

COMMUNITY AND ECONOMIC DEVELOPMENT BULLETIN

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2005 LEGISLATIVE SUMMARY

■ Anita R. Brown-Graham

Despite improved economic conditions in North Carolina this year, economic and community development initiatives continued to dominate the debate in the 2005 General Assembly. Surprisingly, the considerable debate failed to produce either the promised significant new legislation or sweeping reforms of existing legislation. At session's end, more money was available than in previous years to fund essentially the same types of community and economic development programs as existed before.

Tax and Grant Incentives

Industrial Recruitment Programs

This session both the House and Senate filed bills to significantly modify the economic development recruitment incentives that are part of the William S. Lee (Bill Lee) Act and the Job Development Investment Grant (JDIG) program. None of these bills came to a vote in either chamber.

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, and companies investing in them qualify for larger tax credits. In comparison, 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 these agreements would secure industrial sites that would be located elsewhere but for the investment.

Anita R. Brown-Graham is a School of Government faculty member.

Instead of making major revisions to either the Bill Lee Act or JDIG, S.L. 2005-241 (H 1004) extends the incentives available under both programs. These credits and incentives were due to expire January 1, 2006. In each case, the sunset was extended until January 1, 2008, for most industries and until January 1, 2010, for major industries and specific projects in state development zones.

S.L. 2005-241 includes provisions to shift the smallest counties and those ten counties with the highest unemployment rates into Enterprise Tier One under the Bill Lee Act. Under the amendments to the JDIG program, an eligible business is required to provide health insurance only to full-time employees who earn less than \$150,000 in taxable compensation annually or three and one-half times the annualized average wage for all privately insured employers with between 250 and 1,000 employees. Implying the possibility of future reform, the act creates the Joint Legislative Economic Development Oversight Committee, which is tasked with studying comprehensive changes to the Bill Lee Act, JDIG, and related economic development incentives. Finally, S.L. 2005-241 provides additional sunset extensions intended to bring specific projects to Gaston and Nash counties. The act accomplishes this by extending until 2010 the sunset for tax credits and incentives under JDIG or the Bill Lee Act for certain large projects located in development zones and partially completed before January 1, 2006.

S.L. 2005-406 (S 868) also amends the Bill Lee Act by providing an exception to the tier designation formula for industrial parks located in higher-tiered counties. If these parks meet certain conditions related to size, population, governmental ownership, and Medicaid eligibility percentages, they will be treated as if they were located in a tier one area. The act also gives dealers of tobacco products a refund of the excise tax paid on stale (and otherwise unsellable) cigars that are returned to the manufacturer.

Sales Tax Refunds

The 2005 General Assembly allowed additional sales tax refunds as incentives to specific industries. Effective for taxes paid on or after August 1, 2005, Section 33 of S.L. 2005-435 (H 105) extends to air couriers the refund of state and local sales taxes paid on construction materials and fixtures allowed to certain industries that make large investments in facilities. The existing refund was set to expire July 1, 2009, for the following industries: aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, and semiconductor manufacturing. Section 33 delays the sunset until

January 1, 2010 (the same date the Bill Lee Act is set to expire for major industries), and makes the sunset applicable to all industries entitled to the refund.

Part III of S.L. 2005-435 enacts two new sales tax refund incentives, effective retroactively to taxes paid on or after January 1, 2005, and expiring for taxes paid on or after January 1, 2007: (1) for interstate passenger air carriers, an annual sales tax refund for state and local sales taxes paid on fuel during the year over a threshold of \$2.5 million after subtracting the existing fuel sales tax refund measured by the carrier's operations outside North Carolina; and (2) for motor sports racing teams and sanctioning bodies, an annual refund of state and local sales taxes paid on aviation fuel used to travel to and from motor sports events.

Film Industry Jobs Incentives

Part 39 of the Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622) replaces the film industry development grant program in G.S. 143B-434.4 (which had been unfunded for several years) with a refundable income tax credit equal to 15 percent of at least \$250,000 of the qualifying expenditures made in connection with a production in North Carolina. The credit is effective for taxable years beginning on or after January 1, 2005, and sunsets January 1, 2010.

