

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 1224

Senate Finance Committee Substitute Adopted 7/16/14

Senate Finance Committee Substitute Adopted 7/22/14

Short Title: Local Sales Tax Options/Econ. Devpt. Changes.

(Public)

Sponsors:

Referred to:

May 28, 2014

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE TOTAL LOCAL GOVERNMENT SALES AND USE TAX RATE TO TWO AND ONE-HALF PERCENT; TO GIVE COUNTIES THE FLEXIBILITY TO USE UP TO ONE-HALF PERCENT OF THE LOCAL SALES AND USE TAX FOR PUBLIC TRANSPORTATION, FOR PUBLIC EDUCATION, FOR GENERAL PURPOSES, OR FOR A COMBINATION THEREOF; AND TO MAKE VARIOUS CHANGES TO TAX AND ECONOMIC DEVELOPMENT LAWS.

The General Assembly of North Carolina enacts:

PART I. LOCAL OPTION SALES TAX OPTIONS

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

"Article 43A.

"County Sales and Use Tax for Public Education.

"§ 105-513.1. Short title; purpose.

This Article is the County Sales and Use Tax for Public Education. Article 43 of this Chapter, Article 46 of this Chapter, and this Article give the counties of this State an opportunity to obtain an additional source of revenue with which to meet their needs. A county may choose to use this source of revenue to finance local public transportation systems, as provided in Article 43 of this Chapter, for public education needs, as provided in this Article, or for general purposes, as provided in Article 46 of this Chapter.

"§ 105-513.2. Levy.

(a) Referendum. – A tax levied under this Article must be approved in a referendum. The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local sales and use tax in the county at a rate of up to one-half percent (1/2%). The applicable rate must meet all of the conditions listed in this subsection. The election shall be held in accordance with the procedures of G.S. 163-287. The conditions are:

(1) It must be in an increment of one-quarter percent (1/4%).

(2) It must be at a rate that, if levied, would not result in a total local sales and use tax rate in the county in excess of two and one-half percent (2 1/2%).

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article shall be:

[] FOR [] AGAINST



1 Local sales and use tax at the [applicable rate stated in both words and as a percentage] in
2 addition to the current local sales and use taxes, to be used only for public education."

3 (c) Authority. – If the majority of those voting in a referendum held pursuant to this
4 Article vote for the levy of the tax, the board of commissioners of the county may, by
5 resolution and after 10 days' public notice, levy a local sales and use tax at the rate specified in
6 the ballot.

7 **"§ 105-513.3. Administration.**

8 Except as provided in this Article, the adoption, levy, collection, administration, and repeal
9 of these additional taxes must be in accordance with Article 39 of this Chapter. In applying the
10 provisions of Article 39 of this Chapter to this Article, references to "this Article" mean
11 "Article 43A of Chapter 105 of the General Statutes." G.S. 105-468.1 is an administrative
12 provision that applies to this Article. A tax levied under this Article does not apply to the sales
13 price of food that is exempt from tax pursuant to G.S. 105-164.13B or to the sales price of a
14 bundled transaction taxable pursuant to G.S. 105-467(a)(5a). The Secretary shall not divide the
15 amount allocated to a county between the county and the municipalities within the county.

16 **"§ 105-513.4. Use.**

17 A county may use the proceeds of a tax levied under this Article only for the following
18 purposes:

- 19 (1) Public school capital outlay purposes, as defined in G.S. 115C-426(f), or to
20 retire any indebtedness incurred by the county for these purposes.
- 21 (2) Salaries of classroom teachers, salaries of classroom teacher assistants, and
22 supplements of classroom teacher salaries. For the purposes of this section, a
23 classroom teacher is an employee of a local board of education employed as
24 a teacher who spends at least seventy percent (70%) of his or her work time
25 in classroom instruction, and a classroom teacher assistant is an employee of
26 a local board of education employed as a teacher assistant who spends at
27 least seventy percent (70%) of his or her work time assisting in a classroom.
- 28 (3) Financial support of community colleges, including funds to supplement
29 State financial support of community colleges."

30 **SECTION 1.2.(a)** G.S. 115C-429(b) reads as rewritten:

31 "(b) The board of county commissioners shall complete its action on the school budget
32 on or before July 1, or such later date as may be agreeable to the board of education. The
33 commissioners shall determine the amount of county revenues to be appropriated in the county
34 budget ordinance to the local school administrative unit for the budget year. The board of
35 county commissioners may, in its discretion, allocate part or all of its appropriation by purpose,
36 function, or project as defined in the uniform budget format. For allocations made by the board
37 of county commissioners for the purpose of or for a function related to instructional services,
38 the board of county commissioners may direct the amount of funds to be used for salaries of
39 classroom teachers, salaries of classroom teacher assistants, and supplements of classroom
40 teacher salaries. For the purposes of this section, a classroom teacher is an employee of a local
41 board of education employed as a teacher who spends at least seventy percent (70%) of his or
42 her work time in classroom instruction, and a classroom teacher assistant is an employee of a
43 local board of education employed as a teacher assistant who spends at least seventy percent
44 (70%) of his or her work time assisting in a classroom."

45 **SECTION 1.2.(b)** G.S. 115C-433(b) reads as rewritten:

46 "(b) If the board of county commissioners allocates part or all of its appropriations
47 pursuant to G.S. 115C-429(b), the board of education must obtain the approval of the board of
48 county commissioners for an amendment to the budget that does any of the following:

- 49 (1)(i) ~~increases~~ Increases or decreases expenditures from the capital outlay fund
50 for projects listed in G.S. 115C-426(f)(1) or ~~(2), or (ii)-(2).~~

1 (2) ~~increases—Increases~~ or decreases the amount of county appropriation
2 allocated to a purpose or function by twenty-five percent (25%) or more
3 from the amount contained in the budget ordinance adopted by the board of
4 county commissioners: ~~Provided, provided,~~ that at its discretion, the board
5 may in its budget ordinance specify a lesser percentage, so long as such
6 percentage is not less than ten ~~percent, percent~~ (10%).

7 (3) Decreases the amount of funds allocated for salaries of classroom teachers,
8 salaries of classroom teacher assistants, and supplements of classroom
9 teacher salaries. For the purposes of this section, a classroom teacher is an
10 employee of a local board of education employed as a teacher who spends at
11 least seventy percent (70%) of his or her work time in classroom instruction,
12 and a classroom teacher assistant is an employee of a local board of
13 education employed as a teacher assistant who spends at least seventy
14 percent (70%) of his or her work time assisting in a classroom."

