

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 117
Committee Substitute Favorable 3/3/15
PROPOSED COMMITTEE SUBSTITUTE H117-PCS10078-LR-2

Short Title: NC Competes Act.

(Public)

Sponsors:

Referred to:

February 27, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA COMPETES ACT.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. JDIG MODIFICATIONS**

6 **SECTION 1.(a)** Section 15.19(a1) of S.L. 2013-360 reads as rewritten:

7 "**SECTION 15.19.(a1)** Notwithstanding G.S. 143B-437.52(c), for the ~~2013-2015 fiscal~~
8 ~~biennium~~, period from July 1, 2013, to December 31, 2015, the maximum total liability for
9 grants awarded, including amounts transferred to the Utility Account pursuant to
10 G.S. 143B-437.61, is ~~twenty-two million five hundred thousand dollars (\$22,500,000) and, for~~
11 ~~the period from July 1, 2015, to December 31, 2015, the maximum total liability for grants~~
12 ~~awarded, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, is~~
13 ~~seven million five hundred thousand dollars (\$7,500,000).~~ forty-five million dollars
14 (\$45,000,000). No agreement may be entered into that, when considered together with other
15 existing agreements governing grants awarded during an applicable time period provided in this
16 subsection, could cause the State's potential total annual liability for grants awarded in that time
17 period to exceed the designated maximum amount."

18 **SECTION 1.(b)** The title of Part 2G of Article 10 of Chapter 143B of the General
19 Statutes reads as rewritten:

20 "Part 2G. Job Development Investment Grant Program. Job Growth Reimbursement
21 Opportunities – People Program."

22 **SECTION 1.(c)** G.S. 143B-437.52(a) is amended by adding a new subdivision to
23 read:

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

27 **SECTION 1.(d)** G.S. 143B-437.52(b) is repealed.

28 **SECTION 1.(e)** G.S. 143B-437.53 reads as rewritten:

29 "**§ 143B-437.53. Eligible projects.**

30 (a) Minimum Number of Eligible Positions. – A business may apply to the Committee
31 for a grant for any project that creates the minimum number of eligible positions as set out in
32 the table below. If the project will be located in more than one development tier area, the
33 location with the highest development tier area designation determines the minimum number of
34 eligible positions that must be created.

35 Development Tier Area

Number of Eligible Positions



* H 1 1 7 - P C S 1 0 0 7 8 - L R - 2 *

1	Tier One	10
2	Tier Two	20
3	Tier Three	<u>2050</u>
4	...	

(c) Health Insurance. – A business is eligible for a grant under this Part only if the business provides health insurance for all of the applicable full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, an applicable full-time employee is one who earns from the business less than one hundred fifty thousand dollars (\$150,000) in taxable compensation on an annualized basis or three and one-half times the annualized average State wage for all insured private employers in the State employing between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a business provides health insurance if it 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.coverage.~~

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.58 a certification that the business continues to provide health insurance, as required by this subsection, for all applicable full-time employees of the project with respect to which the grant is made. If the business ceases to provide the required health insurance, the Committee shall amend or terminate the agreement as provided in G.S. 143B-437.59."

SECTION 1.(f) G.S. 143B-437.56(d) reads as rewritten:

"(d) For any eligible position that is located in a development tier three area, ~~seventy five percent (75%)~~seventy percent (70%) of the annual grant approved for disbursement shall be payable to the business, and ~~twenty five percent (25%)~~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 two area, eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the business, and fifteen percent (15%) 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."

SECTION 1.(g) G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

- ...
 - (10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to ~~permit require~~ the Committee to recapture all or part an appropriate portion of the grant at its discretion if the business does not remain at the site for the required term.
 - (11) A provision that requires the business to maintain employment levels in this State at the greater of the level of the year immediately preceding the base period employment on the date of the application or the level of employment on the date of the award.

...."

SECTION 1.(h) G.S. 143B-437.62 reads as rewritten:

"§ 143B-437.62. Expiration.

The authority of the Committee to award new grants expires January 1, ~~2016~~2020."

SECTION 1.(i) The Revisor of Statutes shall make the conforming statutory changes necessary to the General Statutes to reflect renaming of the Job Development

1 Investment Grant Program to the Job Growth Reimbursement Opportunities – People Program,
2 as provided in this section.

3 **SECTION 1.(j)** The Department of Commerce shall study the factors that have
4 contributed to the termination of grants awarded pursuant to Part 2G of Article 10 of Chapter
5 143B of the General Statutes. In conducting the study required by this subsection, the
6 Department shall examine the efforts of other states that have permitted similar economic
7 development programs to incent businesses to create jobs for the purpose of determining best
8 practices for remediating underperformance of participating businesses in order to lower the
9 incidence of community economic development agreements under G.S. 143B-437.57 ending in
10 termination. The Department shall submit the report to the House of Representatives Finance
11 Committee, the Senate Finance Committee, the House Committee on Agriculture and Natural
12 and Economic Resources, the Senate Appropriations Committee on Natural and Economic
13 Resources, and the Fiscal Research Division no later than March 1, 2016.

