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HOUSE PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H **D**

HOUSE BILL DRH30333-MC-1M (11/16)

Short Title:	Economic Development Incentives Modifications.	(Public)
Sponsors:	Representatives S. Martin, Szoka, Ross, and Fraley (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO ECONOMIC DEVELOPMENT INCENTIVES OF THE STATE AND TO THE USE OF DEVELOPMENT TIERS AND RANKINGS.

The General Assembly of North Carolina enacts:

PART I. MODIFY CONTRACTING FOR PERFORMANCE OF DUTIES BY THE DEPARTMENT OF COMMERCE

SECTION 1. G.S. 143B-431.01 reads as rewritten:

"**§ 143B-431.01. Department of Commerce – contracting of functions.**

…

(b) Contract. – The Department of Commerce is authorized to contract with a North Carolina nonprofit corporation to perform one or more of the Department's functions, powers, duties, and obligations set forth in G.S. 143B-431, except as provided in this subsection. The contract entered into pursuant to this section between the Department and the Economic Development Partnership of North Carolina is exempt from Articles 3 and 3C of Chapter 143 of the General Statutes and G.S. 143C-6-23. If the Department contracts with a North Carolina nonprofit corporation to promote and grow the travel and tourism industries, then all funds appropriated to the Department for tourism marketing purposes shall be used for a research-based, comprehensive marketing program directed toward consumers in key markets most likely to travel to North Carolina and not for ancillary activities, such as statewide branding and business development marketing. The Department may not contract with a North Carolina nonprofit corporation regarding any of the following:

…

(5) Site certification functions and activities performed by the Department.

(6) The performance of one or more functions, powers, duties, or obligations of any other State agency.

…

(e) Mandatory Contract Terms. – Any contract entered into under this section must include all of the following:

…

(2) A provision requiring the nonprofit corporation to provide by September 1 of each year, and more frequently as requested, a report to the Department on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources. The report shall also include all of the following:

a. Jobs anticipated to result from efforts of the nonprofit corporation. This includes the name and contact person of each company creating new jobs in the State, the location of each project, and project leads that were not submitted to the Department for possible discretionary incentives pursuant to Chapter 143B of the General Statutes.

…

(17) A provision prohibiting the nonprofit corporation from contracting with any State agency other than the Department for the performance of one or more of the agency's functions, powers, duties, or obligations.

…."

PART II. DISCRETIONARY ECONOMIC DEVELOPMENT FUND MODIFICATIONS

SECTION 2.1.(a) G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

…

(5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base period. The term does not include a position filled by a worker with an H-1B visa/with H-1B status.

…."

SECTION 2.1.(b) G.S. 143B-437.52(a) reads as rewritten:

"(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be ~~located.~~located, including the anticipated effect the project described in the application will have on the development factors, as calculated pursuant to G.S. 143B-437.08, of the area.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(6) For a project located in a development tier three area, the affected local governments have participated in recruitment and offered incentives in a manner appropriate to the project."

SECTION 2.1.(c) G.S. 143B-437.56(d) reads as rewritten:

"(d) For any eligible position that is located in a county designated as an attainment area pursuant to G.S. 143B-437.08, seventy percent (70%) of the annual grant approved for disbursement shall be payable to the business, and thirty percent (30%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For any eligible position that is located in a development tier three ~~area,~~ area that is not designated as an attainment area pursuant to G.S. 143B-437.08, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For any eligible position that is located in a development tier two area, ninety percent (90%) of the annual grant approved for disbursement shall be payable to the business, and ten percent (10%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the development tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee. This subsection does not apply to a high-yield project in years in which the business receives the enhanced percentage pursuant to subsection (a1) of this section."

SECTION 2.1A. G.S. 143B-437.52(c) reads as rewritten:

"(c) Award Limitations. – The following limitations apply to grants awarded under this Part:

(1) Maximum liability. – The maximum amount of total annual liability for grants awarded for projects not wholly located in development tier one areas in any single calendar year under this Part, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, is twenty million dollars ($20,000,000) for a year in which no grants are awarded for a high-yield project and is thirty-five million dollars ($35,000,000) for a year in which a grant is awarded for a high-yield project. No agreement for grants for projects not wholly located in development tier one areas may be entered into that, when considered together with other existing agreements governing grants awarded during a single calendar ~~year,~~ year for projects not wholly located in development tier one areas, could cause the State's potential total annual liability for grants awarded in a single calendar year to exceed the applicable amount. The Department shall make every effort to ensure that the average percentage of withholdings of eligible positions for grants awarded under this Part does not exceed the average of the range provided in G.S. 143B-437.56(a).

…."

