

COMMUNITY AND ECONOMIC DEVELOPMENT

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2003 LEGISLATIVE ACTION IN COMMUNITY AND ECONOMIC DEVELOPMENT

■ Anita Brown-Graham and David Lawrence

When the General Assembly convenes its 2004 Regular Session in May, bringing jobs to North Carolina is likely to dominate all other issues. Several groups, including at least two legislative committees, are poised to propose significant economic development legislation. A Joint Select Committee on Economic Growth and Development has been charged with studying the efficacy of the state's economic development incentive tools and proposing job creation strategies prior to the session. Another legislative committee is studying the state's need to stimulate small business activity. In addition, the Governor has already received the recommendations for investments proposed by the blue ribbon Biotechnology Strategic Plan Steering Committee, cochaired by former governors James Hunt and James Martin. Other groups, including those representing the state's business and industry community, are also preparing legislative packages.

The proposals from these various groups are likely to build on the legislative economic development activities of 2003. In both its 2003 Regular Session and its Second Extra Session, the General Assembly responded to the state's declining economy with considerable debate concerning various economic development strategies. Discussion of the role that tax cuts should play in stimulating economic activity was particularly contentious. The 2003 Sessions, however, produced relatively little new legislation. The legislation that did emerge included efforts to stimulate private sector activity by offering new tax breaks to specific companies,



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extending existing business tax credits scheduled to expire, and granting local governments the authority to employ a few additional means to support local economic development efforts.

2003 Second Extra Session

Two companies were the primary beneficiaries of S. L. 2003-435 (H 2), the most significant legislation of the extra session. Merck & Co., the pharmaceutical giant, received approximately \$36.8 million to use in the construction of a \$300-million vaccine plant in Durham. Of that amount, \$24 million was appropriated as a cash grant to a nonreverting fund for land purchase and site preparation. The remainder came in the form of tax credits.

The General Assembly supported the Merck recruitment effort by making changes to the Job Development Investment Grant (JDIG) program. This program, which was adopted in 2002, allows the state's Economic Investment Committee to enter into agreements with companies in which the state would reimburse 10–75 percent of the companies' income tax withholding payments for up to twelve years if such an incentive would prevent these companies from locating elsewhere. The Economic Investment Committee consists of the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and two members appointed upon the recommendations of the Speaker of the House and the President Pro Tempore of the Senate. The major changes to JDIG include (1) allowing the committee to consider a division or unit instead of the entire company when determining whether the company has increased or maintained its employment levels as a result of the incentive and (2) repealing the wage standard of the William S. Lee Quality Jobs Act (Bill Lee Act) as it applies to the JDIG program.

As a further benefit to Merck, the General Assembly extended the availability of Bill Lee Act tax credits to 2010 for bioprocessing and pharmaceutical/medicine manufacturing and distribution facilities representing investments of \$100 million or more.¹ Merck also received an authorization for annual sales and local tax refunds for construction materials and fixtures that become part of the facility's real property.

The General Assembly exempted the Merck project from state construction and purchase and

contract regulations, with the exception of those procurement regulations related to minority business participation goals. The project was also exempted from the State Environmental Policy Act's requirements of detailed environmental impact statements.

R. J. Reynolds in Winston-Salem is the second company to significantly benefit from the session's legislation, as S.L. 2003-435 extends the sunset on the cigarette exportation tax credit from 2005 to 2018, as long as the taxpayer claiming the credit uses the North Carolina State Ports. The legislation provides that the credit can be claimed by any successors in the business and modifies the base year determination. Finally, the legislature created an enhancement of the cigarette exportation tax credit, allowing a corporate income tax credit to be taken by tobacco manufacturers that export cigarettes to foreign countries, use the North Carolina State Ports, and maintain employment levels in North Carolina exceeding employment levels at the end of 2004.

S.L. 2003-435 also establishes the Life Sciences Revenue Bond Authority. This authority, to be housed within the Department of the State Treasurer, will study and make recommendations for creating a credit enhancement program to finance the construction of life sciences manufacturing facilities.

