

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 1135
May 20, 2014
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH10528-MC-259 (09/06)

Short Title: Business Facilities Development. (Public)

Sponsors: Representatives 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 SITES AND BUILDINGS, AS
4 RECOMMENDED BY THE NORTH CAROLINA ECONOMIC DEVELOPMENT
5 BOARD.

6 The General Assembly of North Carolina enacts:

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

8 **"§ 143B-437.02. Site infrastructure development.**

9 ...
10 (b) Fund. – The Site ~~Infrastructure~~ and Building Development Fund is created as a
11 restricted reserve in the Department. Funds in the fund do not revert but remain available to the
12 Department for these purposes. The Department may use the funds in the fund only for ~~the~~
13 ~~following purposes:~~

14 (1) ~~For site development~~ the acquisition and development of sites and buildings
15 in accordance with this section.

16 (2) ~~To acquire options and hold options for the purchase of land in accordance~~
17 ~~with subsection (m) of this section.~~

18 (c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In addition,
19 the following definitions apply in this section:

20 (1) Department. – The Department of Commerce.

21 (2) Site or building development. – A subsidized loan to one or more local
22 government units to enable the unit or units, individually or pursuant to a
23 multijurisdictional agreement, to acquire land or buildings or to improve
24 land, including constructing buildings or renovating or rehabilitating existing
25 buildings, or to do both in order to ready the property for lease or sale to a
26 business. ~~Any of the following:~~

27 a. ~~A restricted grant or a forgivable loan made to a business to enable~~
28 ~~the business to acquire land, improve land, or both.~~

29 b. ~~A grant to one or more State agencies or nonprofit corporations to~~
30 ~~enable the grantees to acquire land, improve land, or both and to~~
31 ~~lease the property to a business.~~

32 e. ~~A grant to one or more local government units to enable the units to~~
33 ~~acquire land, improve land, or both and to lease the property to a~~
34 ~~business.~~

35 (3) Subsidized loan. – A loan from the State, for a term to be determined by the
36 Department, to one or more local government units for site or building



* D R H 1 0 5 2 8 - M C - 2 5 9 *

1 development having an interest rate of zero percent (0%) for tier one
2 counties, one percent (1%) for tier two counties, and two percent (2%) for
3 tier three counties.

4 (d) Eligibility. – To be eligible for consideration for site or building development for a
5 project, ~~a business must meet both of the following conditions:~~ a local government unit must
6 execute a written agreement with the Department that provides for each of the following:

7 (1) ~~The business will invest at least one hundred million dollars (\$100,000,000)~~
8 ~~of private funds in the project.~~ A requirement that the unit obtain from a
9 business leasing or purchasing property acquired or improved by a
10 subsidized loan an agreement to meet performance criteria that protects the
11 State's investment and secures the benefits anticipated by the lease or sale to
12 the business.

13 (2) ~~The project will employ at least 100 new employees.~~ A requirement that any
14 performance criteria used by the unit include, at a minimum, the creation and
15 maintenance for a period of at least five years of an appropriate level of
16 employment and capital investment by the business leasing or purchasing
17 property acquired or improved by a subsidized loan and any other criteria the
18 Department considers appropriate, other than a wage standard or test.

19 (3) A requirement that the unit repay the subsidized loan if the business leasing
20 or purchasing property acquired or improved by a subsidized loan fails to
21 meet the performance criteria.

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

28 (5) A requirement that the unit enter into an agreement with a business leasing
29 or purchasing property acquired or improved by a subsidized loan, whereby
30 the business agrees to meet the requirements of subsections (f) and (g) of
31 this section.

32 (6) A requirement that the property acquired or improved by a subsidized loan
33 will not be primarily used for entertainment, retail, professional office,
34 sporting event, museum, or governmental purposes.

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

42 ~~Each year that a contract for site development under this section is in effect, the business~~
43 ~~must provide the Department a certification that the business continues to provide health~~
44 ~~insurance for all full-time employees of the project governed by the contract. If the business~~
45 ~~ceases to provide health insurance to all full-time employees of the project, Department shall~~
46 ~~provide for reimbursement of an appropriate portion of the site development funds provided to~~
47 ~~the business.~~

48 (f) Safety and Health Programs. – In order for a business to be eligible ~~for~~
49 ~~consideration for~~ to purchase or lease site or building development property under this section,
50 the business must have no citations under the Occupational Safety and Health Act that have
51 become a final order within the past three years for willful serious violations or for failing to

1 abate serious violations with respect to the location for which the grant is made. For the
2 purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

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

7 (h) Selection. – The Department shall administer the selection of projects to receive site
8 or building development. The selection process shall include the following components:

9 (1) Criteria. – The Department must develop criteria to be used to identify and
10 evaluate eligible projects for possible site development.

