

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 1135

Short Title: Business Facilities Development. (Public)

Sponsors: Representatives Stam, Murry, and Jeter (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Finance, if favorable, Appropriations.

May 21, 2014

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE A FUND TO PROVIDE LOANS TO LOCAL GOVERNMENT  
3 UNITS FOR THE DEVELOPMENT OF SITES AND BUILDINGS, AS  
4 RECOMMENDED BY THE NORTH CAROLINA ECONOMIC DEVELOPMENT  
5 BOARD.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 143B-437.02 reads as rewritten:

8 **"§ 143B-437.02. Site infrastructure development.**

9 ...  
10 (b) Fund. – The Site ~~Infrastructure~~ and Building Development Fund is created as a  
11 restricted reserve in the Department. Funds in the fund do not revert but remain available to the  
12 Department for these purposes. The Department may use the funds in the fund only for ~~the~~  
13 ~~following purposes:~~

14 (1) ~~For site development~~ the acquisition and development of sites and buildings  
15 in accordance with this section.

16 (2) ~~To acquire options and hold options for the purchase of land in accordance~~  
17 ~~with subsection (m) of this section.~~

18 (c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In addition,  
19 the following definitions apply in this section:

20 (1) Department. – The Department of Commerce.

21 (2) Site or building development. – A subsidized loan to one or more local  
22 government units to enable the unit or units, individually or pursuant to a  
23 multijurisdictional agreement, to acquire land or buildings or to improve  
24 land, including constructing buildings or renovating or rehabilitating existing  
25 buildings, or to do both in order to ready the property for lease or sale to a  
26 business. ~~Any of the following:~~

27 a. ~~A restricted grant or a forgivable loan made to a business to enable~~  
28 ~~the business to acquire land, improve land, or both.~~

29 b. ~~A grant to one or more State agencies or nonprofit corporations to~~  
30 ~~enable the grantees to acquire land, improve land, or both and to~~  
31 ~~lease the property to a business.~~

32 e. ~~A grant to one or more local government units to enable the units to~~  
33 ~~acquire land, improve land, or both and to lease the property to a~~  
34 ~~business.~~



1           (3)    Subsidized loan. – A loan from the State, for a term to be determined by the  
2                    Department, to one or more local government units for site or building  
3                    development having an interest rate of zero percent (0%) for tier one  
4                    counties, one percent (1%) for tier two counties, and two percent (2%) for  
5                    tier three counties.

6           (d)    Eligibility. – To be eligible for consideration for site or building development for a  
7 project, ~~a business must meet both of the following conditions:~~ a local government unit must  
8 execute a written agreement with the Department that provides for each of the following:

9           (1)    ~~The business will invest at least one hundred million dollars (\$100,000,000)~~  
10                   ~~of private funds in the project.~~ A requirement that the unit obtain from a  
11                    business leasing or purchasing property acquired or improved by a  
12                    subsidized loan an agreement to meet performance criteria that protects the  
13                    State's investment and secures the benefits anticipated by the lease or sale to  
14                    the business.

15           (2)    ~~The project will employ at least 100 new employees.~~ A requirement that any  
16                    performance criteria used by the unit include, at a minimum, the creation and  
17                    maintenance for a period of at least five years of an appropriate level of  
18                    employment and capital investment by the business leasing or purchasing  
19                    property acquired or improved by a subsidized loan and any other criteria the  
20                    Department considers appropriate, other than a wage standard or test.

21           (3)    A requirement that the unit repay the subsidized loan if the business leasing  
22                    or purchasing property acquired or improved by a subsidized loan fails to  
23                    meet the performance criteria.

24           (4)    A requirement that the unit enter into an agreement with a business leasing  
25                    or purchasing property acquired or improved by a subsidized loan, whereby  
26                    the business agrees to reimburse the unit for any amount of repayment  
27                    required by subdivision (3) of this subsection and agrees to structure the  
28                    lease or sale as a conditional grant, revocable lease, or otherwise include  
29                    terms permitting liquidated damages.