15 **SECTION 1.3.(a)** G.S. 115D-55(a) reads as rewritten:

16 "(a) Approval of Budget by Local Tax-Levying Authority. – By a date fixed by the local
17 tax-levying authority, the budget shall be submitted to the local tax-levying authority for
18 approval of that portion within its authority as stated in G.S. 115D-54(b). On or before July 1,
19 or such later date as may be agreeable to the board of trustees, but in no instance later than
20 September 1, the local tax-levying authority shall determine the amount of county revenue to
21 be appropriated to an institution for the budget year. The local tax-levying authority may
22 allocate part or all of an appropriation by purpose, function, or project as defined in the budget
23 manual as adopted by the State Board of Community Colleges. The local tax-levying authority
24 may direct the use of funds appropriated to the institution derived from a tax levied under
25 Article 43A of Chapter 105 of the General Statutes.

26 The local tax-levying authority shall have full authority to call for all books, records, audit
27 reports, and other information bearing on the financial operation of the institution except
28 records dealing with specific persons for which the persons' rights of privacy are protected by
29 either federal or State law.

30 Nothing in this Article shall be construed to place a duty on the local tax-levying authority
31 to fund a deficit incurred by an institution through failure of the institution to comply with the
32 provisions of this Article or rules and regulations issued pursuant hereto."

33 **SECTION 1.3.(b)** G.S. 115D-58(b) reads as rewritten:

34 "(b) If the local tax-levying authority allocates part or all of an appropriation pursuant to
35 G.S. 115D-55, the board of trustees must obtain approval of the local tax-levying authority for
36 an amendment to the budget which does any of the following:

37 (1) ~~increases—Increases~~ or decreases the amount of that appropriation allocated to
38 a purpose, function, or project by twenty-five percent (25%) or more from
39 the amount contained in the budget ordinance adopted by the local
40 tax-levying authority or such lesser percentage as specified by the local
41 tax-levying authority in the original budget ordinance, so long as such
42 percentage is not less than ten percent (10%).

43 (2) Decreases the amount of the appropriation directed by the tax-levying
44 authority for a specific use from funds appropriated to the institution derived
45 from a tax levied under Article 43A of Chapter 105 of the General Statutes."

46 **SECTION 1.4.(a)** G.S. 105-506 reads as rewritten:

47 "**§ 105-506. Short title; purpose.**

48 This Article is the Local Government Public Transportation Sales Tax Act and may be cited
49 by that name. This ~~Article gives—Article, Article 43A of this Chapter, and Article 46 of this~~
50 Chapter give the counties and transportation authorities of this State an opportunity to obtain an
51 additional source of revenue with which to meet their ~~needs for financing—needs.~~ Counties and

1 transportation authorities may choose to use this source of revenue to finance local public
2 transportation systems.~~systems~~ under this Article, counties may choose to use this source of
3 revenue to finance public education needs, as provided in Article 43A of this Chapter, or
4 counties may choose to use this source of revenue for general purposes, as provided in Article
5 46 of this Chapter. It provides them with authority to levy sales and use taxes. All such taxes~~A~~
6 tax levied under this Article must be approved in a referendum."

7 **SECTION 1.4.(b)** Part 1 of Article 43 of Chapter 105 of the General Statutes is
8 amended by adding a new section to read:

9 **"§ 105-506.4. Tax rate.**

10 (a) Rate. – The applicable rate of local sales and use tax that may be levied under this
11 Article must meet all of the following conditions:

12 (1) It must be in an increment of one-quarter percent (1/4%).

13 (2) It must be at a rate that, if levied, would not result in a total local sales and
14 use tax rate in the county in excess of two and one-half percent (2 1/2%).

15 (b) Cap. – Except as provided in this subsection, a county's local sales and use tax rate
16 may not exceed two and one-half percent (2 1/2%). A county's local sales and use tax rate may
17 exceed two and one-half percent (2 1/2%) if the county conducted one or more advisory
18 referendums on or before December 31, 2012, in which a majority of the voters approved the
19 levy of a local sales and use tax resulting in a total local sales and use tax rate in the county of
20 two and three-quarters percent (2 3/4%). In no event may a county's local sales and use tax rate
21 exceed two and three-quarters percent (2 3/4%). If a county's local sales and use tax rate is two
22 and three-quarters percent (2 3/4%) on April 1, 2013, and the county repeals the levy of a tax
23 authorized under Subchapter VIII of this Chapter so that the county's local sales and use tax
24 rate falls below two and three-quarters percent (2 3/4%), the county may not enact a local sales
25 and use tax under this Subchapter that results in a county local sales and use tax rate that
26 exceeds two and one-half percent (2 1/2%)."

27 **SECTION 1.4.(c)** G.S. 105-507.1 reads as rewritten:

28 **"§ 105-507.1. Local election on adoption of sales and use tax.**

29 (a) Resolution. – The board of commissioners of a county may direct the county board
30 of elections to conduct an advisory referendum within the county on the question of whether a
31 local sales and use tax at the rate of up to one-half percent (1/2%) may be levied in accordance
32 with this Part. The applicable rate must be in accordance with G.S. 105-506.4. The election
33 shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners
34 shall hold a public hearing on the question at least 30 days before the date the election is to be
35 held.

36 (b) Ballot Question. – The form of the question to be presented on a ballot for a special
37 election concerning the levy of a tax authorized by this Article shall be:

38 "[] FOR [] AGAINST

39 ~~One-half percent (1/2%)~~ [The applicable rate stated in both words and as a percentage] local
40 sales and use taxes, in addition to the current local sales and use taxes, to be used only for
41 public transportation systems."

42 **SECTION 1.4.(d)** G.S. 105-507.2 reads as rewritten:

43 **"§ 105-507.2. Levy and collection of sales and use tax.**

44 If the majority of those voting in a referendum held pursuant to G.S. 105-507.1 vote for the
45 levy of the tax, the board of commissioners of the county may, by resolution, levy ~~one-half~~
46 ~~percent (1/2%)~~ local sales and use taxes a local sales and use tax at the rate specified in the
47 ballot in addition to any other State and local sales and use taxes levied pursuant to law. Except
48 as provided in this Part, the adoption, levy, collection, administration, and repeal of these
49 additional taxes shall be in accordance with Article 39 of this Chapter. In applying the
50 provisions of Article 39 of this Chapter to this Part, references to "this Article" mean "Part 1 of
51 Article 43 of Chapter 105 of the General Statutes"."

1 **SECTION 1.4.(e)** G.S. 105-509 reads as rewritten:

2 "**§ 105-509. Local election on adoption of sales and use tax – regional public**
3 **transportation authority.**

4 ...