14 **SECTION 1.(k)** This Part is effective when it becomes law.
15

16 **PART II. ONE NC MODIFICATIONS**

17 **SECTION 2.(a)** The title of Part 2H of Article 10 of Chapter 143B of the General
18 Statutes reads as rewritten:

19 "Part 2H. ~~One North Carolina Fund.~~ Job Growth Reimbursement Opportunities – Capital
20 Program."

21 **SECTION 2.(b)** The title of Part 2I of Article 10 of Chapter 143B of the General
22 Statutes reads as rewritten:

23 "Part 2I. ~~One North Carolina~~ Job Growth Reimbursement Opportunities – Capital Small
24 Business Program."

25 **SECTION 2.(c)** The Revisor of Statutes shall make the conforming statutory
26 changes necessary to the General Statutes to reflect renaming of the One North Carolina Fund
27 to the Job Growth Reimbursement Opportunities – Capital Program and the renaming of the
28 One North Carolina Small Business Program to the Job Growth Reimbursement Opportunities
29 – Capital Small Business Program, as provided in this section.

30 **SECTION 2.(d)** This Part is effective when it becomes law.
31

32 **PART III. SITE INFRASTRUCTURE DEVELOPMENT FUND**

33 **SECTION 3.(a)** Of the funds appropriated to the Department of Commerce for the
34 2014-2015 fiscal year, twenty million dollars (\$20,000,000) shall be transferred to the Site
35 Infrastructure Development Fund for uses consistent with G.S. 143B-437.02. The Office of
36 State Budget and Management, in conjunction with the Office of the State Controller and the
37 Department of Commerce, shall transfer the unencumbered cash balance of the Job Catalyst
38 Fund (Budget Code 14600-1912) to the Site Infrastructure Development Fund (Budget Code
39 24600-2583).

40 **SECTION 3.(b)** The tagline of G.S. 143B-437.02 reads as rewritten:

41 "**§ 143B-437.02. Site infrastructure development.** Acceleration Fund."

42 **SECTION 3.(c)** G.S. 143B-437.02(e) reads as rewritten:

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

50 Each year that a contract for site development under this section is in effect, the business
51 must provide the Department of Commerce a certification that the business continues to

1 provide health insurance for all full-time employees of the project governed by the contract. If
2 the business ceases to provide health insurance to all full-time employees of the project,
3 Department shall provide for reimbursement of an appropriate portion of the site development
4 funds provided to the business."

5 **SECTION 3.(d)** The Revisor of Statutes shall make the conforming statutory
6 changes necessary to the General Statutes to reflect renaming of the Site Infrastructure
7 Development Fund to the Site Acceleration Fund, as provided in this section.

8 **SECTION 3.(e)** This Part is effective when it becomes law.
9

10 **PART IV. SINGLE SALES FACTOR MODIFICATION**

11 **SECTION 4.(a)** G.S. 105-130.4(s1) reads as rewritten:

12 "(s1) All apportionable income of a qualified capital intensive corporation shall be
13 apportioned by multiplying the income by the sales factor as determined under subsection (l) of
14 this section. A "qualified capital intensive corporation" is a corporation that satisfies all of the
15 conditions of this subsection. A corporation that is subject to this subsection must list on its
16 return the property, payroll, and sales factors ~~it used in determining whether it is aof the~~
17 qualified capital intensive corporation. If the corporation fails to invest one billion dollars
18 (\$1,000,000,000) in private funds within nine years as required by subdivision (2) of this
19 subsection, the benefit of this subsection expires and the corporation must apportion income as
20 it would otherwise be required to do under this section absent this subsection. If a corporation
21 fails to satisfy the conditions of this subsection, the corporation forfeits the benefit of this
22 subsection and must apportion income as it would otherwise be required to do absent this
23 subsection. A corporation that forfeits the benefit of this subsection is liable for all past taxes
24 avoided as a result of the benefit plus interest at the rate established under G.S. 105-241.21,
25 computed from the date additional taxes would have been due if the benefit had not been
26 allowed. The past taxes and interest are due 30 days after the date the benefit is forfeited; a
27 corporation that fails to pay the past taxes and interest by the due date is subject to the penalties
28 provided in G.S. 105-236. Notwithstanding G.S. 105-241.8(b)(3), if a corporation forfeits the
29 benefit of this subsection, the period for proposing an assessment of any tax due as a result of
30 the forfeiture is three years after the date of the discovery of the forfeiture.

31 The conditions are:

- 32 (1) ~~The corporation's property factor as a percentage of the sum of the factors in~~
33 ~~the formula set out in subsection (i) of this section, including the doubling of~~
34 ~~the sales factor, exceeds seventy five percent (75%) or the corporation's~~
35 ~~average property factor for the preceding three years as a percentage of the~~
36 ~~average sum of the factors in the formula set out in subsection (i) of this~~
37 ~~section, including the doubling of the sales factors, for the preceding three~~
38 ~~years exceeds seventy five percent (75%).~~
39 (2) The Secretary of Commerce makes a written determination that the
40 corporation has invested or is expected to invest at least one billion dollars
41 (\$1,000,000,000) in private funds to construct a facility in this State within
42 nine years after the time that construction begins. For the purposes of this
43 subsection, costs of construction include costs of acquiring and improving
44 land for the facility, costs for renovations or repairs to existing buildings,
45 and costs of equipping or reequipping the facility.
46 (3) The corporation maintains the average number of employees it has at the
47 facility during the first two years after the facility is placed in service for the
48 remainder of time in which the corporation must complete the investment
49 required under subdivision (2) of this subsection.

