for which the credit is claimed meet the wage
33 standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the
34 credit for investing in machinery and equipment, the credit for research and development,
35 or the credit for investing in real property for a central administrative office if the jobs at
36 the location with respect to which the credit is claimed meet the wage standard at the time
37 the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average
38 weekly wage that is at least equal to the applicable percentage times the applicable
39 average weekly wage for the county in which the jobs will be located, as computed by the
40 Secretary of Commerce from data compiled by the Employment Security Commission
41 for the most recent period for which data are available. The applicable percentage for
42 jobs located in an enterprise tier one area is one hundred percent (100%). The applicable
43 percentage for all other jobs is one hundred ten percent (110%). The applicable average

1 weekly wage is the lowest of the following: (i) the average wage for all insured private
2 employers in the county, (ii) the average wage for all insured private employers in the
3 State, and (iii) the average wage for all insured private employers in the county
4 multiplied by the county income/wage adjustment factor. The county income/wage
5 adjustment factor is the county income/wage ratio divided by the State income/wage
6 ratio. The county income/wage ratio is average per capita income in the county divided
7 by the annualized average wage for all insured private employers in the county. The State
8 income/wage ratio is the average per capita income in the State divided by the annualized
9 average wage for all insured private employers in the State.

10 (b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit under
11 this Article becomes eligible for the large investment enhancements provided for credits
12 under this Article if the Secretary of Commerce certifies that the taxpayer will purchase
13 or lease, and place in service in connection with the eligible business within a two-year
14 period, at least one hundred fifty million dollars (\$150,000,000) worth of one or more of
15 the following: real property, machinery and equipment, or central administrative office
16 property. If the taxpayer fails to make the level of investment certified within this two-
17 year period, the taxpayer forfeits the large investment enhancements as provided in
18 subsection (d) of this section.

19 ~~(e) Worker Training. – A taxpayer is eligible for the tax credit for worker training~~
20 ~~only for training workers who occupy jobs for which the taxpayer is eligible to claim an~~
21 ~~installment of the credit for creating jobs or which are full-time positions at a location~~
22 ~~with respect to which the taxpayer is eligible to claim an installment of the credit for~~
23 ~~investing in machinery and equipment for the taxable year.~~

24 ~~The credit for worker training is allowed only with respect to employees in positions~~
25 ~~not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and~~
26 ~~for expenditures for training that would be eligible for expenditure or reimbursement~~
27 ~~under the Department of Community Colleges' New and Expanding Industry Program, as~~
28 ~~determined by guidelines adopted by the State Board of Community Colleges. The credit~~
29 ~~is not allowed for expenditures that are paid or reimbursed by the New and Expanding~~
30 ~~Industry Program. To establish eligibility, the taxpayer must obtain as part of the~~
31 ~~application process under G.S. 105-129.6 the certification of the Department of~~
32 ~~Community Colleges that the taxpayer's planned worker training would satisfy the~~
33 ~~requirements of this paragraph. A taxpayer shall apply to the Department of Community~~
34 ~~Colleges for this certification. The application must be on a form provided by the~~
35 ~~Department of Community Colleges, must provide a detailed plan of the worker training~~
36 ~~to be provided, and must contain any information required by the Department of~~
37 ~~Community Colleges to determine whether the requirements of this paragraph will be~~
38 ~~satisfied. If the Department of Community Colleges determines that the planned worker~~
39 ~~training meets the requirements of this paragraph, the Department of Community~~
40 ~~Colleges shall issue a certificate describing the location with respect to which the credit is~~
41 ~~claimed and stating that the planned worker training meets the requirements of this~~
42 ~~paragraph. The State Board of Community Colleges may adopt rules in accordance with~~

1 Chapter 150B of the General Statutes that are needed to carry out its responsibilities
2 under this paragraph.

3 (d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the
4 taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In
5 addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer
6 fails to make the level of investment certified by the Secretary of Commerce under
7 subsection (b1) of this section within the required two-year period. A taxpayer that
8 forfeits a credit under this Article is liable for all past taxes avoided as a result of the
9 credit plus interest at the rate established under G.S. 105-241.1(i), computed from the
10 date the taxes would have been due if the credit had not been allowed. The past taxes and
11 interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay
12 the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-
13 236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in
14 machinery and equipment, the taxpayer also forfeits any credit for worker training
15 claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the
16 location with respect to which the credit for investing in machinery and equipment was
17 claimed.

18 (e) Change in Ownership of Business. – The sale, merger, acquisition, or
19 bankruptcy of a business, or any ~~other~~ transaction by which an existing business
20 reformulates itself as another business, does not create new eligibility in a succeeding
21 business with respect to credits for which the predecessor was not eligible under this
22 Article. A successor business may, however, take any installment of or carried-over
23 portion of a credit that its predecessor could have taken if it had a tax liability. The
24 acquisition of a business is a new investment that creates new eligibility in the acquiring
25 taxpayer under this Article if any of the following conditions are met:

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

27 (2) The business was required to file a notice of plant closing or mass layoff
28 under the federal Worker Adjustment and Retraining Notification Act,
29 29 U.S.C. § 2102, before it was acquired.

30 (3) The business was acquired by its employees through an employee stock
31 option transaction or another similar mechanism.

32 **"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.**

33 (a) Tax Election. – The credits provided in this Article are allowed against the
34 franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4
35 of this Chapter. The credit for investing in central administrative office property
36 provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in
37 Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be
38 claimed when filing the return on which the first installment of the credit is claimed. This
39 election is binding. Any carryforwards of the credit must be claimed against the same tax.