5 (b) Resolution. – The board of trustees of the regional public transportation authority
6 may, if all of the conditions listed in this subsection have been met, direct the respective county
7 board or boards of elections to conduct an advisory referendum within the special district on
8 the question of whether a local sales and use tax at the rate of up to one-half percent (1/2%)
9 may be levied within the district in accordance with this Part. The applicable rate must be in
10 accordance with G.S. 105-506.4. The tax may not be levied without voter approval. The
11 election shall be held on a date jointly agreed upon by the authority, the county board or boards
12 of commissioners, and the county board or boards of elections and shall be held on a date
13 permitted by and in accordance with the procedures of G.S. 163-287. The conditions are as
14 follows:

15 (1) The board of trustees has obtained approval to conduct a referendum by a
16 vote of the following:

17 a. A majority vote of each of the county boards of commissioners
18 within the special district, if it is a multicounty special district.

19 b. A majority of the county board of commissioners within the special
20 district, if it is a single-county special district.

21 (2) A public hearing is held on the question by the board or boards of
22 commissioners at least 30 days before the date the election is to be held.

23 (c) Ballot Question. – The form of the question to be presented on a ballot for a special
24 election concerning the levy of a tax authorized by this Article shall be:

25 " FOR AGAINST

26 ~~One-half percent (1/2%)~~ The applicable rate stated in both words and as a percentage
27 local sales and use taxes, in addition to the current local sales and use taxes, to be used only for
28 public transportation systems."
29 "

30 **SECTION 1.4.(f)** G.S. 105-509.1 reads as rewritten:

31 "**§ 105-509.1. Levy and collection of sales and use tax – regional public transportation**
32 **authority.**

33 If the majority of those voting in a referendum held pursuant to G.S. 105-509 vote for the
34 levy of the tax, the transportation authority may, by resolution, levy ~~one-half percent (1/2%)~~
35 ~~local sales and use taxes~~ a local sales and use tax at the rate specified in the ballot within the
36 special district, in addition to any other State and local sales and use taxes levied pursuant to
37 law. In determining the results of the election in a multicounty district, all the counties of the
38 district shall be considered to be one unit but also must receive a majority vote in each county,
39 except that if the referendum is passed in one or more but not all of the counties, the counties in
40 which the referendum was not approved are removed from the special district upon certification
41 of the election result and the county or counties that approved the referendum shall remain in
42 the special district. Except as provided in this Part, the adoption, levy, collection,
43 administration, and repeal of these additional taxes shall be in accordance with Article 39 of
44 this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references
45 to "this Article" mean "Part 4 of Article 43 of Chapter 105 of the General Statutes." Any repeal
46 of the tax shall be done by the same procedure as its enactment under this section, and in a
47 multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes
48 in all the counties in the district."

49 **SECTION 1.4.(g)** G.S. 105-510 reads as rewritten:

50 "**§ 105-510. Local election on adoption of sales and use tax – regional transportation**
51 **authority.**

1 ...
 2 (b) Resolution. – The board of trustees of the regional transportation authority may, if
 3 all of the conditions listed in this subsection have been met, direct the respective county board
 4 or boards of elections to conduct an advisory referendum within the special district on the
 5 question of whether a local sales and use tax at the rate of up to one-half percent (1/2%) may be
 6 levied within the district in accordance with this Part. The applicable rate must be in
 7 accordance with G.S. 105-506.4. The tax may not be levied without voter approval. The
 8 election shall be held on a date jointly agreed upon by the authority, the county board or boards
 9 of commissioners, and the county board or boards of elections and shall be held on a date
 10 permitted by and in accordance with the procedures of G.S. 163-287. The conditions are as
 11 follows:

- 12 (1) The board of trustees has obtained approval to conduct a referendum by a
 13 vote of the following:
 14 a. A majority vote of both of the county boards of commissioners
 15 within the special district, if it is a multicounty special district.
 16 b. A majority of the county board of commissioners within the special
 17 district, if it is a single-county special district.
 18 (2) A public hearing is held on the question by the board or boards of
 19 commissioners at least 30 days before the date the election is to be held.

20 (c) Ballot Question. – The form of the question to be presented on a ballot for a special
 21 election concerning the levy of a tax authorized by this Article shall be:

22 "[] FOR [] AGAINST

23 ~~One-half percent (1/2%)~~ [The applicable rate stated in both words and as a percentage]
 24 local sales and use taxes, in addition to the current local sales and use taxes, to be used only for
 25 public transportation systems."
 26"

27 **SECTION 1.4.(h)** G.S. 105-510.1 reads as rewritten:

28 **"§ 105-510.1. Levy and collection of sales and use tax – regional transportation authority.**

29 If the majority of those voting in a referendum held pursuant to G.S. 105-510 vote for the
 30 levy of the tax, the transportation authority may, by resolution, levy ~~one-half percent (1/2%)~~
 31 ~~local sales and use taxes~~ a local sales and use tax at the rate specified in the ballot within the
 32 special district, in addition to any other State and local sales and use taxes levied pursuant to
 33 law. In determining the results of the election in a multicounty district, all the counties of the
 34 district shall be considered to be one unit but also must receive a majority vote in each county,
 35 except that if the referendum is passed in one but not both of the counties, the county in which
 36 the referendum was not approved is removed from the special district upon certification of the
 37 election result and the county that approved the referendum shall remain in the special district.
 38 Except as provided in this Part, the adoption, levy, collection, administration, and repeal of
 39 these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the
 40 provisions of Article 39 of this Chapter to this Article, references to "this Article" mean "Part 5
 41 of Article 43 of Chapter 105 of the General Statutes." Any repeal of the tax shall be done by the
 42 same procedure as its enactment under this section, and in a multicounty district a petition for
 43 repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district."

44 **SECTION 1.4.(i)** G.S. 105-511.2 reads as rewritten:

45 **"§ 105-511.2. Local election on adoption of sales and use tax.**

46 (a) Resolution. – The board of commissioners of a county may direct the county board
 47 of elections to conduct an advisory referendum within the county on the question of whether a
 48 local sales and use tax at ~~the rate of one-quarter percent (1/4%)~~ a rate of up to one-half percent
 49 (1/2%) may be levied in accordance with this Part. The applicable rate must be in accordance
 50 with G.S. 105-506.4. The election shall be held on a date jointly agreed upon by the boards and
 51 shall be held on a date permitted by and in accordance with the procedures of G.S. 163-287.

1 The board of commissioners shall hold a public hearing on the question at least 30 days before
2 the date the election is to be held.

3 (b) Ballot Question. – The form of the question to be presented on a ballot for a special
4 election concerning the levy of a tax authorized by this Article shall be:

5 "[] FOR [] AGAINST

6 ~~One-quarter percent (1/4%)~~ [The applicable rate stated in both words and as a percentage]
7 local sales and use taxes, in addition to the current local sales and use taxes, to be used only for
8 public transportation systems.""

