GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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HOUSE BILL 1110
Committee Substitute Favorable 5/31/01

Short Title: North Carolina Tourism Development Act. (Public)

Sponsors:

Referred to:

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX INCENTIVES FOR CAPITAL TOURISM PROJECTS IN TIER ONE, TWO, AND THREE COUNTIES, AND TO CREATE THE TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3E.

"Tax Incentives For New And Expanding Tourism Businesses.

"**§ 105-129.41. Definitions.**

The following definitions apply in this Article:

(1) Attractor. – A tourism facility that draws tourists to the local area for one or more days on its own merits, is designed primarily to attract tourists rather than local residents, and invests its own capital to market its products and services. Examples of attractors include museums, downtown areas, amusement parks, and facilities that promote local crafts.

(2) Cost. – Defined in G.S. 105-129.2.

(3) Development zone. – Defined in G.S. 105-129.2.

(4) Enterprise tier. – Defined in G.S. 105-129.2.

(5) Full-time job. – Defined in G.S. 105-129.2.

(6) Machinery and equipment. – Defined in G.S. 105-129.2.

(7) NAICS. – Defined in G.S. 105-129.2.

(8) Purchase. – Defined in G.S. 105-129.2.

(9) Tourism facility. – A facility that attracts tourists from more than 100 miles away to the local area where they spend money on lodging, food, and entertainment.

(10) Tourism property. – Buildings, machinery and equipment, furniture, or fixtures used in engaging in business as an attractor.

"**§ 105-129.42. Sunset; no double credit.**

(a) Sunset. – This Article is repealed effective for applications for credits filed on or after January 1, 2008.

(b) No Double Credit. – A taxpayer that takes a credit under this Article with respect to jobs or property is not allowed a credit under any other Article of this Chapter with respect to the same jobs or property.

"**§ 105-129.43. Eligibility; forfeiture.**

(a) Type of Business. – A taxpayer is eligible for a credit allowed by this Article if the taxpayer is engaged in business primarily as an attractor, the jobs with respect to which a credit is claimed are created in that business, and the tourism property with respect to which a credit is claimed are used in that business.

(b) Wage Standard. – A taxpayer is eligible for a credit allowed by this Article if the jobs at the location with respect to which the credit is claimed meet the wage standard provided in G.S. 105-129.4(b) at the time the taxpayer applies for the credit.

(c) Location. – A taxpayer is eligible for a credit allowed by this Article if the location with respect to which the credit is claimed is in an enterprise tier one, two, or three area or is in a development zone.

(d) Health Insurance. – A taxpayer is eligible for the credit for creating tourism jobs under this Article if the taxpayer provides health insurance for the positions for which the credit is claimed at the time the taxpayer applies for the credit. A taxpayer is eligible for the tourism investment credit under this Article if the taxpayer provides health insurance for all of the full-time positions at the location with respect to which the credit is claimed at the time the taxpayer applies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if the taxpayer pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims an installment or carryforward of a credit allowed under this Article the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for the jobs for which the credit was claimed or the full-time jobs at the location with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer applies for the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Commerce will provide the Department of Environment and Natural Resources a list of all taxpayers making this certification. The Department of Environment and Natural Resources may conduct random audit checks to verify taxpayers' certifications. The Department of Environment and Natural Resources must notify the Department of Revenue of any taxpayer certifications it determines are not accurate.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer applies for the credit, at the business location with respect to which the credit is claimed, the taxpayer has no outstanding citations under the Occupational Safety and Health Act and has had no serious violation as defined in G.S. 95-127 within the last three years. The Secretary of Commerce will provide the Department of Labor a list of all taxpayers making this certification. The Department of Labor may conduct random audit checks to verify taxpayers' certifications. The Department of Labor must notify the Department of Revenue of any taxpayer certifications it determines are not accurate.

(g) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i) computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(h) Change in Ownership of Business. – The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

"**§ 105-129.44. Tax election; cap.**

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer must take a credit allowed under this Article against only one of the taxes against which it is allowed. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article and Articles 3A and 3B of this Chapter against each tax for the taxable year. Any unused portion of a credit may be carried forward for the succeeding five years.

