

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 2007**

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**HOUSE BILL 39\***

Short Title: Endangered Manufacturing and Jobs Act. (Public)

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Sponsors: Representatives Church, J. Harrell, Jeffus (Primary Sponsors); Faison, Frye, Gillespie, Hilton, Saunders, Starnes, and Wainwright.

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Referred to: Rules, Calendar, and Operations of the House.

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January 31, 2007

**A BILL TO BE ENTITLED**

AN ACT TO PROVIDE ENHANCED ECONOMIC DEVELOPMENT INCENTIVES TO ENDANGERED MANUFACTURERS, TO PROVIDE PROPERTY TAX EXCLUSIONS FOR ENDANGERED MANUFACTURERS, TO CLARIFY THAT A LOW-PROFIT LIMITED LIABILITY COMPANY IS A LIMITED LIABILITY COMPANY UNDER STATE LAW, TO ESTABLISH THE NORTH CAROLINA FURNITURE FUND TO RECEIVE STATE AND FEDERAL FUNDING FOR THE FURNITURE INDUSTRY, TO ESTABLISH THE NORTH CAROLINA FURNITURE COUNCIL TO ADMINISTER THE FUND, AND TO APPROPRIATE FUNDS FOR THAT PURPOSE, TO APPROPRIATE FUNDS TO ESTABLISH THE FURNITURE TECHNOLOGY CENTER, TO PROVIDE FOR ADDITIONAL PENALTIES FOR THE UNAUTHORIZED DISCLOSURE OF TRADE SECRETS, AND TO CLARIFY THAT INDUSTRIAL MACHINERY IS NOT SUBJECT TO REGULATION UNDER THE BUILDING CODE.

Whereas, the State of North Carolina is and should be actively engaged in economic development efforts to attract and stimulate private sector job creation and capital investors; and

Whereas, the furniture industry in North Carolina has been damaged by overseas competition and has now become an endangered industry in North Carolina; and

Whereas, economically distressed areas could utilize grant funds to revitalize the furniture industry and furniture manufacturing, in particular, to provide jobs to the unemployed; and

Whereas, economic development grant funds could enable North Carolina to be more nationally or internationally competitive in developing the furniture industry; and

Whereas, additional furniture industry jobs would strengthen the economy of North Carolina as a whole; Now, therefore,

The General Assembly of North Carolina enacts:

**PART I. ECONOMIC DEVELOPMENT INCENTIVES**

**SECTION 1.1.** G.S. 105-129.83 is amended by adding a new subsection to read:

"(m) Endangered Manufacturer Enhancements. – Any establishment whose primary activity is in one of the following subsectors shall be treated as if it were located in a development tier one area for all purposes under this Article:

- (1) Apparel manufacturing subsector 315 as defined by NAICS.
- (2) Furniture and related product manufacturing subsector 337 as defined by NAICS.
- (3) Textile mills subsector 313 as defined by NAICS.
- (4) Textile product mills subsector 314 as defined by NAICS."

**SECTION 1.2.** G.S. 105-164.14(h) reads as rewritten:

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

- (1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3 or a development tier one area, as defined in G.S. ~~143B-437.08~~ 143B-437.08 or in an industry listed in G.S. 105-129.83(m) regardless of where the machinery and equipment is located in this State. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.
- (2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3~~ or 105-129.3, if it is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area, as defined in G.S. ~~143B-437.08~~ 143B-437.08, or if it is engaged primarily in one of the businesses listed in G.S. 105-129.83(m) anywhere in the State.
- (3) Machinery and equipment. – For the purpose of this subsection, the term "machinery and equipment" means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.4(a) or G.S. 105-129.83(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an ~~enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3, or a development tier one area, as defined in G.S. 143B-437.08,~~ applicable area, capitalizes them for tax purposes under the Code, and does not lease them to another party."

**SECTION 1.3.** G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one development tier area, the location with the highest development tier area designation determines the minimum number of eligible positions that must be created. If the primary activity of the project is in an industry listed in G.S. 105-129.83(m), the minimum job creation number applicable to development tier one applies regardless of the tier designation of the location of the project.

Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	20
Tier Three	20"

**SECTION 1.4.** G.S. 143B-437.56(d) reads as rewritten:

"(d) For any eligible position that is located in a development tier three area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For any eligible position that is located in a development tier two area, eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the business, and fifteen percent (15%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For a project that is primarily engaged in one of the industries listed in G.S. 105-129.83(m), one hundred percent (100%) of the annual grant approved for disbursement shall be payable to the business regardless of the development tier designation of the location. A position is located in the development tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee."

