LEGISLATIVE RESEARCH COMMISSION

CAPITAL INCENTIVE PROGRAM FOR TOURISM

REPORT TO THE

2001 SESSION OF THE

2001 GENERAL ASSEMBLY

OF NORTH CAROLINA

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1999 Session and 2000 Sessions, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of issues relating to the establishment of a travel and tourism capital incentive program was authorized by Section 2.1 (5)(c) of S.L. 1999-395. Part II of S.L. 1999-395 allows for studies authorized by that Part for the Legislative Research Commission to consider House Joint Resolution 1483 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 395 and House Joint Resolution 1483 are included in Appendix A.

The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Coastal Issues Grouping area under the direction of Senator Austin M. Allran. The Committee was chaired by Senator Stephen Metcalf and Representative Beverly Earle. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Capital Incentive Program for Tourism Committee met six times after the 2000 Regular Session of the 1999 General Assembly. The Committee was charged with studying issues relating to the establishment of a travel and tourism capital incentive program. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

August 2, 2000

At its organizational meeting on August 2, 2000, the Capital Incentive Program for Tourism LRC Committee first reviewed its study charge. Karen Cochrane-Brown, Committee Co-Counsel explained the legislation that authorized this study. The Studies Act of 1999, House Bill 163, authorized the Legislative Research Commission to study issues relating to the establishment of a travel and tourism capital incentive program. The Studies Act referenced House Joint Resolution 1483, which stated that tourism, is highly competitive among the States and that it is a major industry in North Carolina. To remain competitive, capital expenditures are necessary to expand and improve facilities and attractions in the State and to create new destinations such as convention centers and arenas.

The first speaker to address the Committee was Ms. Lynn Minges, Director of Tourism Programs of the North Carolina Department of Commerce, who provided background information about the tourism industry in North Carolina and an overview of the tourism programs currently in place as well as the Department’s role in the industry. She explained that the mission of the Division of Tourism is to work in cooperation with strategic partners to strengthen the state's tourism industry. The industry provides several benefits to our State including job creation, revenue, preservation of the state's natural, historic, and cultural assets, and the enhancement of the quality of life for North Carolina citizens. According to the Department’s surveys, North Carolina is perceived to be a good travel value because tourists can get a lot for their money in this state.

Next, Ms. Minges explained the Department’s domestic marketing programs to promote the tourism industry. The program spends approximately 3 million dollars on direct media placements such as advertisements in magazines promoting North Carolina as a travel destination. The Department encourages a variety of tour operators to market North Carolina as a destination. The Department also works with the North Carolina Convention and Visitors’ Bureau to bring in large conventions and groups to the state. The Department has also invested heavily in technological improvements including web site development and outbound e-mail marketing.

Next, Ms. Minges described the Department’s international marketing strategies. Of the $1 million dollars spent annually, the majority of that budget is spent between the United Kingdom and Germany, as those are the two largest markets that feed into North Carolina. The relationship with Canada is also being strengthened as currently about 60% of the state's international visitors come from there. There is also marketing done in other international areas such as Brazil and Japan through a coalition called Travel South, which is an organization of 14 state travel offices in the south that collectively market southern states as travel destinations.

Lastly, Ms. Minges added that “heritage tourism” is an important and growing segment of the market. There are currently eight positions throughout the state and two in the state tourism office, which manage the statewide coordinated heritage tourism program.

Next, Ms. Susan L. Markham with the Travel and Tourism Coalition provided the Committee with an overview of North Carolina's occupancy tax and an explanation of tourism development programs in other states. The Travel and Tourism Coalition is a statewide membership organization representing the major travel and tourism destinations, attractions, and trade associations across the state. The purpose of this coalition is to provide a unified voice in government policy for the travel and tourism industry in the state, namely the use of occupancy tax, to promote travel and tourism in the localities where the tax is collected.

Ms. Markham began by pointing out that the federal organization that promoted international travel and tourism was disbanded in the early 1990s. As a result, marketing responsibilities for the tourism industry were shifted to the states. Ms. Markham then explained the history of occupancy taxes in this State and the current status of occupancy taxes including the amount of tax in the various counties and the manner in which they are collected and spent.

In North Carolina, each local area collects the room occupancy tax that is authorized. She stated that in the early 1990's there was an effort to standardize the room occupancy tax into a statute of statewide policy that would determine who collected the tax, the amount, and how it would be distributed. While the statewide effort did not pass, the House Finance Committee, under the leadership of Representatives Miller and Jarrell, worked with the industry to create an occupancy tax standard.