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

1 carryforwards, claimed by the taxpayer under this Article against each tax for the taxable
2 year. Any unused portion of ~~the a credit with respect to a large investment~~ may be carried
3 forward for the succeeding ~~five years. 20 years.~~ Any unused portion of any other credit
4 may be carried forward for the succeeding five years.

5 **"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.**

6 (a) Application. – To claim the credits allowed by this Article, the taxpayer must
7 provide with the tax return the certification of the Secretary of Commerce that the
8 taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each
9 credit. A taxpayer shall apply to the Secretary of Commerce for certification of
10 eligibility. The application must be on a form provided by the Secretary of Commerce
11 and must contain any information necessary for the Secretary of Commerce to determine
12 whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce
13 determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4
14 with respect to a credit, the Secretary shall issue a certificate describing the location with
15 respect to which the credit is claimed, outlining the eligibility requirements for the credit,
16 and stating that the taxpayer meets the eligibility requirements. If the Secretary of
17 Commerce determines that the taxpayer does not meet all of the eligibility requirements
18 of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in
19 writing of the eligibility requirements the taxpayer fails to meet. The Secretary of
20 Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that
21 are needed to carry out the Secretary of Commerce's responsibilities under this section.

22 (a1) Fee. – When filing an application for certification under this section, the
23 taxpayer must pay the Department of Commerce a fee of seventy-five dollars (\$75.00).
24 Fees collected under this subsection are receipts of the Department of Commerce.

25 (b) Reports. – The Department of Commerce shall report to the Department of
26 Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each
27 year the following information for the 12-month period ending the preceding April 1:

- 28 (1) The number of applications for each credit allowed in this Article.
- 29 (2) The number and enterprise tier area of new jobs with respect to which
30 credits were applied for.
- 31 (3) The cost of machinery and equipment with respect to which credits were
32 applied for.

33 **"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.**

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

41 **"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.**

42 (a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-
43 129.4, has five or more employees for at least 40 weeks during the taxable year, and hires

1 an additional full-time employee during that year to fill a position located in this State is
 2 allowed a credit for creating a new full-time job. The amount of the credit for each new
 3 full-time job created is set out in the table below and is based on the enterprise tier of the
 4 area in which the position is ~~located~~: located. In addition, if the position is located in a
 5 development zone, the amount of the credit is increased by four thousand dollars (\$4,000)
 6 per job.

7 Area Enterprise Tier	Amount of Credit
8 Tier One	\$12,500
9 Tier Two	4,000
10 Tier Three	3,000
11 Tier Four	1,000
12 Tier Five	500

13 A position is located in an area if more than fifty percent (50%) of the employee's
 14 duties are performed in the area. The credit may not be taken in the taxable year in which
 15 the additional employee is hired. Instead, the credit shall be taken in equal installments
 16 over the four years following the taxable year in which the additional employee was hired
 17 and shall be conditioned on the continued employment by the taxpayer of the number of
 18 full-time employees the taxpayer had upon hiring the employee that caused the taxpayer
 19 to qualify for the credit.

20 If, in one of the four years in which the installment of a credit accrues, the number of
 21 the taxpayer's full-time employees falls below the number of full-time employees the
 22 taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires
 23 and the taxpayer may not take any remaining installment of the credit. The taxpayer may,
 24 however, take the portion of an installment that accrued in a previous year and was
 25 carried forward to the extent permitted under G.S. 105-129.5.

26 Jobs transferred from one area in the State to another area in the State shall not be
 27 considered new jobs for purposes of this section. If, in one of the four years in which the
 28 installment of a credit accrues, the position filled by the employee is moved to an area in
 29 a higher- or lower-numbered enterprise tier, or is moved from a development zone to an
 30 area that is not a development zone, the remaining installments of the credit shall be
 31 calculated as if the position had been created initially in the area to which it was moved.

32 (b) Repealed by Session Laws 1989, c. 111, s. 1.

33 (b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

34 (d) Planned Expansion. – A taxpayer that signs a letter of commitment with the
 35 Department of Commerce to create at least twenty new full-time jobs in a specific area
 36 within two years of the date the letter is signed qualifies for the credit in the amount
 37 allowed by this section based on the area's enterprise tier and development zone
 38 designation for that year even though the employees are not hired that year. The credit
 39 shall be available in the taxable year after at least twenty employees have been hired if
 40 the hirings are within the two-year commitment period. The conditions outlined in
 41 subsection (a) apply to a credit taken under this subsection except that if the area is
 42 redesignated to a higher-numbered enterprise tier or loses its development zone
 43 designation after the year the letter of commitment was signed, the credit is allowed

1 based on the area's enterprise tier and development zone designation for the year the letter
 2 was signed. If the taxpayer does not hire the employees within the two-year period, the
 3 taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit
 4 under subsection (a) in the year any new employees are hired, the taxpayer may take the
 5 credit under that subsection.

6 (e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for
 7 taxable years beginning on or after January 1, 1996.

8 **"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery**
 9 **and equipment.**

10 (a) Credit. – If a taxpayer that has purchased or leased eligible machinery and
 11 equipment places it in service in this State during the taxable year, the taxpayer is
 12 allowed a credit equal to seven percent (7%) of the excess of the eligible investment
 13 amount over the applicable threshold. Machinery and equipment is eligible if is
 14 capitalized by the taxpayer for tax purposes under the Code and is not leased to another
 15 party. In addition, in the case of a large investment, machinery and equipment that is not
 16 capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The
 17 credit may not be taken for the taxable year in which the equipment is placed in service
 18 but shall be taken in equal installments over the seven years following the taxable year in
 19 which the equipment is placed in service.

