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Economic and Community Development

The most noteworthy economic development legislation of 2007 was a new grant program designed to provide up to \$60 million of incentives for private companies that make large investments in their facilities but do not increase employment in the state. The legislation was in the news because an earlier act was vetoed by the Governor before the General Assembly enacted a compromise version of the program. The legislation was groundbreaking in that it provided substantial government funding to a private business without requiring the business to increase jobs, increase payroll, or take the incentive in the form of a tax benefit.

As in 2006, the General Assembly substantially increased the amount of authorized grants for 2007 under the Job Development Investment Grant program. It also appropriated funds for other economic development grant programs and for rural development. Other economic development legislation in 2007 included expanding existing tax incentives and providing new tax incentives for specific industries and specific businesses. The General Assembly also extended the sunset on the tax credit for qualified business investments and appropriated \$2 million for Johnson and Wales University in Charlotte.

The 2007 legislative session included community development initiatives that focused on housing and environmental needs of communities across the state, particularly in rural areas. There was also an emphasis on expanding access to technology to North Carolina's rural communities.

Grants to Retain Existing Industry

On August 2, 2007, the General Assembly ratified House Bill 1761 and presented it to the Governor. The bill would have created the Job Maintenance and Capital Development Fund in the Department of Commerce. The fund was to provide a grant to a private business if the business invested a minimum amount in a facility in a development tier one county, employed and maintained at least 2,000 full-time employees or equivalent full-time contract employees at the facility, and satisfied specified conditions relating to employee health insurance, safety and health programs, and environmental compliance. The bill would have allowed grants for up to five businesses for a total cost of \$40 million. Although the bill did not name a specific company, news reports indicated that it was intended for Goodyear Tire & Rubber in Fayetteville. The legislation was unusual in that it provided an incentive to a company that would not increase its payroll or number of jobs within North Carolina, but would merely agree not to move out of the state. In addition, it was reported that the incentive took the form of a grant rather than a tax credit because Goodyear pays so little tax to North Carolina that a proposal to reduce its tax liability would not have been a sufficiently generous incentive.

Governor Mike Easley vetoed House Bill 1761 on August 30, 2007. According to news reports, the Governor's office was contacted by numerous other businesses expressing a desire to receive public money for continuing to do business in North Carolina. In addition, Goodyear's rival, Bridgestone Firestone of Wilson, complained that the subsidy would put it at a competitive disadvantage and was unfair because Bridgestone was also investing a substantial amount in its North Carolina facilities. The Governor's veto message stated:

House Bill 1761 would set a dangerous precedent for North Carolina's economic development policy and is not fair to her taxpayers. It calls for the state to give up to \$40 million in cash to an existing company in one county with little or no regard for how much the company actually pays in state and local taxes, what wages it pays now or in the future, or whether it lays off nearly 25% of its workforce.

On September 6, 2007, the Governor issued a proclamation reconvening the General Assembly on September 10 to reconsider House Bill 1761. When it reconvened, the General Assembly did not vote on the question of whether to override the veto. Instead, after negotiations with the Governor's office, it considered new legislation in an extra session convened by the Governor at the same time. The resulting act, S.L. 2007-552 Extra Session (H 4), is similar to the vetoed bill. Effective retroactively to July 1, 2007, it too creates the Job Maintenance and Capital Development Fund but this time with an increase in the maximum total cost of grants that may be paid, from \$40 million to \$60 million. The new act also appears to allow Bridgestone Firestone to qualify for a grant. Unlike House Bill 1761, the act requires grant recipients to meet a wage standard: they must pay full-time employees and equivalent contract employees an average weekly wage of at least 140 percent of the county average. S.L. 2007-552 also addresses the Governor's concern that a grant recipient might lay off up to 25 percent of its employees. The act provides that if the employment level at the facility drops, the amount of the grant will be reduced proportionally and will be reduced to zero for any year that the employment level is less than 80 percent of the required level. Thus a grant recipient may lay off up to 20 percent of its employees without losing the grant. S.L. 2007-552 requires the Department of Commerce to monitor the grants and report quarterly to the Joint Legislative Commission on Governmental Operations. It also directs the Joint Select Committee on Economic Development Incentives to report on all economic development incentives offered by the state, whether in the form of tax breaks, grants, loans, or appropriations.