Turning to her explanation of tourism financing methods in other states, Ms. Markham explained that there are basically three funding models: performance-based models, dedicated tax revenue models, and general fund appropriation models. She then explained in detail each of the models as used in several states including Missouri, Florida, Virginia, and Illinois.

Next, the Committee heard from Mr. Gerry Hancock, attorney for the North Carolina Travel and Tourism Coalition, who expressed concern that much of the revenue generated by occupancy taxes has not been used for its original purpose – the promotion of tourism. He stated that the Coalition wants to emphasize that the purpose of tourism revenue is to promote tourism.

Next, Representative Earle sought input from the Committee members regarding the issues on which they wanted the Committee to focus. The Committee members expressed a desire to study a variety of issues including the need to promote economic development and improve infrastructure in the depressed areas of northeastern North Carolina as a means of bringing tourism to those areas, to study other state programs, to define "tourism" for incentive purposes, encourage more out-of-staters to visit North Carolina, to establish a statewide fund that localities could draw from to finance tourism-related products, and to develop creative funding sources to promote the tourism industry.

August 21, 2000

The second meeting of the Committee began with a presentation by Mr. Stewart Dickinson, Director of the Commerce Finance Center with the North Carolina Department of Commerce, on the William S. Lee Act. The Act, enacted in 1996, was the first and only statewide incentive act in North Carolina. By offering tax credits, the Act targets new companies with quality jobs to locate in North Carolina and to encourage existing companies to expand, to invest, to provide worker training, and to meet sound health, environmental and safety standards. Through its “tier” system, which ranks counties based on unemployment rates, per capita income, and population growth within the last three years, the Act also encourages companies to locate in the more distressed counties in the state. The amount of the tax credit is based on the tier where the jobs are located or where 50% or more of the employee's duties are performed.

In response to a question, Mr. Dickinson explained that the tourism industry is not eligible for tax credits under the Bill Lee Act. The act is targeted primarily at manufacturing industries that would create a large amount of higher wage, full-time jobs and that would provide at least 40 weeks per year of employment with good health benefits for employees. There was discussion regarding the need to improve the perception of the tourism industry, which tends to be regarded as not providing high quality or high paying jobs.

Next, the Committee heard comments from Ms. Kathy Sawyer, Legislative Liaison for the Department of Commerce and Special Assistant to the Secretary of Commerce, regarding the incorporation of tourism into the Bill Lee Act. Ms. Sawyer indicated that tourism was not a natural fit for the Lee Act and suggested, instead, that it be used as a model to create specific new legislation for the tourism industry.

In response to a question about the competitiveness of the Lee Act to similar acts in other states and whether the Lee Act is achieving the intended goals in North Carolina, Mr. Dickinson replied that the Lee Act ranks as one of the more conservative acts. However, the Act does not need to be overly aggressive because North Carolina already has a level playing field due to the relatively low taxes, real estate values, and the available labor force in the state.

Next, Mr. Gerry Hancock, legal counsel for the North Carolina Travel and Tourism Coalition, gave a presentation on federal programs related to tourism.

Mr. Hancock stated that there were not many federal acts available specifically for tourism, but that there were a vast array of loan assistance programs available through the Small Business Administration that apply to small businesses, particularly for local governments in economically distressed areas. Included in Mr. Hancock's research materials was information on Kentucky's tourism incentive program, which he suggested to the Committee was worthy of study for application in North Carolina.

October 4, 2000

The third meeting of the Capital Incentive Program for Tourism Committee was held on October 4, 2000. Senator Metcalf chaired the meeting, which began with a presentation on behalf of the Mountains and Coastal Preservation Movement. Senator Metcalf recognized Ms. Susan Bulluck, Governmental Relations Consultant for Pearsall Operating and First Carolina Management Company. These companies own and manage hotel properties and other businesses across the state. Ms. Bulluck noted that as a major investor in tourism related property on the coast and in the mountains, her company is concerned with the future prospects for those natural and economic assets. Next, Ms Bulluck introduced Mr. Hugh Morton, owner of Grandfather Mountain. Mr. Morton offered a slide presentation with pictures of a technique designed to protect beachfront property from erosion. The technique was developed by Mr. Dick Homberg. Mr. Morton showed slides of Mr. Homberg's underwater stabilizers, which are fabric bags filled with concrete. The stabilizers are placed under water, and within a few months, sand settles over the stabilizers covering them and extending the beachfront area. Mr. Morton showed pictures of property on Lake Michigan and in Saudi Arabia, before and after the use of the stabilizers. Mr. Morton stated that he would like to see this technique used on some area of the North Carolina coast, and suggested that the Legislature could pass legislation to permit a pilot program to try the stabilizer technology.