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

27 (c) Threshold. – The applicable threshold is the appropriate amount set out in the
 28 following table based on the enterprise tier of the area where the eligible machinery and
 29 equipment are placed in service during the taxable year. If the taxpayer places eligible
 30 machinery and equipment in service in more than one area during the taxable year, the
 31 threshold applies separately to the eligible machinery and equipment placed in service in
 32 each area. If the taxpayer places eligible machinery and equipment in service in an area
 33 over the course of a two-year period, the applicable threshold for the second taxable year
 34 is reduced by the eligible investment amount for the previous taxable year.

Enterprise Tier	Threshold
Tier One	\$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000

40 Tier Five 1,000,000(d) Expiration. – If, in one of the seven years in which the
 41 installment of a credit accrues, the machinery and equipment with respect to which the
 42 credit was claimed are disposed of, taken out of service, or moved out of State, the credit
 43 expires and the taxpayer may not take any remaining installment of the credit. The

1 taxpayer may, however, take the portion of an installment that accrued in a previous year
2 and was carried forward to the extent permitted under G.S. 105-129.5.

3 If, in one of the seven years in which the installment of a credit accrues, the
4 machinery and equipment with respect to which the credit was claimed are moved to an
5 area in a higher-numbered enterprise tier, or are moved from a development zone to an
6 area that is not a development zone, the remaining installments of the credit are allowed
7 only to the extent they would have been allowed if the machinery and equipment had
8 been placed in service initially in the area to which they were moved.

9 (e) Planned Expansion. – A taxpayer that signs a letter of commitment with the
10 Department of Commerce to place specific eligible machinery and equipment in service
11 in an area within two years after the date the letter is signed may, in the year the eligible
12 machinery and equipment are placed in service in that area, calculate the credit for which
13 the taxpayer qualifies based on the area's enterprise tier and development zone
14 designation for the year the letter was signed. All other conditions apply to the credit, but
15 if the area has been redesignated to a higher-numbered enterprise tier or has lost its
16 development zone designation after the year the letter of commitment was signed, the
17 credit is allowed based on the area's enterprise tier and development zone designation for
18 the year the letter was signed. If the taxpayer does not place part or all of the specified
19 eligible machinery and equipment in service within the two-year period, the taxpayer
20 does not qualify for the benefit of this subsection with respect to the machinery and
21 equipment not placed in service within the two-year period. However, if the taxpayer
22 qualifies for a credit in the year the eligible machinery and equipment are placed in
23 service, the taxpayer may take the credit for that year as if no letter of commitment had
24 been signed pursuant to this subsection.

25 **"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and**
26 **development.**

27 (a) General Credit. – A taxpayer that claims for the taxable year a federal income
28 tax credit under section ~~41~~41(a) of the Code for increasing research activities is allowed
29 a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's
30 expenditures for increasing research activities. The State's apportioned share of a
31 taxpayer's expenditures for increasing research activities is the excess of the taxpayer's
32 qualified research expenses for the taxable year over the base amount, as determined
33 under section 41 of the Code, multiplied by a percentage equal to the ratio of the
34 taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's
35 total qualified research expenses for the taxable year.

36 (b) Alternative Credit. – A taxpayer that claims the alternative incremental credit
37 under section 41(c)(4) of the Code for increasing research activities is allowed a credit
38 equal to twenty-five percent (25%) of the State's apportioned share of the federal credit
39 claimed. The State's apportioned share of the federal credit claimed is the amount of the
40 alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for
41 the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified
42 research expenses in this State for the taxable year to the taxpayer's total qualified
43 research expenses for the taxable year. For the purpose of this subsection, the amount of

1 the alternative incremental credit claimed by a taxpayer is determined without regard to
2 any reduction elected under section 280C(c) of the Code.

3 (c) Definitions. – As used in this section, the terms 'qualified research expenses'
4 and 'base amount' have the meaning provided in section 41 of the Code.

5 **"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.**

6 (a) Credit. – A taxpayer that provides worker training for five or more of its
7 eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%)~~
8 ~~of its eligible expenditures for the wages paid to the eligible employees during the~~
9 ~~training. Wages paid to an employee performing his or her job while being trained are not~~
10 ~~eligible for the credit.~~ For positions located in an enterprise tier one area, the credit may
11 not exceed one thousand dollars (\$1,000) per employee trained during the taxable year.
12 For other positions, the credit may not exceed five hundred dollars (\$500.00) per
13 employee trained during the taxable year. A position is located in an area if more than
14 fifty percent (50%) of the employee's duties are performed in the area.

15 (b) Eligibility. —~~The eligibility of a taxpayer's expenditures and employees is~~
16 ~~determined as provided in G.S. 105-129.4. An employee is eligible if the employee is in a~~
17 ~~full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C.~~
18 ~~§ 213(a)(1) and meets one or more of the following conditions:~~

19 (1) The employee occupies a job for which the taxpayer is eligible to claim
20 an installment of the credit for creating jobs.

21 (2) The employee is being trained to operate machinery and equipment for
22 which the taxpayer is eligible to claim an installment of the credit for
23 investing in machinery and equipment.

