

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 797

Short Title: Business Facilities Development. (Public)

Sponsors: Representatives Jeter, Stam, and Murry (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Commerce and Job Development, if favorable, Appropriations.

April 11, 2013

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 SITE INFRASTRUCTURE.

4 The General Assembly of North Carolina enacts:

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

6 "§ 143B-437.02. Site infrastructure development.

7 (a) Findings. – The General Assembly finds that:

8 (1) It is the policy of the State of North Carolina to stimulate economic activity
9 and to create new jobs for the citizens of the State by encouraging and
10 promoting the expansion of existing business and industry within the State
11 and by recruiting and attracting new business and industry to the State.

12 (2) Both short-term and long-term economic trends at the State, national, and
13 international levels have made the successful implementation of the State's
14 economic development policy and programs both more critical and more
15 challenging; and the decline in the State's traditional industries, and the
16 resulting adverse impact upon the State and its citizens, have been
17 exacerbated in recent years by adverse national and State economic trends
18 that contribute to the reduction in the State's industrial base and that inhibit
19 the State's ability to sustain or attract new and expanding businesses.

20 (3) The economic condition of the State is not static and recent changes in the
21 State's economic condition have created economic distress that requires the
22 enactment of a new program as provided in this section that is designed to
23 stimulate new economic activity and to create new jobs within the State.

24 (4) The enactment of this section is necessary to stimulate the economy,
25 facilitate economic recovery, and create new jobs in North Carolina and this
26 section will promote the general welfare and confer, as its primary purpose
27 and effect, benefits on citizens throughout the State through the creation of
28 new jobs, an enlargement of the overall tax base, an expansion and
29 diversification of the State's industrial base, and an increase in revenue to the
30 State and its political subdivisions.

31 (5) The purpose of this section is to stimulate economic activity and to create
32 new jobs within the State.

33 (b) Fund. – The Site Infrastructure Development Fund is created as a restricted reserve
34 in the Department of Commerce. Funds in the fund do not revert but remain available to the



1 Department for these purposes. The Department may use the funds in the fund only for the
2 following purposes:

3 ~~(1) For-site development in accordance with this section.~~

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

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

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

9 (2) Site development. – A subsidized loan to one or more local government
10 units to enable the unit or units (i) to acquire land, to improve land, including
11 constructing buildings or renovating or rehabilitating existing buildings, or
12 to do both in order to ready the property for lease or sale to a business or (ii)
13 to install fiber or lines suitable for the provision of high-speed Internet
14 access service. For purposes of this section, the term "local government unit"
15 includes economic development commissions. ~~Any of the following:~~

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

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

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

24 (3) Subsidized loan. – A loan from the State to one or more local government
25 units for site development having (i) an interest rate of zero percent (0%) for
26 tier one counties, one percent (1%) for tier two counties, and two percent
27 (2%) for tier three counties and (ii) a provision allowing for reduction of the
28 principal of the loan by an amount equal to the number of jobs created and
29 maintained as by a business multiplied by the amount of the credit provided
30 in G.S. 105-129.87(a) for the county in which the job is located.

31 (4) Economic development commission. – A commission, agency, nonprofit
32 entity, or other entity operating for the purpose of promoting economic
33 development growth and for the benefit of one or more local government
34 units, if the unit or units have adopted a resolution designating that the entity
35 is operating for that purpose.

36 (d) Eligibility. – To be eligible for consideration for site development for a project, a
37 ~~business must meet both of the following conditions:~~ a local government unit must execute a
38 written agreement with the State that provides for each of the following:

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

45 (2) ~~The project will employ at least 100 new employees.~~ A requirement that any
46 performance criteria used by the unit include, at a minimum, the creation and
47 maintenance of an appropriate level of employment by the business leasing
48 or purchasing property acquired or improved by a subsidized loan and any
49 other criteria the Department considers appropriate.

1 (3) A requirement that the unit repay any portion of a subsidized loan reduced
2 for job creation if the business leasing or purchasing property acquired or
3 improved by a subsidized loan fails to meet the performance criteria.

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

10 (5) A requirement that the unit enter into an agreement with a business leasing
11 or purchasing property acquired or improved by a subsidized loan, whereby
12 the business agrees to meet the requirements of subsections (e) through (g)
13 of this section.

