

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

S

3

**SENATE BILL 393*
Judiciary I Committee Substitute Adopted 6/1/05
House Committee Substitute Favorable 8/11/05**

Short Title: Economic Development - Public Records.

(Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE PUBLIC RECORDS LAWS WITH RESPECT TO
2 ECONOMIC DEVELOPMENT AND TO REQUIRE THE DEPARTMENT OF
3 REVENUE TO PUBLISH ANNUAL REPORTS REGARDING USE OF
4 ECONOMIC DEVELOPMENT TAX INCENTIVES.
5

6 The General Assembly of North Carolina enacts:
7

8 **PART I. GENERAL ECONOMIC DEVELOPMENT POLICIES**
9

10 **SECTION 1.1.** G.S. 132-6(d) reads as rewritten:

11 "(d) Notwithstanding the provisions of subsections (a) and (b) of this section,
12 public records relating to the proposed expansion or location of specific business or
13 industrial projects ~~in the State~~ may be withheld so long as their inspection, examination
14 or copying would frustrate the purpose for which such public records were created;
15 provided, however, that nothing herein shall be construed to permit the withholding of
16 public records relating to general economic development policies or activities. Once the
17 State, a local government, or the specific business has announced a commitment by the
18 business to expand or locate a specific project in this State or a final decision not to do
19 so and the business has communicated that commitment or decision to the State or local
20 government agency involved with the project, the provisions of this subsection allowing
21 public records to be withheld by the agency no longer apply. Once the provisions of this
22 subsection no longer apply, the agency shall disclose as soon as practicable, and within
23 25 days, public records requested for the announced project that are not otherwise made
24 confidential by law. An announcement that a business or industrial project has
25 committed to expand or locate in the State shall not require disclosure of local
26 government records relating to the project if the business has not selected a specific
27 location within the State for the project. Once a specific location for the project has been
28 determined, local government records must be disclosed, upon request, in accordance

1 with the provisions of this section. For purposes of this section, "local government
2 records" include records maintained by the State that relate to a local government's
3 efforts to attract the project."

4 **SECTION 1.2.** Chapter 132 of the General Statutes is amended by adding a
5 new section to read:

6 "**§ 132-1.8. Economic development incentives.**

7 (a) Assumptions and Methodologies. – Subject to the provisions of this Chapter
8 regarding confidential information and the withholding of public records relating to the
9 proposed expansion or location of specific business or industrial projects when the
10 release of those records would frustrate the purpose for which they were created,
11 whenever a public agency or its subdivision performs a cost-benefit analysis or similar
12 assessment with respect to economic development incentives offered to a specific
13 business or industrial project, the agency or its subdivision must describe in detail the
14 assumptions and methodologies used in completing the analysis or assessment. This
15 description is a public record and is subject to all provisions of this Chapter and other
16 law regarding public records.

17 (b) Disclosure of Public Records Requirements. – Whenever an agency or its
18 subdivision first proposes, negotiates, or accepts an application for economic
19 development incentives with respect to a specific industrial or business project, the
20 agency or subdivision must disclose that any information obtained by the agency or
21 subdivision is subject to laws regarding disclosure of public records. In addition, the
22 agency or subdivision must fully and accurately describe the instances in which
23 confidential information may be withheld from disclosure, the types of information that
24 qualify as confidential information, and the methods for ensuring that confidential
25 information is not disclosed."

26 **SECTION 1.3.** Part 2 of Article 10 of Chapter 143B of the General Statutes
27 is amended by adding a new section to read:

28 "**§ 143B-437.07. Economic development grant reporting.**

29 The Department of Commerce must publish on or before March 1 of each year the
30 following information, itemized by business entity, for all grant programs administered
31 by the Department that disbursed or awarded grant monies to businesses during the
32 previous calendar year:

- 33 (1) The amount of grant monies awarded during the previous year.
- 34 (2) The amount of grant monies disbursed during the previous year.
- 35 (3) The amount of grant monies that were disbursed in earlier years to
36 business entities that received grant monies during the previous year.
- 37 (4) The amount of potential future liability under the grant program.
- 38 (5) The number, type, and wage level of jobs created or retained during
39 the previous year as a result of a grant.
- 40 (6) A description of any other financial assistance received during the
41 previous year from all economic development incentive programs
42 administered by the Department.
- 43 (7) Any amount recaptured from the business entity during the previous
44 year for failure to comply with the grant agreement or applicable law."