24 **"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central**
25 **administrative office property.**

26 (a) Credit. – If a taxpayer that has purchased or leased real property in this State
27 begins to use the property as a central administrative office during the taxable year, the
28 taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment
29 amount. The eligible investment amount is the lesser of (i) the cost of the property and
30 (ii) the amount by which the cost of all of the property the taxpayer is using in this State
31 as central administrative offices on the last day of the taxable year exceeds the cost of all
32 of the property the taxpayer was using in this State as central administrative offices on
33 the last day of the base year. The base year is that year, of the three immediately
34 preceding taxable years, in which the taxpayer was using the most property in this State
35 as central administrative offices. In the case of property that is leased, the cost of the
36 property is not determined as provided in G.S. 105-129.2 but is considered to be the
37 taxpayer's lease payments over a seven-year period, plus any expenditures made by the
38 taxpayer to improve the property before it is used as the taxpayer's central administrative
39 office if the expenditures are not reimbursed or credited by the lessor. The maximum
40 credit allowed a taxpayer under this section for property used as a central administrative
41 office is five hundred thousand dollars (\$500,000). The entire credit may not be taken for
42 the taxable year in which the property is first used as a central administrative office but
43 shall be taken in equal installments over the seven years following the taxable year in

1 which the property is first used as a central administrative office. The basis in any real
2 property for which a credit is allowed under this section shall be reduced by the amount
3 of credit allowable.

4 (b) Mixed Use Property. – If the taxpayer uses only part of the property as the
5 taxpayer's central administrative office, the amount of the credit allowed under this
6 section is reduced by multiplying it by a fraction the numerator of which is the square
7 footage of the property used as the taxpayer's central administrative office and the
8 denominator of which is the total square footage of the property.

9 (c) Expiration. – If, in one of the seven years in which the installment of a credit
10 accrues, the property with respect to which the credit was claimed is no longer used as a
11 central administrative office, the credit expires and the taxpayer may not take any
12 remaining installment of the credit. If, in one of the seven years in which the installment
13 of a credit accrues, part of the property with respect to which the credit was claimed is no
14 longer used as a central administrative office, the remaining installments of the credit
15 shall be reduced by multiplying it by the fraction described in subsection (b) of this
16 section. If, in one of the seven years in which the installment of a credit accrues, the total
17 number of employees the taxpayer employs at all of its central administrative offices in
18 this State drops by 40 or more, the credit expires and the taxpayer may not take any
19 remaining installment of the credit.

20 In each of these cases, the taxpayer may nonetheless take the portion of an installment
21 that accrued in a previous year and was carried forward to the extent permitted under
22 G.S. 105-129.5."

23 Section 2. G.S. 105-129.15(2) reads as rewritten:

24 "(2) Cost. —~~Determined~~In the case of property owned by the taxpayer, cost
25 is determined pursuant to regulations adopted under section 1012 of the
26 Code, subject to the limitation on cost provided in section 179 of the
27 Code. In the case of property the taxpayer leases from another, cost is
28 value as determined pursuant to G.S. 105-130.4(j)(2)."

29 Section 3. G.S. 143B-437.04 reads as rewritten:

30 "**§ 143B-437.04. Economic-Community development block grants.**

31 (a) The Department of Commerce shall adopt guidelines for the awarding of
32 Community Development Block Grants ~~for economic development that will ensure that~~
33 ~~no to ensure that:~~

34 (1) No local match is required for grants awarded for projects located in
35 enterprise tier one areas as defined in G.S. ~~105-129.3 and, to 105-129.3.~~

36 (2) To the extent practicable, ~~that~~ priority consideration for grants is given
37 to projects located in enterprise tier one areas as defined in G.S. ~~105-~~
38 ~~129.3.~~ 105-129.3 or in development zones that have met the conditions
39 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 zone under G.S. 105-129.3A, the governing body of the city in which the
42 zone is located must adopt a strategy to improve the zone and establish a development

1 zone committee to oversee the strategy. The strategy and the committee must conform
2 with requirements established by the Secretary of Commerce."

3 **PART II. INFRASTRUCTURE FUNDS**

4 Section 4. It is the intent of the General Assembly to appropriate funds from
5 the General Fund to the Department of Commerce for the 1998-99 fiscal year to be
6 allocated to the Utility Account of the Industrial Development Fund for use in accordance
7 with G.S. 143B-437.01(b1).

8 Section 5. It is the intent of the General Assembly to appropriate funds from
9 the General Fund to the Department of Commerce for the 1998-99 fiscal year to be
10 allocated to the Industrial Development Fund for use in accordance with G.S. 143B-
11 437.01(a).

12 Section 6. G.S. 143B-437.01 reads as rewritten:

13 **"§ 143B-437.01. Industrial Development Fund.**

14 (a) Creation and Purpose of Fund. – There is created in the Department of
15 Commerce the Industrial Development Fund to provide funds to assist the local
16 government units of the most economically distressed counties in the State in creating
17 jobs in certain industries. The Department of Commerce shall adopt rules providing for
18 the administration of the program. Those rules shall include the following provisions,
19 which shall apply to each grant from the fund:

20 (1) The funds shall be used for (i) installation of or purchases of equipment
21 for ~~manufacturing or processing, eligible industries,~~ (ii) structural
22 repairs, improvements, or renovations of existing buildings to be used
23 for expansion of ~~manufacturing or processing, eligible industries,~~ or (iii)
24 construction of or improvements to new or existing water, sewer, gas, or
25 electrical utility distribution lines or equipment for existing or new or
26 proposed industrial buildings to be used for ~~manufacturing or~~
27 ~~processing operations, eligible industries.~~ To be eligible for funding,
28 the water, sewer, gas, or electrical utility lines or facilities shall be
29 located on the site of the building or, if not located on the site, shall be
30 directly related to the operation of the specific ~~manufacturing or~~
31 ~~processing eligible industrial activity.~~

32 (1a) The funds shall be used for projects located in economically distressed
33 counties except that the Secretary of Commerce may use up to one
34 hundred thousand dollars (\$100,000) to provide emergency economic
35 development assistance in any county that is documented to be
36 experiencing a major economic dislocation.

