

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 1355

Short Title: Improve Economic Development Programs. (Public)

Sponsors: Representatives C. Wilson; Crawford, Frye, Hill, Hilton, LaRoque, Moore, and Parmon.

Referred to: Rules, Calendar, and Operations of the House.

May 11, 2004

A BILL TO BE ENTITLED
AN ACT TO SHIFT THE STATE'S ECONOMIC DEVELOPMENT RESOURCES TO
MORE EFFICIENT AND EFFECTIVE INCENTIVES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.
- (3) The William S. Lee Act, Article 3A of Chapter 105 of the General Statutes, does not have sufficient accountability mechanisms built into the program.
- (4) The Bill Lee Act has questionable value as an inducement to bring additional business activity to the State and may be largely rewarding activities that would have occurred without an incentive.
- (5) This act is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina, and this act will promote the general welfare and confer, as its primary purpose and

1 effect, benefits on citizens throughout the State through the creation of
2 new jobs, an enlargement of the overall tax base, an expansion and
3 diversification of the State's industrial base, and an increase in revenue
4 to the State and its political subdivisions.

- 5 (6) The purpose of this act is to stimulate economic activity and to create
6 new jobs within the State.

7 **SECTION 2.** G.S. 105-129.2A reads as rewritten:

8 **"§ 105-129.2A. Sunset; studies.**

9 (a) Sunset. – G.S. 105-129.9A is repealed effective for business activities that
10 occur on or after January 1, 2006. Except as otherwise provided in this section, the
11 remainder of this This Article is repealed effective for business activities that occur on or
12 after January 1, ~~2006~~.2005.

13 (a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this
14 section, in the case of an interstate air courier that enters into a real estate lease on or
15 before January 1, 2006, with an airport authority that provides for the lease of at least
16 100 acres of real property with a lease term in excess of 15 years, this Article is repealed
17 effective for business activities that occur on or after January 1, 2010.

18 (a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this
19 section, in the case of a taxpayer that qualifies as an eligible major industry on or before
20 January 1, 2006, this Article is repealed effective for business activities that occur on or
21 after January 1, 2010.

22 (b) Equity Study. – The Department of Commerce shall study the effect of the
23 tax incentives provided in this Article on tax equity. This study shall include the
24 following:

- 25 (1) Reexamining the formula in G.S. 105-129.3(b) used to define
26 enterprise tiers, to include consideration of alternative measures for
27 more equitable treatment of counties in similar economic
28 circumstances.
29 (2) Considering whether the assignment of tiers and the applicable
30 thresholds are equitable for smaller counties, for example those under
31 50,000 in population.
32 (3) Compiling any available data on whether expanding North Carolina
33 businesses receive fewer benefits than out-of-State businesses that
34 locate to North Carolina.

35 (c) Impact Study. – The Department of Commerce shall study the effectiveness
36 of the tax incentives provided in this Article. This study shall include:

- 37 (1) Study of the distribution of tax incentives across new and expanding
38 industries.
39 (2) Examination of data on economic recruitment for the period from 1994
40 through the most recent year for which data are available by county, by
41 industry type, by size of investment, and by number of jobs, and other
42 relevant information to determine the pattern of business locations and
43 expansions before and after the enactment of the William S. Lee Act
44 incentives.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by April 1, 2001.

(e) Outstanding Liability. – The Department of Revenue must monitor the amount and expected timing of outstanding potential liability remaining under this Article. Each year that outstanding potential liability remains, the Department must report the estimated amount and timing of the liability on or before June 1 to the cochairs of the Senate and House of Representatives Committees on Finance and on Appropriations. Notwithstanding subsection (a) of this section, this subsection remains in effect as long as outstanding potential liability remains under this Article."

SECTION 3. Chapter 105 of the General Statutes is amended by adding a new Article 3F entitled "Research and Development."

SECTION 4.(a) The following statutes in Article 3 of Chapter 105 of the General Statutes are amended as follows:

(1) G.S. 105-129.3 is recodified as G.S. 143B-437.5.

(2) G.S. 105-129.10(a) is recodified as G.S. 105-129.55.

(3) G.S. 105-129.10(b) is recodified as G.S. 105-129.56.

(4) G.S. 105-129.10(c) is repealed.

SECTION 4.(b) The Revisor of Statutes is authorized to change cross-references to these provisions wherever they may be found in the General Statutes in order to reflect the recodification.

