Community And Economic Development

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2004 Legislative Action in Community and Economic Development

■ Anita Brown-Graham and Jonathan Morgan

In the continued aftermath of widespread plant closings, economic development remained a dominant theme in the 2004 legislative agenda. The General Assembly responded to calls to create jobs by considering, with vigorous debate, changes in the ways North Carolina grants incentives to and taxes its corporate citizens. Numerous bills were introduced that sponsors claimed would attract new businesses, aid existing businesses, and support new entrepreneurs. While most of these bills failed, the General Assembly did authorize some major expenditures. The most significant action was taken during a special extra session convened by the governor to respond to computer manufacturer Dell's request for a large-scale incentive package. Lawmakers approved one of the largest state incentive deals ever in North Carolina—$242.5 million—in an effort to secure the Dell project.[1]

In comparison, considerably less debate and fewer dollars were directed toward affordable housing efforts, with most of the enacted legislation being aimed at supporting local initiatives. For information on legislation related to land use, transportation, and the environment enacted by the 2004 General Assembly, see *Planning and Zoning Law Bulletin* No. 16.

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1. Dell ultimately chose to locate its computer manufacturing facility in Winston-Salem after the city and Forsyth County offered local incentives totaling $35 million.

UNC SCHOOL OF GOVERNMENT

The University of North Carolina at Chapel Hill
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2004 Extra Session on Economic Development

Tax Incentives for Major Computer Manufacturing Facilities

Governor Easley called lawmakers back to Raleigh to convene a special session of the General Assembly on November 4, 2004. The purpose of the session was to discuss and respond to a request for state incentives from a major computer manufacturer interested in locating a production facility in North Carolina. The company, Dell, had asked for a sizeable incentive package in exchange for its commitment to create jobs and make a substantial capital investment in the state. In response, the General Assembly enacted S.L. 2004-204, which authorized new tax credits and enhanced certain existing incentives totaling an estimated $242 million over fifteen years. The legislation passed by comfortable margins in both the House and Senate.

The core of the incentive package passed on Dell's behalf is a new tax credit that may be taken against the company's franchise and/or state income tax liability. The amount of the credit is equal to $10 million in the 2005 tax year. Starting in the 2006 tax year, the amount of the annual credit will vary based on (1) the taxable year, (2) unit output of the facility, (3) production factor, and (4) increases in employment at the facility. The unit output is the total number of computers and computer peripherals produced, assembled, or manufactured at the facility during the taxable year. To calculate the credit amount, the unit output is multiplied by a production factor of $15.00 for the 2006 tax year and a production factor of $6.25 thereafter. Annual caps on the credit amount range from $10 million to $20 million.

Although the Dell project was the impetus for the new incentive, any computer manufacturing facility that meets the eligibility requirements would qualify for the tax credit. To qualify, a taxpayer must have at least 1,200 full-time equivalent employees within the first five years of operation and invest at least $100 million in constructing and equipping a facility over a five-year period. The measure requires a company to provide health insurance coverage for all full-time positions in order to claim tax credits for those jobs. The Commerce Department estimates that this particular credit will cost roughly $200 million over fifteen years.

The next largest component of the Dell incentive package required the General Assembly to modify tax credits under the Quality Jobs and Business Expansion Act (the William S. Lee Act or Bill Lee Act). Section 2 of S.L. 2004-204 amends the Bill Lee Act (G.S. 105-129.4) to make the following enhancements for major computer facilities:

1. Eliminate the minimum wage standard required under the Bill Lee Act
2. Increase the job creation credit by $4,000 per job
3. Make the applicable percentage 7 percent and the applicable threshold zero for the machinery and equipment credit regardless of tier designation of the county in which the facility is located
4. Make the maximum credit for worker training equal to $1,000 per worker trained regardless of the tier designation
5. Make a taxpayer eligible to claim the credit for substantial investment in other property despite the tier designation of the county in which the facility is located

According to Department of Commerce estimates, the computer facility enhancements to the Bill Lee Act are projected to add another $21 million to the cost of the Dell incentive package.

2004 Regular Session

One North Carolina Fund

In S.L. 2004-88 (H 1352) the General Assembly appropriated $20 million to the One North Carolina Fund. This fund (formerly the Governor's Industrial Recruitment Competitiveness Fund) gives the governor significant discretion to provide grants to local governments to secure commitments from companies considering relocation to or expansion within the state or to convince companies considering leaving the state to remain. S.L. 2004-88 also amends G.S. 143B-437.71 to establish the fund as a nonreverting account and expresses the legislature's intent that the fund receive a recurring annual appropriation of $10 million.