9 **SECTION 1.4.(j)** G.S. 105-511.3 reads as rewritten:

10 **"§ 105-511.3. Levy and collection of sales and use tax.**

11 (a) Authority to Levy. – If the majority of those voting in a referendum held pursuant to
12 this Part vote for the levy of the tax, the board of commissioners of the county may, by
13 resolution, levy ~~one-quarter percent (1/4%) local sales and use taxes~~ a local sales and use tax
14 at the rate specified in the ballot in addition to any other State and local sales and use taxes levied
15 pursuant to law.

16 (b) Administration. – Except as provided in this Part, the adoption, levy, collection,
17 administration, and repeal of these additional taxes shall be in accordance with Article 39 of
18 this Chapter. In applying the provisions of Article 39 of this Chapter to this Part, references to
19 "this Article" mean "Part 6 of Article 43 of Chapter 105 of the General Statutes.""

20 **SECTION 1.4.(k)** This section is effective when it becomes law.

21 **SECTION 1.5.(a)** Part 1 of Article 43 of Chapter 105 of the General Statutes, as
22 amended by Section 1.4 of this act, is amended by adding a new section to read:

23 **"§ 105-506.3. Applicability.**

24 A tax levied under Part 4 of this Article may not be in effect in a county at the same time as
25 a tax levied by that county under Part 6 of this Article."

26 **SECTION 1.5.(b)** G.S. 105-511 reads as rewritten:

27 **"§ 105-511. Applicability.**

28 This Part applies only in counties other than Durham, Forsyth, Guilford, Mecklenburg,
29 ~~Orange, or Wake, or Orange."~~

30 **SECTION 1.5.(c)** This section is effective when it becomes law.

31 **SECTION 1.6.(a)** Article 46 of Chapter 105 of the General Statutes reads as
32 rewritten:

33 "Article 46.

34 "One-Quarter Cent (1/4¢) or One-Half Cent (1/2¢) County Sales and Use Tax.

35 **"§ 105-535. Short title.**

36 This Article is the One-Quarter Cent (1/4¢) or One-Half Cent (1/2¢) County Sales and Use
37 Tax Act.

38 **"§ 105-536. Limitations.**

39 This Article applies only to counties that levy the first one-cent (1¢) sales and use tax under
40 Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half
41 cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half
42 cent (1/2¢) local sales and use tax under Article 42 of this Chapter.

43 **"§ 105-537. Levy.**

44 (a) Authority. – A tax levied under this Article must be approved in a referendum. If the
45 majority of those voting in a referendum held pursuant to this Article vote for the levy of the
46 tax, the board of county commissioners may, by resolution and after 10 days' public notice,
47 levy a local sales and use tax at ~~a rate of one-quarter percent (0.25%)~~ the applicable rate. The
48 applicable rate must meet all of the following conditions:

49 (1) It must be in an increment of one-quarter percent (1/4%).

50 (2) It must be at a rate that, if levied, would not result in a total local sales and
51 use tax rate in the county in excess of two and one-half percent (2 1/2%).

1 (b) Vote. – The board of county commissioners may direct the county board of
 2 elections to conduct an advisory referendum on the question of whether to levy a local sales
 3 and use tax in the county as provided in this Article. The election shall be held in accordance
 4 with the procedures of G.S. 163-287.

5 (c) Ballot Question. – The form of the question to be presented on a ballot for a special
 6 election concerning the levy of the tax authorized by this Article shall be:

7 "[] FOR [] AGAINST

8 Local sales and use tax at the rate of ~~one-quarter percent (0.25%)~~ [The applicable rate stated
 9 in both words and as a percentage] in addition to all other State and local sales and use taxes."

10 ...
 11 **"§ 105-538. Administration of taxes.**

12 Except as provided in this Article, the adoption, levy, collection, administration, and repeal
 13 of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1
 14 is an administrative provision that applies to this Article. A tax levied under this Article does
 15 not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B or to
 16 the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a). The Secretary
 17 shall not divide the amount allocated to a county between the county and the municipalities
 18 within the county.

19 **"§ 105-539. Use.**

20 (a) Referenda Held On or Before January 1, 2015. – A county that approves the levy of
 21 a tax under this Article in a referendum held on or before January 1, 2015, must use the
 22 proceeds of the tax levied under this Article for any lawful public purpose.

23 (b) Referenda Held After January 1, 2015. – A county that approves the levy of a tax
 24 under this Article in a referendum held after January 1, 2015, must use the proceeds of a tax
 25 levied under this Article for any lawful public purpose, except that the proceeds may not be
 26 used for a purpose for which a tax levied under Article 43 of this Chapter must be used."

27 **SECTION 1.6.(b)** G.S. 105-164.3(4a) reads as rewritten:

28 "(4a) Combined general rate. – The sum of all of the following:

- 29 a. The State's general rate of tax set in G.S. ~~105-164.4(a)~~ 105-164.4(a).
 30 b. plus the sum of the rates of the local sales and use taxes
 31 authorized for every county in this State by ~~Subchapter VIII~~ Article
 32 39 of this Chapter or Chapter 1096 of the 1967 Session Laws, Article
 33 40 of this Chapter, and Article 42 of this Chapter for every county in
 34 this State. Chapter.
 35 c. One-half of the maximum rate of tax authorized by Article 46 of this
 36 Chapter."

37 **SECTION 1.6.(c)** This section is effective when it becomes law.

38 **SECTION 1.7.** Except as otherwise provided, this Part is effective when it
 39 becomes law.

40
 41 **PART II. JMAC MODIFICATIONS**

42 **SECTION 2.(a)** G.S. 143B-437.012 reads as rewritten:

43 **"§ 143B-437.012. Job Maintenance and Capital Development Fund.**

44 ...
 45 (d) Eligibility. – A business is eligible for consideration for a grant under this section if
 46 it satisfies the conditions of either subdivision (1) or (2) of this subsection and satisfies ~~the~~
 47 ~~conditions of both subdivisions (3) and~~ subdivision (4) of this subsection:

48 (1) The business is a major employer. A business is a major employer if the
 49 business meets the following requirements:

- 50 a. The Department certifies that the business has invested or intends to
 51 invest at least two hundred million dollars (\$200,000,000) of private