Job Development Investment Grant Program

The 2007 appropriations act, S.L. 2007-323 (H 1473), increases from \$15 to \$25 million the maximum amount of grant liability the state may incur in 2007 for the Job Development Investment Grant (JDIG) program. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding twelve years. Therefore, this increase of \$10 million for 2007 could have a fiscal impact of up to \$120 million over a twelve-year period.

Expansion of Existing Tax Incentives

Qualified Business Investment Tax Credit

The qualified business investment tax credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture, a qualified grantee business, or a qualified licensee business directly from that business. Although the credit was enacted in 1987 to promote economic development for North Carolina businesses, it was later modified to allow credits for investments in qualified businesses regardless of whether they are headquartered or operating in North Carolina. The change was made in response to a concern that the provision may have violated the interstate commerce clause of the federal constitution, which forbids discrimination against out-of-state businesses. S.L. 2007-422 (H 1598) extends the sunset on the tax credit from January 1, 2008, to January 1, 2011. One of the purposes of the sunset is to allow the credit to expire if the state determines that it is being used for investments in non-North Carolina businesses. The act also extends the deadline for applying for a qualified business investment tax credit from September 15 to October 15 of the year following the year the investment was made.

Research and Development Tax Credits

Section 31.8 of S.L. 2007-323 amends G.S. 105-129.55 to increase the amount of the tax credits for various types of research and development conducted in North Carolina. The increased credit amounts are effective beginning with 2007 tax year. Thus, rather than operating solely as an incentive for future economic activity, the increase in the credit may reward 2007 investments that were made without regard to the increase.

Renewable Fuel Facilities

G.S. 105-129.16D(b1) provides an income tax credit for a taxpayer's investment in constructing and equipping three or more commercial facilities for processing renewable fuel in North Carolina. The taxpayer must invest at least \$400 million; the credit is equal to 35 percent of the construction and equipment costs. Effective beginning with the 2007 tax year, Section 31.9 of S.L. 2007-323 amends the statute to (1) allow the credit to be taken against a taxpayer's franchise tax and (2) remove a provision that made a taxpayer whose credit expired ineligible for the credit under 105-129.16D(b) (construction of a single facility) for the same property.

Aircraft Parts Manufacturer Sales Tax Refund

Section 31.10 of S.L. 2007-323 amends G.S. 105-164.14(j)(3)b. to extend the sales tax refund for aircraft manufacturers to include manufacturers of certain aircraft parts, effective for purchases made on or after July 1, 2007.

Project Development Financing

S.L. 2007-395 (S 1196) makes three important modifications to the Project Development Financing Act. First, it amends G.S. 159-103(a) to add a few purposes for which project development financing (tax increment financing) debt instruments may be issued—(1) financing the capital costs of providing certain parks and recreation facilities; (2) financing the capital costs of providing community colleges facilities; and (3) financing the capital costs of providing school facilities, including school buses and other necessary vehicles. It also clarifies that the proceeds of the project development financing debt instruments may be used for any service or facility to be provided in a municipal service district without having to actually create the district.

Second, the S.L. 2007-395 amends G.S. 159-103(a) to allow a city or a county to issue project development financing debt and use the proceeds for one or more of the specified purposes for which either unit of government may issue general obligation bonds. For example, as amended, G.S. 159-103(a) allows either a city or county to issue project development financing debt to fund the capital costs of providing streets and sidewalks even though, pursuant to G.S. 159-48(d)(5), only a city may issue general obligation debt to fund these projects.

Finally, the act eliminates the requirement that the base valuation be increased during each revaluation to reflect projected increases due solely to the revaluation of the property values of the district as they existed on the January 1 immediately preceding the effective date of the district. Thus, unless the unit amends its development financing plan to expand the district or remove property from the district, the base valuation will remain constant during the lifetime of the development financing district.

New Tax Incentives

Section 31.7 of S.L. 2007-323 reduces the tax on purchases by software publishers of certain capital machinery and equipment used for research and development. Effective July 1, 2007, the act amends G.S. 105-187.51B to impose a privilege tax on these purchases at the rate of 1 percent of the sales price, with a maximum of \$80 per item. Items subject to the privilege tax are exempt from state and local sales tax, which would otherwise be roughly 7 percent (depending on the applicable county rate).

