

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE PRINCIPAL CLERK

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HOUSE DRH30326-MC-98A (03/01)

Short Title: Business Facilities Development. (Public)

Sponsors: Representatives Jeter, Stam, and Murry (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE A FUND TO PROVIDE LOANS TO LOCAL GOVERNMENT  
3 UNITS FOR THE DEVELOPMENT OF SITE INFRASTRUCTURE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 143B-437.02 reads as rewritten:

6 "§ 143B-437.02. Site infrastructure development.

7 (a) Findings. – The General Assembly finds that:

8 (1) It is the policy of the State of North Carolina to stimulate economic activity  
9 and to create new jobs for the citizens of the State by encouraging and  
10 promoting the expansion of existing business and industry within the State  
11 and by recruiting and attracting new business and industry to the State.

12 (2) Both short-term and long-term economic trends at the State, national, and  
13 international levels have made the successful implementation of the State's  
14 economic development policy and programs both more critical and more  
15 challenging; and the decline in the State's traditional industries, and the  
16 resulting adverse impact upon the State and its citizens, have been  
17 exacerbated in recent years by adverse national and State economic trends  
18 that contribute to the reduction in the State's industrial base and that inhibit  
19 the State's ability to sustain or attract new and expanding businesses.

20 (3) The economic condition of the State is not static and recent changes in the  
21 State's economic condition have created economic distress that requires the  
22 enactment of a new program as provided in this section that is designed to  
23 stimulate new economic activity and to create new jobs within the State.

24 (4) The enactment of this section is necessary to stimulate the economy,  
25 facilitate economic recovery, and create new jobs in North Carolina and this  
26 section will promote the general welfare and confer, as its primary purpose  
27 and effect, benefits on citizens throughout the State through the creation of  
28 new jobs, an enlargement of the overall tax base, an expansion and  
29 diversification of the State's industrial base, and an increase in revenue to the  
30 State and its political subdivisions.

31 (5) The purpose of this section is to stimulate economic activity and to create  
32 new jobs within the State.

33 (b) Fund. – The Site Infrastructure Development Fund is created as a restricted reserve  
34 in the Department of Commerce. Funds in the fund do not revert but remain available to the  
35 Department for these purposes. The Department may use the funds in the fund only for the  
36 following purposes:



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- 1           ~~(1) For-site development in accordance with this section.~~  
2           ~~(2) To acquire options and hold options for the purchase of land in accordance~~  
3           ~~with subsection (m) of this section.~~
- 4           (c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In addition,  
5 the following definitions apply in this section:
- 6           (1) Department. – The Department of Commerce.  
7           (2) Site development. – A subsidized loan to one or more local government  
8           units to enable the unit or units (i) to acquire land, to improve land, including  
9           constructing buildings or renovating or rehabilitating existing buildings, or  
10           to do both in order to ready the property for lease or sale to a business or (ii)  
11           to install fiber or lines suitable for the provision of high-speed Internet  
12           access service. For purposes of this section, the term "local government unit"  
13           includes economic development commissions. Any of the following:  
14           a. ~~A restricted grant or a forgivable loan made to a business to enable~~  
15           ~~the business to acquire land, improve land, or both.~~  
16           b. ~~A grant to one or more State agencies or nonprofit corporations to~~  
17           ~~enable the grantees to acquire land, improve land, or both and to~~  
18           ~~lease the property to a business.~~  
19           e. ~~A grant to one or more local government units to enable the units to~~  
20           ~~acquire land, improve land, or both and to lease the property to a~~  
21           ~~business.~~
- 22           (3) Subsidized loan. – A loan from the State to one or more local government  
23           units for site development having (i) an interest rate of zero percent (0%) for  
24           tier one counties, one percent (1%) for tier two counties, and two percent  
25           (2%) for tier three counties and (ii) a provision allowing for reduction of the  
26           principal of the loan by an amount equal to the number of jobs created and  
27           maintained as by a business multiplied by the amount of the credit provided  
28           in G.S. 105-129.87(a) for the county in which the job is located.
- 29           (4) Economic development commission. – A commission, agency, nonprofit  
30           entity, or other entity operating for the purpose of promoting economic  
31           development growth and for the benefit of one or more local government  
32           units, if the unit or units have adopted a resolution designating that the entity  
33           is operating for that purpose.
- 34           (d) Eligibility. – To be eligible for consideration for site development for a project, a  
35 ~~business must meet both of the following conditions:~~ a local government unit must execute a  
36 ~~written agreement with the State that provides for each of the following:~~
- 37           (1) ~~The business will invest at least one hundred million dollars (\$100,000,000)~~  
38           ~~of private funds in the project.~~ A requirement that the unit obtain from a  
39           business leasing or purchasing property acquired or improved by a  
40           subsidized loan an agreement to meet performance criteria that protects the  
41           State's investment and secures the benefits anticipated by the lease or sale to  
42           the business.
- 43           (2) ~~The project will employ at least 100 new employees.~~ A requirement that any  
44           performance criteria used by the unit include, at a minimum, the creation and  
45           maintenance of an appropriate level of employment by the business leasing  
46           or purchasing property acquired or improved by a subsidized loan and any  
47           other criteria the Department considers appropriate.
- 48           (3) A requirement that the unit repay any portion of a subsidized loan reduced  
49           for job creation if the business leasing or purchasing property acquired or  
50           improved by a subsidized loan fails to meet the performance criteria.

