



HOUSE BILL 1031: NC Econ. Dev. Partnership Modifications

2013-2014 General Assembly

Committee:
Introduced by: Rep. Murry
Analysis of: S.L. 2014-18

Date: September 10, 2014
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SUMMARY: *Session Law 2014-18 (i) permits the Department of Commerce to contract with a North Carolina nonprofit corporation for the performance of certain economic development functions currently performed by the Department, (ii) eliminates the Economic Development Board, (iii) modifies the duties and membership of the North Carolina Board of Science and Technology, and (iv) establishes 8 geographic zones in the State for inter-departmental cooperation purposes.*

ANALYSIS:

Part I of the act establishes the framework for the Department of Commerce to contract with a nonprofit corporation to assist the Department in fostering and retaining jobs and business development, international trade, marketing, and travel and tourism. The act incorporates a number of requirements regarding contracting that can be broadly categorized as follows: limitations on scope, oversight requirements, contractual pre-requisites, mandatory contract terms, reporting requirements, applicability of laws provisions.

Limitations on Scope: The contract for performance is limited in scope by disallowing for the contracting of the following economic development functions of the Department:

- The obligation or commitment of funds under Article 10 (Commerce) of Chapter 143B of the General Statutes; however, recruitment, negotiation, and recommendations relating to economic development programs would fall within the purview of the nonprofit corporation.
- The Division of Employment Security, including the administration of unemployment insurance.
- The functions, powers, duties, and obligations vested in the State Board of Alcoholic Control, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the State Banking Commission and the Commissioner of Banks, the Savings Institutions Division, the Credit Union Commission, the North Carolina Mutual Burial Association Commission, and the North Carolina Rural Electrification Authority.
- The administration of federal funds or grants.

Oversight: A nonprofit corporation contracted with by the Department would be overseen by an Economic Development Accountability & Standards Committee, consisting of the Secretaries of Commerce (Chair), Transportation, Environment and Natural Resources, and Revenue, one member appointed by the Speaker of the House, one member appointed by the President Pro Tempore of the Senate, and one member jointly appointed by the Speaker and President Pro Temp. No member may be a member of the General Assembly. The Committee would meet at least quarterly and would function to do the following:

- Monitor/oversee the performance of the contract by the nonprofit corporation.



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- Receive, review, and refer complaints, as appropriate.
- Request enforcement of the contract by the Attorney General or the Department.
- Audit at least biennially, via OSBM, internal auditors of the Department, or the State Auditor, the records of the nonprofit corporation to verify data affecting performance and reports.
- Coordinate economic development grant programs between the Departments of Commerce, Transportation, and Environment and Natural Resources.
- Perform other contractual duties.

Contractual Pre-requisites: The contractual authority granted in the act and the permission to receive State funds by a nonprofit pursuant to a contract exist only if certain requirements are satisfied, as follows:

- At least 45 days prior to entering or substantively amending the contract, the Department submits the contract and a detailed explanation to GovOps and the Fiscal Research Division.
- The nonprofit corporation's governing board meets the following requirements:
 - It is composed of 17 members (9 Governor appointees, including the chair, 4 Senate appointees, and 4 House appointees). The appointees should reflect the geographic diversity of the State, and the Governor's appointees should meet expertise requirements. At least one-fourth of legislative appointees and two-ninths of Governor's appointees must be from tier one or two areas. No legislative appointee and not more than 2 Governor appointees may be from the same Prosperity Zone.
 - No member of the board may take actions or use their position for self, business, or familial profit.
 - No State officer or employee may serve on the board.
 - The board must meet at least quarterly and report to the Economic Development Accountability & Standards Committee on economic development progress.
 - The board must provide advice concerning economic and community development planning for the State, recommend economic development policy, recommend appropriations levels for economic development programs, and recommend how to coordinate economic development efforts amount involved agencies and entities.
 - The nonprofit corporation must adhere to the prohibitions on lobbying set forth in Section 501(c)(3) of the Internal Revenue Code.
- The amount of State funds used for annual salaries for individual employees and officers of the corporation is capped at the greater of \$120,000 per annum or the amount most recently set by the General Assembly in a budget act. Salaries of board members are limited to per diems and allowances in line with the limitations provided in G.S. 138-5.
- The nonprofit corporation receives from sources other than the State funds totaling at least \$250,000.