- 1 funds in improvements to real property and additions to tangible
 2 personal property in the project within a six-year period beginning
 3 with the time the investment commences.
- 4 b. The business employs at least 2,000 full-time employees or
 5 equivalent full-time contract employees at the project that is the
 6 subject of the grant at the time the application is made, and the
 7 business agrees to maintain at least 2,000 full-time employees or
 8 equivalent full-time contract employees at the project for the full
 9 term of the grant agreement.
- 10 c. The project is located in a development tier one area at the time the
 11 business applies for a grant.
- 12 (2) The business is a large manufacturing employer. A business is a large
 13 manufacturing employer if the business meets the following requirements:
- 14 a. The business is in manufacturing, as defined in G.S. 143B-437.01,
 15 and is converting its manufacturing process to change the product it
 16 ~~manufactures~~ manufactures or is investing in its manufacturing
 17 process by enhancing pollution controls or transitioning the
 18 manufacturing process from using coal to using natural gas for the
 19 purpose of becoming more energy efficient or reducing emissions.
- 20 b. The Department certifies that the business has invested or intends to
 21 invest at least ~~sixty-five~~fifty million dollars
 22 ~~(\$65,000,000)~~(\$50,000,000) of private funds in improvements to real
 23 property and additions to tangible personal property in the project
 24 within a ~~three-year~~five-year period beginning with the time the
 25 investment commences.
- 26 c. The business meets one of the following employment requirements:
- 27 1. If in a development tier one area, the business employs at
 28 least 320 full-time employees at the project that is the subject
 29 of the grant at the time the application is made, and the
 30 business agrees to maintain at least 320 full-time employees
 31 at the project for the full term of the grant.
- 32 2. If in a development tier two area with a population of less
 33 than 60,000 as of July 1, 2013, the business employs at least
 34 800 full-time employees or equivalent full-time contract
 35 employees at the project that is the subject of the grant at the
 36 time the application is made, and the business agrees to
 37 maintain at least 800 full-time employees or equivalent
 38 full-time contract employees at the project for the full term of
 39 the grant.
- 40 ~~(3) The project is located in a development tier one area at the time the business~~
 41 ~~applies for a grant.~~
- 42 (4) All newly hired employees of the business must be citizens of the United
 43 ~~States,~~States or have proper identification and documentation of their
 44 authorization to reside and work in the United States.
- 45 ...
- 46 (n) Limitations. – The Department may enter into no more than five agreements under
 47 this section. The total aggregate cost of all agreements entered into under this section may not
 48 exceed ~~sixty-nine million dollars (\$69,000,000).~~seventy-nine million dollars (\$79,000,000).
 49 The total annual cost of an agreement entered into under this section may not exceed six
 50 million dollars (\$6,000,000)."

51 **SECTION 2.(b)** This section becomes effective July 1, 2014.

PART III. JOB CATALYST FUND

SECTION 3.(a) G.S. 143B-437.50 reads as rewritten:

~~"Part 2G. Job Development Investment Grant Program. Development.~~

"§ 143B-437.50. Legislative findings and purpose.

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.

...."

SECTION 3.(b) G.S. 143B-437.51 reads as rewritten:

"§ 143B-437.51. Definitions.

The following definitions apply in this Part:

...

- (6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(6a) Full-time worker. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Department to be employed in a permanent position. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

- (7) New employee. – A full-time employee or a full-time worker who represents a net increase in the number of the business's employees or workers statewide.

...."

SECTION 3.(c) G.S. 143B-437.52 reads as rewritten:

"Subpart A. Job Development Investment Grant Program.

"§ 143B-437.52. Job Development Investment Grant Program.

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

...."

SECTION 3.(d) The Revisor of Statutes is authorized to change references of "this Part" in Subpart A of Part 2G of Article 10 of Chapter 143B of the General Statutes to "this Subpart" as appropriate.

SECTION 3.(e) Part 2G of Article 10 of Chapter 143B of the General Statutes is amended by adding a new Subpart to read:

"Subpart B. Job Catalyst Fund.

"§ 143B-437.67. Job Catalyst Fund.

1 (a) Creation and Purpose of Fund. – There is created in the Department of Commerce a
2 special, nonreverting account to be known as the Job Catalyst Fund to provide funds to a local
3 governmental unit for projects that result in the creation of jobs. The Secretary of Commerce is
4 solely responsible for the administration of the program and shall adopt guidelines applicable to
5 program administration. The guidelines shall include the following provisions, which shall
6 apply to each grant from the account:

7 (1) The funds are reserved for a project for which a business agrees to create and
8 maintain, for the greater of 10 years or a time period not less than the sum of
9 the full term of the grant plus five years, the number of new worker positions
10 at the project as follows:

11 a. For development tier one areas, 500 full-time workers.

12 b. For development tier two areas, 800 full-time workers.

13 c. For development tier three areas, 1,200 full-time workers.

14 (2) The funds are reserved for a project for which a business agrees to make an
15 investment at the project as provided in this subdivision. The investment
16 required by this subdivision must be private funds in improvements to real
17 property and additions to tangible personal property located at the project for
18 the greater of 10 years or a time period not less than the sum of the full term
19 of the grant plus five years. The investment must be commenced no later
20 than the time when the first disbursement is made to the business and must
21 be completed no later than five years from the time the first disbursement is
22 made to the business. Tangible personal property transferred by the business
23 or from a related member of the business from one area in the State to the
24 project is not considered an investment in tangible personal property located
25 at the project for purposes of this section. The Department shall certify the
26 amount of the investment made by the business at the project. The minimum
27 investment at the project the business agrees to make is as follows:

28 a. For development tier one areas, twenty million dollars (\$20,000,000).

29 b. For development tier two areas, thirty-five million dollars
30 (\$35,000,000).

31 c. For development tier three areas, fifty million dollars (\$50,000,000).

32 (3) The funds are (i) used to acquire or improve land or infrastructure, for
33 facility development, or for capital investment and (ii) used for
34 manufacturing projects. For purposes of this subdivision, "manufacturing" is
35 defined in G.S. 143B-437.01.

36 (4) The funds are provided to a local governmental unit, and the local
37 governmental unit matches a portion of the funds allocated by the
38 Department as provided in this subdivision. A local match may include cash,
39 fee waivers, in-kind services, the donation of assets, the provision of
40 infrastructure, or a combination. The local match requirement is as follows:

41 a. For development tier one areas, a local match of at least three dollars
42 (\$3.00) for every one hundred dollars (\$100.00) from the State is
43 required.

44 b. For development tier two areas, a local match of at least six dollars
45 (\$6.00) for every one hundred dollars (\$100.00) from the State is
46 required.

47 c. For development tier three areas, a local match of at least nine dollars
48 (\$9.00) for every one hundred dollars (\$100.00) from the State is
49 required.

50 (5) The funds are reserved for a project for which a business agrees to meet, for
51 the greater of 10 years or a time period not less than the sum of the full term

1 of the grant plus five years, the wage standard provided in this subdivision
2 for all full-time workers at the project. In making the wage calculation, all
3 full-time position jobs filled during the year for at least 1,600 hours are
4 included. The required wage standard is as follows:

5 a. For development tier one and two areas, an average weekly wage that
6 is at least equal to the lesser of one hundred percent (100%) of the
7 average wage for all insured private employers in the county.

8 b. For development tier three areas, an average weekly wage that is at
9 least equal to the lesser of one hundred ten percent (110%) of the
10 average wage for all insured private employers in the county.