Despite the discretion still afforded the governor, the General Assembly placed some limitations on the fund's uses. Proceeds from the fund may be used only for (1) the installation or purchase of equipment; (2) structural repairs, improvements, or renovations to existing buildings as part of expansion projects; (3) construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or the purchase of related equipment for existing buildings; (4) construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or the purchase of related equipment for new or proposed buildings that will be used for manufacturing and industrial operations; and (5) any other purposes specified by the General Assembly. Prior to the enactment of S.L. 2004-88, the administrative rules regulating the fund permitted all of the above uses except construction of or improvements to the infrastructure of new or proposed buildings.

The new provisions of G.S. 143B-437.72 clarify that funds from the One North Carolina Fund may only be disbursed as set out in agreements entered into between a local government and the state and a local government and a grantee business. An agreement between a local government and a grantee business must include (1) specific provisions regarding the number of jobs to be created or retained, the salary ranges involved, the location of the jobs, and the time period within which the jobs will be created or retained and maintained; (2) a commitment on the part of the business to provide proof of the jobs created or retained and the salary level of those jobs; (3) limitations on the use of funds; (4) provisions regarding the right of the state or local government to inspect all records of the business to confirm compliance with the agreement; (5) a method for establishing compliance with the agreement; (6) a schedule for disbursing funds that relates disbursement to the level of performance the business has achieved under the agreement; (7) a requirement for recapturing funds if the business fails to comply with the terms of the agreement; and (8) any additional protections deemed necessary.

An agreement between the state and a local government must contain (1) the local government's commitment to match state funds with cash, fee waivers, in-kind services, donation of assets, provision of infrastructure, or a combination of these; (2) provisions regarding the local government's obligation to recapture funds if the company fails to meet its commitments; (3) provisions regarding the local government's obligation to reimburse the state for recaptured or improperly disbursed funds; (4) provisions regarding the state's right to access local government records regarding compliance; (5) a schedule for the disbursement of funds; and (6) any additional protections deemed necessary. The Department of Commerce is charged with developing further guidelines related to the administration of the fund.

Rural Economic Infrastructure Funds

Rural North Carolina has been particularly hard hit by the recent recession and the longer-term transitions in the national economy. The General Assembly, in S.L. 2004-88, sought to alleviate some of the economic stress facing rural communities by providing the North Carolina Rural Economic Center $20 million in funding to stimulate rural economic development. The legislation directs that $15 million of that funding be used to establish the North Carolina Infrastructure Program. This program will furnish grants to local governments for the construction of critical water and wastewater facilities and other infrastructure, including technology-related infrastructure, in sites where the facilities will provide opportunities for private job creation.

The legislation also directs that the Rural Center set aside part of the funding for a program to redevelop some of the many buildings vacated by closed businesses as space for new and expanding businesses. Priority for the Building Reuse and Restoration Fund must be given to towns with a population of less than 5,000. Remaining funding may be used for research and demonstration grants, and up to 4 percent of the total funds may be used for administrative costs. Local governments applying for the funds must specify the number of private sector jobs that will be created and provide a verifiable means of ensuring that commitments are met. The overall goal of the funding effort is to create 130 new businesses and 1,500 jobs in rural areas of the state.

Worker Retraining

North Carolina community colleges have been inundated with the training needs of dislocated workers. The General Assembly responded by appropriating $4.1 million to the Community Colleges System Office for the 2004–2005 fiscal year to support the new and expanding industry training program. S.L. 2004-88 provides that funds unexpended and unencumbered at the end of the fiscal year will not revert to the General Fund.

Job Development Investment Grants

S.L. 2004-124 (H 1414) expands and extends the Job Development Investment Grant (JDIG) program. JDIG, which was created in 2002, allows a state Economic Investment Committee to enter into agreements with companies for the reimbursement of 10–75 percent of state income tax withholding payments for up to twelve years if such agreements would secure industrial sites that would be located elsewhere but for the incentive. The major changes to JDIG include (1) an increase from fifteen to twenty-five in the possible number of projects, (2) an increase from $10 million to $15 million in the total amount available for grants in a single year, and (3) extension of the program's sunset to January 1, 2006. Responding to critics who claimed that JDIG has disproportionately benefited the urban areas of the state, the General Assembly strongly encouraged the Department of Commerce and the Economic Investment Committee to give priority consideration under JDIG to projects located in less economically developed areas. S.L. 2004-124 also authorizes a comprehensive study of JDIG to be submitted to the 2005 General Assembly.