Mandatory Contract Terms: A contract authorized by the act must contain the following terms:

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- A provision requiring annual audited financial statements be submitted within 7 days of issuance to the Fiscal Research Division, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Department.
- A provision requiring annual reporting to the Department on program activities, objectives, accomplishments, expenditures, and fund sources, as well as jobs anticipated to result from the nonprofit's activities (including project leads not submitted to the Department for possible discretionary incentives), itemized performance metrics, proposed amendments to areas of expertise for the governing board, and an explanation of how salaries are determined (base pay and bonus pay, including bonuses designed to aid rural/low-income area development). The report must also include any additional information requested by the Department.
- A provision requiring that, upon termination or repeal of the charter of the corporation or dissolution of the corporation, the corporation's assets and funds (including those of affiliated and subsidiary entities) must be returned to the Department within 30 days (during which no further encumbering may occur).
- A provision requiring the corporation to adopt and publish policies on conflicts of interest and gifts.

The conflict of interest provision should provide, at a minimum, the need to avoid use of the official position to profit themselves, their immediate families or businesses in a way that is greater than similarly located and situated people or businesses. Otherwise, abstinence from voting on or discussing the matter is appropriate.

The gift policy should provide, at a minimum, that an employee, officer, or member of the board should not knowingly accept a gift from a person seeking to do business in the State or that has a financial interests that may be substantially and materially affected in a way different than the public due to the corporate personnel's job performance. Excepted from the gift prohibition are gifts of food, beverages, transportation, lodging, entertainment, or related expenses associated with recruitment, travel, tourism, and trade if unsolicited and not in trade for job performance and if reported within 30 days to the corporation, including value, description, and explanation of how the gift contributed to recruitment, travel, tourism, or trade. Also excepted are gifts less than \$100 in value if customarily given in another country as protocol.

- A provision requiring the corporation to maintain a record of all contributors, including date and aggregate total of all contributions, which is included in the report to the Department.
- A provision requiring separate accounts and bookkeeping by the corporation for State and private funds and prohibiting commingling of funds.
- A provision providing the corporation will not engage in awarding public or private funds of the nonprofit corporation.
- A provision limiting the term and renewal provisions of the contract between the Department and the nonprofit corporation. The maximum initial term is 5 years. The maximum number of term extensions is 4. The maximum single term extension is 1 year. No extension may occur prior to 4/5 of the initial term passing.
- A provision prohibiting the use of State funds for severance pay and otherwise limiting the severance pay of the officers, including chief officers, to the lesser of \$120,000 or (number of whole years in chief officer position/4) x (\$120,000).

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- An annual certification that the corporation is in compliance with the North Carolina Nonprofit Corporation Act and has complied with all mandatory contract terms (or an explanation of noncompliance).
- A provision requiring the nonprofit to comply with the travel and tourism policy act if the Department contracts with the nonprofit to promote and market tourism.
- A provision requiring fundraising results of at least \$750k in the first year of the contract and at least \$1.25M in each additional year of the contract.
- A provision that that financial obligations by State agencies are subject to the availability of appropriated funds or available funds that are not State funds as defined by Chapter 143C.

Reporting and Applicability of Laws: The Department must annually report to EDGE, GovOps, and the Fiscal Research Division on any performance for which the Department has contracted with a nonprofit corporation. The report must contain the report received by the Department from the nonprofit, an executive summary of that report, a listing of each entity for which the corporation has referred to the Department, an explanation of response by the Department for corporate noncompliance with mandatory contract terms, and any soliciting of funds by the Secretary of Commerce on behalf of the corporation. A corporation contracted with must adhere to public records laws and open meetings laws. Regarding State funds, the act provides (i) interest earned on State funds must be used for the same purposes as the principal, (ii) travel and personnel expenses reimbursed by State funds must adhere to reimbursement limitations in the North Carolina Budget manual used for State employees (deviations must be approved by the Secretary), and (iii) State funds may not be used for hiring a lobbyist.

The act makes clear the Secretary can engage in solicitation of funds for the corporation, but other State employees cannot engage in solicitation of funds for the corporation. In addition, corporate personnel are not State employees, are not covered by the State Personnel Act, and are not entitled to State-funded employee benefits.