37 (2) The funds shall be used by the city and county governments for projects
38 that will directly result in the creation of new jobs. The funds shall be
39 expended at a maximum rate of ~~four thousand dollars (\$4,000) five~~
40 ~~thousand dollars (\$5,000)~~ per new job created up to a maximum of ~~four~~
41 ~~hundred thousand dollars (\$400,000) five hundred thousand dollars~~
42 (\$500,000) per project.

- 1 (3) There shall be no local match requirement if the project is located in an
2 enterprise tier one area as defined in G.S. 105-129.3.
- 3 (4) The Department may authorize a local government that receives funds
4 under this section to use up to two percent (2%) of the funds, if
5 necessary, to verify that the funds are used only in accordance with law
6 and to otherwise administer the grant or loan.
- 7 (a1) Definitions. – The following definitions apply in this section:
- 8 (1) Air courier services. – A person is engaged in the air courier services
9 business if the person is primarily engaged in furnishing air delivery of
10 individually addressed letters, parcels, and packages, except by the
11 United States Postal Service.
- 12 (1a) Central administrative office. – Defined in the North American Industry
13 Classification System adopted by the United States Office of
14 Management and Budget.
- 15 (1b) Data processing. – Defined in the North American Industry
16 Classification System adopted by the United States Office of
17 Management and Budget.
- 18 (1c) Economically distressed county. – A county designated as an enterprise
19 tier one, two, or three area pursuant to G.S. 105-129.3.
- 20 (1d) Eligible industry. – A central administrative office or a person engaged
21 in the business of air courier services, data processing, manufacturing,
22 or warehousing and wholesale trade.
- 23 (2) Major economic dislocation. – The actual or imminent loss of 500 or
24 more manufacturing jobs in the county or of a number of manufacturing
25 jobs equal to at least ten percent (10%) of the existing manufacturing
26 workforce in the county.
- 27 (3) ~~Manufacturing and processing.~~ Manufacturing. – Defined in the
28 ~~Standard Industrial Classification Manual issued by the United States~~
29 ~~Bureau of the Census.~~ North American Industry Classification System
30 adopted by the United States Office of Budget and Management.
- 31 (4) Warehousing and wholesale trade. – Defined in the North American
32 Industry Classification System adopted by the United States Office of
33 Management and Budget.
- 34 (b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.
- 35 (b1) Utility Account. – There is created within the Industrial Development Fund a
36 special account to be known as the Utility Account to provide funds to assist the local
37 government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3,
38 in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data~~
39 ~~processing, as defined in the Standard Industrial Classification Manual issued by the~~
40 ~~United States Bureau of the Census.~~ eligible industries. The Department of Commerce
41 shall adopt rules providing for the administration of the program. Except as otherwise
42 provided in this subsection, those rules shall be consistent with the rules adopted with
43 respect to the Industrial Development Fund. The rules shall provide that the funds in the

1 Utility Account may be used only for construction of or improvements to new or existing
2 water, sewer, gas, or electrical utility distribution lines or equipment for existing or new
3 or proposed industrial buildings to be used for ~~industrial operations in manufacturing or~~
4 ~~processing, warehousing or distribution, or data processing.~~ eligible industrial operations.
5 To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities
6 shall be located on the site of the building or, if not located on the site, shall be directly
7 related to the operation of the specific industrial activity. There shall be no maximum
8 funding amount per new job to be created or per project.

9 (c) Reports. – The Department of Commerce shall report annually to the General
10 Assembly concerning the applications made to the fund and the payments made from the
11 fund and the impact of the payments on job creation in the State. The Department of
12 Commerce shall also report quarterly to the Joint Legislative Commission on
13 Governmental Operations and the Fiscal Research Division on the use of the moneys in
14 the fund, including information regarding to whom payments were made, in what
15 amounts, and for what purposes.

16 (c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section,
17 the Department of Commerce shall report annually to the General Assembly concerning
18 the payments made from the Utility Account and the impact of the payments on job
19 creation in the State. The Department of Commerce shall also report quarterly to the Joint
20 Legislative Commission on Governmental Operations and the Fiscal Research Division
21 on the use of the moneys in the Utility Account including information regarding to whom
22 payments were made, in what amounts, and for what purposes.

23 (d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

24 PART III. AIR COURIER HUBS

25 Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

26 "(6a) Interstate air courier. – A person engaged in the air courier services
27 business, as defined in G.S. 105-129.2, in interstate commerce.

28 "(6b) Hub. – The airport in this State (i) to which an air courier has
29 allocated under G.S. 105-388 more than sixty percent (60%) of its
30 aircraft value apportioned to this State and (ii) at which the air
31 courier receives packages from consolidation locations for intrastate
32 and interstate sorting and distribution."