SECTION 2.2. G.S. 143B-437.72 reads as rewritten:

"**§ 143B-437.72. Agreements required; disbursement of funds.**

…

(b) Company Performance Agreements. – An agreement between a local government and a grantee business must contain the following provisions:

(1) A commitment to create or retain a specified number of jobs within a specified salary range at a specific location and commitments regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained. Provisions regarding the commitment required pursuant to this subdivision may not include the number of jobs filled by workers with H-1B visas/with H-1B status.

…

(c) Local Government Grant Agreement. – An agreement between the State and one or more local governments shall contain the following provisions:

(1) A commitment on the part of the local government to match the funds allocated by the State, as provided in this subdivision. A local match may include cash, fee waivers, in-kind services, the donation of assets, the provision of infrastructure, or a combination of these.

a. For a local government in a development tier one area, as defined in G.S. 143B-437.08, the State shall provide no more than three dollars ($3.00) for every one dollar ($1.00) provided by the local government.

b. For a local government in a development tier two area, as defined in G.S. 143B-437.08, the State shall provide no more than two dollars ($2.00) for every one dollar ($1.00) provided by the local government.

c. For a local government in a development tier three area that is not designated as an attainment area, as defined in G.S. 143B-437.08, the State shall provide no more than one dollar ($1.00) for every one dollar ($1.00) provided by the local government.

d. For a local government in an attainment area, as defined in G.S. 143B-437.08, the State shall provide no more than one dollar ($1.00) for every two dollars ($2.00) provided by the local government.

…."

SECTION 2.3.(a) G.S. 143B-437.01(a) reads as rewritten:

"(a) Creation and Purpose of Fund. – There is created in the Department of Commerce a special account to be known as the Industrial Development Fund Utility Account ("Utility Account") to provide funds to assist the local government units of the most economically distressed counties in the State in retaining or creating ~~jobs.~~jobs, including expanding the existing job base. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the account:

(1) The funds shall be used for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed buildings. To be eligible for funding, the water, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the job creation activity. To be eligible for funding, the sewer infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the job creation activity, even if the sewer infrastructure is located in a county other than the county in which the building is located.

…

(2) The funds shall be used by the city and county governments for projects that are reasonably anticipated to result in the creation of new jobs, including expanding the existing job base, or retention of existing jobs. There shall be no maximum funding amount per new job to be created or per project.

…."

SECTION 2.3.(b) This section is effective when it becomes law and applies to grants awarded on or after that date.

SECTION 2.4. Section 2.1 and Section 2.2 of this Part become effective January 1, 2017, and apply to awards made on or after that date.

PART III. DEVELOPMENT TIER MODIFICATIONS

SECTION 3.(a) G.S. 143B-437.08 reads as rewritten:

"**§ 143B-437.08. Development tier designation.**

…

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this ~~section and making the adjustments required in this~~ section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(c1) Index. – The Secretary of Commerce shall cost adjust the national value for per capita income to determine the State value for that factor and shall determine the State value for the factors listed in subdivisions (1), (3), and (4) of subsection (b) of this section. Using these metrics, the Secretary shall create an index, as follows: (i) the State average rate of unemployment divided by the county's average rate, (ii) the county's per capita income divided by the per capita income value for the State determined pursuant to this subsection, (iii) the county's percentage growth in population divided by the State's percentage growth, and (iv) the county's adjusted assessed property value per capita divided by the State adjusted assessed property value per capita. After computing the indices as provided in this subsection, the Secretary shall rank and publish all the counties within the State according to their index scores, along with the value against which the factor is compared, from lowest to highest. The Secretary shall separately designate any county with performance greater than that of the benchmarks for all indexed development factors as an "attainment area." An index score average and achievement area designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of ~~unemployment~~ unemployment, per capita income, and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. ~~In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.~~

~~(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties, and any county that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census shall automatically be ranked one of the 40 highest counties.~~

~~(f) Adjustment for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.~~

~~(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:~~

~~(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.~~

~~(2) At least one-third of the park is located in the county with the lower tier designation.~~

~~(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.~~

~~(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.~~

~~(5) Expired, effective July 1, 2012, pursuant to Session Laws 2009-524, s. 2.~~

~~(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4, and parcels of land located within the industrial park that are subsequently transferred and used for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1, have the lowest development tier designation of the designations of the counties in which they are located if all of the following conditions are satisfied:~~

~~(1) The industrial park is located, at one or more sites, in three or more contiguous counties.~~

~~(2) At least one of the counties in which the industrial park is located is a development tier one area.~~

~~(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.~~

~~(4) In each county in which the industrial park is located, the park has at least 250 developable acres. A transfer of acreage that reduces the number of developable acres below 250 developable acres in a county does not affect an industrial park's eligibility under this subsection if the transfer is to an owner who uses or develops the acreage for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1. For the purposes of this subdivision, "developable acres" includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.~~