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

21 Each year ~~that a contract for site development under this section~~ an agreement between the
22 business and the local government unit required by subsection (d) of this section is in effect, the
23 business must provide the Department of Commerce a certification that the business continues
24 to provide health insurance for all full-time employees of the project governed by the contract.
25 If the business ceases to provide health insurance to all full-time employees of the project,
26 Department shall provide for reimbursement of an appropriate portion of the site development
27 funds ~~provided to the business.~~ provided.

28 (f) Safety and Health Programs. – In order for a business to be eligible ~~for~~
29 ~~consideration for~~ to purchase or lease site development property under this section, the business
30 must have no citations under the Occupational Safety and Health Act that have become a final
31 order within the past three years for willful serious violations or for failing to abate serious
32 violations with respect to the location for which the grant is made. For the purposes of this
33 subsection, "serious violation" has the same meaning as in G.S. 95-127.

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

38 (h) Selection. – The Department of ~~Commerce~~ Commerce, in consultation with the
39 North Carolina Rural Economic Development Center, Inc., shall administer the selection of
40 projects to receive site development. The selection process shall include the following
41 components:

42 (1) Criteria. – The Department of Commerce must develop criteria to be used to
43 identify and evaluate eligible projects for possible site development.

44 (2) Initial evaluation. – The Department must evaluate major competitive
45 projects to determine if site development is merited and to determine
46 whether the project is eligible and appropriate for consideration for site
47 development.

48 (3) Application. – The Department must require a ~~business~~ local government
49 unit to submit an application in order for a project to be considered for site
50 development. The Department must prescribe the form of the application,
51 the application process, and the information to be provided, including all

- 1 information necessary to evaluate the project in accordance with the
2 applicable criteria.
- 3 (4) ~~Committee~~ Application evaluation. – The ~~Department~~ Department, must
4 submit to the Economic Investment Committee the applications for projects
5 the Department considers eligible and appropriate for consideration for site
6 development. In in evaluating each application, the Committee must
7 consider all of the factors set out in Section 2.1(b) of S.L. 2002-172; the
8 following:
- 9 a. Impact on gross regional product and gross State product.
10 b. Costs and benefits of the project to the State, including the expected
11 return on investment made in the project by the State.
12 c. Number of induced short-term, project-related jobs expected to be
13 generated by the project as well as the number of long-term
14 permanent jobs expected to be generated indirectly in the economy as
15 a result of the project.
16 d. Economic circumstances of the county and region, including the
17 extent to which the project will serve to mitigate unemployment.
18 e. The expected time frame during which the project is expected to pay
19 back in State tax revenues the amount of any subsidized loans.
20 f. The extent to which the project impacts an existing industrial cluster.
21 g. The long-term prospects for growth at the project site or sites.
22 h. A strategic business facilities development analysis of potential sites
23 for development, shell building needs, special use buildings needs,
24 and buildings to be renovated, as determined by the North Carolina
25 Rural Economic Development Center, Inc., in consultation with each
26 of the seven regional economic development partnerships in the
27 State. The Center, in consultation with each of the seven regional
28 economic development partnerships in the State, shall update the
29 analysis every four years.
- 30 (5) Findings. – In order to recommend a project for site development, the
31 ~~Committee~~ Department must make all of the following findings:
- 32 a. The conditions for eligibility have been met.
33 b. Site development for the project is necessary to carry out the public
34 purposes provided in subsection (a) of this section.
35 c. The project is consistent with the economic development goals of the
36 State and of the area where it will be located.
37 d. ~~The affected local governments have participated in recruitment and~~
38 ~~offered incentives in a manner appropriate to the project.~~
39 e. The price and nature of any real property to be acquired is
40 appropriate to the project and not unreasonable or excessive.
41 f. Site development under this section is necessary for the completion
42 of the project in this State.
- 43 (6) ~~Recommendations~~ Awards. – If the ~~Committee recommends~~ Department
44 approves a project for site development, it must recommend determine the
45 amount of State funds to be committed, the preferred form and details of the
46 State participation, and the performance criteria and safeguards to be
47 required in order to protect the State's investment.
- 48 (i) Agreement. – Unless the Secretary of Commerce determines that the project is no
49 longer eligible or appropriate for site development, the ~~Department~~ Secretary shall enter into an
50 agreement to provide site development within available funds for a ~~project recommended by~~
51 ~~the Committee~~ project. Each site development agreement is binding and constitutes a