33 Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision
34 to read:

35 "j. Sales of the following items to an interstate air courier for use at
36 its hub: materials handling equipment, racking systems, and
37 related parts and accessories, for the storage or handling and
38 movement of tangible personal property at an airport or in a
39 warehouse or distribution facility."

40 Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

41 "(44) Sales of the following items to an interstate air courier for use at its
42 hub: aircraft lubricants, aircraft repair parts, and aircraft
43 accessories."

1 Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

2 "(24a) Aircraft that is owned or leased by an interstate air courier, is
3 apportioned under G.S. 105-337 to the air courier's hub in this State, and
4 is used in the air courier's operations in this State. For the purpose of
5 this subdivision, the terms 'interstate air courier' and 'hub' have the
6 meanings provided in G.S. 105-164.3."

7 Section 11(a). The Piedmont Triad International Airport Authority may
8 contract for design and construction of an air freight distribution facility on Airport
9 property without being subject to the requirements of Article 8 of Chapter 143 of the
10 General Statutes.

11 Section 11(b). The Piedmont Triad International Airport Authority may
12 contract for supplies, materials, equipment, and contractual services of the Authority
13 related to an air freight distribution facility on Airport property without being subject to
14 the requirements of Article 3 of Chapter 143 of the General Statutes.

15 **PART IV. RECYCLING INDUSTRY**

16 Section 12. Chapter 105 of the General Statutes is amended by adding a new
17 Article to read:

18 **"ARTICLE 3C.**

19 **"TAX INCENTIVES FOR RECYCLING FACILITIES.**

20 **"§ 105-129.25. Definitions.**

21 The following definitions apply in this Article:

- 22 (1) Reserved.
- 23 (2) Reserved.
- 24 (3) Large recycling facility. – A recycling facility that qualifies under G.S.
25 105-129.26(b).
- 26 (4) Machinery and equipment. – Engines, machinery, tools, and implements
27 used or designed to be used in the business for which the credit is
28 claimed. The term does not include real property as defined in G.S. 105-
29 273 or rolling stock as defined in G.S. 105-333.
- 30 (5) Major recycling facility. – A recycling facility that qualifies under G.S.
31 105-129.26(a).
- 32 (6) Owner. – A person who owns or leases a recycling facility.
- 33 (7) Post-consumer waste material. – Any product that was generated by a
34 business or consumer, has served its intended end use, and has been
35 separated from the solid waste stream for the purpose of recycling. The
36 term includes material acquired by a recycling facility either directly or
37 indirectly, such as through a broker or an agent.
- 38 (8) Purchase. – Defined in section 179 of the Code.
- 39 (9) Recycling facility. – A manufacturing plant at least three-fourths of
40 whose products are made of at least fifty percent (50%) post-consumer
41 waste material measured by weight or volume. The term includes real
42 and personal property located at or on land in the same county and
43 reasonably near the plant site and used to perform business functions

1 related to the plant or to transport materials and products to or from the
2 plant. The term also includes utility infrastructure and transportation
3 infrastructure to and from the plant.

4 **"§ 105-129.26. Qualification; forfeiture.**

5 (a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits
6 provided in this Article and in Article 5 of this Chapter for major recycling facilities if it
7 meets all of the following conditions:

8 (1) The facility is located in an area that, at the time the owner began
9 construction of the facility, was an enterprise tier one area pursuant to
10 G.S. 105-129.3.

11 (2) The Secretary of Commerce has certified that the owner will, by the end
12 of the fourth year after the year the owner begins construction of the
13 recycling facility, invest at least three hundred million dollars
14 (\$300,000,000) in the facility and create at least 250 new, full-time jobs
15 at the facility.

16 (3) The jobs at the recycling facility meet the wage standard in effect
17 pursuant to G.S. 105-129.4(b) as of the date the owner begins
18 construction of the facility.

19 (b) Large Recycling Facility. – A recycling facility qualifies for the tax credit
20 provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following
21 conditions:

22 (1) The facility is located in an area that, at the time the owner began
23 construction of the facility, was an enterprise tier one area pursuant to
24 G.S. 105-129.3.

25 (2) The Secretary of Commerce has certified that the owner will, by the end
26 of the second year after the year the owner begins construction of the
27 recycling facility, invest at least one hundred fifty million dollars
28 (\$150,000,000) in the facility and create at least 155 new, full-time jobs
29 at the facility.

30 (3) The jobs at the recycling facility meet the wage standard in effect
31 pursuant to G.S. 105-129.4(b) as of the date the owner begins
32 construction of the facility.

33 (c) Forfeiture. – If the owner of a large or major recycling facility fails to make the
34 required minimum investment or create the required number of new jobs within the
35 period certified by the Secretary of Commerce under this section, the recycling facility no
36 longer qualifies for the applicable recycling facility tax benefits provided in this Article
37 and in Article 5 of this Chapter and forfeits all tax benefits previously received under
38 those Articles. Forfeiture does not occur, however, if the failure was due to events
39 beyond the owner's control. Upon forfeiture of tax benefits previously received, the
40 owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of
41 all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits
42 received plus interest at the rate established in G.S. 105-241.1(i), computed from the date
43 the taxes would have been due if the tax benefits had not been received. The tax and

1 interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax
2 and interest is subject to the penalties provided in G.S. 105-236.

