HOUSE BILL 117: NC Competes Act

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2015-2016 General Assembly

Committee:	House Finance, if favorable, Appropriations	**Date:**	March 3, 2015
Introduced by:	Reps. S. Martin, Jeter, Collins, Steinburg	**Prepared by:**	Dan Ettefagh
Analysis of:	Second Edition		Committee Counsel

SUMMARY: The draft would do the following: (i) increase the amount Commerce could commit in JDIG awards, (ii) modify and extend the JDIG program, (iii) rename the JDIG, One NC, One NC Small Business, and Site Infrastructure Development programs, (iv) modify qualification for single sales factor apportionment of income by qualified capital intensive corporations, (v) recapture funds previously allocated for the Job Catalyst Fund (included in H1224 that was not enacted last year) and reallocate those funds for the Site Infrastructure Development Fund, (vi) extend the sales tax refund for sales tax paid on fuel by an interstate passenger air carrier in excess of $2.5M; and (vii) enact a sales tax exemption for datacenters investing at least $75M within a 5-year period for sales of datacenter equipment and electricity located and used at the datacenter.

PART I. JDIG MODIFICATIONS:

CURRENT LAW: JDIG is a discretionary program of the State that provides funds to incentivize new or expanding business to create jobs in the State. The amount of the JDIG incentive to a company is equal to between 10% to 75% of the personal income tax withholdings generated by the eligible created positions.[1] If the business is in a tier 2 or 3 area, the incentive paid to the business is automatically reduced by 15% or 25%, respectively, and that portion is diverted into the Utility Account. The JDIG agreement can be for a term of up to 12 years. The amount that can be committed in JDIG grants has generally been capped at $15M per calendar year; however, the current cap is based on the 2013-15 biennium and is $22.5M, and the cap for 7/1/15 through 12/31/15 is $7.5M. Presuming a use of $1M of the allowed cap for a period and a term of 12 years, a $1M commitment would be paid each year of the 12-year term if the company met all required metrics, for a total commitment of $12M. The authority to enter new JDIG agreements is currently set to expire 1/1/16.

BILL ANALYSIS: The bill modifies JDIG in the following ways:

1. It increases the maximum JDIG commitment for the current period in two ways: (i) it changes the current period from being a 2013-2015 biennium to being a period lasting from 7/1/13 through 12/31/15, effectively making the $7.5M available for 7/1/15 to 12/31/15 immediately available for commitment and (ii) it adds $15M of additional capacity that may be committed in JDIG awards in the period ending 12/31/15. Collectively, these changes increase the cap for the current period from $22.5M to $45M, with the latter change potentially increasing the State's JDIG commitment by $180M ($15M per year over 12 years for the current period).[2]

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[1] The amount of the incentive paid to a company is automatically decreased by 25% or 15% for tier 3 and tier 2 projects, respectively, with that percentage going to the Utility Account for infrastructure projects that are reasonably expected to create jobs in economically distressed counties (i.e. tier 1 and 2 counties).

[2] The advancement of the $7.5M from the last half of the CY does not increase potential JDIG commitment, but it does permit the liability to occur sooner.

2. It extends the authority to make new JDIG commitments until 1/1/20. This change potentially increases the State's JDIG commitment by $720M ($15M per year over 12 years multiplied by each year of the 4-year extension).
3. It renames the program from the Job Development Investment Grant (JDIG) to the Job Growth Reimbursement Opportunities - People Program (Job GRO People).
4. It adds to findings that the Committee is required to make prior to entering into a JDIG agreement a finding that affected local governments have participated in recruitment and offered appropriate incentives.
5. It eliminates priority for JDIG projects due to being located in an Eco-Industrial Park.[3]
6. It increases the minimum number of jobs a business must create in a tier 3 area in order to participate in JDIG from 20 jobs to 50 jobs.
7. Regarding the health care coverage requirement, it eliminates an obsolete reference to minimum health care coverage recommendations by the Small Employer Carrier Committee for purposes of meeting the health insurance requirement for JDIG participants.
8. It increases the diversion from JDIG to the Utility Account for tier 3 projects from 25% to 30%.
9. It modifies the recapture provision applicable to EIC recaptures of JDIG amounts to a participating business if the business fails to maintain operations at the project for at least 150% of the grant term. Under current law, the recapture is in the discretion of the EIC. The bill would require the EIC to recapture an appropriate portion of the grant.
10. It modifies the relevant time period against which increases in employment are measured. Under current law, the business must maintain employment levels at the level of the year immediately preceding the base period. The bill would change the relevant comparison point for employment levels from immediately preceding the base period to the greater of the employment levels at the date of application or date of award.