~~(5) The total population of all of the counties in which the industrial park is located is less than 200,000.~~

~~(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.~~

~~(i) Expired, effective July 1, 2013, pursuant to Session Laws 2009-505, s. 2, as amended by Session Laws 2012-36, s. 1.~~

~~(j) Exception for Eco-Industrial Park. – An Eco-Industrial Park has a development tier one designation. An Eco-Industrial Park is an industrial park that the Secretary of Commerce has certified meets the following requirements:~~

~~(1) It has at least 100 developable acres.~~

~~(2) It is located in a county that is not required under G.S. 143-215.107A to perform motor vehicle emissions inspections.~~

~~(3) Each building located in the industrial park is constructed in accordance with energy-efficiency and water-use standards established in G.S. 143-135.37 for construction of a major facility.~~

~~(4) Each business located in the park is in a clean-industry sector according to the Toxic Release Inventory by the United States Environmental Protection Agency.~~

(k) Report. – By November 30 of each year, the Secretary of Commerce shall submit a written report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on the tier rankings required by subsection (c) of this section, including a map of the State whereupon the tier ranking of each county is designated."

SECTION 3.(b) G.S. 143B-437.01(a1) reads as rewritten:

"(a1) Definitions. – The following definitions apply in this section:

…

(4) Economically distressed county. – A county that is defined as a development tier one or two area under ~~G.S. 143B-437.08 after the adjustments of that section are applied.~~G.S. 143B-437.08.

…."

SECTION 3.(c) G.S. 143B-472.127 reads as rewritten:

"**§ 143B-472.127. Programs administered.**

(a) The Rural Economic Development Division shall be responsible for administering the program whereby economic development grants or loans are awarded by the Rural Infrastructure Authority as provided in G.S. 143B-472.128 to local government units. The Rural Infrastructure Authority shall, in awarding economic development grants or loans under the provisions of this subsection, give priority to local government units of the counties that have one of the 80 highest rankings under ~~G.S. 143B-437.08 after the adjustment of that section.~~G.S. 143B-437.08. The funds available for grants or loans under this program may be used as follows:

…."

SECTION 3.(d) G.S. 143B-472.128 reads as rewritten:

"**§ 143B-472.128. Rural Infrastructure Authority created; powers.**

…

(j) Powers and Duties. – The Authority has the following powers and duties:

…

(2) To award grants or loans as provided in G.S. 143B-472.127. In awarding grants or loans under G.S. 143B-472.127(a), priority shall be given to local government units of the counties that have one of the 80 highest rankings under ~~G.S. 143B-437.08 after the adjustment of that section.~~G.S. 143B-437.08.

…."

SECTION 3.(e) This Part becomes effective January 1, 2018, and applies to economic development awards made and related determinations occurring on or after that date.

PART IV. RURAL ASSISTANCE

SECTION 4.(a) For each Collaboration for Prosperity Zone established in G.S. 143B-28.1, the employees of the Department of Commerce in the zone shall examine each annual update of the plan required by G.S. 143B-434.01, collate all information relevant to the zone, county, region, and other unit of local government in the zone, and provide a copy of the collated information to each unit of local government within the zone. The collated information shall also identify any additional regional assets not otherwise contained in the annual update. For any asset identified in the annual update or identified by the employees, an analysis shall be performed to identify appropriate potential industries best suited to maximize the beneficial economic impact of each asset. The employees shall identify for each asset any potential additional infrastructure needs anticipated for identified appropriate potential industries. The Department shall provide to the Joint Legislative Oversight Committee on Economic Development and Global Engagement a list of any assets remaining in the collated information for more than two years by January 1 of each year.

SECTION 4.(b) For each Collaboration for Prosperity Zone established in G.S. 143B-28.1, the employees of the Department of Commerce in the zone shall submit a report to the Joint Legislative Oversight Committee on Economic Development and Global Engagement and the Fiscal Research Division on the following: (i) jobs anticipated to result from efforts of the employees, including the name and contact person of each company creating new jobs in the zone, (ii) the location of each project, including the development tier designation of the location, and (iii) project leads that were not submitted to the Department for possible discretionary incentives pursuant to Chapter 143B of the General Statutes.