Section 31.20 of S.L. 2007-323, as amended by S.L. 2007-345 (H 714) allows an annual refund for a portion of the sales tax paid by laboratories engaged in analytical services. The refund is allowed for the greater of (1) 50 percent of the amount by which the sales tax the taxpayer paid on purchases of supplies used in analytical services in a fiscal year exceeds the tax the taxpayer paid on these purchases in 2006-07 or (2) 50 percent of the amount of sales tax it paid in the fiscal year on medical reagents.

Section 31.22 of S.L. 2007-323 reduces the tax on purchases by certain data centers of capital machinery and equipment used for data center services or electric power generation or management. A data center is a facility that provides infrastructure for hosting or data processing services. To be eligible, a data center must invest at least \$150 million of private funds at a facility in development tier one or at least \$300 million at a facility in another tier. It must also meet other conditions relating to its power and cooling systems, the wages it pays its employees, and providing health insurance for its employees. Effective October 1, 2007, the act enacts G.S. 105-187.51C to impose a privilege tax on these purchases at the rate of 1 percent, up to a maximum of \$80 per article. Items subject to the privilege tax are exempt from state and local sales tax, which would otherwise be roughly 7 percent (depending on the applicable county rate). If the required level of investment is not timely made or the machinery and equipment is not located and used at the datacenter, the rate of tax is forfeited and the taxpayer is liable for past sales taxes avoided as a result of the provision. The provision expires July 1, 2013.

Section 31.23 of S.L. 2007-323, as amended by Section 14.7 of S.L. 2007-345, enacts new Article 3K of G.S. Chapter 105 to provide a tax credit of 50 percent for a taxpayer's payments for the construction of an eligible railroad intermodal facility. To be eligible, the facility must cost

more than \$30 million to construct. An intermodal facility is a facility where freight is transferred from one mode of transportation to another. The credit is allowed against the taxpayer's income or franchise tax each tax year and may not exceed 50 percent of the tax against which it is claimed. Any excess may be carried forward for ten years. The new credit was effective January 1, 2007, and continues in effect until the 2038 tax year. The practical effect of the new credit is that the state is paying interest on the thirty-year debt incurred by a private taxpayer for construction of a facility, despite the fact that the state could finance the same facility at a lower cost to taxpayers by issuing its own debt at a lower interest rate.

Effective January 1, 2007, Section 31.23 also amends G.S. 105-164.13 and G.S. 105-164.14 to exempt owners of railroad intermodal facilities from sales tax on sales of cranes, trucks, and locomotives. Owners of railroad intermodal facilities will receive a sales tax refund for materials and equipment that become a part of their facilities.

One North Carolina Fund/Small Business Fund

S.L. 2007-323 appropriates \$14 million in nonrecurring funds for the One North Carolina Fund and an additional \$4.8 million in nonrecurring funds for the Small Business Fund within the One North Carolina Fund. The act diverts \$650,000 of the funds appropriated to the One North Carolina Fund, however, to the Department of Environment and Natural Resources, Division of Information Technology Services, for a Tier II hazardous chemicals inventory database and Web-based access application. The One North Carolina Fund provides businesses creating new jobs with incentive grants for infrastructure, repair and renovation, and machine and equipment purchases. The Small Business Fund provides incentive funds for small businesses to apply for federal innovation grants.

NC Green Business Fund

Section 13.2 of S.L. 2007-323 enacts new Part 2B of Article 10 of G.S. Chapter 143B, creating the "NC Green Business Fund" in the Department of Commerce to promote a green economy by making grants to small and medium-sized businesses, nonprofits, and government agencies. The grants must focus on (1) developing the biofuels industry, (2) developing the green building industry, and (3) supporting investments and entrepreneurial growth in environmentally conscious clean technology and renewable energy products and businesses. The Department of Commerce must develop and publish guidelines governing administration of the fund and selection of grant recipients. It must also report annually in disbursements from the fund. The act appropriated \$1 million in nonrecurring funds for the new program.

Minority Economic and Community Development Appropriations

The 2007 appropriations act, S.L. 2007-323, appropriates \$1.5 million in each year of the fiscal biennium to the N.C. Institute of Minority Economic Development for economic development projects and initiatives. The act also appropriates \$3 million in each fiscal year to the North Carolina Minority Support Center for credit unions.