30           (5)    A requirement that the unit enter into an agreement with a business leasing  
31                    or purchasing property acquired or improved by a subsidized loan, whereby  
32                    the business agrees to meet the requirements of subsections (f) and (g) of  
33                    this section.

34           (6)    A requirement that the property acquired or improved by a subsidized loan  
35                    will not be primarily used for entertainment, retail, professional office,  
36                    sporting event, museum, or governmental purposes.

37           (e)    ~~Health Insurance. – A business is eligible for consideration for site development~~  
38 ~~under this section only if the business provides health insurance for all of the full-time~~  
39 ~~employees of the project with respect to which the application is made. For the purposes of this~~  
40 ~~subsection, a business provides health insurance if it pays at least fifty percent (50%) of the~~  
41 ~~premiums for health care coverage that equals or exceeds the minimum provisions of the basic~~  
42 ~~health care plan of coverage recommended by the Small Employer Carrier Committee pursuant~~  
43 ~~to G.S. 58-50-125.~~

44           ~~Each year that a contract for site development under this section is in effect, the business~~  
45 ~~must provide the Department a certification that the business continues to provide health~~  
46 ~~insurance for all full-time employees of the project governed by the contract. If the business~~  
47 ~~ceases to provide health insurance to all full-time employees of the project, Department shall~~  
48 ~~provide for reimbursement of an appropriate portion of the site development funds provided to~~  
49 ~~the business.~~

50           (f)    Safety and Health Programs. – In order for a business to be eligible for  
51 ~~consideration for~~ to purchase or lease site or building development property under this section,

1 the business must have no citations under the Occupational Safety and Health Act that have  
2 become a final order within the past three years for willful serious violations or for failing to  
3 abate serious violations with respect to the location for which the grant is made. For the  
4 purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

5 (g) Environmental Impact. – A business is eligible ~~for consideration for~~ to purchase or  
6 lease site or building development property under this ~~part section~~ only if the business certifies  
7 that, at the time of ~~the application, purchase or lease,~~ the business satisfies the environmental  
8 impact standard under G.S. 105-129.83.

9 (h) Selection. – The Department shall administer the selection of projects to receive site  
10 or building development. The selection process shall include the following components:

11 (1) Criteria. – The Department must develop criteria to be used to identify and  
12 evaluate eligible projects for possible site development.

13 (2) Initial evaluation. – The Department must evaluate major competitive  
14 projects to determine if site development is merited and to determine  
15 whether the project is eligible and appropriate for consideration for site  
16 development.

17 (3) Application. – The Department must require a ~~business~~ local government  
18 unit to submit an application in order for a project to be considered for site  
19 development. The Department must prescribe the form of the application,  
20 the application process, and the information to be provided, including all  
21 information necessary to evaluate the project in accordance with the  
22 applicable criteria.

23 (4) ~~Committee Development plan.~~ – ~~The Department must submit to the~~  
24 ~~Economic Investment Committee the applications for projects the~~  
25 ~~Department considers eligible and appropriate for consideration for site~~  
26 ~~development. In evaluating each application, the Committee must consider~~  
27 ~~all of the factors set out in Section 2.1(b) of S.L. 2002-172.~~ Department, in  
28 evaluating each application, must obtain a strategic business facilities  
29 development analysis of potential sites for development, shell building  
30 needs, special use buildings needs, and buildings to be renovated. The  
31 Department shall obtain the analysis by contracting with another entity with  
32 demonstrated experience in site selection services for businesses and in  
33 evaluating sites and buildings for business recruitment purposes. The  
34 Department must consider, but is not bound by, the priority  
35 recommendations in the analysis. The analysis shall be updated every four  
36 years.

37 (5) Findings. – In order to recommend a project for site development, the  
38 ~~Committee~~ Department must make all of the following findings:

39 a. The conditions for eligibility have been met.

40 b. ~~Site~~ The site or building development for the project is necessary to  
41 carry out the public purposes provided in subsection (a) of this  
42 section.