**SECTION 1.5.** Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. Section 1.2 of this part becomes effective January 1, 2007, and applies to purchases made on or after that date. The remainder of this part is effective when it becomes law.

## **PART II. PROPERTY TAX EXCLUSION**

**SECTION 2.1.** G.S. 105-275 is amended by adding a new subdivision to read:

**"§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

- ...
- (43) Real and personal property that is located at an establishment whose primary activity is in one of the subsectors listed in this subdivision. For the purposes of this subdivision, the terms 'establishment' and 'NAICS' have the same meaning as in G.S. 105-129.81.
    - a. Apparel manufacturing subsector 315 as defined by NAICS.
    - b. Furniture and related product manufacturing subsector 337 as defined by NAICS
    - c. Textile mills subsector 313 as defined by NAICS.
    - d. Textile product mills subsector 314 as defined by NAICS."

**SECTION 2.2.** This part is effective for taxes imposed for taxable years beginning on or after July 1, 2008.

### **PART III. LOW-PROFIT LIMITED LIABILITY COMPANIES**

**SECTION 3.1.** G.S. 57C-1-03 reads as rewritten:

**"§ 57C-1-03. Definitions.**

The following definitions apply in this Chapter, unless otherwise specifically provided:

...  
(11) Limited liability company or domestic limited liability company. – An entity formed and existing under this Chapter. The term "limited liability company" or "domestic limited liability company" includes low-profit limited liability companies and companies designated as "L3C."

(12) Limited partnership or domestic limited partnership. – Has the same meaning as in G.S. 59-102(8).

(12a) Low-profit limited liability company or "L3C." – An entity formed and existing under this Chapter that is organized for a business purpose that satisfies and is at all times operated to satisfy each of the following requirements:

a. The entity (i) significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended, and (ii) would not have been formed but for the entity's relationship to the accomplishment of charitable or educational purposes;

b. No significant purpose of the entity is the production of income or the appreciation of property; provided, however, that the fact that an entity produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property; and

c. No purpose of the entity is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Code, as amended.

If an entity that met this definition at its formation at any time ceases to satisfy any one of the foregoing requirements, it shall immediately cease to be a low-profit limited liability company but will continue to exist as a limited liability company.

All references in this subdivision to sections of the Code shall be to sections of the Internal Revenue Code of 1986, as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

~~(12a)~~(12b) Management of the affairs. – In respect of an entity, unless the context indicates otherwise, the authority to direct and participate in the management of the entity.

...."

**SECTION 3.2.** G.S. 55D-20(a) is amended by adding the following subdivision to read:

"(6) The name of a low-profit limited liability company, as defined in G.S. 57C-1-03(12a), must contain the abbreviation "L3C" or "l3c.""

**SECTION 3.3** This part is effective when it becomes law.

#### **PART IV. NORTH CAROLINA FURNITURE FUND AND COUNCIL**

**SECTION 4.1.** Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2K. North Carolina Furniture Council.

##### **"§ 143B-437.95. North Carolina Furniture Council. – creation; powers; duties.**

There is established the North Carolina Furniture Council of the Department of Commerce. The North Carolina Furniture Council shall have the following powers and duties:

- (1) To identify and implement methods for improving North Carolina's furniture industry.
- (2) To assure orderly growth and development of North Carolina's furniture industry.
- (3) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the furniture industry.
- (4) To receive and disburse funds.
- (5) To establish criteria for recipients of grants from the North Carolina Furniture Fund and to make grants from the Fund.
- (6) To enter into contracts for the purpose of developing new or improved markets for and technological advances in the furniture industry.
- (7) To enter into agreements with any local, state, or national organizations or agencies engaged in education for the purpose of disseminating information on furniture industry projects.
- (8) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina furniture industry.
- (9) To acquire any licenses or permits necessary for performance of the duties of the Council.

##### **"§ 143B-437.96. North Carolina Furniture Council. — composition; terms; reimbursement.**

(a) The Council shall consist of 13 members. The following members or their designees shall serve as ex officio members:

- (1) The Secretary of the Department of Commerce.
- (2) The President of the Community College System.
- (3) The Chancellor of North Carolina State University.