1           (4)    A requirement that the unit enter into an agreement with a business leasing  
2           or purchasing property acquired or improved by a subsidized loan, whereby  
3           the business agrees to reimburse the unit for any amount of repayment  
4           required by subdivision (3) of this subsection and agrees to structure the  
5           lease or sale as a conditional grant, revocable lease, or otherwise include  
6           terms permitting liquidated damages.

7           (5)    A requirement that the unit enter into an agreement with a business leasing  
8           or purchasing property acquired or improved by a subsidized loan, whereby  
9           the business agrees to meet the requirements of subsections (e) through (g)  
10          of this section.

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

18          Each year ~~that a contract for site development under this section~~ an agreement between the  
19          business and the local government unit required by subsection (d) of this section is in effect, the  
20          business must provide the Department of Commerce a certification that the business continues  
21          to provide health insurance for all full-time employees of the project governed by the contract.  
22          If the business ceases to provide health insurance to all full-time employees of the project,  
23          Department shall provide for reimbursement of an appropriate portion of the site development  
24          funds ~~provided to the business.~~ provided.

25          (f)    Safety and Health Programs. – In order for a business to be eligible ~~for~~  
26          ~~consideration for~~ to purchase or lease site development property under this section, the business  
27          must have no citations under the Occupational Safety and Health Act that have become a final  
28          order within the past three years for willful serious violations or for failing to abate serious  
29          violations with respect to the location for which the grant is made. For the purposes of this  
30          subsection, "serious violation" has the same meaning as in G.S. 95-127.

31          (g)    Environmental Impact. – A business is eligible ~~for consideration for~~ to purchase or  
32          lease site development property under this ~~part~~ section only if the business certifies that, at the  
33          time of ~~the application, purchase or lease,~~ the business satisfies the environmental impact  
34          standard under G.S. 105-129.83.

35          (h)    Selection. – The Department of ~~Commerce~~ Commerce, in consultation with the  
36          North Carolina Rural Economic Development Center, Inc., shall administer the selection of  
37          projects to receive site development. The selection process shall include the following  
38          components:

39               (1)    Criteria. – The Department of Commerce must develop criteria to be used to  
40               identify and evaluate eligible projects for possible site development.

41               (2)    Initial evaluation. – The Department must evaluate major competitive  
42               projects to determine if site development is merited and to determine  
43               whether the project is eligible and appropriate for consideration for site  
44               development.