Community Development Appropriations

The 2007 appropriations act, S.L. 2007-323, made significant appropriations to programs and initiatives to assist local communities in meeting the needs of their residents. These appropriations

included (1) \$3 million in recurring funds to the N.C. Community Development Initiative to provide funding for grants, loans, technical assistance, and administration for community economic development projects; (2) \$100 million in nonrecurring funds to the Rural Economic Development Center, Inc., for water and sewer system grants to local governments; and (3) \$5 million in recurring funds to the Housing Trust Fund to finance affordable housing for families in the state.

Regional Development Appropriations

S.L. 2007-323 requires regional councils of government to use funds appropriated to them by the act only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other appropriate activities. As in past years, the appropriations act appropriates funds to be distributed to the seven regional economic development commissions. The funds for 2007–08 are at the same level as the previous year, but are reduced 5 percent and made nonrecurring for 2008–09. The act directs the Performance Evaluation Division of the General Assembly to study the structure and funding of the regional economic development commissions and report by May 1, 2008. The act also directs the Department of Commerce to report by September 1, 2007, on its success in implementing 2006 legislation requiring the department to develop uniform financial standards, personnel practices, and purchasing procedures, which the commissions must follow as a condition of receiving state funds. Finally, the act also specifies that no more than \$120,000 in state funds may be used for the annual salary of any one employee of a regional economic development commission.

Rural Development Appropriations

S.L. 2007-323 appropriates \$19 million to the Rural Economic Development Center, Inc., to (1) expand the N.C. Rural Economic Infrastructure Fund with targeted priority to severely distressed rural areas and (2) establish a Rural Economic Transition Program providing grants and equity investments to carry out transformative economic development and agricultural enhancement projects.

In addition, of the funds appropriated in the 2007–08 fiscal year to the Rural Economic Development Center, Inc., \$1 million was designated for allocation in community development grants to support development projects and activities within the state’s minority communities, and \$19.5 million was allocated (1) to continue the N.C. Infrastructure Program, which provides money to local governments to address critical water and wastewater facility needs; (2) for matching grants to local governments in distressed areas; and (3) for economic development research and demonstration grants.

Foreclosure Protections

Concerns for the foreclosure blight that has spread across the state were reflected in the 2007 session. S.L. 2007-323 appropriated \$1.5 in nonrecurring funds to continue the Home Protection Pilot Program, which provides short- or long-term loans to qualifying homeowners in twenty-six counties, who are at risk of losing their homes due to job loss. S.L. 2007-351 (H 1374) provides homeowners with legal protections that are intended to reduce foreclosures. Enacted in response to two North Carolina Supreme Court decisions from December 2006, *Shepard v. Ocwen Federal Bank, FSB et al.*, 261 NC 137, 638 S.E. 2d 197 (2006) and *Skinner v. Preferred Credit et al.*, 361 NC 114, 638 S.E. 2d 203 (2006), S.L. 2007-351 (1) expands the amount of information that trustees must provide to debtors during foreclosures, (2) extends the amount of time that

borrowers have to file usury claims based on allegedly illegal closing fees and charges, and (3) subjects mortgage-holding trusts to the personal jurisdiction of North Carolina's courts. S.L. 2007-352 (H 1817) provides protections for homebuyers from predatory lending practices, imposing requirements on lenders to have a reasonable basis for belief that the borrower can afford to repay the loan.

North Carolina also joins other states in making residential mortgage fraud a felony. S.L. 2007-163 (H 817) enacts new Article 20A of G.S. Chapter 14, making it a felony to make or use a deliberate misstatement, misrepresentation, or omission during the mortgage lending process for loans secured by residential real property or manufactured homes with the intention to induce a mortgage lender, broker, borrower, or other person to rely on it. S.L. 2007-163 also permits courts to order restitution and contains a forfeiture provision, stating "[a]ll real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation" of the act is subject to forfeiture.

The General Assembly also provided protections for renters living in properties subject to foreclosure proceedings. S.L. 2007-353 (H 947) requires that a notice of sale in a foreclosure proceeding be sent to tenants who are residing in the property to be sold and allows for early termination of the rental agreement.