11 (2) Initial evaluation. – The Department must evaluate major competitive
12 projects to determine if site development is merited and to determine
13 whether the project is eligible and appropriate for consideration for site
14 development.

15 (3) Application. – The Department must require a ~~business~~ local government
16 unit to submit an application in order for a project to be considered for site
17 development. The Department must prescribe the form of the application,
18 the application process, and the information to be provided, including all
19 information necessary to evaluate the project in accordance with the
20 applicable criteria.

21 (4) ~~Committee Development plan.~~ – ~~The Department must submit to the~~
22 ~~Economic Investment Committee the applications for projects the~~
23 ~~Department considers eligible and appropriate for consideration for site~~
24 ~~development. In evaluating each application, the Committee must consider~~
25 ~~all of the factors set out in Section 2.1(b) of S.L. 2002-172.~~ Department, in
26 evaluating each application, must obtain a strategic business facilities
27 development analysis of potential sites for development, shell building
28 needs, special use buildings needs, and buildings to be renovated. The
29 Department shall obtain the analysis by contracting with another entity with
30 demonstrated experience in site selection services for businesses and in
31 evaluating sites and buildings for business recruitment purposes. The
32 Department must consider, but is not bound by, the priority
33 recommendations in the analysis. The analysis shall be updated every four
34 years.

35 (5) Findings. – In order to recommend a project for site development, the
36 ~~Committee~~ Department must make all of the following findings:

37 a. The conditions for eligibility have been met.

38 b. ~~Site~~ The site or building development for the project is necessary to
39 carry out the public purposes provided in subsection (a) of this
40 section.

41 c. The site or building development project is consistent with the
42 economic development goals of the State and of the area where it
43 will be located.

44 d. ~~The affected local governments have participated in recruitment and~~
45 ~~offered incentives in a manner appropriate to the project.~~

46 e. The price and nature of any real property to be acquired or improved
47 is appropriate to the site or building development project and not
48 unreasonable or excessive.

49 f. ~~Site development~~ A subsidized loan under this section is necessary
50 for the completion of the site or building development project in this
51 State.

1 (6) ~~Recommendations-Awards.~~ – If the ~~Committee recommends~~ Department
2 approves a project for site or building development, it must ~~recommend~~
3 determine the amount of State funds to be committed, the preferred form and
4 details of the State participation, and the performance criteria and safeguards
5 to be required in order to protect the State's investment.

6 (i) Agreement. – Unless the Secretary of Commerce determines that the project is no
7 longer eligible or appropriate for site or building development, the ~~Department~~ Secretary shall
8 enter into an agreement to provide a subsidized loan for site or building development within
9 available funds for a ~~project recommended by the Committee~~ project. In doing so,
10 consideration shall be given to projects according to the strategic business facilities
11 development analysis obtained by the Department, as required by subdivision (4) of subsection
12 (h) of this section. Each ~~site~~ development agreement is binding and constitutes a continuing
13 contractual obligation of the State and the ~~business~~ local government unit. The ~~site~~
14 development agreement must include all of the performance criteria, remedies, and other
15 safeguards ~~recommended~~ determined necessary by the ~~Committee~~ or required by the
16 Department to secure the State's investment. Each ~~site~~ development agreement must contain a
17 provision prohibiting a ~~business~~ local government unit from ~~receiving a payment or other~~
18 ~~benefit~~ leasing or selling under the agreement to a business that at any time when the business
19 has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or
20 otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption
21 by the State of any debt of any business or authorizes the taxing power or the full faith and
22 credit of the State to be pledged.