45               (3)    Application. – The Department must require a ~~business~~ local government  
46               unit to submit an application in order for a project to be considered for site  
47               development. The Department must prescribe the form of the application,  
48               the application process, and the information to be provided, including all  
49               information necessary to evaluate the project in accordance with the  
50               applicable criteria.

- 1           (4) ~~Committee.~~Application evaluation. – The ~~Department~~Department, ~~must~~  
2 ~~submit to the Economic Investment Committee the applications for projects~~  
3 ~~the Department considers eligible and appropriate for consideration for site~~  
4 ~~development. In in evaluating each application, the Committee must~~  
5 ~~consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.~~the  
6 following:
- 7           a. Impact on gross regional product and gross State product.
  - 8           b. Costs and benefits of the project to the State, including the expected  
9 return on investment made in the project by the State.
  - 10          c. Number of induced short-term, project-related jobs expected to be  
11 generated by the project as well as the number of long-term  
12 permanent jobs expected to be generated indirectly in the economy as  
13 a result of the project.
  - 14          d. Economic circumstances of the county and region, including the  
15 extent to which the project will serve to mitigate unemployment.
  - 16          e. The expected time frame during which the project is expected to pay  
17 back in State tax revenues the amount of any subsidized loans.
  - 18          f. The extent to which the project impacts an existing industrial cluster.
  - 19          g. The long-term prospects for growth at the project site or sites.
  - 20          h. A strategic business facilities development analysis of potential sites  
21 for development, shell building needs, special use buildings needs,  
22 and buildings to be renovated, as determined by the North Carolina  
23 Rural Economic Development Center, Inc., in consultation with each  
24 of the seven regional economic development partnerships in the  
25 State. The Center, in consultation with each of the seven regional  
26 economic development partnerships in the State, shall update the  
27 analysis every four years.
- 28           (5) Findings. – In order to recommend a project for site development, the  
29 ~~Committee~~Department must make all of the following findings:
- 30           a. The conditions for eligibility have been met.
  - 31           b. Site development for the project is necessary to carry out the public  
32 purposes provided in subsection (a) of this section.
  - 33           c. The project is consistent with the economic development goals of the  
34 State and of the area where it will be located.
  - 35           d. ~~The affected local governments have participated in recruitment and~~  
36 ~~offered incentives in a manner appropriate to the project.~~
  - 37           e. The price and nature of any real property to be acquired is  
38 appropriate to the project and not unreasonable or excessive.
  - 39           f. Site development under this section is necessary for the completion  
40 of the project in this State.
- 41           (6) ~~Recommendations.~~Awards. – If the ~~Committee recommends~~Department  
42 approves a project for site development, it must ~~recommend~~determine  
43 the amount of State funds to be committed, the preferred form and details of the  
44 State participation, and the performance criteria and safeguards to be  
45 required in order to protect the State's investment.
- 46           (i) Agreement. – Unless the Secretary of Commerce determines that the project is no  
47 longer eligible or appropriate for site development, the ~~Department~~Secretary shall enter into an  
48 agreement to provide site development within available funds for a ~~project recommended by~~  
49 ~~the Committee project.~~ Each site development agreement is binding and constitutes a  
50 continuing contractual obligation of the State and the ~~business~~local government unit. The site  
51 development agreement must include all of the performance criteria, remedies, and other

1 safeguards ~~recommended~~ determined necessary by the Committee or required by the  
2 Department to secure the State's investment. Each site development agreement must contain a  
3 provision prohibiting a ~~business~~ local government unit from ~~receiving a payment or other~~  
4 ~~benefit~~ leasing or selling under the agreement to a business that ~~at any time when the business~~  
5 has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or  
6 otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption  
7 by the State of any debt of any business or authorizes the taxing power or the full faith and  
8 credit of the State to be pledged.

9 The Department shall cooperate with the Department of Administration and the Attorney  
10 General's Office in preparing the documentation for the site development agreement. The  
11 Attorney General shall review the terms of all proposed agreements to be entered into under  
12 this section. To be effective against the State, an agreement entered into under this section must  
13 be signed personally by the Attorney General.