2003 Regular Session

Project Development Financing

Subject to voter approval of an amendment to the North Carolina Constitution, S.L. 2003-403 (S 725) seeks to allow local governments to borrow money to finance public improvements associated with private development projects. This is the third time in twenty years that the legislature has proposed a constitutional amendment to permit local governments to use this economic development tool, commonly referred to as *tax increment financing* (TIF). TIF can be used for industrial site development, redevelopment of existing industrial and brownfields sites, and the restoration of blighted areas. Because it is intended to support quality jobs, TIF can only be used to create manufacturing positions that meet specific wage and benefit requirements.

When a local government proposes to use TIF, it delineates a project financing district that will include the site of the private development anticipated to result from the public investments and probably some surrounding territory as well. The current value of taxable property in the district is determined and

1. In 2002 the General Assembly extended a similar sunset date for interstate air couriers.

becomes the base value of the district. Thereafter, each local government with jurisdiction over the district levies its normal property taxes against property in the district. The proceeds of the taxes on the base value of the district are turned over to each levying government. If there has been new development in the district since its creation, however, such that the actual value of property in the district is greater than the district's base value, the taxes on that additional value (the *increment*) are placed into a special fund that will become the primary security for the TIF bonds. (The implementing legislation also allows local governments issuing TIF bonds to pledge as security revenues from nontax sources in order that TIF bonds can carry the same sort of security that special obligation bonds do.)

The legislation permits cities to establish project financing districts within redevelopment areas and permits both cities and counties to establish such districts in areas that are "inappropriately developed" or "are appropriate for economic development." Cities must notify counties of any project financing district proposals, at which point the counties, in turn, are authorized to veto the creation of any of these proposed districts.

The state constitution requires voter approval of any bonds that pledge a local government's taxing power. The TIF bonds do not carry a general obligation pledge—bondholders cannot force a government issuing TIF bonds to levy taxes sufficient to retire the debt. The bonds do, however, carry a pledge of the proceeds of property taxes on specific property, and it is therefore possible that a court could hold that this new type of bond is indeed secured by a pledge of taxing power. The General Assembly could have enacted this legislation without a constitutional amendment and then awaited a test case to settle the issue, but it preferred to propose an amendment that clearly exempts TIF bonds from any requirement of voter approval. The proposed constitutional amendment will come before voters on the ballot of the November 2004 general election.

A number of local governments have been interested in cooperating in the development of industrial parks and in attracting major industrial projects. However, the fact that any potential project will be located in one specific place and thus not all of the cooperating governments will have jurisdiction to levy property taxes on it has discouraged participation in such arrangements. Consequently, local governments have been seeking methods through which they might share the tax base created by such projects. S.L. 2003-417 (H 1301) permits local governments to enter into agreements to share

financing, expenditures, and revenues related to joint undertakings. Such agreements may remain in place for as long as forty years. The new law is expected to facilitate the expansion of regional economic development projects as well as provide needed financing options for projects in rural areas of the state.

Tax Credits

The State Ports Tax Credit aims to encourage North Carolina businesses to increase their use of state ports. The Qualified Business Investments Tax Credit encourages investments in entrepreneurial start-ups. Both credits were set to expire on December 31, 2003. In S.L. 2003-414 (H 1294) the General Assembly extended the State Ports Tax Credit and the Qualified Business Investments Tax Credit to January 1 of 2009 and 2007, respectively, as recommended by the North Carolina Economic Development Board, an advisory group to the Governor and the Department of Commerce. The legislature also expands the applicability of the Qualified Business Investments Tax Credit to include investments in companies that commercialize university-developed technologies as well as companies that receive grants to enhance economic development through applied research and technology development and commercialization of the new technologies.

Senate Bill 944 and House Bill 1284 included proposals to significantly expand the tax credit available in North Carolina for research and development activity. The bills did not pass this session despite the North Carolina Economic Development Board's contention that the legislation would significantly increase research and development activity in the state. Currently a limited research and development credit is available only to companies that qualify for the Bill Lee Act. Enacted in 1996, the Bill Lee Act offers tax credits to companies in specifically named industrial classifications that create jobs or invest in machinery and equipment, worker training, research and development, and central offices. For purposes of applying many of the credits, counties receive one of five tier designations based on per capita income, unemployment rates, and population growth. The lower the designation of the area in which a company is located—that is, the more economically distressed the county—the larger the available tax credit will be. Proponents of the expanded research and development tax credit complained that many research and development activities are not well suited for the economically distressed areas the Bill Lee Act was designed to target.