(4) ~~The facility that satisfies the condition of subdivision (2) of this subsection is located in a county that was designated as a development tier one or two area at the time construction of the facility began.~~

(5) The corporation satisfies a wage standard at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, the wage standard ~~that must be~~ satisfied is the one established under G.S. 105-129.83(e) if the corporation pays an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county.

(6) The corporation provides health insurance for all of its full-time employees at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, a company provides health insurance if ~~it satisfies the provisions of G.S. 105-129.83(d).~~ pays at least fifty percent (50%) of the premiums for health care coverage."

SECTION 4.(b) Section 4 of S.L. 2009-54 is repealed.

SECTION 4.(c) Section 6 of S.L. 2009-54 reads as rewritten:

"**SECTION 6.** This act is effective for taxable years beginning on or after January 1, 2010. ~~If no corporation has qualified as a qualified capital intensive corporation under G.S. 105-130.4(s1) prior to January 1, 2019, then G.S. 105-130.4(s1) is repealed for taxable years beginning on or after January 1, 2019."~~

SECTION 4.(d) Subsection (c) of this section is effective when it becomes law. The remainder of this Part is effective when it becomes law and applies to corporations receiving a written determination from the Secretary of Commerce on or after that date.

PART V. EXTEND SALES TAX REFUND FOR PASSENGER AIR CARRIERS

SECTION 5.(a) G.S. 105-164.14A(a)(1) reads as rewritten:

"(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars (\$2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after January 1, ~~2016-2020.~~"

SECTION 5.(b) This Part is effective when it becomes law.

PART VI. DATACENTER INFRASTRUCTURE ACT

SECTION 6.(a) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(33) Qualifying datacenter. – A datacenter that satisfies each of the following conditions:

a. The datacenter meets the wage standard and health insurance requirements of G.S. 143B-437.08A.

b. The Secretary of Commerce has made a written determination that at least seventy-five million dollars (\$75,000,000) in private funds has been or will be invested by one or more owners, users, or tenants of the datacenter within five years of the date the owner, user, or tenant

of the datacenter makes its first real or tangible property investment in the datacenter on or after January 1, 2012. Investments in real or tangible property in the datacenter made prior to January 1, 2012, may not be included in the investment required by this subdivision.

(33a) Purchase price. – The term has the same meaning as the term "sales price" when applied to an item subject to use tax.

~~(33a)~~(33b) Real property contractor. – A person that contracts to perform construction, reconstruction, installation, repair, or any other service with respect to real property and to furnish tangible personal property to be installed or applied to real property in connection with the contract and the labor to install or apply the tangible personal property that becomes part of real property. The term includes a general contractor, a subcontractor, or a builder for purposes of G.S. 105-164.4H.

~~(33b)~~(33c) Related member. – Defined in G.S. 105-130.7A.

~~(33e)~~(33d) Remote sale. – A sale of tangible personal property or digital property ordered by mail, by telephone, via the Internet, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and delivers the property or causes it to be delivered to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

...."

SECTION 6.(b) G.S. 105-164.13 is amended by adding a new subdivision to read:

"(55a) Sales of electricity for use at a qualifying datacenter and datacenter support equipment to be located and used at the qualifying datacenter. As used in this subdivision, "datacenter support equipment" is property that is capitalized for tax purposes under the Code and is used either:

- a. For the provision of a service or function included in the business of an owner, user, or tenant of the datacenter.
- b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and other capital equipment used for these purposes.
- c. For HVAC and mechanical systems, including chillers, cooling towers, air handlers, pumps, and other capital equipment used for these purposes.
- d. For hardware and software for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and equipment.
- e. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(33) is not timely made, the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33) is timely made but any specific datacenter support equipment is not located and used at the qualifying datacenter, the exemption provided for such datacenter support equipment under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33) is timely made but any portion of electricity is not used at the qualifying datacenter, the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an

1 exemption under this subdivision is liable for all past taxes avoided as a
2 result of the forfeited exemption, computed from the date the taxes would
3 have been due if the exemption had not been allowed, plus interest at the rate
4 established under G.S. 105-241.21. If the forfeiture is triggered due to the
5 lack of a timely investment required by G.S. 105-164.3(33), interest is
6 computed from the date the taxes would have been due if the exemption had
7 not been allowed. For all other forfeitures, interest is computed from the
8 time as of which the datacenter support equipment or electricity was put to a
9 disqualifying use. The past taxes and interest are due 30 days after the date
10 the exemption is forfeited. A taxpayer that fails to pay the past taxes and
11 interest by the due date is subject to the provisions of G.S. 105-236."

12 **SECTION 6.(c)** This Part becomes effective July 1, 2015, and applies to sales
13 made on or after that date.

14
15 **PART VII. EFFECTIVE DATE**

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