14 (i1) Subsidized loans. – Subsidized loans must be evidenced by a promissory note and  
15 secured by a deed of trust on the property acquired or improved by the loan. A repayment of a  
16 subsidized loan is triggered by property secured by the loan being sold or leased to a business.  
17 The amount of repayment triggered must be proportional to the amount of the property sold or  
18 leased and must be calculated by multiplying the loan, as reduced by created jobs, by a fraction,  
19 the numerator of which is the amount of property secured by the loan sold or leased and the  
20 denominator of which is the total amount of property subject to the loan. Upon the payment of  
21 the amount of the loan calculated to be required by this subsection, a release deed shall be  
22 executed and filed for the portion of the property for which the payment was made.

23 (i2) Payments. – The Department shall remit amounts paid pursuant to subsection (i1) of  
24 this section to the State Community College System for use in purchasing equipment and  
25 constructing facilities for the community colleges in this State suitable for industrial training of  
26 students.

27 (j) Safeguards. – To ensure that public funds are used only to carry out the public  
28 purposes provided in this section, the Department shall require that each ~~business that receives~~  
29 ~~State-funded site development must agree~~ local government unit that leases or sells property  
30 improved by a subsidized loan to obtain from the acquiring business an agreement to meet  
31 performance criteria to protect the State's investment and assure that the projected benefits of  
32 the project are secured. ~~The performance criteria to be required shall include creation and~~  
33 ~~maintenance of an appropriate level of employment and investment over the term of the~~  
34 ~~agreement and any other criteria the Department considers appropriate. The agreement must~~  
35 ~~require the business to repay or reimburse an appropriate portion of the State funds expended~~  
36 ~~for the site development, based on the extent of any failure by the business to meet the~~  
37 ~~performance criteria. The agreement must provide a method for securing these payments from~~  
38 ~~the business, such as structuring the site development as a conditional grant, a forgivable loan,~~  
39 ~~or a revocable lease.~~

40 (k) Monitoring and Reports. – The Department is responsible for monitoring  
41 compliance with the performance criteria under each site development agreement and for  
42 administering the repayment in case of default. The Department shall pay for the cost of this  
43 monitoring from funds appropriated to it for that purpose or for other economic development  
44 purposes.

45 On September 1 of each year until all funds have been expended, the Department shall  
46 report to the Joint Legislative Commission on Governmental Operations regarding the Site  
47 Infrastructure Development Program. This report shall include a listing of each agreement  
48 negotiated and entered into during the preceding year, including ~~the name of the business,~~ the  
49 cost/benefit analysis conducted ~~by the Committee~~ during the application process, a description  
50 of the project, and the amount of the site development incentive expected to be paid under the  
51 agreement during the current fiscal ~~year~~ year, and the status of any property sold or leased to a

1 business. The report shall also include detailed information about any defaults and repayment  
2 during the preceding year. The Department shall publish this report on its web site and shall  
3 make printed copies available upon request.

4 (l) Reserved for future codification purposes.

5 (m) ~~Options.—The Department of Commerce may acquire options and hold options for  
6 the purchase of land for an anticipated industrial site if all of the following conditions are met:~~

7 (1) ~~The options are necessary to provide a large, regional industrial site that  
8 cannot be assembled by local governments.~~

9 (2) ~~The acquisition of the options is approved by the Committee."~~

10 **SECTION 2.** There is appropriated from the General Fund to the Department of  
11 Commerce, Commerce Finance Center, the sum of \_\_\_\_\_ for the 2013-2014 fiscal  
12 year to administer the program created by this act.

13 **SECTION 3.** It is the intent of the General Assembly to continue to make annual  
14 appropriations for this program. It is also the intent of the General Assembly that the Golden  
15 Leaf Foundation shall allocate at least fifteen percent (15%) each year of its annual receipts to a  
16 loan program created to comport with the program enacted by this act.

17 **SECTION 4.** This act is effective when it becomes law and applies to site  
18 development agreements entered on or after that date.