"**§ 105-129.45. Application; reports.**

(a) Application. – To claim a credit allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.43 with respect to each credit. A taxpayer must apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. In addition, the application must state the number of full-time jobs to be created that are located within a development zone, the number of full-time jobs to be created that are expected to be filled by employees residing within the development zone, and the number of full-time jobs to be created that are expected to be filled by employees residing within a census tract or census block group that has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.43 with respect to a credit, the Secretary must issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.43 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(b) Fee. – When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of five hundred dollars ($500.00) for each credit the taxpayer intends to claim with respect to a location that is not in an enterprise zone or in an enterprise tier one or two area, subject to a maximum fee of one thousand five hundred dollars ($1,500) per taxpayer per taxable year. If the taxpayer applies for certification for a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.

The Secretary of Commerce must retain one-fourth of the proceeds of the fee imposed in this section for the costs of administering this section. The Secretary of Commerce must credit the remaining proceeds of the fee imposed in this section to the Department of Revenue for the costs of administering and auditing the credits allowed in this Article. The proceeds of the fee are receipts of the Department to which they are credited.

(c) Reports. – The Department of Commerce must report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of tourism property with respect to which credits were applied for.
(4) The number of new jobs created within development zones and the percentage of those jobs that were filled by residents of the zones.

"**§ 105-129.46. Substantiation.**

(a) To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit is on the taxpayer, and no credit is allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Each taxpayer must provide with the tax return qualifying information for each credit claimed under this Article for the first taxable year the credit is claimed and for every year in which a subsequent installment or a carryforward of that credit is claimed. The qualifying information must be in the form prescribed by the Secretary, must cover each taxable year beginning with the first taxable year the credit is claimed, and must be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for an initial credit and any installments and carryforwards and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the enterprise tier designation of the location and whether it is in a development zone. In addition, for each individual who fills a job at a location with respect to which a credit is claimed, the place where the individual resided before taking the job, including any enterprise tier or development zone designation of that place.
(2) The type of business with respect to which the credit is claimed, as required by G.S. 105-129.43(a), and wage information described in G.S. 105-129.43(b).
(3) Qualifying information required for the credit for creating tourism jobs and the tourism investment credit allowed under this Article.

"**§ 105-129.47. Credit for creating tourism jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.43, has five or more full-time employees, and hires an additional full-time employee during the taxable year to fill a position located in an enterprise tier one, two, or three area or in a development zone is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	-0-
Tier Five	-0-

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit must be taken in equal installments over the four years following the taxable year in which the additional employee was hired and is conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires, and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.44.

Jobs transferred from one area in the State to another area in the State are not new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit must be calculated as if the position had been created initially in the area to which it was moved.

(b) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to create at least 20 new full-time jobs in a specific area within two years after the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit is available in the taxable year after at least 20 employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) of this section apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) of this section in the year any new employees are hired, the taxpayer may take the credit under that subsection.

"**§ 105-129.48. Credit for tourism investment.**

(a) Credit. – If a taxpayer that has purchased or leased eligible tourism property places it in service in an enterprise tier one, two, or three area during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. For the purpose of this section, a development zone is considered an enterprise tier one area. Tourism property is eligible if it is capitalized by the taxpayer for tax purposes under the Code and not leased to another party. The credit may not be taken for the taxable year in which the property is placed in service but must be taken in equal installments over the seven years following the taxable year in which it is placed in service.

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible tourism property and (ii) the amount by which the cost of all of the taxpayer's eligible tourism property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible tourism property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible tourism property in service in this State. A taxpayer that claims a credit under this section must include with the application for certification required under G.S. 105-129.45 specific documentation supporting the taxpayer's calculation of the eligible investment amount under this subsection.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible tourism property is placed in service during the taxable year. If the taxpayer places eligible tourism property in service in more than one county during the taxable year, the threshold applies separately to the eligible tourism property placed in service in each county. If the taxpayer places eligible tourism property in service in a county over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the tourism property with respect to which the credit was claimed is disposed of, taken out of service, or moved to an area that is not an enterprise tier one, two, or three area, the credit expires, and the taxpayer may not take any remaining installment of the credit for that tourism property unless the cost of that tourism property is offset in the same taxable year by the taxpayer's new investment in eligible tourism property placed in service in the same enterprise tier, as provided in this subsection. If, during the taxable year the taxpayer disposed of the tourism property for which installments remain there has been a net reduction in the cost of all the taxpayer's eligible tourism property that is in service in the same enterprise tier as the tourism property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the tourism property that was disposed of, then the taxpayer forfeits the remaining installments of the credit for the tourism property that was disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the tourism property that was disposed of, or if there is no net reduction, then the taxpayer does not forfeit the remaining installments of the expired credit. In determining the amount of any net reduction during the taxable year, the cost of tourism property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible tourism property that is in service. If in a single taxable year tourism property with respect to two or more credits in the same tier is disposed of, the net reduction in the cost of all the taxpayer's eligible tourism property that is in service in the same tier is compared to the total cost of all the tourism property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.44.