43 c. The site or building development project is consistent with the  
44 economic development goals of the State and of the area where it  
45 will be located.

46 d. ~~The affected local governments have participated in recruitment and~~  
47 ~~offered incentives in a manner appropriate to the project.~~

48 e. The price and nature of any real property to be acquired or improved  
49 is appropriate to the site or building development project and not  
50 unreasonable or excessive.

1 f. ~~Site development~~A subsidized loan under this section is necessary  
2 for the completion of the site or building development project in this  
3 State.

4 (6) ~~Recommendations-Awards.~~ – If the ~~Committee recommends~~Department  
5 approves a project for site or building development, it must ~~recommend~~  
6 determine the amount of State funds to be committed, the preferred form and  
7 details of the State participation, and the performance criteria and safeguards  
8 to be required in order to protect the State's investment.

9 (i) Agreement. – Unless the Secretary of Commerce determines that the project is no  
10 longer eligible or appropriate for site or building development, the ~~Department~~Secretary shall  
11 enter into an agreement to provide a subsidized loan for site or building development within  
12 available funds for a ~~project recommended by the Committee~~project. In doing so,  
13 consideration shall be given to projects according to the strategic business facilities  
14 development analysis obtained by the Department, as required by subdivision (4) of subsection  
15 (h) of this section. Each ~~site development~~ agreement is binding and constitutes a continuing  
16 contractual obligation of the State and the ~~business~~local government unit. The ~~site~~  
17 development agreement must include all of the performance criteria, remedies, and other  
18 safeguards ~~recommended~~determined necessary by the Committee or required by the  
19 Department to secure the State's investment. Each ~~site development~~ agreement must contain a  
20 provision prohibiting a ~~business~~local government unit from ~~receiving a payment or other~~  
21 ~~benefit~~leasing or selling under the agreement to a business that at any time when the business  
22 has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or  
23 otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption  
24 by the State of any debt of any business or authorizes the taxing power or the full faith and  
25 credit of the State to be pledged.

26 The Department shall cooperate with the Department of Administration and the Attorney  
27 General's Office in preparing the documentation for the site development agreement. The  
28 Attorney General shall review the terms of all proposed agreements to be entered into under  
29 this section. To be effective against the State, an agreement entered into under this section must  
30 be signed personally by the Attorney General.

31 (i1) Subsidized Loans. – Subsidized loans must be evidenced by a promissory note and  
32 secured by a deed of trust on the property acquired or improved by the loan. Repayment of a  
33 subsidized loan is required on the occurrence of the earlier of (i) the passage of five years from  
34 the date the subsidized loan was made or (ii) the property secured by the loan being sold or  
35 leased for a period of more than three years, including all options or automatic rights to extend  
36 the base term of the lease. The amount of repayment triggered is proportional to the amount of  
37 the property sold or leased and shall be calculated by multiplying the loan by a fraction, the  
38 numerator of which is the amount of property secured by the loan sold or leased and the  
39 denominator of which is the total amount of property subject to the loan. Upon the payment of  
40 the amount of the loan calculated to be required by this subsection, a release deed shall be  
41 executed and filed for the portion of the property for which the payment was made.

42 (i2) Multiple Loans. – One or more financial institutions may hold a security interest on  
43 the property with a priority equal to the security interest for the subsidized loan if there is a  
44 written intercreditor agreement that (i) has been reviewed and approved by the Department and  
45 (ii) provides that, in the event of default, any loss is shared among the creditors in proportion to  
46 the amount loaned.

47 (i3) Payments. – The Department shall remit amounts repaid pursuant to subsection (i1)  
48 of this section to the Site and Building Development Fund.