1
2 **PART II. SPECIFIC DISCLOSURE REQUIREMENTS**
3

4 **SECTION 2.1.** G.S. 143B-437.55(c) is amended by adding two new
5 subdivisions to read:

6 "(c) Annual Reports. – The Committee shall publish a report on the Job
7 Development Investment Grant Program on or before April 30 of each year. The report
8 shall include the following:

9 ...

10 (3a) A listing of the employment level for all businesses receiving a grant
11 and any changes in those levels from the level of the next preceding
12 year.

13 ...

14 (13) The total amount transferred to the Utility Account of the Industrial
15 Development Fund under this Part during the preceding year."

16 **SECTION 2.2.** G.S. 105-129.6 reads as rewritten:

17 "(b) Reports. – The Department of Revenue shall publish by ~~April~~ May 1 of each
18 year the following information itemized by credit and by taxpayer for the 12-month
19 period ending the preceding December 31:

20 (1) The number of ~~claims~~ credits taken for each credit allowed in this
21 Article.

22 (2) The number and enterprise tier area of new jobs with respect to which
23 credits were generated and to which credits were ~~claimed~~ taken.

24 (3) The cost and enterprise tier area of machinery and equipment with
25 respect to which credits were generated and to which credits were
26 ~~claimed~~ taken.

27 (4) The number of new jobs created by businesses located in development
28 zones, and the percentage of jobs at those locations that were filled by
29 residents of the zones.

30 (5) The amount and enterprise tier area of worker training expenditures
31 with respect to which credits were generated and to which credits were
32 ~~claimed~~ taken.

33 (6) The amount and enterprise tier area of new research and development
34 expenditures with respect to which credits were generated and to
35 which credits were ~~claimed~~ taken.

36 (7) The cost and enterprise tier area of real property investment with
37 respect to which credits were generated and to which credits were
38 ~~claimed~~ taken."

39 **SECTION 2.3.** G.S. 105-129.19 reads as rewritten:

40 "**§ 105-129.19. Reports.**

41 The Department of Revenue must ~~report to the Revenue Laws Study Committee and~~
42 ~~to the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year
43 the following information for the 12-month period ending the preceding ~~April~~
44 December 31:

1 (1) The number of taxpayers that ~~claimed~~took the credits allowed in this
2 Article.

3 (2) The cost of business property and renewable energy property with
4 respect to which credits were ~~claimed~~taken.

5 (2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.

6 (3) The total cost to the General Fund of the credits ~~claimed~~taken."

7 **SECTION 2.4.** G.S. 105-129.26(e) reads as rewritten:

8 (e) Reports. – The Department of Commerce and the Department of Revenue
9 shall report to the Fiscal Research Division of the General Assembly jointly publish by
10 May 1 of each year the following information itemized by taxpayer for the 12-month
11 period ending the preceding April 1: December 31:

12 (1) The number and location of large and major recycling facilities
13 qualified under this Article.

14 (2) The number of new jobs created by each recycling facility.

15 (3) The amount of investment in each recycling facility.

16 (4) The amount of ~~reinvestment credit refunded to each major recycling~~
17 ~~facility credits taken under G.S. 105-129.28.~~this Article."

18 **SECTION 2.5.** Article 3D of Chapter 105 of the General Statutes is
19 amended by adding a new section to read:

20 "**§ 105-129.38. Reports.**

21 The Department of Revenue must publish by May 1 of each year the following
22 information for the 12-month period ending the preceding December 31:

23 (1) The number of taxpayers that took the credits allowed in this Article.

24 (2) The amount of rehabilitation expenses and qualified rehabilitation
25 expenditures with respect to which credits were taken.

26 (3) The total cost to the General Fund of the credits taken."

27 **SECTION 2.6.** G.S. 105-129.44 reads as rewritten:

28 "**§ 105-129.44. Report.**

29 The Department of Revenue must ~~report to the Revenue Laws Study Committee and~~
30 ~~the Fiscal Research Division of the General Assembly~~publish by May 1 of each year
31 the following information for the 12-month period ending the preceding ~~April~~
32 ~~1:~~December 31:

33 (1) The number of taxpayers that ~~claimed~~took the credit allowed in this
34 Article.

35 (2) The location of each qualified North Carolina low-income building or
36 housing development for which a credit was ~~claimed~~taken.