3 (d) Substantiation. – To claim a credit allowed by this Article, the owner must
4 provide any information required by the Secretary of Revenue. Every owner claiming a
5 credit under this Article shall maintain and make available for inspection by the Secretary
6 of Revenue any records the Secretary considers necessary to determine and verify the
7 amount of the credit to which the owner is entitled. The burden of proving eligibility for
8 the credit and the amount of the credit shall rest upon the owner, and no credit shall be
9 allowed to an owner that fails to maintain adequate records or to make them available for
10 inspection.

11 (e) Reports. – The Department of Commerce shall report to the Fiscal Research
12 Division of the General Assembly by May 1 of each year the following information for
13 the 12-month period ending the preceding April 1:

14 (1) The number and location of large and major recycling facilities
15 qualified under this Article.

16 (2) The number of new jobs created by each recycling facility.

17 (3) The amount of investment in each recycling facility.

18 (4) The amount of reinvestment credit refunded to each major recycling
19 facility under G.S. 105-129.28.

20 **"§ 105-129.27. Credit for investing in large or major recycling facility.**

21 (a) Credit. – An owner that purchases or leases machinery and equipment for a
22 major recycling facility in this State during the taxable year is allowed a credit equal to
23 fifty percent (50%) of the amount payable by the owner during the taxable year to
24 purchase or lease the machinery and equipment. An owner that purchases or leases
25 machinery and equipment for a large recycling facility in this State during the taxable
26 year is allowed a credit equal to twenty percent (20%) of the amount payable by the
27 owner during the taxable year to purchase or lease the machinery and equipment.

28 (b) Taxes Credited. – The credit provided in this section is allowed against the
29 franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of
30 Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are
31 subtracted before the credit allowed by this section.

32 (c) Carryforwards. – The credit provided in this section may not exceed the
33 amount of tax against which it is claimed for the taxable year, reduced by the sum of all
34 other credits allowed against that tax, except tax payments made by or on behalf of the
35 owner. Any unused portion of the credit may be carried forward for the succeeding 25
36 years.

37 (d) Change in Ownership of Facility. – The sale, merger, acquisition, or
38 bankruptcy of a recycling facility, or any transaction by which the facility is reformulated
39 as another business, does not create new eligibility in a succeeding owner with respect to
40 a credit for which the predecessor was not eligible under this section. A successor
41 business may, however, take any carried-over portion of a credit that its predecessor
42 could have taken if it had a tax liability.

1 (e) Forfeiture. – If any machinery or equipment for which a credit was allowed
2 under this section is not placed in service within 30 months after the credit was allowed,
3 the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all
4 past taxes avoided as a result of the credit plus interest at the rate established under G.S.
5 105-241.1(i), computed from the date the taxes would have been due if the credit had not
6 been allowed. The past taxes and interest are due 30 days after the date the credit is
7 forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject
8 to the penalties provided in G.S. 105-236.

9 (f) No Double Credit. – A recycling facility that is eligible for the credit allowed
10 in this section is not allowed the credit for investing in machinery and equipment
11 provided in G.S. 105-129.9.

12 **"§ 105-129.28. Credit for reinvestment.**

13 (a) Credit. – A major recycling facility that is accessible by neither ocean barge
14 nor ship and that transports materials to the facility or products away from the facility is
15 allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its
16 additional transportation and transloading expenses incurred with respect to the materials
17 and products due to its inability to use ocean barges or ships. The additional expenses for
18 which credit is allowed are expenses due to using river barges and expenses due to
19 having to use another mode of transportation because the quantity that is transported by
20 river barge is insufficient to meet the facility's needs. In order to claim the credit allowed
21 by this section, the facility must provide the Secretary of Commerce audited
22 documentation of the amount of its additional transportation and transloading expenses
23 incurred during the taxable year.

24 (b) Cap. – The credit allowed to a major recycling facility under this section for
25 the taxable year may not exceed the applicable annual cap provided in the following
26 table:

<u>Taxable Year</u>	<u>Cap</u>
1998	\$ 150,000
1999	\$ 640,000
2000	\$ 3,860,000
2001	\$ 8,050,000
2002	\$ 9,550,000
2003	\$10,100,000
2004-2007	\$10,400,000

35 (c) Reduction. – For the first ten taxable years after the owner begins transporting
36 materials and products to and from the major recycling facility, the credit allowed by this
37 section must be reduced by the amount of credit allowed in previous years that was used
38 for a purpose other than an allowable purpose under subsection (d) of this section, as
39 certified by the Secretary of Commerce.

40 (d) Use of Credited Amount. – For the first ten taxable years after the owner
41 begins construction of the major recycling facility, the owner must use the amount of
42 credit allowed under this section to pay for (i) investment in rail or roads associated with
43 the facility, (ii) investment in water system infrastructure designed to reduce the expense

1 of transporting materials and products to and from the recycling facility, and (iii)
2 investment in land and infrastructure for other industrial sites located in the same county
3 as the recycling facility. If the owner determines that there are no reasonable economic
4 opportunities in a given year to use the total amount of credit for the expenditures
5 described above, the owner may use the excess for investment at or in connection with
6 the recycling facility above the initial required investment of three hundred million
7 dollars (\$300,000,000).

8 Expenses incurred for the purposes allowed in this subsection during a taxable year in
9 the ten-year period may be counted toward a credit allowed in a later taxable year in the
10 ten-year period. If the owner is not able to use the full amount of the credit during a
11 taxable year for any of the purposes allowed by this subsection, the excess may be used
12 for these purposes in subsequent taxable years.