State Development Zones

S.L. 2004-132 (S 1063) directs the Secretary of Commerce to encourage, but not require, industrial and pollution control projects applying for industrial revenue bonds to locate in state development zones. In addition, S.L. 2004-203 (H 281), the technical corrections bill, clarifies G.S. 105-129.3A(a) and G.S. 160A-536 to provide that the state budget officer, rather than the state planner, is responsible for certifying population estimates for purposes of determining development zones and urban revitalization areas.

Changes to 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. Counties in the state are grouped into five tiers based on per capita income, unemployment rates, and population growth. The lower-tiered counties are the more economically distressed counties, and companies investing in them qualify for larger tax credits. S.L. 2004-202 (S 1244) provides that counties will be reevaluated each year (instead of every three years) for purposes of determining their tier status. This change is intended to make the act's incentive system more sensitive to catastrophic changes in a county's economic conditions.

In the 2003 Special Session on Economic Development, the General Assembly created a corporate income tax credit for any cigarette manufacturer that exports cigarettes to foreign countries, uses the North Carolina State Ports, and maintains employment levels in North Carolina exceeding those of the manufacturer at the end of 2004. S.L. 2004-170 (H 1145) amends G.S. 130.46 to clarify that, for purposes of this credit, a job may only be counted in a company's employment total for any one year if the job is located (that is, more than 50 percent of the employee's duties are performed) in North Carolina for more than six months of the year.

Research and Development Tax Credit

For years, including during the 2004 session, economic developers have argued that many research and development activities are not well suited for the economically distressed areas the Bill Lee Act was designed to target. By removing the research and development tax credit from the Bill Lee Act, S.L. 2004-124 expanded the list of businesses eligible for the act's credits as well as the purposes for which the credits may be claimed. However, the act still provides greater incentive rewards for research and development investments in the state's most distressed areas. For example, a taxpayer may take a larger credit for expenses for research performed in an enterprise tier one, two, or three county than for research performed in a tier four or five county. A taxpayer may also take an additional credit of 15 percent for work conducted in North Carolina by a public research university. This tax credit sunsets on January 1, 2009.

Tax Credits for Renewable Fuel Facilities

S.L 2004-153 (H 1636) amends G.S. 105-129.16D to provide tax credits for the construction and installation of commercial facilities for dispensing renewable fuel. The credit, which amounts to 15 percent of the construction costs, must be taken in three equal annual installments beginning with the taxable year in which the facility is placed in service. The bill also provides a credit to taxpayers who construct and place in service a commercial facility for processing renewable fuel. These taxpayers may take a credit equal to 25 percent of construction costs. This credit must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service.

Taxpayers may not take either the processing or dispensing credit if they claim any other state tax credit for the same costs of constructing and equipping the facility. The credit is effective for taxable years beginning on January 1, 2005, and will not apply to facilities placed in service after January 1, 2008.

Tax Law Changes

The 2004 General Assembly sought to make North Carolina a more appealing place for companies to do business by lessening their tax burdens. S.L. 2004-124 loosened eligibility restrictions for companies in less prosperous counties claiming sales tax refunds by reducing the minimum qualifying investment from $100 million to $50 million. Lawmakers also expanded the list of industries eligible for sales tax refunds and exemptions to include airplane manufacturing, computer manufacturing, motor vehicle manufacturing, and semiconductor manufacturing. In addition, the legislature raised the cap on the amount of tax credits a company may claim in a given year for making qualified business investments under G.S. 105-163.012(b). The year's most publicized tax proposal—an effort to exempt a portion of corporate income from taxation—did not pass.

Elimination of Wage Standards for Industrial Revenue Bonds

Previously, companies that took advantage of industrial revenue bonds were required to pay their employees above a specified wage, which usually amounted to slightly more than the average manufacturing wage of the county in which the company would be located (or, in wealthier counties, slightly more than the state average manufacturing wage). S.L. 2004-132 removes this wage standard from bonds for industrial and pollution control projects.

Entrepreneurship

Entrepreneurship has emerged as an important aspect of economic development in recent years. Recognizing this fact, in 2004 the General Assembly appropriated $2.25 million for the Department of Commerce and the North Carolina Rural Economic Development Center to create demonstration grants to be used by local governments in very distressed rural areas. S.L. 2004-124 directs that the grants be used to address critical infrastructure and entrepreneurial needs and to provide support to small businesses. The Department of Commerce also received $533,800 to fund a Business ServiCenter. The center will house an ombudsman who will provide a centralized source of information to assist small businesses.