The General Assembly also failed to enact S 944, a sales tax incentive to benefit large, advanced, or high technology manufacturing facilities. The bill would have authorized a refund of sales taxes paid on construction materials to companies building facilities for aerospace, automotive, semiconductor, pharmaceutical, or biological manufacturing that would have cost more than \$100 million to construct. A more limited sales tax incentive was enacted in the Second Extra Session, however. (See discussion of S.L. 2003-435 [H 2] above.)

One North Carolina—Industrial Recruitment Competitive Fund

In its 2002 session the General Assembly appropriated \$15 million to the One North Carolina—Industrial Recruitment Fund. This fund provides financial assistance to businesses or industries (1) that the Governor deems vital to a healthy and growing state economy and (2) that are making significant efforts to locate or expand in North Carolina. In 2003 the General Assembly made no appropriation to this fund. S.L. 2003-284 (H 397), the appropriations act, directs the Department of Commerce to allot \$1 million of the fund's last appropriation to provide financial assistance to Johnson and Wales University to support the creation and expansion of that educational institution's presence in North Carolina.

Small Business

S.L. 2003-284, Sec. 24.1 (H 397, Sec. 24.1), directs the Secretary of State and the Community College System to develop and implement a plan to transfer the consultation function of the Secretary of State's Business License Information Office to the Small Business Center of each community college in the system.

Workforce Development

The General Assembly considered, but took little action on, several strategies to respond to the high rates of dislocated workers in the state. Most of these proposals would have increased funding for workforce training; others were to be included in the study bill, which was not enacted.

S.L. 2003-418 (S 168) allows boards of county commissioners to create special economic development and training districts under Section 2(4) of

Article V of the North Carolina Constitution. These districts would support training workers for jobs with pharmaceutical, biotechnical, life sciences, chemical, telecommunications, and electronics companies. A county (through its community college) may provide targeted skills training centers in a district if it would be impossible or impractical to provide similar training facilities and services on a countywide basis to all existing and future employers. S.L. 2003-418 also authorizes county commissioners to finance, provide, or maintain the skills training center by levying additional property taxes in the economic development and training district. Finally, the act defines the property that may be initially included within an economic and training district in Johnston County, subject to selection by the Johnston County Board of Commissioners.

Tourism Grants

A bill to create a travel and tourism capital investment program (H 1316) would have provided grants to local governments for travel and tourism projects that (1) demonstrate a positive economic impact, (2) create at least ten jobs consistent with the Bill Lee Act's applicable wage standard [G.S. 105-129.4(b)], and (3) attract new visitors to the area. The requirements for eligible projects differed depending on the enterprise tier designation of the county. Communities in tier one through three counties were required to target tourists who reside outside of the state or more than twenty-five miles from the project and to create at least three new full-time jobs. Communities in tier four and five counties were required to target tourists who reside outside of the state or more than fifty miles from the project and to create at least ten full-time jobs. Similarly, the maximum grant percentages of the total project funds allotted to participating communities were determined by tier designation. Tier one and two communities were entitled to grants of up to 40 percent of the total project funds, grants for tier three and four were set at 30 percent, and grants for tier five were limited to 25 percent. The proceeds of the grants could be used only for capital costs associated with related projects. House Bill 1316 has passed the House and is now in the Senate Finance Committee. It is therefore eligible for consideration in the 2004 session.

Moving Ahead Transportation Initiatives

In the 2003 session Governor Easley advocated for significant improvements of roads and public transit systems as part of his overall economic development initiative. As a result of this advocacy, S.L. 2003-383 (H 48) was enacted, appropriating \$700 million from the Highway Trust Fund over the next two years to these transportation improvement efforts across the state. Of that sum, \$630 million is to be used for high-way preservation, modernization, and maintenance; \$70 million is to be used for public transportation. The Highway Trust Fund, established in 1989 and financed through certain gas tax revenues and highway use, vehicle registration, and title fees, had previously been limited to projects involving new construction, including seven urban loops. Now, however, the Governor's "Moving Ahead" initiative allows cash balances to be borrowed from the Trust Fund and used for other purposes.