SECTION 5. G.S. 143B-437.52(b) and (c) read as rewritten:

~~"(b) Cap. The maximum number of agreements the Committee may enter into each calendar year is 15.~~

(c) Ceiling. – The maximum amount of total annual liability for grants for agreements entered into in any single calendar year may not exceed the applicable ceiling provided in the table below. ~~ten million dollars (\$10,000,000).~~ No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

<u>Year</u>	<u>Ceiling</u>
<u>2003</u>	<u>\$10,000,000</u>
<u>2004</u>	<u>\$12,000,000</u>
<u>2005</u>	<u>\$15,000,000</u>
<u>2006</u>	<u>\$18,000,000</u>
<u>2007</u>	<u>\$21,000,000</u>

SECTION 6. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Authority.Expiration.**

The authority of the Committee to enter into new agreements ~~begins January 1, 2003, and expires January 1, 2005-2008.~~

1 **SECTION 7.** Part 2B of Chapter 143B of the General Statutes, as amended
2 by this act, reads as rewritten:

3 "Part 2B. Economic Development Definitions and Standards.

4 "§ 143B-437.4. Reserved.

5 "§ 143B-437.5. Enterprise tier designation.

6 (a) Tiers Defined. – An enterprise tier one area is a county whose enterprise
7 factor is one of the 10 highest in the State. An enterprise tier two area is a county whose
8 enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is
9 a county whose enterprise factor is one of the next 25 highest in the State. An enterprise
10 tier four area is a county whose enterprise factor is one of the next 25 highest in the
11 State. An enterprise tier five area is any area that is not in a lower-numbered enterprise
12 tier.

13 (b) ~~Annual Designation Ranking.~~ – Each year, on or before December 31, the
14 Secretary of Commerce shall assign to each county in the State an enterprise factor that
15 is the sum of the following:

- 16 (1) The county's rank in a ranking of counties by average rate of
17 unemployment from lowest to highest, for the ~~preceding three~~
18 years, most recent 12-month period for which data are available.
19 (2) The county's rank in a ranking of counties by average per capita
20 income from highest to lowest, for the preceding three years.
21 (3) The county's rank in a ranking of counties by percentage growth in
22 population from highest to lowest.

23 (c) Annual Designation. – The Secretary of Commerce shall then rank all the
24 counties within the State according to their enterprise factor from highest to lowest,
25 identify all the areas of the State by enterprise tier, and publish this information. An
26 enterprise tier designation is effective only for the calendar year following the
27 designation.

28 ~~(b)(d)~~(d) Data. – In measuring rates of unemployment and per capita income, the
29 Secretary shall use the latest available data published by a State or federal agency
30 generally recognized as having expertise concerning the data. In measuring population
31 and population growth, the Secretary shall use the most recent estimates of population
32 certified by the State Planning Officer.

33 ~~(e)(e)~~(e) Exception for Enterprise Tier One and Two Areas. – Notwithstanding the
34 provisions of this section, a county designated as an enterprise tier one area or an
35 enterprise tier two area may not be redesignated as a higher-numbered enterprise tier
36 area until it has been in its enterprise tier area for at least two consecutive years.

37 ~~(d)(f)~~(f) Exception for Two-County Industrial Park. – For the purpose of this
38 ~~Article, Part,~~ an eligible two-county industrial park has the lower enterprise tier
39 designation of the designations of the two counties in which it is located if it meets all
40 of the following conditions:

- 41 (1) It is located in two contiguous counties, one of which has a lower
42 enterprise tier designation than the other.
43 (2) At least one-third of the park is located in the county with the lower
44 tier designation.

- 1 (3) It is owned by the two counties or a joint agency of the counties.
- 2 (4) The county with the lower tier designation contributed at least the
- 3 lesser of one-half of the cost of developing the park or a proportion of
- 4 the cost of developing the park equal to the proportion of land in the
- 5 park located in the county with the lower tier designation.
- 6 (e)(g) Exceptions for Certain Small Counties. – The following exceptions to the
- 7 provisions of this section apply to small counties:
- 8 (1) A county that meets both of the conditions set out below is designated
- 9 an enterprise tier one area:
- 10 a. Its population is less than 12,000.
- 11 b. More than sixteen percent (16%) of its population is below the
- 12 federal poverty level according to the most recent federal
- 13 decennial census.
- 14 (2) A county that meets both of the conditions set out below has an
- 15 enterprise tier designation one level below the designation it would
- 16 otherwise have under subsection (a) of this section:
- 17 a. Its population is less than 50,000.
- 18 b. More than eighteen percent (18%) of its population is below the
- 19 federal poverty level according to the most recent federal
- 20 decennial census.
- 21 (3) A county that has a population of less than 35,000 and that would
- 22 otherwise be designated an enterprise tier four or five area under this
- 23 section must be designated an enterprise tier three area.