The next portion of Mr. Morton's presentation concerned problems in North Carolina's mountain area. Mr. Morton stated that air pollution is the biggest problem in that part of the State and he showed slides to illustrate the problem. Pollution is also affecting the mountain streams. He showed slides of sewage being piped directly into streams without benefit of a septic tank or any type of sewage treatment.

Following Mr.Morton's presentation, Ms. Bulluck was recognized to give closing statements. She again stressed the importance of the mountain and coastal areas to tourism in the State. She expressed her hope that the Legislature would approve funding for some sort of lasting beach renourishment system. She also stated her belief that a fund could be created for mountain projects, to help reduce air pollution and to provide erosion control.

Next, the Committee heard a presentation on behalf of the public/private partnership for the Greenville Convention Center. The Chair introduced Mr. David Holec, the Greenville City Attorney, who spoke about the public/private partnership which will be developing and operating a new Civic Center. Mr. Holec gave background information about the formation of the partnership between the Hilton Hotel and the City of Greenville. The convention center is the culmination of a seven-year process. In 1993, the county was authorized to levy a 3% occupancy tax to be used specifically for the development of a convention center in Greenville. The county and the city then jointly purchased property next to the Hilton for development. The facility will be operated by an affiliate of the Hilton, so that no public funds will be used for the operation of the center. Construction of the convention center is scheduled to begin in April 2001, with the opening of the facility no later than April 30, 2002.

Mr. Holec then introduced Mr. Nick Glennon, who represents Glennon-Bittain Investments, the private partner in the convention center. Mr. Glennon showed the design plans for the proposed convention center and for the renovations of the hotel. He noted that annual attendance is estimated to be 148,000 visitors a year. It is estimated that the construction alone will contribute 32 million dollars to the local and regional economy and when the facility is operating, the center will provide 467 new jobs.

The Chair then recognized Dr. Dori Finley, Chair of the Nutrition and Hospitality Management Department at East Carolina University. The Hilton Greenville will be the teaching hotel in a cooperative education program and the convention center complex will provide a practical learning environment.

In response to a question from a committee member, committee co-counsel, Karen Cochrane Brown, explained the constitutional issue surrounding the process of tax increment financing. Tax increment financing is a process used by many states and localities around the country to finance economic development. Using this method, a unit of local government issues bonds for certain projects, and the bonds are repaid by the increase in the taxes generated as a result of the project being completed. This is unconstitutional in North Carolina. Our constitution prohibits the General Assembly from enacting a law authorizing any locality to pledge its full faith and credit without a vote of the people in that locality. A constitutional amendment to authorize this type of financing has been placed on the ballot twice in the past, and in both instances it failed. In 1993, the last time this was tried, several pro-business organizations campaigned vigorously in favor of the amendment and yet the voters rejected it.

The committee discussed how funding might be secured for air pollution problems in the mountains and coastal beach renourishment. The committee also noted that more federal money should be requested. The Chair noted that it would be problematic for the committee to recommend establishing this type of fund during the next session of the General Assembly, but the committee might consider recommending funding for a pilot project on the coast.

November 20, 2000

The Capital Incentive Program for Tourism Committee met again on November 20, 2000. Representative Earle presided. Ms. Kathy Sawyer, Legislative Liaison and Special Assistant to the Secretary of Commerce, and Ms. Stephanie Grice, Governor's Fellow, presented a proposal to the committee to adapt the William S. Lee Act for the tourism industry. Ms. Sawyer advised the committee that neither Governor Hunt, Governor-elect Easley, nor Secretary of Commerce Carlisle had given approval to the proposal and that the Department of Commerce might not necessarily endorse the proposal in the future. Ms. Sawyer acknowledged that the proposal for creating tax incentives for the tourism industry had been modeled on the current program for manufacturing businesses, but noted that the two industries had very different needs. She stated that the tourism incentives should be kept separate from the Lee Act.

