

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-429
SENATE BILL 393**

AN ACT TO CLARIFY THE PUBLIC RECORDS LAWS WITH RESPECT TO ECONOMIC DEVELOPMENT AND TO REQUIRE THE DEPARTMENT OF REVENUE TO PUBLISH ANNUAL REPORTS REGARDING USE OF ECONOMIC DEVELOPMENT TAX INCENTIVES.

The General Assembly of North Carolina enacts:

PART I. GENERAL ECONOMIC DEVELOPMENT POLICIES

SECTION 1.1. G.S. 132-6(d) reads as rewritten:

"(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects ~~in the State~~ may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project."

SECTION 1.2. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-1.8. Economic development incentives.

(a) Assumptions and Methodologies. – Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) Disclosure of Public Records Requirements. – Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency or subdivision must disclose that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed."

SECTION 1.3. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437.07. Economic development grant reporting.

The Department of Commerce must publish on or before March 1 of each year the following information, itemized by business entity, for all grant programs administered by the Department that disbursed or awarded grant monies to businesses during the previous calendar year:

- (1) The amount of grant monies awarded during the previous year.
- (2) The amount of grant monies disbursed during the previous year.
- (3) The amount of grant monies that were disbursed in earlier years to business entities that received grant monies during the previous year.
- (4) The amount of potential future liability under the grant program.
- (5) The number, type, and wage level of jobs created or retained during the previous year as a result of a grant.
- (6) A description of any other financial assistance received during the previous year from all economic development incentive programs administered by the Department.
- (7) Any amount recaptured from the business entity during the previous year for failure to comply with the grant agreement or applicable law."

PART II. SPECIFIC DISCLOSURE REQUIREMENTS

SECTION 2.1. G.S. 143B-437.55(c) is amended by adding two new subdivisions to read:

"(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

- ... (3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.
- ... (13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year."

SECTION 2.2. G.S. 105-129.6 reads as rewritten:

"(b) Reports. – The Department of Revenue shall publish by ~~April~~ May 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number of ~~claims~~ credits taken for each credit allowed in this Article.
- (2) The number and enterprise tier area of new jobs with respect to which credits were generated and to which credits were ~~claimed~~ taken.
- (3) The cost and enterprise tier area of machinery and equipment with respect to which credits were generated and to which credits were ~~claimed~~ taken.

- (4) The number of new jobs created by businesses located in development zones, and the percentage of jobs at those locations that were filled by residents of the zones.
- (5) The amount and enterprise tier area of worker training expenditures with respect to which credits were generated and to which credits were ~~claimed-taken.~~
- (6) The amount and enterprise tier area of new research and development expenditures with respect to which credits were generated and to which credits were ~~claimed-taken.~~
- (7) The cost and enterprise tier area of real property investment with respect to which credits were generated and to which credits were ~~claimed-taken.~~"

SECTION 2.3. G.S. 105-129.19 reads as rewritten:

"§ 105-129.19. Reports.

The Department of Revenue must ~~report to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year the following information for the 12-month period ending the preceding ~~April 1~~:December 31:

- (1) The number of taxpayers that ~~claimed-took~~ the credits allowed in this Article.
- (2) The cost of business property and renewable energy property with respect to which credits were ~~claimed-taken.~~
- (2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.
- (3) The total cost to the General Fund of the credits ~~claimed-taken.~~"

SECTION 2.4. G.S. 105-129.26(e) reads as rewritten:

(e) Reports. – The Department of Commerce and the Department of Revenue shall ~~report to the Fiscal Research Division of the General Assembly~~ jointly publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding ~~April 1~~:December 31:

- (1) The number and location of large and major recycling facilities qualified under this Article.
- (2) The number of new jobs created by each recycling facility.
- (3) The amount of investment in each recycling facility.
- (4) The amount of ~~reinvestment credit refunded to each major recycling facility credits taken~~ under G.S. 105-129.28, this Article."

SECTION 2.5. Article 3D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.38. Reports.

The Department of Revenue must publish by May 1 of each year the following information for the 12-month period ending the preceding December 31:

- (1) The number of taxpayers that took the credits allowed in this Article.
- (2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken."

SECTION 2.6. G.S. 105-129.44 reads as rewritten:

"§ 105-129.44. Report.

The Department of Revenue must ~~report to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year the following information for the 12-month period ending the preceding ~~April 1~~:December 31:

- (1) The number of taxpayers that ~~claimed-took~~ the credit allowed in this Article.
- (2) The location of each qualified North Carolina low-income building or housing development for which a credit was ~~claimed-taken.~~
- (3) The total cost to the General Fund of the credits ~~claimed-taken.~~"

SECTION 2.7. G.S. 105-129.54 reads as rewritten:

"§ 105-129.54. Reports.

The Department of Revenue must ~~report to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number of taxpayers that ~~claimed~~ took a credit allowed in this Article, itemized by the categories of small business, low-tier, other, and university research.
- (2) The amount of each credit ~~claimed~~ taken in each category.
- (3) The total cost to the General Fund of the credits ~~claimed~~ taken."

SECTION 2.8. Article 3G of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.65A. Reports.

The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number of taxpayers taking a credit allowed in this Article.
- (2) The number of new jobs created with respect to which credits were taken.
- (3) The amount of investment in real property and machinery and equipment with respect to which credits were taken.
- (4) The total cost to the General Fund of the credits taken."

SECTION 2.9. G.S. 105-130.41 is amended by adding a new subsection to read:

"(c1) Report. – The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number of taxpayers taking a credit allowed in this section.
- (2) The total amount of charges with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken."

SECTION 2.10. G.S. 105-130.45 is amended by adding a new subsection to read:

"(f) Report. – The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number of taxpayers taking a credit allowed in this section.
- (2) The total amount of exports with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken."

SECTION 2.11. G.S. 105-151.22 is amended by adding a new subsection to read:

"(c1) Report. – The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number of taxpayers taking a credit allowed in this section.
- (2) The total amount of charges with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken."

SECTION 2.12. G.S. 105-164.14 is amended by adding a new subsection to read:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number of taxpayers claiming a refund allowed in subsections (g), (h), (i), and (j) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 2.13. G.S. 105-259(b)(27) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(27) To publish the information required under G.S. ~~105-129.6~~105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-130.41, 105-130.45, 105-151.22, and 105-164.14."

PART III. ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE STUDY

SECTION 3. The Economic Development Oversight Committee shall study the issue of public disclosure as it relates to economic development efforts. Specifically, the Committee shall study ways of providing the public information about the employment levels, and any changes in employment levels, of businesses that receive economic development incentives from the State or local governments. The Committee may make an interim report on this study, including any recommendations for legislative proposals, to the 2006 Regular Session of the 2005 General Assembly and shall make a final report on this study to the 2007 General Assembly.

PART IV. EFFECTIVE DATE

SECTION 4. Sections 2.2 through 2.12 of this act become effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

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

s/ Michael F. Easley
Governor

Approved 2:02 p.m. this 22nd day of September, 2005