24 **§ 143B-437.6. Standards.**

25 (a) Purpose. – This section establishes various standards to be applied in the

26 State's economic development efforts to assure that incentives are used only for

27 high-quality jobs that are beneficial to the citizens of the State.

28 (b) Wage Standard. – No wage standard applies to activities in an enterprise tier

29 one or two area. Activities in an enterprise tier three, four, or five area must meet the

30 wage standard provided in this subsection.

31 Jobs meet the wage standard if they pay an average weekly wage that is at least

32 equal to ninety percent (90%) of the applicable average weekly wage for the county in

33 which the jobs will be located, as computed by the Secretary of Commerce from data

34 compiled by the Employment Security Commission for the most recent period for which

35 data are available. The applicable average weekly wage is the lowest of the following:

36 (i) the average wage for all insured private employers in the county, (ii) the average

37 wage for all insured private employers in the State, and (iii) the average wage for all

38 insured private employers in the county multiplied by the county income/wage

39 adjustment factor. The county income/wage adjustment factor is the county

40 income/wage ratio divided by the State income/wage ratio. The county income/wage

41 ratio is average per capita income in the county divided by the annualized average wage

42 for all insured private employers in the county. The State income/wage ratio is the

43 average per capita income in the State divided by the annualized average wage for all

44 insured private employers in the State.

1 (4) Qualified North Carolina research expenses. – Qualified research
2 expenses for research performed in this State.

3 **"§ 105-129.51. Administration; sunset.**

4 (a) Administration. – A taxpayer is eligible for the credits allowed in this Article
5 if it satisfies the requirements of G.S. 143B-437.6(b), (c), (d), and (e) relating to wage
6 standard, health insurance, environmental impact, and safety and health programs,
7 respectively. The credits allowed in this Article are exclusive. In each taxable year, the
8 taxpayer must elect which one of the credits it chooses to take with respect to its
9 research activities during that taxable year. The credit elected for a taxable year need
10 not be the same credit elected for a previous taxable year.

11 (b) Sunset. – This Article is repealed effective for research and development
12 activities that occur on or after January 1, 2008.

13 **"§ 105-129.52. Tax election; cap.**

14 (a) Tax Election. – The credits allowed in this Article are allowed against the
15 franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4
16 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed
17 when filing the return on which the first installment of the credit is claimed. This
18 election is binding. Any carryforwards of a credit must be claimed against the same tax.

19 (b) Cap. – A credit allowed in this Article may not exceed fifty percent (50%) of
20 the amount of tax against which it is claimed for the taxable year, reduced by the sum of
21 all other credits allowed against that tax, except tax payments made by or on behalf of
22 the taxpayer. This limitation applies to the cumulative amount of credit, including
23 carryforwards, claimed by the taxpayer under this Article against each tax for the
24 taxable year. Any unused portion of a credit allowed in this Article may be carried
25 forward for the succeeding 15 years.

26 **"§ 105-129.53. Substantiation.**

27 To claim a credit allowed by this Article, the taxpayer must provide any information
28 required by the Secretary. Every taxpayer claiming a credit under this Article must
29 maintain and make available for inspection by the Secretary any records the Secretary
30 considers necessary to determine and verify the amount of the credit to which the
31 taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the
32 credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to
33 maintain adequate records or to make them available for inspection.

34 **"§ 105-129.54. Reports.**

35 The Department of Revenue must report to the Revenue Laws Study Committee and
36 to the Fiscal Research Division of the General Assembly by May 1 of each year the
37 following information for the 12-month period ending the preceding April 1:

38 (1) The number of taxpayers that claimed each credit allowed in this
39 Article.

40 (2) The amount of each credit claimed.

41 (3) The total cost to the General Fund of the credits claimed.

42 **"§ 105-129.55. General ~~credit~~ credit for increasing research and development.**

43 A taxpayer that claims for the taxable year a federal income tax credit under section
44 41(a) of the Code for increasing research activities is allowed a credit equal to five

1 percent (5%) of the State's apportioned share of the taxpayer's expenditures for
2 increasing research activities. The State's apportioned share of a taxpayer's expenditures
3 for increasing research activities is the excess of the taxpayer's qualified research
4 expenses for the taxable year over the base amount, as determined under section 41 of
5 the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified North
6 Carolina research expenses ~~in this State~~ for the taxable year to the taxpayer's total
7 qualified research expenses for the taxable year.