Ms. Sawyer provided some initial definitions and then turned the presentation over to Ms. Grice. Ms. Grice explained that incentives would be permitted based on whether a project was located in a Tourism Development Zone. The Tourism Development Zones would be governed by nonprofit corporations, they would be certified by the Secretary of Commerce, and they would contain capital tourism projects within their geographical limits. As the governing body for a zone, the Tourism Development Authorities, would help define the zone, apply for certification, organize capital tourism projects and receive real property, stock and monetary donations toward tourism projects.

The Tourism Development Zones would be located in an enterprise tier 1, 2, or 3 county or a state development zone. Proposed tourism projects located within a Tourism Development Zone would be eligible for tax incentives once they were certified by the Secretary of Commerce.

In order to be certified, the projects would have to meet the following criteria: 1) be a capital project, 2) be a new facility or an expansion of an existing facility, 3) be an "attractor" (a destination facility that draws tourists from at least 100 miles away to a local area) or an "associated attractor" (service industries that encourage tourists to travel to visit the main attractor and were built in conjunction with the attractor), 4) projects must increase the flow of tourists into the tourism development zone, and 5) projects must protect the integrity of the area's environment.

A taxpayer whose project is certified must have five or more employees for at least 40 weeks during the taxable year. If an additional full-time employee is hired during that year, the taxpayer is eligible for a credit against taxes owed. In addition, if the taxpayer purchased or leased eligible property and placed it in service during the year, the taxpayer would be eligible for an investment tax credit. The proposal also includes contribution credits for donors of real property, stocks, and other fixed assets. This credit would be 25% of the value of the contribution.

At the conclusion of the presentation, some committee members expressed concerns about the 40-week eligibility requirement, which might impact coastal tourism areas. Members also questioned the exclusion of tier 4 and 5 areas, instead of using a declining formula as in the Lee Act. The Chair reminded the committee that all comments and suggestions would be considered before the committee reached its final recommendation. The Chair asked the committee to accept the proposal as presented as a starting point for a recommendation to be used by staff in drafting proposed legislation. The committee agreed.

Mr. Mohammad Jenatian, a committee member, suggested that the committee look at the tourism incentive program developed by the State of Kentucky. He stated that their program does not require funding from the State but rather is based on tax increment financing. In response to a question, Committee Co-Counsel, Karen Cochrane Brown, explained that tax increment financing is indeed unconstitutional in North Carolina. Mr. Jenatian requested that a subcommittee be appointed to see if the Kentucky model could be adapted for North Carolina.

Next, Ms. Barbara Riley, Co-Counsel to the LRC Commission on Coastal Beach Movement, Beach Renourishment and Storm Mitigation, gave a brief presentation concerning the Homberg technology, about which the Committee heard at its last meeting. Ms. Riley stated that, Mr. Paden Woodruff, the program administrator for the Florida Shoreline Management Program, had been a speaker at the last meeting of the Coastal Beach Movement Committee. When asked about Mr. Homberg, Mr. Woodruff indicated that Mr. Homberg was not a coastal engineer and that there were no cheap solutions or quick fixes for the coastal erosion problems. Mr. Woodruff also indicated that there had been problems with at least one project done by Mr. Homberg in Florida. Ms. Riley stated that the Coastal Beach Movement Committee was considering recommendations for the development of a statewide strategic plan on coastal problems and the critically eroded areas. That committee was also working toward establishing long range financing plans. The Chair shared her regrets that the Committee had not had the benefit of Mr. Woodruff's comments when it heard the presentation on behalf of Mr. Homberg's technology.

Representative Barefoot, a committee member, informed the committee about a conference to be held in Wilmington on December 4, at which both sides of the beach movement issue would be discussed. Members of the committee were invited to attend the conference.

The Chair appointed a subcommittee to review the Kentucky program to see if it could be used in North Carolina, and directed the committee to report at the next committee meeting.

December 12, 2000

The next meeting of the Capital Incentive Program for Tourism Committee was held on December 12, 2000. Representative Earle presided, and began by recognizing Ms. Trina Griffin, Committee Co-Counsel, to give an overview of the Kentucky Tourism Development Act. Ms. Griffin began by correcting the impression left at the last meeting that Kentucky's law was a tax increment financing plan, and therefore, unconstitutional. After reviewing the statute, it appears that Kentucky's law is not the type of plan that would violate the North Carolina Constitution.