S.L. 2003-383 is based on the state's apparent intention to replenish the Trust Fund money when it sells \$700 million in bonds that remain unsold from a \$950 million bond issue voters approved in 1996. The act also amends G.S. 136-176 to require the North Carolina Department of Transportation (NCDOT) to report to the Joint Legislative Transportation Oversight Committee twice each year, first on its intended use of the funds and later on its actual current and intended future use of the funds. Each year NCDOT must also certify to the committee that use of the Highway Trust Fund cash balances will not adversely affect the delivery schedule of any Highway Trust Fund project. The funds made available for Moving Ahead projects must be reduced to the amount above which NCDOT cannot so certify.

The Moving Ahead transportation act also establishes a twenty-seven-member Blue Ribbon Commission to study "the unique mobility needs of urban areas in North Carolina." The commission is to study (1) innovative financing approaches to address urban congestion, (2) local revenue options which would give urban areas more control over regional mobility, and (3) any other urban transportation issues that the commission cochairs approve for consideration.²

2. Parts of this section were excerpted from Richard D. Ducker and David W. Owens, "Land Use, Community Planning, Code Enforcement, and Transportation," in *North Carolina Legislation 2003*, ed. William A. Campbell, 111-20 (Chapel Hill, NC: School of Government, The University of North Carolina at Chapel Hill, 2003).

Redevelopment

The redevelopment law, G.S. 160A-514, generally requires that redevelopment property be sold by competitive means. There are exceptions, however, that allow private sale to governments, public utilities, and nonprofit entities, as long as the property will be used pursuant to the redevelopment plan. The provision allowing private sale to a nonprofit corporation has not, however, permitted doing so without full cash consideration. It has required that a committee of three professional appraisers agree upon the property's fair value and that the conveyance be for no less than that amount. S.L. 2003-66 (H 1065) permits a private sale of redevelopment property to a nonprofit pursuant to G.S. 160A-279, which provides for a simpler procedure (no public hearing required) and does not include a fair value requirement. Cities and counties frequently use G.S. 160A-279 to convey property to nonprofit entities and to accept as consideration the nonprofit's promise to put the property to some public use. S.L. 2003-66 will now permit them to follow this procedure with redevelopment property as well.

Internet Access

In 2000 the General Assembly created the Rural Internet Access Authority (RIAA) to address the digital divide existing between the state's urban and rural communities. Finding that the objectives of the RIAA had been largely met but noting the need to ensure that the citizens of rural North Carolina keep pace with technological changes in telecommunications and information networks, the General Assembly enacted S.L. 2003-425 (H 1194), effective December 31, 2003. This new legislation allows the RIAA to sunset and creates in its place the e-NC Authority. Although the authority is created within the Department of Commerce for organizational and budgetary purposes, the North Carolina Rural Economic Development Center will oversee its work.

Unlike the RIAA, which focused on rural areas, the e-NC Authority is charged with promoting efforts to provide high-speed broadband internet access to both rural and urban financially distressed areas. The authority will be governed by a commission of nine voting members and six nonvoting members. The voting members will be selected by the Governor, President Pro Tempore of the Senate, and the Speaker of the House. The six nonvoting members will include the Secretary of Commerce; the State Chief Information Officer; the President of the North

Carolina Rural Economic Development Center, Inc.; the Executive Director of the North Carolina Justice and Community Development Center; the Executive Director of the North Carolina League of Municipalities; and the Executive Director of the North Carolina Association of County Commissioners (or their designees). No member of the General Assembly may serve on the authority.

Board of Science and Technology

S.L. 2003-210 (H 665) amends G.S. 143B-472.80 to add the General Assembly as an entity to which the North Carolina Board of Science and Technology will provide advice on the role of science and technology in the economic growth and development of North Carolina. Previously, the board advised the Governor, the Department of Commerce, and the Economic Development Board.

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