11 (6) The funds are reserved for projects for which a business agrees to meet, for
12 the greater of 10 years or a time period not less than the sum of the full term
13 of the grant plus five years, a requirement to provide health insurance for all
14 full-time workers at the project. For purposes of this subdivision, a business
15 provides health insurance if it pays at least fifty percent (50%) of the
16 premiums for health care coverage that equals or exceeds the minimum
17 provisions of the basic health care plan of coverage recommended by the
18 Small Employer Carrier Committee pursuant to G.S. 58-50-125. A business
19 shall provide a certification that it continues to provide health insurance as
20 required by this subdivision.

21 (7) The funds are not used for a project at which is located, during the greater of
22 10 years or a time period not less than the sum of the full term of the grant
23 plus five years, a business that has received a notice of an overdue tax debt
24 and that overdue tax debt has not been satisfied or otherwise resolved.

25 (8) The funds are not used in favor of jobs created or property investments made
26 for which a business receives a tax credit under Article 3J of Chapter 105 of
27 the General Statutes.

28 (9) The funds are reserved for projects for a business that has no citations under
29 the Occupational Safety and Health Act that have become a final order
30 within the past three years for willful serious violations or for failing to abate
31 serious violations. In addition, the business must, for the greater of 10 years
32 or a time period not less than the sum of the full term of the grant plus five
33 years, have no citations under the Occupational Safety and Health Act that
34 have become a final order within the past three years for willful serious
35 violations or for failing to abate serious violations with respect to the project.
36 For purposes of this subsection, "serious violation" has the same meaning as
37 in G.S. 95-127.

38 (10) The funds are not used for a project that consists of a professional or
39 semiprofessional sports team or club or a project that consists solely of retail
40 facilities. If a project consists of both retail facilities and nonretail facilities,
41 only the portion of the project consisting of nonretail facilities is eligible for
42 a grant, and only full-time workers employed exclusively in the portion of
43 the project that represents nonretail facilities may be counted for purposes of
44 fulfilling the new worker position requirement. If a warehouse facility is part
45 of a retail facility and supplies only that retail facility, the warehouse facility
46 investment and full-time workers are not counted for purposes of the
47 requirements of this section. For the purposes of this Subpart, catalog
48 distribution centers are not retail facilities.

49 (b) Forfeiture. – If the business at the project fails to timely create and maintain the
50 required new jobs, to timely make the required level of investment, or to otherwise meet the
51 requirements of this section, the local governmental unit shall provide a means to recapture

1 from the business at the project an amount equal to the amount disbursed from the Fund for the
2 project, and the local governmental unit must reimburse the Fund for that disbursement.

3 (c) Records. – A business located at a project for which a grant was made from the
4 Fund shall maintain records and make available for inspection by the Secretary of Commerce
5 any records the Secretary considers necessary to determine and verify the business has met the
6 requirements of this section.

7 (d) Report. – The Department shall publish a report on the Job Catalyst Fund on or
8 before April 30 of each year. The Department shall submit the report electronically to the
9 House of Representatives Finance Committee, the Senate Finance Committee, the House of
10 Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate
11 Appropriations Committee on Natural and Economic Resources, and the Fiscal Research
12 Division. The report shall include the following:

13 (1) A listing of each grant awarded during the preceding calendar year,
14 including the name of the business locating at the project, a description of
15 the project, the term of the grant, and the liability under the grant.

16 (2) An update on the status of projects under grants awarded before the
17 preceding calendar year.

18 (3) The number and development tier area of new worker positions to be created
19 by projects with respect to which grants have been awarded.

20 (4) A listing of the employment level for all businesses located at projects with
21 respect to which grants have been awarded and any changes in those levels
22 from the level of the next preceding year.

23 (5) The wage levels of all new worker positions to be created at projects with
24 respect to which grants have been awarded, aggregated, and listed in
25 increments of ten thousand dollars (\$10,000) or other appropriate
26 increments.

27 (6) The number of awards made for projects for new businesses and the number
28 of awards made for projects for existing, expanding businesses in the
29 preceding calendar year.

30 (7) The environmental impact of businesses at projects with respect to which
31 grants have been awarded.

32 (8) The geographic distribution of grants, by number and amount, awarded
33 under the program.

34 (9) For the first annual report after adoption of the guidelines developed by the
35 Department to implement this Subpart, a copy of such guidelines, and, for
36 subsequent reports, identification of any changes in those guidelines from
37 the previous calendar year."

38 **SECTION 3.(f)** The Secretary of Commerce shall develop guidelines related to the
39 administration of the Jobs Catalyst Fund, as authorized by this section, and to the selection of
40 projects. At least 20 days before the effective date of any guidelines or nontechnical
41 amendments to guidelines, the proposed guidelines must be published on the Department's Web
42 site and provide notice to persons who have requested notice of proposed guidelines. In
43 addition, the Department of Commerce shall accept oral and written comments on the proposed
44 guidelines during the 15 business days beginning on the first day the notice requirement of this
45 subsection have been completed. For purposes of this subsection, a technical amendment is one
46 that corrects a spelling or grammatical error or that makes a clarification based on public
47 comment and could have been anticipated by the public notice that immediately preceded the
48 public comment.

49 **SECTION 3.(g)** G.S. 150B-1(d) reads as rewritten:

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

1 ...
2 (10) The Economic Investment Committee in developing criteria for the Job
3 Development Investment Grant Program under ~~Part 2F~~Subpart A of Part 2G
4 of Article 10 of Chapter 143B of the General Statutes.

5 (10a) The Secretary of Commerce in developing criteria for the Job Catalyst Fund
6 under Subpart B of Part 2G of Article 10 of Chapter 143B of the General
7 Statutes.

8"

9 **SECTION 3.(h)** G.S. 143B-437.07(c) reads as rewritten:

10 "(c) Economic Development Incentive. – An economic development incentive includes
11 any grant from the following programs: Job Development Investment Grant Program; the Job
12 Catalyst Fund; the Job Maintenance and Capital Development Fund; One North Carolina Fund;
13 and the Utility Account. The State also incents economic development through the use of tax
14 expenditures in the form of tax credits and refunds. The Department of Revenue must report
15 annually on these statutory economic development incentives, as required under G.S. 105-256."

16 **SECTION 3.(i)** This section is effective when it becomes law.

17 18 **PART IV. JDIG MODIFICATIONS**

19 **SECTION 4.(a)** Section 15.19(a1) of S.L. 2013-360 reads as rewritten:

20 "**SECTION 15.19.(a1)** Notwithstanding G.S. 143B-437.52(c), for the 2013-2015 fiscal
21 biennium, the maximum total liability for grants awarded, including amounts transferred to the
22 Utility Account pursuant to G.S. 143B-437.61, is ~~twenty-two million five hundred thousand~~
23 ~~dollars (\$22,500,000)~~thirty-six million five hundred thousand dollars (\$36,500,000) and, for the
24 period from July 1, 2015, to December 31, 2015, the maximum total liability for grants
25 awarded, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, is
26 seven million five hundred thousand dollars (\$7,500,000). No agreement may be entered into
27 that, when considered together with other existing agreements governing grants awarded during
28 an applicable time period provided in this subsection, could cause the State's potential total
29 ~~annual~~-liability for grants awarded in that time period to exceed the designated maximum
30 amount."