Under the Kentucky Tourism Development Act, developers of approved projects are eligible to recover 25% of their project's cost through the refund of sales tax collected from visitors. Eligible tourism attractions include cultural or historic sites, recreation or entertainment facilities, areas of natural phenomenon or scenic beauty, crafts centers, or entertainment destination centers. Among other things, the project must 1) cost at least one million dollars, 2) attract at least 25% of its visitors from out of state, 3) be open to the public at least 100 days, and 4) not adversely affect existing employment in the State. Generally, lodging and retail facilities are excluded from the act, unless they are a subordinate part of a primary attraction, or, in the case of lodging facilities, they are listed in the National Register of Historic Places.

The Chair then recognized Representative Daniel Barefoot to report on behalf of the subcommittee. The subcommittee met on December 5, 2000. After hearing a brief review of the Kentucky program, the subcommittee discussed the constitutional issue. Committee Co-Counsel, Karen Cochrane Brown, informed the subcommittee that the Kentucky program is not a tax increment plan, in that it uses statewide sales taxes rather than local property taxes. Therefore, it would not appear to be unconstitutional under North Carolina law. In addition, the General Assembly has authorized the refund of sales taxes as an economic development incentive before in some very limited circumstances. The Chair of the subcommittee then asked staff to check on the success of the Kentucky program and to report to the full committee. The subcommittee discussed how to create a plan to use sale tax refunds as a tourism incentive in North Carolina. Subcommittee member, Mr. Mohammad Jenatian, volunteered to draft a proposal to be offered to the full committee. Representative Barefoot then asked the Chair to recognize Mr. Jenatian to explain the proposal.

Mr. Jenatian presented a proposal to the committee that was modeled on the Kentucky program, but differed from that program in that it included higher incentives for distressed counties. Under this proposal qualified projects could recover a percentage of their total costs over a ten-year period. The percentage that could be recovered would depend on the tier status of the county in which the project was located. The recovery would come from projected sales, payroll, and ticket tax revenues generated directly from the project. In order to qualify, a project must cost at least one million in a tier 1 county up to at least five million in a tier 5 county. In addition, the project must meet other specified criteria designed to insure that the State receives a guaranteed share of the annual revenues from the increased tax receipts, and that the local hospitality industry and the local municipality participate in the identification and development of the project.

After the presentation, the committee discussed the proposal. Some members expressed concerns about the requirement that local municipalities participate in the project. Other members were concerned that this proposal incorporated the graduated tier approach, rather than keeping the more simple approach used in Kentucky. The committee was unable to reach a consensus on the proposal.

The Chair then recognized Committee Co-Counsel, Karen Cochrane Brown to present the draft legislation prepared in response to the proposal made by the Department of Commerce at the last meeting. Ms. Cochrane Brown stated that the bill draft proposes a new program to provide tax incentives for capital tourism projects. The draft differs slightly from the Department's proposal in that it eliminates the Tourism Development Zones and Authorities. The program is modeled after the William S. Lee Quality Jobs and Business Expansion Act. Under this program, eligible tourism businesses could receive tax credits for creating new jobs and for investment in tourism property, located in a tier one, two, or three county or in a state development zone.

Several members expressed concern that the draft excluded tiers four and five counties altogether, unless a development zone was located within the county. Other members suggested that the definitions needed to be more carefully considered. Some members felt that the committee needed more time to work on the details of the proposal, and recommended that the committee request to be continued through the next session. Again, the committee was unable to reach a consensus on the proposal.

After considerable discussion, the committee was unable to agree to recommend any of the proposals that had been presented. The Chair then recognized Mr. Gerry Hancock, General Counsel for the North Carolina Travel and Tourism Coalition. Mr. Hancock suggested that the committee report include a summary of each of the proposals and a recommendation that, although the report would contain no legislative proposal, the tourism industry would continue to work with individual legislative members to craft legislation which incorporated the best parts of all of the proposals. The committee agreed to this solution and the Chair directed staff to prepare a draft final report to be considered at the next meeting.

January 2, 2001

The final meeting of the Capital Incentive Program for Tourism Committee was held on January 2, 2001. During this meeting, the committee discussed and approved the report to be submitted to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

I. Summary of the Capital Tourism Tax Incentives Bill

This legislative proposal adds a new Article 3E to Chapter 105 of the General Statutes, to be entitled “Tax Incentives For New and Expanding Tourism Businesses”. The article would apply to tourism “attractors”, or businesses that draw tourist to a local area for one or more days, such as museums, amusement parks and facilities that promote local crafts. It would also apply to “associated attractors”, which are businesses that open or expand within 30 miles of an attractor.