Access to Housing

Also addressed in the 2007 legislative session was the need for affordable housing across the state. S.L. 2007-548 (S 1466) directs the N.C. Housing Finance Agency (NCHFA) to study the need for low-cost financing for the construction and rehabilitation of housing for the state's migrant workers and to report its findings to the Joint Legislative Committee on Government Operations by July 1, 2008. The 2007 appropriations act, S.L. 2007-323, appropriates \$500,000 for the 2007-08 fiscal year to fund locally hosted residential substance abuse programs with a vocational component. S.L. 2007-323 also calls for additional housing assistance for individuals with mental health, developmental, or substance abuse disabilities, directing the Department of Health and Human Services (DHHS) and NCHFA to collaboratively develop a plan for the most efficient and effective use of state resources in local communities to develop additional independent and supportive-living apartments for this population.

Health Care and Wellness

In addition, the 2007 session was characterized by community-focused initiatives aimed at health care and wellness. S.L. 2007-323 appropriated \$2.5 million for the 2007-08 fiscal year to DHHS for the Community-Focused Eliminating Health Disparities Initiative, to be used for grants-in-aid to local public health departments, American Indian tribes, and faith-based and community-based organizations to focus on the use of preventive measures to support healthy lifestyles to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to the status of Caucasians. S.L. 2007-323 also appropriated \$2 million to assist small rural hospitals. The funds may be used for the capital and operation needs of the hospitals and to support pilot programs that address the long-term survivability of small rural hospitals. A \$2 million appropriation in recurring funds for Community Health Grants will support programs and organizations that provide primary and preventative medical services to community members who are uninsured or medically indigent. Two appropriations support communities in having access to clean drinking water: \$300,000 to provide county grants to adopt local programs to enforce statewide private well construction standards and \$615,000 to test private wells for contamination and to pay for alternative drinking water supplies.

Access to Technology

The 2007 appropriations act, S.L. 2007-323, appropriates \$4 million in nonrecurring funds to the e-NC Authority to increase access to Internet connectivity in underserved areas of the state, to provide additional funding for general operations, and to expand funding for new and existing e-NC Business and Technology Centers. The funds may be used to create incentives for broadband in rural areas and to distribute funds for cable access channels through e-NC Authority. Of the appropriated funds, the act directs that \$290,000 be transferred to WOW e-Community Development Corporation to implement a two-year pilot program to establish the Windows on the World Technology Center as the northeastern North Carolina regional technology resource center for indigent rural low-wealth communities.

Community Development Block Grant Funds

S.L. 2007-323 appropriates \$45 million in federal community development block grants (CDBG) for housing programs, community revitalization, and economic development. The allocation amount will be affected by any increases or decreases in federal funds. The act provides for capacity increasing grants to nonprofit organizations that engage in CDBG-eligible activities in partnership with local government units. The act also directs the Department of Commerce to operate a small business/entrepreneurship program in coordination with micro-lending programs and other small business assistance groups in the state. The Department of Commerce may award up to \$1 million in grants to local governments to provide assistance to low-to-moderate income persons for small business and entrepreneurship development. Appropriations from federal block grant funds are made for the 2007–08 fiscal year as follows:

1. State Administration	\$ 1,000,000
2. Urgent Needs and Contingency	1,000,000
3. Scattered Site Housing	13,200,000
4. Economic Development	7,710,000
5. Small Business/Entrepreneurship	1,000,000
6. Community Revitalization	13,500,000
7. State Technical Assistance	450,000
8. Housing Development	2,000,000
9. Infrastructure	5,140,000

Miscellaneous

Transportation Projects for Economic Development

Section 27.3 of the appropriations act, S.L. 2007-323, allocates \$14 million of Department of Transportation funds for economic development projects; each of the fourteen highway divisions is to receive \$1 million. The projects are to be recommended by the board of transportation member representing the division where the project is to be constructed, in consultation with the division engineer, and must be approved by the full board of transportation. Funds not needed for economic development may be used for spot safety or for transportation improvement programs

Executive Aircraft

Section 13.3 of S.L. 2007-323 enacts new G.S. 143B-437.011 to provide that the use of executive aircraft by the Department of Commerce for economic development purposes takes

precedence over all other uses. Use by the Governor is the second priority. The act also provides for an increase in the rates charged for use of the aircraft.

Northeastern N.C. Regional Economic Development Commission

S.L. 2007-93 (S 1248) changes the name of the Northeastern North Carolina Regional Economic Development Commission in G.S. 158-8.2 to North Carolina's Northeast Commission.

Johnson and Wales University

S.L. 2007-323 appropriates \$2 million in nonrecurring funds to Johnson and Wales University in Charlotte.

Martha H. Harris

Sheria Reid