Mill Reuse Act

House Bill 474 would have created a state tax credit for investments in reusing historic mills. The proposed credit could have been claimed against the franchise tax, the income tax, or the insurer's gross premiums tax. To be eligible, a site would have had to meet the following criteria:

1. It was designed or used as a manufacturing facility, for purposes ancillary to manufacturing, or as a facility for providing utility services.
2. It was certified as an historic structure.
3. It was at least 80 percent vacant for a period of at least two years immediately preceding the time at which the eligibility certification was made.
4. The qualified rehabilitation expenditures for the site for which the taxpayer is allowed a credit under Section 47 of the Internal Revenue Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under Section 47 exceeded \$2 million.

The bill was referred to the House Finance Committee.

Other Development Financing Tools

Project Development Financing

Legislation enacted in 2003 amended G.S. 158-7.3 to enable local governments to issue bonds, without voter approval, to finance public improvements associated with private development projects. This economic development tool is commonly referred to as “tax increment financing.” S.L. 2003-403 required that voters approve it in a referendum amending the state constitution. The General Assembly again amended G.S. 158-7.3 in S.L. 2005-407 (S 528) to allow municipalities to use project development financing for tourism-related development projects. The provision is available only to areas designated as Enterprise Tier One under the Bill Lee Act and applies to districts created primarily for tourism-related economic development. Such developments might include facilities for exhibitions, athletic and cultural events, shows, and public gatherings; racing facilities; parks and recreation facilities; art galleries and centers; and museums.

One North Carolina Small Business Program

Section 13.14 of S.L. 2005-276 creates a special account in the One North Carolina Fund to fund two programs for small business development. The North Carolina Small Business Innovative Research and Small Business Technology Transfer (SBIR/STTR) Incentive Program will provide grants to eligible businesses to offset costs (not to exceed \$3,000) associated with applying for Phase I federal Small Business Administration SBIR/STTR grants. The North Carolina SBIR/STTR Matching Funds Program will provide grants (not to exceed \$100,000) to eligible businesses to match funds received as a federal SBIR/STTR Phase I award and will encourage eligible businesses to apply for federal Phase II awards.

Industrial Development Fund

Section 13.5 of S.L. 2005-276 authorizes grants from the Industrial Development Fund to be used for transportation infrastructure related to an operation deemed an eligible industrial activity.

Manufacturing Redevelopment Districts

S.L. 2005-462 (S 629) provides that a manufacturing redevelopment district may be created in an economically distressed county. The district is established upon certification by the owner to the Secretary of State that the area meets certain criteria (which describe an area in Transylvania County) and that the owner is financially capable of completing an assessment and a remediation program. The new operator of the facility must prefund the program with at least \$5 million to assess and remediate known environmental conditions in accordance with applicable environmental laws and in light of the facility’s intended use. The State Property Office must accept a donation of the real property comprising the manufacturing redevelopment district, then immediately transfer to the new operator a fee simple determinable interest in the real property. The consideration for the transfer to the new operator is the creation of jobs and economic opportunities that will result from restarting manufacturing operations. The act provides prior owners (or interest holders) of the district qualified immunity from civil environmental claims.

Community Development Block Grant Funds

The budget act, S.L. 2005-276, appropriates \$45 million in federal community development block grants for housing programs, economic development, and community revitalization. The act also directs the Department of Commerce to partner with the North Carolina Rural Economic Development Center to award up to \$2.25 million in demonstration grants to local governments in very distressed rural areas of the state for critical infrastructure and entrepreneurial needs and to provide small business assistance. The legislation further directs the Office of State Budget and Management to conduct a study to determine the best methods for collecting, managing, and providing access to information about technology, water, sewer, and other modern infrastructure that communities need to become and remain economically viable.

Rural Development

Rural economic development efforts received a boost from a new \$20 million recurring appropriation to the North Carolina Rural Economic Development Center. At least \$15 million of the appropriation must be used for physical infrastructure linked to job creation programs that seek to rehabilitate abandoned buildings

for new commercial uses. In addition, S.L. 2005-276 provides that \$500,000 of this appropriation be allocated to the e-NC Authority.

Funding for Community Development Corporations

Community-based development organizations, particularly those designated as community development corporations, are considered an important vehicle for creating development opportunities in economically distressed areas of the state. S.L. 2005-276 appropriates \$4 million (\$1 million recurring and \$3 million nonrecurring) to the North Carolina Community Development Initiative to fund mature community development organizations. The act also appropriates \$250,000 for the capacity building grant program for emerging community development corporations. The North Carolina Rural Economic Development Center administers this program.