In order to be eligible for tax credits, the business must be located in an enterprise tier one, two, or three area or in a development zone. In addition, the business must meet the wage standard, which is a formula for assuring that the jobs created by the business will pay as well as or better than jobs currently existing in the county or zone. The business also must provide health insurance to its employees, and must certify that it has no environmental or OSHA violations.

An eligible business may take the credits against one of the following taxes: 1) the franchise tax, 2) the income tax, or 3) the gross premiums tax. To claim the credit, a business must apply to the Secretary of Commerce for certification that the business meets all of the eligibility requirements, and pay the application fee. An eligible business that employs at least five full-time employees and hires another employee in an eligible location may claim a tax credit for creating the new full-time job. The amount of the credit varies dependent on where the job is located. The amount of the credit is increased if the job is located in a development zone. A business that purchases or leases eligible tourism property in an eligible location is allowed to take a tax credit for the investment. Tourism property is defined as buildings, machinery and equipment, furniture or fixtures used in business as an attractor or associated attractor. The amount of the credit is 7% of the excess of the eligible investment amount over the applicable threshold. The threshold varies depending on the enterprise tier in which the property is located. The draft contains provisions to insure that no business could obtain credits under both the William S. Lee Act and this act for the same jobs or property. Finally, the act would become effective in 2002 and would expire in 2008. (See, Appendix C)

Findings

1. Under the William S. Lee Act, the State has developed a workable method for identifying the most economically distressed areas of the State, and offering greater incentives to manufacturing businesses that locate in those areas.

2. Most of the committee found that there is merit to providing a graduated incentive that offers greater benefits to businesses that locate in the more distressed areas. However, some members expressed concern with the way tier assignments are made.

3. Most of the committee found that any recommendation should offer some incentive for businesses that locate in any part of the State, including the more affluent areas. Many members of the committee found that the exclusion of tier four and five areas from this proposal was unduly restrictive.

4. Tourism is a broad and somewhat amorphous concept. For this reason, great care should be taken in defining the types of businesses that would qualify for any incentive. The definition of the term "attractor" contained in this proposal may be overly broad. In addition, the North Carolina Hotel & Motel

Association believes that lodging facilities should not be included within the definition of “associated attractors”, and that the committee should consider the long-term advisability of providing incentives to other categories of service industries as “associated attractors”.

II. Summary of Kentucky Tourism Development Act

The Kentucky Tourism Development Act provides developers with a financial incentive to create and expand tourism attractions within the State. Eligible tourism attractions include cultural or historic sites, recreation or entertainment facilities, areas of natural phenomenon or scenic beauty, and craft and product centers. Proposed tourism projects must go through an extensive approval process before construction may commence. However, once approved, developers are eligible to recover the lesser of the total amount of their sales tax liability or 25% of their approved project costs through a refund of sales tax collected from visitors. The refund is paid over a ten-year period at a rate of 2.5% per year beginning one year after operation and collection of sales tax commences.

In addition to the approval process conducted by the Kentucky Tourism Cabinet and the Kentucky Economic Development Finance Authority, there are several other statutory eligibility requirements. First, the project must cost at least $1 million. Second, the attraction must draw at least 25% of its visitors from out of state. Third, the attraction must be open to the public at least 100 days a year. Fourth, the attraction must have a significant and positive impact on the State with consideration given to the extent that the project will compete directly with existing tourism attractions and the amount by which increased tax revenues from the attraction will exceed the credit given the approved company. Lastly, the project must produce sufficient revenues and public demand and must not adversely affect existing employment in the State.

There are three types of projects that are excluded from the Act. First, lodging facilities are excluded unless the facilities represent only a portion of the attraction and are less than 50% of the total cost, or unless the facilities involve the restoration of a historic structure. Second, facilities that are primarily devoted to the sale of retail goods are excluded, unless the sale of goods is a secondary and subordinate component of the attraction. Third, recreational facilities that are unlikely to require nonresidents to remain overnight in commercial lodging near the tourism project are also excluded. (See, APPENDIX D)

Findings

1. The Kentucky Tourism Development Act is a simple program that refunds a flat 25% of sales tax collected regardless of the location of the tourism project.