8 "**§ 105-129.56. Alternative ~~credit~~ credit for increasing research and development.**

9 A taxpayer that claims the alternative incremental credit under section 41(c)(4) of
10 the Code for increasing research activities is allowed a credit equal to twenty-five
11 percent (25%) of the State's apportioned share of the federal credit claimed. The State's
12 apportioned share of the federal credit claimed is the amount of the alternative
13 incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the
14 taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified
15 North Carolina research expenses ~~in this State~~ for the taxable year to the taxpayer's total
16 qualified research expenses for the taxable year. For the purpose of this section, the
17 amount of the alternative incremental credit claimed by a taxpayer is determined
18 without regard to any reduction elected under section 280C(c) of the Code."

19 **SECTION 9.** G.S. 159C-7(b) reads as rewritten:

20 "(b) Findings. – The Secretary shall not approve any proposed industrial project or
21 pollution control project unless the Secretary makes all of the following, applicable
22 findings:

- 23 (1) In the case of a proposed industrial project,
24 a. That the operator of the proposed project pays, or has agreed to
25 pay thereafter, an average weekly manufacturing wage that ~~(i)~~
26 ~~is above the average weekly manufacturing wage paid in the~~
27 ~~county, or (ii) is not less than ten percent (10%) above the~~
28 ~~average weekly manufacturing wage paid in the State, and~~meets
29 the wage standard provided in G.S. 143B-437.6.
30 b. That the proposed project will not have a materially adverse
31 effect on the environment.
- 32 (2) In the case of a proposed pollution control project, that the project will
33 have a materially favorable impact on the environment or will prevent
34 or diminish materially the impact of pollution which would otherwise
35 occur.
- 36 (2a) In the case of a hazardous waste facility or low-level radioactive waste
37 facility that is used as a reduction, recovery or recycling facility, that
38 such project will further the waste management goals of North
39 Carolina and will not have an adverse effect upon public health or a
40 significant adverse effect on the environment.
- 41 (3) In the case of an industrial project or a pollution control project, except
42 a pollution control project for a public utility,
43 a. That the jobs to be generated or saved, directly or indirectly, by
44 the proposed project will be large enough in number to have a

measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate the project, and

c. That the financing of the project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations."

SECTION 10.(a) There is appropriated from the General Fund to the North Carolina Rural Redevelopment Authority in the Department of Commerce the amounts provided in the table below to finance rural economic development projects and invest in rural business development in accordance with Part 2D of Article 10 of Chapter 143B of the General Statutes:

<u>Fiscal Year</u>	<u>Appropriation</u>
2005-2006	\$ 780,000
2006-2007	2,150,000
2007-2008	3,500,000
2008-2009	5,400,000
2009-2010	6,200,000
2010-2011	7,300,000

SECTION 10.(b) It is the intent of the General Assembly that the appropriation in this section shall become part of the Rural Redevelopment Authority's continuation budget and shall supplement and not supplant other funds appropriated for the same purpose.

SECTION 11. G.S. 143B-437.21 is amended by adding a new subdivision to read:

"§ 143B-437.21. Definitions.

The following definitions apply in this Part:

...

(7a) Rural Center. – The North Carolina Rural Economic Development Center, Inc."

SECTION 12. G.S. 143B-437.22(l) and (m) read as rewritten:

"(l) ~~Staff. Chief Executive Officer and Other Employees.—~~ The Authority shall contract with the Rural Center for administrative and staff support for the Authority. The Rural Center shall consult with the Chair of the Board on the selection and the salary of a chief executive officer. The Board shall appoint a full time professional chief executive officer, whose salary shall be fixed by the Board, to serve at its pleasure. The chief executive officer or a person designated by the chief executive officer shall work with the President of the Rural Center to appoint, employ, dismiss, and, within the

1 limits of available funding, fix the compensation of other employees as considered
2 necessary.

3 (m) Office. – The Board shall consult with the Rural Center to establish an office
4 for the transaction of the Authority's business at the place the Board finds advisable or
5 necessary to implement the provisions of this Part."

6 **SECTION 13.(a)** There is appropriated from the General Fund to the North
7 Carolina Rural Redevelopment Authority in the Department of Commerce the sum of
8 two hundred fifty thousand dollars (\$250,000) for the 2004-2005 fiscal year for the
9 expenses of the Authority's board of directors.

10 **SECTION 13.(b)** It is the intent of the General Assembly that the
11 appropriation in this section shall become part of the Rural Redevelopment Authority's
12 continuation budget.

13 **SECTION 14.** Section 4(a)(1), Section 4(b), Section 5, Section 7, and
14 Section 9 of this act become effective January 1, 2005. Section 3, the remainder of
15 Section 4, and Section 8 of this act become effective for business activities that occur on
16 or after January 1, 2005. Sections 10 through 13 of this act become effective July 1,
17 2004. The remainder of this act is effective when it becomes law.