PART II. ONE NC MODIFICATIONS:

CURRENT LAW: The One NC fund is a discretionary fund by the State to provide money to locals to secure commitments for recruitment, expansion, or retention of new or existing businesses. Locals must use the money for equipment purchase or installation, modification of existing businesses for expansion, or infrastructure improvement for existing buildings or new/proposed buildings (if the latter is used for manufacturing/industrial operations). The maximum One NC commitment is limited to $28M per fiscal biennium. Inside One NC is the One North Carolina Small Business Program that provides matching funds for SBIR/STTR federal funds.

BILL ANALYSIS: The bill would rename the program from the One North Carolina Fund (One NC) to the Job Growth Reimbursement Opportunities – Capital Program (Job GRO Capital) and would rename the One North Carolina Small Business Program to the Job Growth Reimbursement Opportunities – Capital Small Business Program.

PART III: SITE INFRASTRUCTURE DEVELOPMENT FUNDING:

CURRENT LAW: The Site Infrastructure Development Fund provides grants or forgivable loans to State agencies, nonprofit corporations, locals, or businesses for acquisition and/or improvement of land

[3] An eco-industrial park is a park certified by the Secretary to have at least 100 developable acres, located in a county that does not require motor vehicle emissions inspections, only has buildings constructed in accordance with energy-efficiency and water-use standards contained in G.S. 143-135.37, only has businesses in a clean-industry sector according to the Toxic Release Inventory by the US EPA.

and to lease property to a business that (i) will invest at least $100,000,000 in private funds in a project and (ii) will employ at least 100 new employees at the project.[4] In addition, last year's budget appropriated $20M to the Job Catalyst Fund, contingent on the passage of HB1224. Because H1224 was not enacted, that amount is not being utilized.

BILL ANALYSIS: The draft would transfer the $20M earmarked for JCF to SIDF to reactivate it for site development functions consistent with that Fund. The bill would also rename the program the Site Acceleration Fund. Finally, regarding the health care coverage requirement, it eliminates an obsolete reference to minimum health care coverage recommendations by the Small Employer Carrier Committee for purposes of meeting the health insurance requirement for JDIG participants.

PART IV: SINGLE SALES FACTOR MODIFICATION:

CURRENT LAW: A corporation that does business in more than one state must pay income tax and franchise tax to each of the states in which it has nexus for the income that is fairly sourced to the taxing state. The conventional method used by states to source income has been the apportionment formula, which is used to derive an apportionment percentage. Generally speaking, a taxpayer multiplies its taxable income by its apportionment percentage to determine the amount of its income sourced to a state. The state's corporate income tax rate is applied to the corporation's income apportionable to that state.

Most states use an apportionment formula based on a composite of three factors: a property factor (the ratio of the taxpayer's real and tangible personal property in the taxing state to its real and tangible personal property everywhere), a payroll factor, and a sales factor (the payroll factor and the sales factor represent a ratio of the taxpayer's payroll and sales in the taxing state to its payroll and sales everywhere). North Carolina uses a double-weighted sales factor apportionment formula, so the payroll and property factors are each weighted 25% and the sales factor is weighted at 50%; the sum of the four factors is divided by four.