1 continuing contractual obligation of the State and the ~~business-local government unit~~. The site
2 development agreement must include all of the performance criteria, remedies, and other
3 safeguards ~~recommended~~ determined necessary by the Committee or required by the
4 Department to secure the State's investment. Each site development agreement must contain a
5 provision prohibiting a ~~business-local government unit~~ from ~~receiving a payment or other~~
6 ~~benefit~~ leasing or selling under the agreement to a business that at any time when the business
7 has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or
8 otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption
9 by the State of any debt of any business or authorizes the taxing power or the full faith and
10 credit of the State to be pledged.

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

16 (i1) Subsidized loans. – Subsidized loans must be evidenced by a promissory note and
17 secured by a deed of trust on the property acquired or improved by the loan. A repayment of a
18 subsidized loan is triggered by property secured by the loan being sold or leased to a business.
19 The amount of repayment triggered must be proportional to the amount of the property sold or
20 leased and must be calculated by multiplying the loan, as reduced by created jobs, by a fraction,
21 the numerator of which is the amount of property secured by the loan sold or leased and the
22 denominator of which is the total amount of property subject to the loan. Upon the payment of
23 the amount of the loan calculated to be required by this subsection, a release deed shall be
24 executed and filed for the portion of the property for which the payment was made.

25 (i2) Payments. – The Department shall remit amounts paid pursuant to subsection (i1) of
26 this section to the State Community College System for use in purchasing equipment and
27 constructing facilities for the community colleges in this State suitable for industrial training of
28 students.

29 (j) Safeguards. – To ensure that public funds are used only to carry out the public
30 purposes provided in this section, the Department shall require that each ~~business that receives~~
31 State-funded site development must agree-local government unit that leases or sells property
32 improved by a subsidized loan to obtain from the acquiring business an agreement to meet
33 performance criteria to protect the State's investment and assure that the projected benefits of
34 the project are secured. ~~The performance criteria to be required shall include creation and~~
35 ~~maintenance of an appropriate level of employment and investment over the term of the~~
36 ~~agreement and any other criteria the Department considers appropriate. The agreement must~~
37 ~~require the business to repay or reimburse an appropriate portion of the State funds expended~~
38 ~~for the site development, based on the extent of any failure by the business to meet the~~
39 ~~performance criteria. The agreement must provide a method for securing these payments from~~
40 ~~the business, such as structuring the site development as a conditional grant, a forgivable loan,~~
41 ~~or a revocable lease.~~

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

47 On September 1 of each year until all funds have been expended, the Department shall
48 report to the Joint Legislative Commission on Governmental Operations regarding the Site
49 Infrastructure Development Program. This report shall include a listing of each agreement
50 negotiated and entered into during the preceding year, including ~~the name of the business,~~
51 cost/benefit analysis conducted ~~by the Committee~~ during the application process, a description

1 of the project, and the amount of the site development incentive expected to be paid under the
2 agreement during the current fiscal year, year, and the status of any property sold or leased to a
3 business. The report shall also include detailed information about any defaults and repayment
4 during the preceding year. The Department shall publish this report on its web site and shall
5 make printed copies available upon request.

6 (l) Reserved for future codification purposes.

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

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

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

12 **SECTION 2.** There is appropriated from the General Fund to the Department of
13 Commerce, Commerce Finance Center, the sum of _____ for the 2013-2014 fiscal
14 year to administer the program created by this act.

15 **SECTION 3.** It is the intent of the General Assembly to continue to make annual
16 appropriations for this program. It is also the intent of the General Assembly that the Golden
17 Leaf Foundation shall allocate at least fifteen percent (15%) each year of its annual receipts to a
18 loan program created to comport with the program enacted by this act.

19 **SECTION 4.** This act is effective when it becomes law and applies to site
20 development agreements entered on or after that date.