31 **SECTION 4.(b)** G.S. 143B-437.52 reads as rewritten:

32 "**§ 143B-437.52. Job Development Investment Grant Program.**

33 (a) Program. – There is established the Job Development Investment Grant Program to
34 be administered by the Economic Investment Committee. In order to foster job creation and
35 investment in the economy of this State, the Committee may enter into agreements with
36 businesses to provide grants in accordance with the provisions of this ~~Part~~Subpart. The
37 Committee, in consultation with the Attorney General, shall develop criteria to be used in
38 determining whether the conditions of this section are satisfied and whether the project
39 described in the application is otherwise consistent with the purposes of this ~~Part~~Subpart.
40 Before entering into an agreement, the Committee must find that all the following conditions
41 are met:

42 ...

43 (5) The total benefits of the project to the State outweigh its costs and render the
44 grant appropriate for the project. If the total costs of the project to the State
45 outweigh the benefits as a result of an award from the Job Catalyst Fund
46 under Subpart B of this Part, the Committee may disregard the Job Catalyst
47 Fund award in determining whether a grant is appropriate for the project.

48"

49 50 **PART V. CROWD FUNDING**

51 **SECTION 5.(a)** G.S. 78A-17 is amended by adding a new subdivision to read:

1 "(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in
2 accordance with G.S. 78A-17.1."

3 **SECTION 5.(b)** Article 3 of Chapter 78A of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 78A-17.1. Invest NC exemption.**

6 (a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a
7 security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is
8 conducted in accordance with each of the following requirements:

9 (1) The issuer of the security is a business entity formed under the laws of the
10 State and registered with the Secretary of State.

11 (2) The transaction meets the requirements of the federal exemption for
12 intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15
13 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.

14 (3) The sum of all cash and other consideration to be received for all sales of the
15 security in reliance upon this exemption does not exceed the cap provided in
16 this subdivision.

17 a. One million dollars (\$1,000,000), less the aggregate amount received
18 for all sales of securities by the issuer within the 12 months before
19 the first offer or sale made in reliance upon this exemption, if the
20 issuer has not undergone and made available to each prospective
21 investor and the Administrator the documentation resulting from a
22 financial audit with respect to its most recently completed fiscal year
23 and meeting generally accepted accounting principles.

24 b. Two million dollars (\$2,000,000), less the aggregate amount received
25 for all sales of securities by the issuer within the 12 months before
26 the first offer or sale made in reliance upon this exemption, if the
27 issuer has undergone and made available to each prospective investor
28 and the Administrator the documentation resulting from a financial
29 audit with respect to its most recently completed fiscal year and
30 meeting generally accepted accounting principles.

31 (4) The issuer has not accepted more than two thousand dollars (\$2,000) from
32 any single purchaser unless the purchaser is an accredited investor as defined
33 by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.

34 (5) Not less than 10 days prior to the commencement of an offering of securities
35 in reliance on this exemption or the use of any publicly available Web site in
36 connection with any such offering, the issuer shall file a notice with the
37 Administrator, in writing or in electronic form as specified by the
38 Administrator, containing the following:

39 a. A notice of claim of exemption from registration, specifying that the
40 issuer will be conducting an offering in reliance upon this exemption,
41 accompanied by the filing fee as specified in this section.

42 b. A copy of the disclosure statement to be provided to prospective
43 investors in connection with the offering, containing the following:

44 1. A description of the company, its type of entity, the address
45 and telephone number of its principal office, its history, its
46 business plan, and the intended use of the offering proceeds,
47 including any amounts to be paid, as compensation or
48 otherwise, to any owner, executive officer, director,
49 managing member, or other person occupying a similar status
50 or performing similar functions on behalf of the issuer.

1 STATE SECURITIES COMMISSION OR REGULATORY
2 AUTHORITY. FURTHERMORE, THE FOREGOING
3 AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR
4 DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY
5 REPRESENTATION TO THE CONTRARY IS A CRIMINAL
6 OFFENSE. THESE SECURITIES ARE SUBJECT TO
7 RESTRICTIONS ON TRANSFERABILITY AND RESALE AND
8 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS
9 PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R.
10 § 230.147(E) AS PROMULGATED UNDER THE SECURITIES
11 ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE
12 SECURITIES LAWS, PURSUANT TO REGISTRATION OR
13 EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE
14 THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL
15 RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD
16 OF TIME."

17 (8) The issuer shall require each purchaser to certify in writing "I understand
18 and acknowledge that:

19 a. I am investing in a high-risk, speculative business venture. I may lose
20 all of my investment, and I can afford the loss of my investment.

21 b. This offering has not been reviewed or approved by any state or
22 federal securities commission or other regulatory authority and that
23 no such person or authority has confirmed the accuracy or
24 determined the adequacy of any disclosure made to me relating to
25 this offering.

26 c. The securities I am acquiring in this offering are illiquid, that there is
27 no ready market for the sale of such securities, that it may be difficult
28 or impossible for me to sell or otherwise dispose of this investment,
29 and that, accordingly, I may be required to hold this investment
30 indefinitely.

31 d. I may be subject to tax on my share of the taxable income and losses
32 of the company, whether or not I have sold or otherwise disposed of
33 my investment or received any dividends or other distributions from
34 the company."

35 (9) If the offer and sale of securities is made through an Internet Web site, the
36 following requirements apply:

37 a. Prior to the offer of an investment opportunity to residents of this
38 State through a Web site, the issuer shall provide to the Web site and
39 to the Administrator evidence that the issuer is organized under
40 North Carolina law and that it is authorized to do business within the
41 State.

42 b. The issuer shall obtain from each purchaser of a security under this
43 section evidence that the purchaser is a resident of North Carolina
44 and, if applicable, an accredited investor.

45 c. The Web site operator shall register with the Administrator by filing
46 a statement that it is a business entity that is organized under North
47 Carolina law and that it is authorized to do business within the State
48 and that it is being utilized to offer and sell securities pursuant to this
49 exemption. As part of the registration, the Web site shall notify the
50 Administrator of its and the issuer's identity, location, and contact
51 information.