Although made subject to the open records law, the act modifies the open records laws in the following ways:

- Under current law, once the State, a local government or specific business announce a committed to expand or located a project in the State (or a final, communicated decision not to), the provisions allowing the withholding of public records would no longer apply (i.e., it becomes public record).
- Under the act, a final, communicated decision not to expand or locate no longer removes the provision allowing the withholding of public records (i.e. those would remain outside of the public record). Also, if a business requests discretionary incentives for a project but does not expand or locate in the State or does not receive the discretionary incentives, the only records subject to the open records law are the records submitted to the Department by the nonprofit. If a business expands/located in the State but the nonprofit submits no documentation to the Department regarding discretionary incentives (regardless of such were requested) and if the business does not receive discretionary incentives, the records regarding the project are not subject to the open records laws.

Officers, employees, and board members are public servants, as defined in the State Ethics Act and must file statements of economic interest if receiving an annual compensation of \$60,000 or more.

From funds raised by the nonprofit, the act requires that at least 25% of the funds be used for the benefit of or for salaries of employees working solely on tier one or tier two areas.

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The remaining provisions of Part I include (i) a repeal of the Economic Development Board, (ii) an authorization to allow the Secretary to delegate the Secretary's responsibilities with respect to a comprehensive strategic economic development plan to the governance board of the nonprofit corporation with which the Department has contracted, (iii) a requirement that the governing board of the nonprofit corporation continue functions previously performed by the Economic Development Board, (iv) an exemption for Collaboration for Prosperity Zone liaisons and officers, board members, and employees of the nonprofit corporation from certain provisions of the State Personnel Act, and (v) a requirement that the Department study and develop:

- A plan for private fundraising efforts for the nonprofit corporation, including private fundraising potential, private fundraising in other states, creating a budget for the corporation without private fundraising and comparing the budget with amounts required by the Department for the same functions. The study must look to other states that have P3-type entities for purposes of determining the average and appropriate compensation levels.
- A report on various performance metrics for the Department for the last year and annual averages for the last 5 years. The Department must report to OSBM, GovOps, EDGE, and FRD no later than 12/1/14, and the Department must require the nonprofit corporation to report on the same metrics for comparison purposes to Departmental performance.

Part I of the act repeals the budgetary provision authorizing privatization of Departmental functions.

Part II of the act renames the North Carolina Board of Science and Technology as the North Carolina Board of Science, Technology, and Innovation, which would gain the duty to advise and make recommendations to the nonprofit corporation on the role of science, technology, and innovation. The composition of the Board would be changed, increasing from 17 to 23 members. New members include one member of the North Carolina Community Colleges System, one member representing K-12 public education, 2 additional private industry members, and 7 at-large members. Of the existing two members appointed by the Governor from components of The University of North Carolina system other than UNC-CH and NCSU, one member must be from a historically black college or university.¹ Eliminated members include one member from the Research Triangle Institute (nominated by its executive committee), one member from the Microelectronics Center of NC (nominated by its executive committee), one member from the Biotechnology Center (nominated by its executive committee), and two members from public agencies in the State. An additional elimination is the requirement that at least one member be a professional, registered engineer with a degree from an accredited college or university.

Part III of the act divides the State into 8 geographic regions to facilitate collaborative and coordinated planning and resource use, improve cooperation, facilitate increased efficiencies, receive advice on economic development issues by local boards established by a nonprofit corporation, and establish one-stop assistance in each region for citizens and businesses. The act would require that the Departments of Commerce, Environment and Natural Resources, and Transportation each provide one employee to each regional office to serve as that department's liaison with other departments and with local governments, schools and colleges, businesses, and other developmental planning bodies. The Community Colleges System Office and State Board of Education would also be required to designate one representative to serve as a liaison in each zone. Office location shall be jointly selected, and Commerce would be authorized to contract with the nonprofit corporation to fulfill the Department's liaison responsibilities. Part IV includes reporting requirements on the establishment and activities of liaisons by Commerce, the Community Colleges System Office, the State Board of Education, the Department of Transportation

¹ The appointments from UNC-Chapel Hill and NCSU are unchanged by the bill.

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and DENR. Finally, Part IV modifies the existing educational districts to match the Prosperity Zone composition.

Part V of the act provides for review of reports and intent to address certain topics by the General Assembly.

EFFECTIVE DATE: Other than the repeal of the budgetary privatization provision, which becomes effective when the act becomes law, Parts I, II, and III become effective 7/1/14. Part IV becomes effective 7/1/14 and expires 7/1/18. The remainder of the act is effective when it becomes law.