PART V. IMPROVE PROJECT IMPACT

SECTION 5.(a) G.S. 143B-437.07 reads as rewritten:

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

(a) Report. – The Department of Commerce ~~must~~ shall publish on or before October 1 of each year the information required by this subsection, itemized by business entity, for each business or joint private venture to which the State has, in whole or in part, granted one or more economic development incentives during the relevant time period. The relevant time period ends June 30 preceding the publication date of this subsection and begins (i) for incentives not awarded under Part 2G of this Article with the 2007 calendar year and (ii) for incentives awarded under Part 2G of this Article with the 2002 calendar year. The information in the report ~~must~~ shall include all of the following:

…

(3) The name, mailing address, telephone number, and Web site of the business recipient, or recipients if a joint venture, and the physical location of the site receiving the incentive. If the physical location of the site is undecided, then the name of the county in which the site will be located. The information regarding the physical location ~~must~~ shall indicate whether the physical location is a new or expanded facility.

…

(b) Online Posting/Written Submission. – The Department of Commerce ~~must~~ shall post on its Internet Web site a summary of the report compiled in subsection (a) of this section. The summary report ~~must~~ shall include the information required by subdivisions (2), (9), (11), and (12) of subsection (a) of this section. By October 1 of each year, the Department of Commerce ~~must~~ shall submit the written report required by subsection (a) of this section to the Joint Legislative Commission on Governmental Operations, the Revenue Laws Study Committee, the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly.

(c) Economic Development Incentive. – An economic development incentive includes any grant from the following programs: Job Development Investment Grant Program; the Job Maintenance and Capital Development Fund; One North Carolina Fund; and the Utility Account. The State also incents economic development through the use of tax expenditures in the form of tax credits and refunds. The Department of Revenue ~~must~~ shall report annually on these statutory economic development incentives, as required under G.S. 105-256.

(d) County Improvement Plan and Reports. – The Department of Commerce, using the index required by G.S. 143B-437.08(c1), shall create a plan for improving the performance of each county underperforming the benchmark in one or more indexed development factors to the benchmark performance level at the time the plan was created. The plan shall cover a period of five years, and the Department shall create a new plan complying with this subsection at the expiration of the plan. The Department shall publish and submit an annual progress report to the Joint Legislative Oversight Committee on Economic Development and Global Engagement providing, at a minimum, a (i) comparison of the performance of each county to the benchmarked performance in each indexed development factor where the county underperformed the benchmark for the year and (ii) comparison of that performance to the county's performance in the previous year. The Department shall submit a copy of a plan for the first year after it is created and each progress report on or before April 1 of each year."

SECTION 5.(b) For purposes of the initial plan required by G.S. 143B-437.07(d), as enacted by this act, the Department shall consult with and use data compiled by the Center for Competitive Economies at the Kenan-Flagler Business School at the University of North Carolina in Chapel Hill for the study performed for the Joint Legislative Oversight Committee on Economic Development and Global Engagement.

PART VI. USE OF ECONOMIC DEVELOPMENT TIERS AND RANKINGS

SECTION 6.(a) All entities, including, but not limited to, the entities listed in this section, shall, no later than July 1, 2017, elect whether to discontinue the use of the development tier designations determined pursuant to G.S. 143B-437.08 for all purposes and programs, including taxes, the North Carolina Development Farmland Preservation Trust Fund, the Spay and Neuter Program, the Abandoned Manufactured Home Cleanup Grants Program, the State Wastewater Reserve, the State Drinking Water Reserve, the Public Safety Assistance Points Grant Program, Oral Health Preventive Services, Medication Assistance, Qualified Allocation Plan for Low-Income Housing Tax Credits, and the Strategic Prioritization Funding Plan for Regional Impact Transportation Investment Projects. This section applies to the following:

(1) The Department of Agriculture and Consumer Services.
(2) The Department of Environmental Quality.
(3) The Department of Information Technology.
(4) The Department of Health and Human Services.
(5) The North Carolina Housing Finance Agency.
(6) The Department of Transportation.
(7) The Department of Revenue.

SECTION 6.(b) Each entity electing to discontinue the use of the development tier designations pursuant to subsection (a) of this section shall independently develop criteria designed to achieve each program's objectives to be used in place of development tier designations and shall report by October 1, 2017, on the developed criteria to the Fiscal Research Division and to their respective joint oversight committees, including, but not limited to, the following:

(1) The Departments of Agriculture and Consumer Services and Environmental Quality to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources.

(2) The Department of Information Technology to the Joint Legislative Oversight Committee on Information Technology.

(3) The Department of Health and Human Services to the Joint Legislative Oversight Committee on Health and Human Services.

(4) The North Carolina Housing Finance Agency to the Joint Legislative Oversight Committee on General Government.

(5) The Department of Transportation to the Joint Legislative Transportation Oversight Committee.

(6) The Department of Revenue to the Revenue Laws Study Committee.

SECTION 6.(c) An entity electing to discontinue use of the development tier designations pursuant to subsection (a) of this section shall continue to update, as of January 1 of each calendar year, usage of the development tier designations to those published latest by the Department of Commerce until the developed replacement criteria are enacted into law.

PART VII. EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.