2. The Kentucky Tourism Development Cabinet has approved six tourism projects since the Act was enacted in 1996.

3. According to the Kentucky Tourism Development Cabinet, the Act has proven to be very successful in increasing revenue for the State, attracting out-of-state visitors, revitalizing economically distressed areas, and improving public infrastructure such as roads, bridges, and parking facilities.

4. The provision of a sales tax refund as an incentive is most likely constitutional under North Carolina's Constitution and is currently authorized in limited circumstances.

5. Although this appears to be a workable model, most of the committee found that more study of the details of the program was needed.

III. Summary of the North Carolina Tourism Development Act Proposal

On December 5, 2000, the Subcommittee of the Capital Incentive Program for Tourism met to discuss the Kentucky Tourism Development Tourism Act and to consider drafting a similar proposal for North Carolina. The members of the subcommittee were Representative Daniel W. Barefoot, Chair, Mohammad Jenatian, and Carolyn Lohr.

As a result of the discussion, the subcommittee adopted a proposal titled the North Carolina Tourism Development Act. Under this proposal, developers of qualified projects would be eligible to recover a percentage of their total cost over a period of ten years based on the tier in which the project is located. The proposal incorporates the tier levels found in the William S. Lee Act. Projects located in Tier 1 counties would be eligible to recover up to 35% of the total cost, projects in Tier 2 and 3 counties would be eligible to recover up to 30% of the total cost, and projects in Tier 4 and 5 counties would be eligible to recover up to 25% of the total cost. The money recaptured must be dedicated to construction costs or marketing efforts, or both. This proposal sets out several criteria, all of which must be met before a developer is eligible for the cost recovery: (1) the project must be certified as a major economic and employment generator that benefits the travel and tourism industry and the community as a whole; (2) the project must guarantee enhancement of tax revenues for the State; (3) a major portion of the project's targeted business must include visitors requiring overnight stays; (4) the project must be identified as a priority project by the local hospitality industry and the local municipality; (5) the project must be receiving public funding through the local municipality; (6) the request for participation in the cost recovery program must be made to the State by the local municipality; and (7) the project must meet a minimum cost which is graduated based on the tier in which the project is located. Beginning with a cost of $1 million in tier 1 counties, the minimum cost increases by $1 million for each subsequent tier.

The primary focus of the subcommittee when drafting this proposal included guaranteeing tax revenues for the State of North Carolina and offering enhanced incentives for the economically depressed areas of the State for the creation and expansion of tourism in their communities. (See Appendix D).

Findings

1. Several members of the committee expressed concern about involving local governments in the qualification process of proposed tourism projects. Although it is clearly beneficial to have local support for a project, local governments have many demands on limited resources and may not always be in the best position to judge the long-term benefits of a tourism project, when compared to a more immediate need.

2. The committee found that one of the more appealing features of the Kentucky program was its simplicity, in that it provided the same incentive to all qualified projects, regardless of where in the state they chose to locate their project. Some members found that this proposal was unduly complicated and restrictive.

3. Any legislation providing financial incentives for the tourism industry involves complex issues concerning the definition of “tourism” or “tourism product”, the adequacy of public infrastructure in areas targeted for incentives, and the success of similar programs in other states that are similar in population and geography as North Carolina.

4. The committee found that, although this proposal presented a good general approach to providing statewide tourism incentives, many of the details of the program needed to be developed before the committee could recommend the proposal.

Recommendations

Based on these findings, the committee concluded that it could not make legislative recommendations at this time. The committee further recommends that the representatives of the tourism industry continue to work with legislative members towards the goal of crafting a legislative proposal that incorporates the best parts of the proposals considered by the committee.

APPENDIX A

SESSION LAWS 1999 - 395

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

. . .

c. Capital incentive program for tourism (H.J.R. 1483 - Earle).

. . .

Section 2.2. Committee Membership. -- For each Legislative Research Commission committee created during the 1999-2001 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Section 2.3. Reporting Date. -- For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1999 General Assembly, 2000 Regular Session, or the 2001 General Assembly.

Section 2.4. Funding. -- From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

. . .