- 1 d. The issuer and the Web site must keep and maintain records of the
2 offers and sales of securities effected through the Web site and must
3 provide ready access to the records to the Administrator, upon
4 request. The Administrator may access, inspect, and review any Web
5 site and its records.
- 6 (10) All payments for purchase of securities must be directed to and held by the
7 bank or depository institution subject to the provisions of sub-subdivision
8 (a)(5)c. of this section. The bank or depository institution shall notify the
9 Administrator of the receipt of payments for securities and the identity and
10 residence of the investors. The information shall be confidential and
11 considered trade secrets within the scope of G.S. 132-1.2 while in the
12 possession of the Administrator.
- 13 (11) No offers or sales of a security shall be made through an Internet Web site
14 unless the Web site is registered with the Administrator pursuant to
15 sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to
16 the registration provisions of G.S. 78A-36, provided that all of the following
17 apply:
- 18 a. It does not offer investment advice or recommendations.
19 b. It does not solicit purchases, sales, or offers to buy the securities
20 offered or displayed on the Web site.
21 c. It does not compensate employees, agents, or other persons for the
22 solicitation or based on the sale of securities displayed or referenced
23 on the Web site.
24 d. It is not compensated based on the amount of securities sold, and it
25 does not hold, manage, possess, or otherwise handle investor funds
26 or securities.
27 e. It does not engage in such other activities as the Administrator, by
28 rule, determines appropriate.
- 29 (12) An executive officer, director, managing member, or person occupying a
30 similar status or performing similar functions in the name of and on behalf
31 of the issuer shall be exempt from the registration provisions of
32 G.S. 78A-36, provided that the person does not receive, directly or
33 indirectly, any commission or remuneration for offering and selling
34 securities of the issuer pursuant to this exemption.
- 35 (13) The issuer must provide a copy of the disclosure document provided to the
36 Administrator pursuant to sub-subdivision (a)(5)b. of this section to each
37 prospective investor at the time the offer of securities is made to the
38 prospective investor. In addition to the information described in
39 sub-subdivision (a)(5)b. of this section, the disclosure document provided to
40 the Administrator and to prospective investors should include additional
41 information material to the offering, including, where appropriate, a
42 discussion of significant factors that make the offering speculative or risky.
43 This discussion must be concise and organized logically and should not
44 present risks that could apply to any issuer or any offering.
- 45 (b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall
46 be cumulatively adjusted every fifth year by the Administrator to reflect the change in the
47 Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics,
48 setting each dollar limitation to the nearest fifty thousand dollars (\$50,000).
- 49 (c) Report. – An issuer of a security, the offer and sale of which is exempt under this
50 section, shall provide a quarterly report to the issuer's investors until no securities issued under
51 this section are outstanding. The report required by this subsection shall be free of charge. An

1 issuer may satisfy the reporting requirement of this subsection by making the information
2 available on an Internet Web site address if the information is made available within 45 days of
3 the end of each fiscal quarter and remains available until the succeeding quarterly report is
4 issued. An issuer shall file each such quarterly report with the Administrator and must provide
5 a written copy of the report to any investor upon request. The report must contain each of the
6 following:

7 (1) Compensation received by each director and executive officer, including
8 cash compensation earned since the previous report and on an annual basis
9 and any bonuses, stock options, other rights to receive securities of the issuer
10 or any affiliate of the issuer, or other compensation received.

11 (2) An analysis by management of the issuer of the business operations and
12 financial condition of the issuer.

13 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section
14 shall not be used in conjunction with any other exemption under this Chapter, except offers and
15 sales to controlling persons shall not count toward the limitation in subdivision (3) of
16 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or
17 individual occupying similar status or performing similar functions with respect to the issuer or
18 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes
19 of securities of the issuer.

20 (e) Disqualification. – The exemption allowed by this section shall not apply if an
21 issuer or person affiliated with the issuer or offering is subject to any disqualification contained
22 in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the
23 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply
24 if (i) upon a showing of good cause and without prejudice to any other action by the
25 Administrator, the Administrator determines that it is not necessary under the circumstances
26 that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into
27 whether any disqualification existed under this subsection but did not know, and in the exercise
28 of reasonable care could not have known, that a disqualification existed under this subsection.
29 The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer
30 and the other offering participants.

31 (f) Rules. – The Administrator may adopt rules to implement the provisions of this
32 section and to protect investors who purchase securities under this section.

33 (g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred
34 fifty dollars (\$150.00) for filing an exemption notice required by subsection (a) of this section.
35 The fees paid to the Administrator pursuant to this subsection shall be used to pay the costs
36 incurred in administering and enforcing this Chapter. The revenue derived from the fee shall be
37 credited to a nonreverting agency revenue account."

38 **SECTION 5.(c)** G.S. 78A-49(d) reads as rewritten:

39 "(d) The Administrator may by rule or order require the filing of any prospectus,
40 pamphlet, circular, form letter, advertisement, or other sales literature or advertising
41 communication addressed or intended for distribution to prospective investors, unless the
42 security or transaction is exempted by ~~G.S. 78A-16 or 78A-17 (except 78A-17(9), (17), and~~
43 ~~(19))~~G.S. 78A-16 and G.S. 78A-17 (except G.S. 78A-17(9), (17), (19), and (20)) and such
44 exemption has not been denied or revoked under G.S. 78A-18 or the security is a security
45 covered under federal law or the transaction is with respect to a security covered under federal
46 law."

47 **SECTION 5.(d)** Notwithstanding any provision of Article 2A of Chapter 150B of
48 the General Statutes, within 12 months of the effective date of this act, the Secretary of State
49 shall adopt rules to implement the provisions of this act in accordance with the following
50 procedure:

- 1 (1) At least 15 business days prior to adopting a rule, submit the rule and a
2 notice of public hearing to the Codifier of Rules. The Codifier of Rules shall
3 publish the proposed rule and the notice of public hearing on the Internet
4 within five business days.
- 5 (2) At least 15 business days prior to adopting a rule, notify persons on the
6 mailing list maintained pursuant to G.S. 150B-21.2(d) and any other
7 interested parties of the Secretary's intent to adopt a rule and of the public
8 hearing.
- 9 (3) Accept written comments on the proposed rule for at least 15 business days
10 prior to adoption of the rule.
- 11 (4) Hold at least one public hearing on the proposed rule no less than five days
12 after the rule and notice have been published.

13 A rule adopted in accordance with this section becomes effective on the first day of
14 the month following the month the Secretary adopts the rule and submits the rule to the
15 Codifier of Rules for entry into the North Carolina Administrative Code. Any rule adopted
16 more than 12 months after the effective date of this act shall comply with the requirement of
17 Article 2A of Chapter 150B of the General Statutes.

18 **SECTION 5.(e)** Subsection (d) of this section is effective when it becomes law and
19 expires 12 months after the effective date of this act. The remainder of this section is effective
20 when it becomes law and expires on July 1, 2017.

21
22 **PART VI. EFFECTIVE DATE**

23 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
24 law.