37 (3) The total cost to the General Fund of the credits ~~claimed~~taken."

38 **SECTION 2.7.** G.S. 105-129.54 reads as rewritten:

39 "**§ 105-129.54. Reports.**

40 The Department of Revenue must ~~report to the Revenue Laws Study Committee and~~
41 ~~to the Fiscal Research Division of the General Assembly~~publish by May 1 of each year
42 the following information itemized by taxpayer for the 12-month period ending the
43 preceding December 31:

1 (1) The number of taxpayers that ~~claimed~~took a credit allowed in this
2 Article, itemized by the categories of small business, low-tier, other,
3 and university research.

4 (2) The amount of each credit ~~claimed~~taken in each category.

5 (3) The total cost to the General Fund of the credits ~~claimed~~taken."

6 **SECTION 2.8.** Article 3G of Chapter 105 of the General Statutes is
7 amended by adding a new section to read:

8 "**§ 105-129.65A. Reports.**

9 The Department of Revenue must publish by May 1 of each year the following
10 information itemized by taxpayer for the 12-month period ending the preceding
11 December 31:

12 (1) The number of taxpayers taking a credit allowed in this Article.

13 (2) The number of new jobs created with respect to which credits were
14 taken.

15 (3) The amount of investment in real property and machinery and
16 equipment with respect to which credits were taken.

17 (4) The total cost to the General Fund of the credits taken."

18 **SECTION 2.9.** G.S. 105-130.41 is amended by adding a new subsection to
19 read:

20 "(c1) Report. – The Department of Revenue must publish by May 1 of each year
21 the following information itemized by taxpayer for the 12-month period ending the
22 preceding December 31:

23 (1) The number of taxpayers taking a credit allowed in this section.

24 (2) The total amount of charges with respect to which credits were taken.

25 (3) The total cost to the General Fund of the credits taken."

26 **SECTION 2.10.** G.S. 105-130.45 is amended by adding a new subsection to
27 read:

28 "(f) Report. – The Department of Revenue must publish by May 1 of each year
29 the following information itemized by taxpayer for the 12-month period ending the
30 preceding December 31:

31 (1) The number of taxpayers taking a credit allowed in this section.

32 (2) The total amount of exports with respect to which credits were taken.

33 (3) The total cost to the General Fund of the credits taken."

34 **SECTION 2.11.** G.S. 105-151.22 is amended by adding a new subsection to
35 read:

36 "(c1) Report. – The Department of Revenue must publish by May 1 of each year
37 the following information itemized by taxpayer for the 12-month period ending the
38 preceding December 31:

39 (1) The number of taxpayers taking a credit allowed in this section.

40 (2) The total amount of charges with respect to which credits were taken.

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

42 **SECTION 2.12.** G.S. 105-164.14 is amended by adding a new subsection to
43 read:

1 "(k) Reports. – The Department of Revenue shall publish by May 1 of each year
2 the following information itemized by taxpayer for the 12-month period ending the
3 preceding December 31:

4 (1) The number of taxpayers claiming a refund allowed in subsections (g),
5 (h), (i), and (j) of this section.

6 (2) The total amount of purchases with respect to which refunds were
7 claimed.

8 (3) The total cost to the General Fund of the refunds claimed."

9 **SECTION 2.13.** G.S. 105-259(b)(27) reads as rewritten:

10 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
11 who has access to tax information in the course of service to or employment by the State
12 may not disclose the information to any other person unless the disclosure is made for
13 one of the following purposes:

14 (27) To publish the information required under G.S. ~~105-129.6~~105-129.6,
15 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A,
16 105-130.41, 105-130.45, 105-151.22, and 105-164.14."

17
18 **PART III. ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE STUDY**

19 **SECTION 3.** The Economic Development Oversight Committee shall study
20 the issue of public disclosure as it relates to economic development efforts.
21 Specifically, the Committee shall study ways of providing the public information about
22 the employment levels, and any changes in employment levels, of businesses that
23 receive economic development incentives from the State or local governments. The
24 Committee may make an interim report on this study, including any recommendations
25 for legislative proposals, to the 2006 Regular Session of the 2005 General Assembly
26 and shall make a final report on this study to the 2007 General Assembly.

27
28 **PART IV. EFFECTIVE DATE**

29 **SECTION 4.** Sections 2.2 through 2.12 of this act become effective January
30 1, 2007. The remainder of this act is effective when it becomes law.