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Community Development and Housing

The debate surrounding modifications to the William S. Lee Quality Jobs and Business and Expansion Act (the Bill Lee Act) and the enactment of other economic development initiatives dominated the last days of the 2002 session. Even so, the session yielded little legislation in the areas of community development and affordable housing.

Community Development

Expanding the Bill Lee Act

Enacted in 1996, the Bill Lee Act is a package of state tax incentives given primarily in the form of tax credits for job creation, worker training, and investment in machinery and equipment, real property, and research and development. Counties are divided into five economic distress tiers based on unemployment rates, per capita income, and population growth. For many of the credits, the lower the tier of the county, the more favorable the incentive.

The General Assembly has sought to bolster or better target the Bill Lee Act in every session since its original enactment. This year's changes to the Bill Lee Act are found in S.L. 2002-172 (H 1734) and address the following areas of concern:

- Machinery and equipment. To better focus the benefits of the Bill Lee Act toward the most distressed counties, the General Assembly reduced the amount of the machinery and equipment credit in tier three, four, and five counties from 7 percent of the cost of the machinery and equipment in excess of the applicable threshold to 6, 5, and 4 percent, respectively. In addition, the purchase amount threshold for tier four counties was increased from \$500,000 to \$1,000,000, and in tier five counties, from \$1,000,000 to \$2,000,000.
- Development zones. In 1998 the General Assembly amended the Bill Lee Act to provide additional incentives for businesses that locate to or make expansions within economically distressed zones in urban areas. A business located in one of these development zones could (1) claim a maximum worker training credit of \$1,000 (rather than \$500), (2) claim an additional \$4,000 credit per new job created, and (3) claim the same amount for investing in machinery and equipment as if the zone were located in a tier one county. Although the intent was to target and qualify only relatively small municipal areas for these credits, some large nonmetropolitan areas that were not distressed could, at times, qualify as development zones under the initial criteria. In 1999 the General Assembly closed these loopholes and, in this session, attempted to further clarify its definition of a *development zone*. S.L. 2002-172 provides that such a zone includes all of a parcel of land located partially within the zone if
 - at least 50 percent of the parcel is located within the zone,
 - the parcel existed under common ownership prior to the previous decennial federal census, and
 - The parcel is made up of multiple tracts of tax parcels of land surrounded by a continuous perimeter boundary.
- Wage standards. Under prior law the wage standard was 100 percent of the average weekly wage in tier one counties and development zones and 110 percent in the other tiers. The jobs included in calculating the wage standard vary depending on the particular credit. As further incentive for businesses to locate in the most economically distressed counties, S.L. 2002-172 eliminates the wage standard in tier one and two counties and state development zones. By eliminating the wage standard in tiers one and two, the new law also increases the number of taxpayers qualified to take the worker training credit.

S.L. 2002-172 also makes the wage standard test applicable to a taxpayer's taxable year rather than the calendar year. A wage standard based on a calendar year had been difficult to compute for companies that have alternative tax years.
- Overdue tax debts. S.L. 2002-172 provides that taxpayers are ineligible for a credit under the Bill Lee Act if they have any overdue tax debt.

Job Development Investment Grant Program

In S.L. 2002-172 The General Assembly created a new economic development tool through which grants could be awarded to new and expanding businesses in North Carolina. Through the Job Development Investment Grant Program, a business can now qualify for a cash grant based on the amount of income tax withheld from the new jobs it created as part of a qualifying project. The program sets out the minimum number of jobs a project must create to be eligible. For projects located in tiers one through three, the project must create at least ten new full-time positions. For projects located in tiers four and five, the project must create at least twenty new full-time positions. If the project is located in more than one location, the tier designation of the location in the highest tier area determines the minimum number of new jobs that must be created in order for the project to qualify for the grant.

Some of the program requirements are tied to the Bill Lee Act in various ways. First, as in the Bill Lee Act, to be eligible for the program a business must offer health insurance with all full-time jobs associated with a particular project. Second, the average wage of all jobs at the location for which the grant is sought must meet the Bill Lee wage standards. Third, the business must have no Occupational Safety and Health Act citations for willful serious violations or for failing to abate any serious violations that have become final orders within the previous three years. The project must also satisfy other conditions that are not found in the Bill Lee Act: (1) the project must result in new net employment in the state, (2) the project must strengthen the state's economy, (3) the project must be consistent with state economic development goals, (4) the grant must be necessary to secure the project for the state, and (5) the total benefits of the project must outweigh the costs.

Grant decisions will be made by an Economic Investment Committee, which will consist of the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and two members appointed by the General Assembly, one upon recommendation of the Speaker of the House and the other upon recommendation of the President Pro Tempore of the Senate. The members of the committee appointed by the General Assembly may not be General Assembly members. The committee may not enter into more than fifteen agreements or commit more than \$10 million in grants in any calendar year.