Workforce Development

Lead Agency for Workforce Development

S.L. 2005-77 (H 583) addresses the state's fragmented system of workforce development by designating the Community Colleges System Office as the primary lead agency for delivering workforce and adult literacy training and adult education programs in the state. The bill provides no guidance on how the Community College System is to exercise this new role.

Worker Training Trust Fund

S.L. 2005-276 extends the sunset for the Worker Training Trust Fund from January 1, 2006, to January 1, 2011. The act also appropriates \$6.3 million from the Special Employment Security Administration Reserve Fund to local Employment Security Commission offices.

Water Infrastructure

The General Assembly failed to enact Senate Bill 1091, which would have increased the state's deed stamp tax to create a dedicated funding source for a water infrastructure fund. The fund would have provided resources for water, wastewater, and stormwater projects in the state. The General

Assembly did, however, enact S.L. 2005-454 (H 1095), which establishes, but does not provide long-term revenue for, a Water Infrastructure Fund. The act also creates a state Water Infrastructure Commission in the Office of the Governor. The commission's purpose is to identify the state's water infrastructure needs, develop a plan to meet those needs, and monitor plan implementation. A more detailed analysis of S.L. 2005-454 can be found in Chapter 11, "Environment and Natural Resources."

The General Assembly established the Clean Water Management Trust Fund (CWMTF) in 1996 to help finance projects that enhance or restore degraded waters, protect unpolluted waters, and/or contribute toward a network of riparian buffers and greenways benefiting environmental, educational, and recreational activities. The CWMTF was initially funded with an appropriation of \$40 million per year. Although subsequent legislation called for a phased increase in the annual appropriation first to \$70 million and then to \$100 million, the past several budgets have not allocated these amounts. In this year's budget, the CWMTF was fully funded at \$100 million in each fiscal year of the biennium. This new infusion of grant money will allow the CWMTF to provide assistance with a wider variety of projects to protect and improve water quality. Local governments will be the primary recipients of grants from the fund.

The budget also appropriates funds for certain named water resources development projects and provides the state match for federal safe drinking water funds.

Affordable Housing

Housing Finance Agency Funds

S.L. 2005-276 provides the North Carolina Housing Finance Agency with an additional \$4.5 million for housing programs. Advocates had sought a \$50 million appropriation for each year of the biennium for affordable housing through the North Carolina Housing Trust Fund.

Manufactured Housing

The General Assembly continued its efforts to improve consumer protections for purchasers of manufactured housing, a growing affordable housing alternative in North Carolina. S.L. 2005-451 (H 630) requires manufactured home dealers to establish and maintain escrow or trust accounts for buyer deposits.

Dealers must also provide buyers with a receipt for all deposits. The receipt must include the name and address of the bank where the deposit will be made.

House Bill 1288 would have (1) established an advance disposal tax on the sale of new and used manufactured homes, (2) required counties to develop a plan for the management of abandoned manufactured homes, and (3) provided a process for counties to use to remove and properly dispose of abandoned manufactured homes deemed to be nuisances. The bill is pending in the House Finance Committee.

Related Development Legislation

Interlocal Agreements

S.L. 2005-72 (S 867) enhances the multi-jurisdiction industrial park statutes by increasing from forty to ninety-nine years the period of time which an interlocal agreement regarding an industrial or commercial park may remain in effect.

Economic Development Public Records

S.L. 2005-493 (S 393) will allow public access to most records about state and local economic development incentive deals within twenty-five business days after the announcement that a business has committed to expand or locate a specific project in the state. Disclosure of local government records relating to the project is not required if the business

has not yet selected a specific location for the project. Once a location has been chosen, however, the local government records (including those maintained by the state related to the local government's efforts to attract the project) must be disclosed upon request. For further details, see Chapter 20, "Public Records."

Regional Councils of Government

Regional Councils of Government (COGs) play an increasingly important role in community and economic development activity in North Carolina. S.L. 2005-276 appropriates up to \$48,950 per fiscal year for each regional council of government or lead regional organization. In addition, S.L. 2005-290 (H 819) authorizes COGs to acquire real property by purchase, gift, or otherwise, and to improve the property. The bill makes clear, however, that a COG may not exercise the power of eminent domain.

Global TransPark Changes

S.L. 2005-364 (S 606) updates the statutes to reflect that the Global TransPark Development Zone has been renamed North Carolina's Eastern Region and that its governing body is renamed as North Carolina's Eastern Region Commission. The act adds to the commission's economic development responsibilities by directing it to promote travel, tourism, and natural resource-based attractions in the eastern part of the state.

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