For qualified capital intensive corporations, North Carolina uses a single sales factor formula for apportionment, so the total allocation of a corporation's profits to North Carolina is solely based on where the sales are sourced. A 'qualified capital intensive corporation' (QCIC) is one that meets all of the requirements following:

- The corporation's property factor must meet one of the following conditions:
    - The property factor as a percentage of the sum of the factors in North Carolina's double weighted sales factor apportionment formula must exceed 75%.
    - The average property factor for the preceding three years as a percentage of the average sum of the double weighted sales factor apportionment formula must exceed 75%.
- The Secretary of Commerce makes a written determination that the corporation has invested or is expected to invest at least $1 billion in private funds to construct a facility in this State within nine years of the time that construction begins.

[4] The fund was created and used in conjunction with other incentives to attract Merck and has since been depleted and inactive.

- With respect to the facility that meets the $1 billion investment threshold, it must:
    - Be located in a county designated as a tier one or tier two area at the time construction began.
    - Maintain the average number of employees it has at the facility during the first two years after the facility is placed in service for the remainder of time in which the corporation must complete the required $1 billion investment.
    - Meet the weekly wage standard set out in Article 3J.
    - Provide health insurance for all full-time jobs at the facility.

The tax benefit of the single sales factor apportionment formula expires prospectively if the corporation fails to make the required investment in capital facilities within nine years. It does not require the recapture of any benefits already received.

BILL ANALYSIS: The draft does the following:

- It eliminates the requirements regarding the corporation's property factor and the requirement that the facility be located in a tier 1 or 2 area.
- It converts the expiration of the tax benefit into a recapture provision should the QCIC fail to make the required investment or otherwise fail to meet eligibility requirements.
- It sets forth the wage standard explicitly instead of the same wage standard being incorporated by reference.
- Regarding the health care coverage requirement, it eliminates an obsolete reference to minimum health care coverage recommendations by the Small Employer Carrier Committee.
- It eliminates the sunset of the SSF benefit for QCIC's, which was set to expire in 2019, if no corporation qualifies as a QCIC by that time.
- It eliminates the prohibition against coupling the tax benefit of SSF with incentive funds from JDIG and/or One NC for QCICs.

PART V. EXTEND SALES TAX REFUND FOR PASSENGER AIR CARRIERS:

CURRENT LAW: Businesses whose primary business is scheduled passenger air transportation in interstate commerce (passenger air carriers) are allowed a sales tax refund of sales tax paid on fuel in excess of $2.5M. The refund tax benefit is repealed for purchases made on or after 1/1/2016.

BILL ANALYSIS: The draft would extend the tax benefit for 4 years to 1/1/20.

PART VI. DATACENTER INFRASTRUCTURE ACT:

CURRENT LAW: Under current law, datacenters receive tax benefits for certain purchases if certain conditions are met. They are as follows:

- G.S. 105-187.51C imposes a privilege tax, in lieu of a sales tax, on certain equipment and machinery purchased by an eligible data center. The rate of tax is 1% of the sales price of the equipment and machinery, capped at $80 per article. To qualify, a taxpayer must invest $150M in a tier one area datacenter or $225 million in a tier 2 or 3 area datacenter over a five-year period. The benefit applies to a second datacenter in which $75M is invested as well.

- G.S. 105-164.13(55) exempts an eligible Internet data center from sales tax on electricity and on certain business property located and used at the data center, if $250M is invested over a 5-year period.[5]
- The General Assembly created a sales tax refund for information technology companies in a tier one area for machinery and equipment purchased and placed in service in the tier one area.

BILL ANALYSIS: The draft would create an additional sales tax exemption for datacenter equipment and electricity, similar but broader in scope of equipment covered, if $75M is invested over a 5-year period.

[5] To be an eligible Internet data center under G.S. 105-164.13 or an eligible data center under G.S. 105-187.51C, a facility must meet certain use, location, wage, and employee insurance benefits.