If, in one of the seven years in which the installment of a credit accrues, the tourism property with respect to which the credit was claimed is moved to a higher-numbered enterprise tier area, the remaining installments of the credit are allowed only to the extent they would have been allowed if the tourism property had been placed in service initially in the area to which it was moved.

(e) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible tourism property in service in an area within two years after the date the letter is signed may, in the year the eligible tourism property is placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible tourism property in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the tourism property not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible tourism property is placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

SECTION 2. G.S. 105-129.16(c) reads as rewritten:

"(c) No Double Credit. – A taxpayer that claims ~~the~~ a credit allowed under Article 3A or Article 3E of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for business property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not capitalize the property for tax purposes under the Code and the lessor will not claim the credit allowed in this section with respect to the property."

SECTION 3. Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-434.3. Travel and Tourism Capital Incentive Grant Program.**

(a) There is established in the Department of Commerce the Travel and Tourism Capital Incentive Grant Program. Grant funds shall be allocated to local government units for the purpose of inducing the creation of new or the expansion or renovation of existing travel and tourism qualified projects. Grants shall be made available to city and county governments that provide public funding, in whole or in part, that directly supports a qualified tourism project. Grant funds shall be used only for the support of qualified tourism projects. The Department of Commerce shall adopt rules for the administration of the program. The rules shall include the following provisions:

(1) Local government units may apply to the Department of Commerce for Travel and Tourism Capital Incentive Grants no sooner than one year after the qualified tourism project is opened to the public and no later than five years after it is opened to the public. The application shall contain all necessary information regarding the nature and cost of the tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the local government unit will use the grant funds.

(2) Local government units may enter into agreements with private investors to develop new or expand or renovate existing tourism projects. If the tourism project is the result of a public/private partnership, the grant application shall set forth in detail the respective rights and obligations of the parties and the specific terms of the agreement.

(3) A qualified tourism project must meet the following conditions:

a. The project will attract at least twenty-five percent (25%) of its visitors from among persons who reside more than 100 miles from the tourism project;

b. The project will have a profitable business plan and once opened must demonstrate profitability within three years;

c. The project must have impact projections regarding estimated State and local tax revenues;

d. The project will have a significant and positive impact on the community, considering among other factors the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided to the local government unit;

e. The project will produce sufficient revenues and public demand to be operating and open to the public for a minimum of 100 days per year;

f. The project will generate at least 10 new jobs in the local area; and

g. The project will have a minimum cost based on the following:

Enterprise Tier	Minimum Cost
1 and 2	one million dollars ($1,000,000);
3 and 4	fifteen million dollars ($15,000,000);
5	thirty million dollars ($30,000,000).

(b) The amount of each grant shall be determined as an amount equal to a percentage of the total amount of the following taxes generated by the qualified tourism project: (i) the net State sales tax collected by the qualified tourism project, in accordance with Article 5 of Chapter 105 of the General Statutes, (ii) the net privilege tax paid by a qualified tourism project in accordance with G.S. 105-37.1, and (iii) the amount withheld from the wages of each employee of the qualified tourism project, in accordance with G.S. 105-163.2. The percentage shall vary depending on the enterprise tier, as defined in G.S. 105-129.3, in which the qualified tourism project is located. If the project is located in a tier one or two county, the local government unit is eligible for a grant in an amount equal to no more than thirty-five percent (35%) of the eligible taxes generated by the project. If the project is located in a tier three or four county, the local government unit is eligible for a grant in an amount equal to no more than thirty percent (30%) of the eligible taxes generated by the project. If the project is located in a tier five county, the local government unit is eligible for a grant in an amount equal to no more than twenty-five percent (25%) of the eligible taxes generated by the project.

(c) The Department of Commerce may reserve and allocate up to ten percent (10%) of the funds available to the Travel and Tourism Capital Incentive Grant Program to State and local administrative costs to implement the Program.

(d) The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund. The Department of Commerce shall also report quarterly to the Joint Legislative

Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on the use of moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes."

SECTION 4. This act becomes effective for taxable years beginning on or after January 1, 2002, and Section 1 of this act expires January 1, 2008.