Proceedings of the new committee are subject to the open meetings and public records laws. However, the committee is exempt from the rule-making process. Instead, G.S. 143B-437, as enacted by S.L. 2002-172, requires it to publish its proposed grant-making criteria on the Department of Commerce Web site at least fifteen business days prior to the adoption of these criteria or any amendments to them. Although the committee may add to them at a later date, the following conditions must apply:

- The amounts of any grants may not be less than 10 percent or more than 75 percent of the withholdings associated with the new jobs created by the project.
- The terms of grants may never exceed twelve years.
- The percentage used to determine the amount of a grant will be reduced by one-fourth for any eligible positions located in a tier four or five area.
- Unless the committee makes a specific determination that a grant should be calculated based on eligible positions created in any one year during the term of the agreement, the amount of the grant must be calculated based on eligible positions created during the first two years of the agreement.
- In the absence of an explicit finding otherwise, the total amount of all grants provided by the state may not exceed 75 percent of the withholding of all eligible positions.
- The amount of a grant associated with any specific position may not exceed \$6,500 in a year.

The state Attorney General will review the terms of all proposed agreements and must personally sign each agreement.

S.L. 2002-172 requires the Economic Investment Committee to monitor grantee businesses and to amend or terminate agreements if businesses fail to meet the terms of the agreement or the requirements of the program. If such a failure extends over a period of two consecutive years, the committee is required to both terminate the agreement and recapture any associated grant funds made in previous years. Moreover, a business with an overdue tax debt may not receive an annual disbursement of the grant as long as the overdue tax debt has not been satisfied or otherwise resolved.

There are no restrictions on the use of grant funds by businesses participating in the program.

Changes to the Industrial Development Fund

The Industrial Development Fund provides assistance to local governments for infrastructure improvements to better enable them to attract new business. Previously, the fund and its utility account could be used only for construction of and improvements to water, sewer, gas, and

electricity lines and equipment. In S.L. 2002-172 the General Assembly expanded the purposes for which these funds could be used to include telecommunications and high-speed broadband lines and equipment.

Under prior law the fund's utility account could be used to assist only those local governments located in tiers one and two. S.L. 2002-172 expands the focus of this account by allowing local governments in tier three to use these funds as well.

Study Provisions

S.L. 2002-172 requires the Revenue Laws Study Committee to study the use, effectiveness, and cost of the Job Development Investment Grant Program, the Bill Lee Act, incentives for the film industry, and the Industrial Recruitment Competitive Fund. The committee may provide an interim report to the 2004 Regular Session of the General Assembly. A final report is due by March 15, 2005.

Film Industry Incentives

The General Assembly amended the Film Industry Development Account in S.L. 2002-172 to require a minimum expenditure of \$1 million in North Carolina before a project is considered eligible for a grant.

Planning for Biopharmaceutical Training

S.L. 2002-172 authorizes the State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the North Carolina Biotechnology Center to initiate planning and development of a new biopharmaceutical/bioprocess manufacturing training center to be centrally located with related facilities placed regionally at community colleges.

Affordable Housing

Low Income Housing Tax Credits

The development of affordable rental housing in North Carolina is primarily facilitated through the syndication of the federal and state tax credit given to private equity investors. Both the federal and state credits are awarded to projects through a competitive process conducted by the North Carolina Housing Finance Agency (HFA). The new state tax credit is different from the federal tax credit and the state credit in effect prior to 2003 in that it is not an investment. There is no sale of the credit, no limited partner equity, nor any of the other features of a tax-shelter investment. S.L. 2002-87 (S 1416) amends G.S. 105-129.42(c) to change the basis for credit allocations from the economic distress tier designations to a standard of household income and housing affordability established by the HFA. The credit will now be 30 percent of a project's basis in low-income counties, 20 percent in moderate-income counties, and 10 percent in high-income counties. S.L. 2002-87 also removes the basis requirement for credit allocations approved in S.L. 2001-431. As a result, the program no longer limits the developer's allocation of the state credit to the investor's adjusted basis in the development entity. The credit is also now directly available to developers.

Minimum Housing Changes

Continuing a trend of giving local governments flexibility to address the problem of unsafe or abandoned housing and commercial buildings, S.L. 2002-118 (S 1312) amends G.S. 160A-426 to

grant authority to Durham, Fayetteville, Hope Mills, and Spring Lake to declare residential buildings in community development target areas unsafe and to demolish those buildings. The bill also grants authority to Whiteville to deal with abandoned structures in the same manner as municipalities in counties with populations in excess of 71,000 according to the previous federal census.

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