

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

1

HOUSE BILL 117

Short Title: NC Competes Act.

(Public)

Sponsors: Representatives S. Martin, Jeter, Collins, and Steinburg (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Finance, if favorable, Appropriations.

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22 **SECTION 1.(c)** G.S. 143B-437.52(b) is repealed.

23 **SECTION 1.(d)** G.S. 143B-437.53(c) reads as rewritten:

24 "(c) Health Insurance. – A business is eligible for a grant under this Part only if the  
25 business provides health insurance for all of the applicable full-time employees of the project  
26 with respect to which the grant is made. For the purposes of this subsection, an applicable  
27 full-time employee is one who earns from the business less than one hundred fifty thousand  
28 dollars (\$150,000) in taxable compensation on an annualized basis or three and one-half times  
29 the annualized average State wage for all insured private employers in the State employing  
30 between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a  
31 business provides health insurance if it pays at least fifty percent (50%) of the premiums for  
32 health care ~~coverage that equals or exceeds the minimum provisions of the basic health care~~  
33 ~~plan of coverage recommended by the Small Employer Carrier Committee pursuant to~~  
34 G.S. 58-50-125.coverage.



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

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

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

10 ...

11 (11) A provision that requires the business to maintain employment levels in this  
12 State at the greater of the level of the year immediately preceding the base  
13 period employment on the date of the application or the level of employment  
14 on the date of the award.

15 ...."

16 **SECTION 1.(f)** G.S. 143B-437.62 reads as rewritten:

17 "**§ 143B-437.62. Expiration.**

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

19 **SECTION 1.(g)** The Revisor of Statutes shall make the conforming statutory  
20 changes necessary to the General Statutes to reflect renaming of the Job Development  
21 Investment Grant Program to the Job Growth Reimbursement Opportunities – People Program,  
22 as provided in this section.

23 **SECTION 1.(h)** This Part is effective when it becomes law.

## 24 **PART II. ONE NC MODIFICATIONS**

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

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

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

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

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

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

## 39 **PART III. SITE INFRASTRUCTURE DEVELOPMENT FUND**

40 **SECTION 3.(a)** Of the funds appropriated to the Department of Commerce for the  
41 2014-2015 fiscal year, twenty million dollars (\$20,000,000) shall be transferred to the Site  
42 Infrastructure Development Fund for uses consistent with G.S. 143B-437.02. The Office of  
43 State Budget and Management, in conjunction with the Office of the State Controller and the  
44 Department of Commerce, shall transfer the unencumbered cash balance of the Job Catalyst  
45 Fund (Budget Code 14600-1912) to the Site Infrastructure Development Fund (Budget Code  
46 24600-2583).

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

48 "**§ 143B-437.02. Site infrastructure development.** Acceleration Fund."

49 **SECTION 3.(c)** G.S. 143B-437.02(e) reads as rewritten:  
50  
51

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

8       Each year that a contract for site development under this section is in effect, the business  
9 must provide the Department of Commerce a certification that the business continues to  
10 provide health insurance for all full-time employees of the project governed by the contract. If  
11 the business ceases to provide health insurance to all full-time employees of the project,  
12 Department shall provide for reimbursement of an appropriate portion of the site development  
13 funds provided to the business."

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

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

#### 18 19 **PART IV. SINGLE SALES FACTOR MODIFICATION**

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

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

40       The conditions are:

- 41       (1) ~~The corporation's property factor as a percentage of the sum of the factors in~~  
42 ~~the formula set out in subsection (i) of this section, including the doubling of~~  
43 ~~the sales factor, exceeds seventy five percent (75%) or the corporation's~~  
44 ~~average property factor for the preceding three years as a percentage of the~~  
45 ~~average sum of the factors in the formula set out in subsection (i) of this~~  
46 ~~section, including the doubling of the sales factors, for the preceding three~~  
47 ~~years exceeds seventy five percent (75%).~~  
48       (2) The Secretary of Commerce makes a written determination that the  
49 corporation has invested or is expected to invest at least one billion dollars  
50 (\$1,000,000,000) in private funds to construct a facility in this State within  
51 nine years after the time that construction begins. For the purposes of this

1 subsection, costs of construction include costs of acquiring and improving  
2 land for the facility, costs for renovations or repairs to existing buildings,  
3 and costs of equipping or reequipping the facility.