PART XXII.-----BILL AND RESOLUTIONS REFERENCES

Section 22.1. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:03 p.m. this 5th day of August, 1999

APPENDIX B
CAPITAL INCENTIVE PROGRAM FOR TOURISM COMMITTEE (LRC)
1999-2001
S.L. 1999-395

Pro Tem's Appointments

Sen. Stephen M. Metcalf, Cochair
PO Box 1694
Asheville, NC 28804
(828) 232-1998

Mr. Joseph Randolph Fluharty, Jr.
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Sen. John A. Garwood
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Mrs. Elsie Griggs Pugh
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Mr. Richard Y. Tharrington
President, First Carolina Management, Inc.
PO Box 7246
Rocky Mount, NC 27804

Sen. Ed N. Warren
227 Country Club Drive
Greenville, NC 27834
(252) 756-2671

Speaker's Appointments

Rep. Beverly M. Earle, Cochair
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Rep. Daniel W. Barefoot
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(704) 735-5817

Rep. Zeno L. Edwards, Jr.
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Mr. Mohammad Jenatian
6532 Montezuma Trail
Charlotte, NC 28227

Ms. Carolyn Lohr
Carteret County Tourism Development Bureau
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Rep. R. Eugene Rogers
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(252) 792-6354

Staff

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Ms. Karen Cochrane-Brown
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(919) 733-2578

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Ms. Nancy Pulley
(919) 733-5655

APPENDIX E

Travel and Tourism Capital Incentive Program

Travel and tourism has been the most rapidly growing industry in North Carolina and is projected to become the number one industry in the state.

Considering the remarkable state-wide economic and employment impacts ($11.4 billion in expenditure, $3.6 billion in payroll, $642 million in state tax receipts, 188,000 employees) of the industry and the role it is projected to assume towards future economic prosperity of North Carolina, it is necessary for the state to establish a capital incentive program to promote continuous development of travel and tourism in the state. Establishment of such program should accomplish following objectives:

Retain and enhance tax revenues
Foster retention and continuous growth of industry's economic and employment impacts
Initiate development projects in lower economic tier counties resulting in generation of new tax revenues and jobs
Influence continuous economic viability of existing public and private investments (convention centers, hotels, restaurants, etc.)
Providing state and local governments with the ability to compete with other states to retain and recruit travel and tourism assets.
Implementing the mission of LRC Capital Incentive Program for Tourism Committee, which reads:

"…to remain competitive, capital expenditures are necessary to expand and improve facilities and attractions in the State and to create new destinations such as convention centers and arenas; and
… creating a travel and tourism capital incentive program would foster a cooperative effort between State and local governments to create new sources of land to provide needed capital expenditures for travel and tourism."

To achieve the goal of establishing such program, the sub committee of LRC Capital Incentive Program for Tourism committee recommends following proposal for committee's consideration.

North Carolina Tourism Development Act (Proposed)

This act will establish a state-wide Travel and Tourism Capital Incentive Program to induce the creation of new or the expansion or renovation of existing travel and tourism qualified projects within the state by allowing recovery of a percentage of the total cost (over a period of 10 years). Designated cost recovery funds will come from projected state tax revenues (sales, payroll, ticket tax) generated directly from and within the project.

Qualified Projects
(To be qualified, a project must meet all following criteria:)
Is certified as major economic and employment generators benefiting travel and tourism industry and a community as a whole.
Clearly guarantees retention and/or enhancement of tax revenues for the state
A major portion of its targeted business includes visitors requiring overnight stays
Has been researched and identified as a priority project by the local hospitality industry and the local municipality
Is receiving public funding through the local municipality
Official incentive request is made to the state by the local municipality
Has certified impact projections regarding estimated state tax revenues from the projects and guarantees state's share of annual revenues (to be determined) as first payment with remaining revenues being distributed between the project (equal to the designated annual cost recovery allocation) and the state.
Its total cost must exceed the amount established below based on economic tier ranking of the county which the project is being built in:
Tier 1 counties: Project must cost more than $1 Million
Tier 2 counties: Project must cost more than $2 Million
Tier 3 counties: Project must cost more than $3 Million
Tier 4 counties: Project must cost more than $4 Million
Tier 5 counties: Project must cost more than $5 Million

Revenue Growth Investment (cost recovery) Formula
Qualified projects will be entitled to receive (capture) a portion of their generated state tax revenues as recovery cost based on following economic tier formulas and over a period of ten years:

Tier 1 counties:	Up to 35% of Total Project Cost
Tier 2 and 3 counties:	Up to 30% of Total Project Cost
Tier 4 and 5 counties:	Up to 25% of Total Project Cost

To effectively maximize impacts and revenues, the revenue growth investment dollars must be dedicated to construction cost (debt service) and/or for marketing of the project. North Carolina (state government) will receive all sales tax revenues after the designated ten (10) year period.