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

28 (i1) Subsidized Loans. – Subsidized loans must be evidenced by a promissory note and
29 secured by a deed of trust on the property acquired or improved by the loan. Repayment of a
30 subsidized loan is required on the occurrence of the earlier of (i) the passage of five years from
31 the date the subsidized loan was made or (ii) the property secured by the loan being sold or
32 leased for a period of more than three years, including all options or automatic rights to extend
33 the base term of the lease. The amount of repayment triggered is proportional to the amount of
34 the property sold or leased and shall be calculated by multiplying the loan by a fraction, the
35 numerator of which is the amount of property secured by the loan sold or leased and the
36 denominator of which is the total amount of property subject to the loan. Upon the payment of
37 the amount of the loan calculated to be required by this subsection, a release deed shall be
38 executed and filed for the portion of the property for which the payment was made.

39 (i2) Multiple Loans. – One or more financial institutions may hold a security interest on
40 the property with a priority equal to the security interest for the subsidized loan if there is a
41 written intercreditor agreement that (i) has been reviewed and approved by the Department and
42 (ii) provides that, in the event of default, any loss is shared among the creditors in proportion to
43 the amount loaned.

44 (i3) Payments. – The Department shall remit amounts repaid pursuant to subsection (i1)
45 of this section to the Site and Building Development Fund.

46 (j) Safeguards. – To ensure that public funds are used only to carry out the public
47 purposes provided in this section, the Department shall require that each ~~business that receives~~
48 State-funded site development must agree local government unit that leases or sells property
49 improved by a subsidized loan obtains from the acquiring business an agreement to meet
50 performance criteria to protect the State's investment and assure that the projected benefits of
51 the project are secured. ~~The performance criteria to be required shall include creation and~~

1 maintenance of an appropriate level of employment and investment over the term of the
2 agreement and any other criteria the Department considers appropriate. The agreement must
3 require the business to repay or reimburse an appropriate portion of the State funds expended
4 for the site development, based on the extent of any failure by the business to meet the
5 performance criteria. The agreement must provide a method for securing these payments from
6 the business, such as structuring the site development as a conditional grant, a forgivable loan,
7 or a revocable lease.

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

13 On September 1 of each year until all funds have been expended, the Department shall
14 report to the Joint Legislative Commission on Governmental Operations regarding the Site
15 Infrastructure Development Program. This report shall include a listing of each agreement
16 negotiated and entered into during the preceding year, including ~~the name of the business,~~ the
17 cost/benefit analysis conducted by ~~the Committee~~ during the application process, a description
18 of the project, ~~and~~ the amount of the site development incentive expected to be paid under the
19 agreement during the current fiscal year, and the status of any property sold or leased to a
20 business. The report shall also include detailed information about any defaults and repayment
21 during the preceding year and the information contained in the report required by
22 G.S. 105-277.15A(g). The Department shall publish this report on its web site and shall make
23 printed copies available upon request.

24 (l) Program Guidelines. – The Department shall develop guidelines related to the
25 administration of site infrastructure development, as authorized by this section, and to the
26 selection of projects. At least 20 days before the effective date of any guidelines or
27 nontechnical amendments to guidelines, the Department must publish the proposed guidelines
28 on the Department's Web site and provide notice to persons who have requested notice of
29 proposed guidelines. In addition, the Department must accept oral and written comments on the
30 proposed guidelines during the 15 business days beginning on the first day the Department has
31 completed the notice requirement of this subsection. For purposes of this subsection, a
32 technical amendment is one (i) that corrects a spelling or grammatical error or (ii) that makes a
33 clarification based on public comment and could have been anticipated by the public notice that
34 immediately preceded the public comment.

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

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

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

40 **SECTION 2.** G.S. 150B-1(d) is amended by adding a new subdivision to read:

41 "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the
42 following:

43 ...

44 (21) The Department of Commerce in developing criteria and guidelines under
45 G.S. 143B-437.02.

46"

47 **SECTION 3.** There is appropriated from the General Fund to the Department of
48 Commerce the sum of four hundred thousand dollars (\$400,000) for the 2014-2015 fiscal year
49 to be used to contract for the preparation of the strategic business facilities development
50 analysis required by Section 1 of this act.

1 **SECTION 4.** The provisions of this act are not subject to the terms of
2 G.S. 160A-20.

3 **SECTION 5.** Subsidized loans undertaken by units of local government are not
4 subject to review and approval by the Local Government Commission under Article 8 of
5 Chapter 159 of the General Statutes.

6 **SECTION 6.** This act becomes effective July 1, 2014, and applies to site
7 development agreements entered on or after that date.