13 The owner must provide the Secretary of Commerce with annual audited
14 documentation demonstrating that the amount of credit received under this section during
15 the previous twelve-month period has not been used for a purpose inconsistent with this
16 subsection. If the Secretary of Commerce determines that the owner has used any of the
17 credit for a purpose that is inconsistent with the requirements of this subsection, the
18 Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and
19 the credit allowed the owner under this section for the following taxable year shall be
20 reduced by that amount in accordance with subsection (c) of this section.

21 After the end of the ten-year period, the amount of any credit allowed under this
22 section that has not yet been used may be used for investment at or in connection with the
23 recycling facility above the initial required investment of three hundred million dollars
24 (\$300,000,000).

25 (e) Credit Refundable. – If the credit allowed by this section exceeds the amount
26 of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the
27 sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The
28 refundable excess is governed by the provisions governing a refund of an overpayment
29 by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing
30 the amount of tax against which multiple credits are allowed, nonrefundable credits are
31 subtracted before refundable credits."

32 Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b)
33 and adding a new subdivision to read:

34 "(8) Major recycling facility. – Defined in G.S. 105-129.25."

35 Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-
36 subdivision to read:

37 "j. Sales to a major recycling facility of the following tangible
38 personal property for use in connection with the facility: cranes,
39 structural steel crane support systems, foundations related to the
40 cranes and support systems, port and dock facilities, rail
41 equipment, and material handling equipment."

42 Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to
43 read:

1 "(10a) Sales to a major recycling facility of (i) lubricants and other
2 additives for motor vehicles or machinery and equipment used at
3 the facility and (ii) materials, supplies, parts, and accessories, other
4 than machinery and equipment, that are not capitalized by the
5 taxpayer and are used or consumed in the manufacturing and
6 material handling processes at the facility.

7 (10b) Sales to a major recycling facility of electricity used at the facility."

8 Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

9 "(g) Major Recycling Facilities. – The owner of a major recycling facility is
10 allowed an annual refund of sales and use taxes paid by it under this Article on building
11 materials, building supplies, fixtures, and equipment that become a part of the real
12 property of the recycling facility. Liability incurred indirectly by the owner for sales and
13 use taxes on these items is considered tax paid by the owner. A request for a refund must
14 be in writing and must include any information and documentation required by the
15 Secretary. A request for a refund is due within six months after the end of the major
16 recycling facility's fiscal year. Refunds applied for after the due date are barred."

17 Section 17. G.S. 105-164.14(f) reads as rewritten:

18 "(f) Information to Counties. – Upon written request of a county, the Secretary
19 shall, within 30 days after the request, provide the designated county official a list of each
20 claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (e)~~
21 (b), (c), or (g) of this section of at least one thousand dollars (\$1,000) of tax paid to the
22 county. The list shall include the name and address of each claimant and the amount of
23 the refund it has received from that county. Upon written request of a county, a claimant
24 that has received a refund under subsection ~~(b) or (e)~~ (b), (c), or (g) of this section shall
25 provide the designated county official a copy of the request for the refund and any
26 supporting documentation requested by the county to verify the request. For the purpose
27 of this subsection, the designated county official is the chair of the board of county
28 commissioners or a county official designated in a resolution adopted by the board.
29 Information provided to a county under this subsection is not a public record and may not
30 be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a
31 refund it has received under subsection ~~(b) or (e)~~ (b), (c), or (g) of this section is
32 incorrect, it shall file an amended request for the refund."

33 Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to
34 read:

35 "d. Real or personal property that is used or, if under
36 construction, is to be used by a major recycling facility
37 as defined in G.S. 105-129.25 predominantly for
38 recycling or resource recovering of or from solid waste,
39 if the Department of Environment and Natural
40 Resources furnishes a certificate to the tax supervisor of
41 the county in which the property is situated stating the
42 Department of Environment and Natural Resources has
43 found that the described property has been or will be

1 constructed or installed for use by a major recycling
2 facility, complies or will comply with the rules of the
3 Department of Environment and Natural Resources, and
4 has, or will have as a purpose recycling or resource
5 recovering of or from solid waste."

6 Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed
7 effective for taxable years beginning on or after January 1, 2008. This section does not
8 affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S.
9 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund
10 or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its
11 repeal.

12 The sole purpose of this ten-year sunset provision is to allow a determination
13 to be made whether any major recycling facility continues to experience additional
14 transportation and transloading expenses due to its inability to use ocean barges or ships
15 to transport materials and products to and from the facility. It is the expectation and
16 intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is
17 determined that, based on audited documentation submitted by a major recycling facility
18 and verified by the Secretary of Commerce, that any major recycling facility continues to
19 experience these additional transportation and transloading expenses as of 2008.

20 **PART V. EFFECTIVE DATES**

21 Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes
22 effective January 1, 1999, and applies to applications filed on or after that date. The
23 amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable
24 years beginning on or after January 1, 1998. Section 3 of this act becomes effective
25 January 1, 1999. The remainder of Part I of this act is effective for taxable years
26 beginning on or after January 1, 1999.

27 Section 21. Part II of this act becomes effective July 1, 1998.

28 Section 22. Section 10 of this act is effective for taxes imposed for taxable
29 years beginning on or after July 1, 2001. Section 11 of this act becomes effective January
30 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes
31 effective January 1, 2001, and applies to sales made on or after that date.

32 Section 23. Section 12 of this act is effective for taxable years beginning on or
33 after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998,
34 and apply to sales made on or after that date. Section 18 of this act is effective for taxes
35 imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV
36 of this act is effective when it becomes law.