The remaining members shall be appointed as follows:

- (1) Three persons appointed by General Assembly, upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a representative of the furniture manufacturing industry.

- (2) Three persons appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a representative of the furniture upholstery industry.
- (3) One representative of the furniture manufacturing industry, appointed by the Governor.
- (4) One representative of the furniture upholstery industry, appointed by the Governor.
- (5) One retailer of North Carolina furniture products, appointed by the Governor.
- (6) One member of the general public, appointed by the Governor.

(b) Other than the initial members of the Council and members of the Council serving ex officio, members of the Council shall serve three-year terms. Initial members of the Council shall serve staggered terms as follows:

- (1) The following initial members shall serve terms of three years:
  - a. The representative of the furniture manufacturing industry appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.
  - b. The representative of the furniture manufacturing industry appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives.
  - c. The retailer of North Carolina furniture products appointed by the Governor.
  - d. The member of the general public appointed by the Governor.

(2) The remaining members shall serve terms of two years.

(c) The Secretary of the Department of Commerce shall serve as chair of the Council and shall call all meetings of the Council.

(d) The Governor may remove any member of the Council appointed by the Governor for misconduct, incompetence, or neglect of duty. The General Assembly may remove any member appointed by it for the same reasons. The appointing authority making the original appointment shall appoint successors.

(e) All vacancies occurring on the Council shall be filled, for the unexpired term, by the appointing authority making the original appointment. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(f) The Department of Commerce shall furnish the Council with meeting space and clerical and other services required by the Council to conduct its business.

(g) The members of the Council shall not receive compensation or per diem for their service on the Council.

(h) A majority of the Council shall constitute a quorum for the transaction of business.

**"§ 143B-437.97. North Carolina Furniture Fund.**

The North Carolina Furniture Fund is hereby created as a special, interest-bearing, and nonreverting fund in the Department of Commerce. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be eligible to receive State and federal funding.

The purpose of the North Carolina Furniture Fund is to develop and support the furniture industry in North Carolina, thereby creating jobs for the citizens of the State, encouraging the investment of private funds in North Carolina companies, and promoting the economy of the State in general. Moneys from the Fund may be used for the public purposes of developing the furniture industry workforce and promoting economic development in the furniture industry through the awarding of grants to organizations that support the furniture industry.

The North Carolina Furniture Council of the Department of Commerce shall administer the Fund and shall make grants from the Fund based on criteria adopted by the Council."

**SECTION 4.2.** There is appropriated from the General Fund to the North Carolina Furniture Fund the sum of five million dollars (\$5,000,000) for the 2007-2009 fiscal biennium to be used to provide grants to promote the furniture industry in North Carolina.

**SECTION 4.3.** This part becomes effective July 1, 2007.

#### **PART V. FURNITURE TECHNOLOGY CENTER**

**SECTION 5.1.** There is appropriated from the General Fund to the Community Colleges System Office the sum of one million dollars (\$1,000,000) for the 2007-2008 fiscal year and the sum of one million dollars (\$1,000,000) for the 2008-2009 fiscal year to establish the Furniture Technology Center. The Furniture Technology Center shall be merged administratively with the Hosiery Technology Center at Catawba Valley Community College. It shall be a collaborative effort by Catawba Valley Community College, Western Piedmont Community College, Caldwell Community College and Technical Institute, and Lenoir-Rhyne College.

**SECTION 5.2.** This part becomes effective July 1, 2007.

#### **PART VI. ADDITIONAL PENALTY FOR MISAPPROPRIATION OF TRADE SECRETS**

**SECTION 6.1.** G.S. 66-154 is amended by adding a new subsection to read:

"(e) Willful and malicious misappropriation of a trade secret is a Class 1 misdemeanor."

**SECTION 6.2.** This part becomes effective December 1, 2007, and applies to acts committed on or after that date.

#### **PART VII. BUILDING CODE INDUSTRIAL MACHINERY**

**SECTION 7.1.** G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as

may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars (\$20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices:

- (1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,
- (2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and
- (3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.



Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. For the purposes of this paragraph, 'industrial machinery' means equipment and machinery used in a system of operations for the explicit purpose of producing a product. The term does not include equipment that is permanently attached to, or a component part of, a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

**SECTION 7.2.** This part is effective when it becomes law.

## **PART VIII. EFFECTIVE DATE**

**SECTION 8.1.** Except as otherwise provided, this act is effective when it becomes law.