4 (3) The corporation maintains the average number of employees it has at the  
5 facility during the first two years after the facility is placed in service for the  
6 remainder of time in which the corporation must complete the investment  
7 required under subdivision (2) of this subsection.

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

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

19 (6) The corporation provides health insurance for all of its full-time employees  
20 at the facility that satisfies the condition of subdivision (2) of this subsection.  
21 For the purposes of this subdivision, a company provides health insurance if  
22 it ~~satisfies the provisions of G.S. 105-129.83(d)~~ pays at least fifty percent  
23 (50%) of the premiums for health care coverage."

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

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

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

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

## 33

### 34 **PART V. EXTEND SALES TAX REFUND FOR PASSENGER AIR CARRIERS**

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

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

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

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

## 45

### 46 **PART VI. DATACENTER INFRASTRUCTURE ACT**

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

48 "**§ 105-164.3. Definitions.**

49 The following definitions apply in this Article:

50 ...

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

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

5 b. The Secretary of Commerce has made a written determination that at  
6 least seventy-five million dollars (\$75,000,000) in private funds has  
7 been or will be invested by one or more owners, users, or tenants of  
8 the datacenter within five years of the date the owner, user, or tenant  
9 of the datacenter makes its first real or tangible property investment  
10 in the datacenter on or after January 1, 2012. Investments in real or  
11 tangible property in the datacenter made prior to January 1, 2012,  
12 may not be included in the investment required by this subdivision.

13 (33a) Purchase price. – The term has the same meaning as the term "sales price"  
14 when applied to an item subject to use tax.

15 ~~(33a)~~(33b) Real property contractor. – A person that contracts to perform  
16 construction, reconstruction, installation, repair, or any other service with  
17 respect to real property and to furnish tangible personal property to be  
18 installed or applied to real property in connection with the contract and the  
19 labor to install or apply the tangible personal property that becomes part of  
20 real property. The term includes a general contractor, a subcontractor, or a  
21 builder for purposes of G.S. 105-164.4H.

22 ~~(33b)~~(33c) Related member. – Defined in G.S. 105-130.7A.

23 ~~(33e)~~(33d) Remote sale. – A sale of tangible personal property or digital property  
24 ordered by mail, by telephone, via the Internet, or by another similar method,  
25 to a purchaser who is in this State at the time the order is remitted, from a  
26 retailer who receives the order in another state and delivers the property or  
27 causes it to be delivered to a person in this State. It is presumed that a  
28 resident of this State who remits an order was in this State at the time the  
29 order was remitted.

30 ...."

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

32 "~~(55a)~~ Sales of electricity for use at a qualifying datacenter and datacenter support  
33 equipment to be located and used at the qualifying datacenter. As used in  
34 this subdivision, "datacenter support equipment" is property that is  
35 capitalized for tax purposes under the Code and is used either:

36 a. For the provision of a service or function included in the business of  
37 an owner, user, or tenant of the datacenter.

38 b. For the generation, transformation, transmission, distribution, or  
39 management of electricity, including exterior substations, generators,  
40 transformers, unit substations, uninterruptible power supply systems,  
41 batteries, power distribution units, remote power panels, and other  
42 capital equipment used for these purposes.

43 c. For HVAC and mechanical systems, including chillers, cooling  
44 towers, air handlers, pumps, and other capital equipment used for  
45 these purposes.

46 d. For hardware and software for distributed and mainframe computers  
47 and servers, data storage devices, network connectivity equipment,  
48 and peripheral components and equipment.

49 e. To provide related computer engineering or computer science  
50 research.

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

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

23  
24 **PART VII. EFFECTIVE DATE**

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