Community Development Block Grants

The budget act, S.L. 2004-124, increases the options for assistance available to nonprofit organizations, expanding their capacity to carry out, in partnership with units of local government, activities eligible for Community Development Block Grants. Under the new law, capacity building is an eligible activity under any program category. In addition, capacity building grants may be financed through program income or unobligated funds.

Support for Motor Sports

Two bills in the 2004 session promote the multibillion-dollar motor sports industry. The budget bill, S.L. 2004-124, appropriates $4 million or the plan-ning and design of a testing complex near Charlotte to compete with similar tracks being developed in neighboring states. The North Carolina Motor Sports Testing and Research Complex will be linked to UNC Charlotte's motor sports engineering program. The second measure, S.L. 2004-185 (S 574), authorizes the Department of Motor Vehicles to issue special license plates having a stock car racing theme.

Regional Partnership Vision Plans

S.L. 2004-124 appropriates $1.75 million to the North Carolina Partnership for Economic Development Inc. for the creation and implementation of strategic economic development plans for each of the seven regional economic development partnerships.

Study Commission on Economic Development Infrastructure

S.L. 2004-161 (S 1152) creates a thirty-two-member Study Commission on Economic Development Infrastructure. The commission is charged with developing a plan to restructure and consolidate the system supporting economic development activities and must report its findings to the 2005 General Assembly.

Housing

Limitations on Housing Authorities

In response to concerns that some housing authorities in the state were using fencing that posed safety hazards to public housing residents, S.L. 2004-199 (S 1225) prohibits housing authorities from erecting or maintaining around occupied housing units any fence or gate structure that is electrified or includes spikes or barbed wire.

Home Loss Protection

S.L 2004-124 directs the North Carolina Housing Finance Agency to develop and administer a Home Protection Pilot Program and Loan Fund to assist workers who lose their jobs and are in danger of losing their homes because of the state's changing economic conditions. The agency is authorized to make loans to such homeowners, fund nonprofit counseling agencies to implement the program, and develop methods to notify homeowners about foreclosure mitigation services and the availability of agency loans.

Minimum Housing Ordinances

Dilapidated and vacant buildings can haunt neighborhoods, blighting the city landscape, lowering nearby property values, increasing crime and the risk of fire, and posing health and safety hazards to children. Over the years the General Assembly has sought to provide local governments the specific tools needed to combat urban decay in their jurisdictions. The 2004 session was no exception. S.L. 2004-70 (H 1726) authorizes the City of Winston-Salem to order residential property owners to repair housing to meet minimum code standards rather than simply vacating these structures. In the 2003 session, S.L. 2003-76 (S 290) and S.L. 2003-320 (S 357) granted this authority to Greensboro and Roanoke Rapids to allow those cities to address blight in a manner that did not further reduce the availability of affordable housing. Two other acts in the 2004 session address the problem of urban decay differently. S.L. 2004-6 (H 1666) adds the Town of Garner to the growing list of municipalities allowed to declare residential buildings in community development target areas unsafe and to demolish those buildings by using the accelerated process authorized under G.S. 160A-426 for the demolition of unsafe nonresidential buildings. Finally, S.L. 2004-98 (H 1737) authorizes the cities of Winston Salem and Reidsville to order that dwellings determined to be unfit for human habitation be repaired or demolished after a period of six months rather than the one year specified in G.S. 160A-443(5a).

Affordable Housing for Teachers

In many North Carolina communities, recent increases in the cost of housing have so outpaced increases in income that public servants cannot afford to buy, or sometimes even to rent, a home. This phenomenon has become a barrier to the recruitment of essential personnel, including teachers. Responding to one community's concerns, the General Assembly enacted S.L. 2004-16 (H 1640) authorizing the Dare County Board of Education to enter into contracts with nonprofit and public housing agencies to construct and provide up to three affordable housing projects on property owned or leased by the board. The projects may contain a mixture of below-market and at-market rental units. Teachers will have priority in securing these units.

Postscript: Update on Amendment One

In the 2003 session, the General Assembly passed (S.L. 2003-403) to enable local governments to issue bonds, without voter approval, to finance public improvements associated with private development projects. The legislation required that voters approve an amendment to the state constitution in order to make this economic development tool available. In the November 2004 election, voters approved Amendment One by a margin of 52 to 48 percent. Passage of the constitutional amendment makes North Carolina the forty-ninth state to permit local governments to use this type of financing mechanism, which is commonly referred to as "tax increment financing." Municipalities and counties can now sell these bonds, without a referendum, and use the proceeds to make infrastructure improvements needed for private development projects

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