49 (j) Safeguards. – To ensure that public funds are used only to carry out the public  
50 purposes provided in this section, the Department shall require that each ~~business that receives~~  
51 State-funded site development must agree ~~local government unit~~ that leases or sells property

1 improved by a subsidized loan obtains from the acquiring business an agreement to meet  
2 performance criteria to protect the State's investment and assure that the projected benefits of  
3 the project are secured. ~~The performance criteria to be required shall include creation and~~  
4 ~~maintenance of an appropriate level of employment and investment over the term of the~~  
5 ~~agreement and any other criteria the Department considers appropriate. The agreement must~~  
6 ~~require the business to repay or reimburse an appropriate portion of the State funds expended~~  
7 ~~for the site development, based on the extent of any failure by the business to meet the~~  
8 ~~performance criteria. The agreement must provide a method for securing these payments from~~  
9 ~~the business, such as structuring the site development as a conditional grant, a forgivable loan,~~  
10 ~~or a revocable lease.~~

11 (k) **Monitoring and Reports.** – The Department is responsible for monitoring  
12 compliance with the performance criteria under each site development agreement and for  
13 administering the repayment in case of default. The Department shall pay for the cost of this  
14 monitoring from funds appropriated to it for that purpose or for other economic development  
15 purposes.

16 On September 1 of each year until all funds have been expended, the Department shall  
17 report to the Joint Legislative Commission on Governmental Operations regarding the Site  
18 Infrastructure Development Program. This report shall include a listing of each agreement  
19 negotiated and entered into during the preceding year, including ~~the name of the business,~~ the  
20 cost/benefit analysis conducted ~~by the Committee~~ during the application process, a description  
21 of the project, ~~and~~ the amount of the site development incentive expected to be paid under the  
22 agreement during the current fiscal year, and the status of any property sold or leased to a  
23 business. The report shall also include detailed information about any defaults and repayment  
24 during the preceding year and the information contained in the report required by  
25 G.S. 105-277.15A(g). The Department shall publish this report on its web site and shall make  
26 printed copies available upon request.

27 (l) **Program Guidelines.** – The Department shall develop guidelines related to the  
28 administration of site infrastructure development, as authorized by this section, and to the  
29 selection of projects. At least 20 days before the effective date of any guidelines or  
30 nontechnical amendments to guidelines, the Department must publish the proposed guidelines  
31 on the Department's Web site and provide notice to persons who have requested notice of  
32 proposed guidelines. In addition, the Department must accept oral and written comments on the  
33 proposed guidelines during the 15 business days beginning on the first day the Department has  
34 completed the notice requirement of this subsection. For purposes of this subsection, a  
35 technical amendment is one (i) that corrects a spelling or grammatical error or (ii) that makes a  
36 clarification based on public comment and could have been anticipated by the public notice that  
37 immediately preceded the public comment.

38 (m) **Options.** – ~~The Department of Commerce may acquire options and hold options for~~  
39 ~~the purchase of land for an anticipated industrial site if all of the following conditions are met:~~

40 (1) ~~The options are necessary to provide a large, regional industrial site that~~  
41 ~~cannot be assembled by local governments.~~

42 (2) ~~The acquisition of the options is approved by the Committee."~~

43 **SECTION 2.** G.S. 150B-1(d) is amended by adding a new subdivision to read:

44 "(d) **Exemptions from Rule Making.** – Article 2A of this Chapter does not apply to the  
45 following:

46 ...

47 (21) The Department of Commerce in developing criteria and guidelines under  
48 G.S. 143B-437.02.

49 ...."

50 **SECTION 3.** There is appropriated from the General Fund to the Department of  
51 Commerce the sum of four hundred thousand dollars (\$400,000) for the 2014-2015 fiscal year

1 to be used to contract for the preparation of the strategic business facilities development  
2 analysis required by Section 1 of this act.

3 **SECTION 4.** The provisions of this act are not subject to the terms of  
4 G.S. 160A-20.

5 **SECTION 5.** Subsidized loans undertaken by units of local government are not  
6 subject to review and approval by the Local Government Commission under Article 8 of  
7 Chapter 159 of the General Statutes.

8 **SECTION 6.** This act becomes effective July 1, 2014, and applies to site  
9 development agreements entered on or after that date.