

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE DRH70412-LY-175 (5/11)

Short Title: Tourism Expansion Act. (Public)

Sponsors: Representative Tolson.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A TOURISM DEVELOPMENT INVESTMENT GRANT
3 PROGRAM AND A TOURISM DEVELOPMENT ACCOUNT TO FACILITATE
4 THE EXPANSION OF THE TOURISM INDUSTRY IN THE STATE AND TO
5 PROVIDE JOBS FOR CITIZENS OF THE STATE.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 10 of Chapter 143B is amended by adding a new Part
8 to read:

9 "Part 2H. Tourism Development Investment Grant Program.

10 "§ 143B-437.70. Legislative findings and purpose.

11 The General Assembly finds that:

- 12 (1) It is the policy of the State of North Carolina to stimulate economic
13 activity and to create new jobs for the citizens of the State by
14 encouraging and promoting the expansion of existing business within
15 the State and by recruiting and attracting new business to the State.
- 16 (2) Both short-term and long-term economic trends at the State, national,
17 and international levels have made the successful implementation of
18 the State's economic development policy and programs both more
19 critical and more challenging; and the decline in the State's traditional
20 industries, and the resulting adverse impact upon the State and its
21 citizens, have been exacerbated in recent years by adverse national and
22 State economic trends that contribute to the reduction in the State's
23 industrial base and that inhibit the State's ability to sustain or attract
24 new and expanding businesses.
- 25 (3) The economic condition of the State is not static and recent changes in
26 the State's economic condition have created economic distress that
27 requires a reevaluation of certain existing State programs and the

1 enactment of a new program as provided in this Part that are designed
2 to stimulate new economic activity and to create new jobs within the
3 State.

4 (4) The enactment of this Part is necessary to stimulate the economy,
5 facilitate economic recovery, and create new jobs in North Carolina;
6 and this Part will promote the general welfare and confer, as its
7 primary purpose and effect, benefits on citizens throughout the State
8 through the creation of new jobs, an enlargement of the overall tax
9 base, an expansion and diversification of the State's commercial base,
10 and an increase in revenue to the State and its political subdivisions.

11 (5) The purpose of this Part is to stimulate economic activity and to create
12 new jobs within the State.

13 (6) Nothing in this Part shall be construed to constitute a guarantee or
14 assumption by the State of any debt of any business or to authorize the
15 taxing power or the full faith and credit of the State to be pledged.

16 (7) Travel and tourism is already an integral component of the State's
17 economy and has the possibility of becoming one of the drivers of
18 future growth in the State.

19 "**§ 143B-437.71. Definitions.**

20 The following definitions apply in this Part:

21 (1) Agreement. – A tourism development agreement under
22 G.S. 143B-437.76.

23 (2) Business. – Any form of business entity, whether organized for profit
24 or not. The term does not include a unit of federal, State, or local
25 government.

26 (3) Commission. – The Tourism Project Commission established pursuant
27 to G.S. 143B-437.73.

28 (4) Committee. – The Tourism Project Review Committee established
29 pursuant to G.S. 143B-437.73.

30 (5) Department. – The Department of Commerce.

31 (6) Development costs. – Costs incurred in the development of the project.
32 The term includes costs for land acquisition; purchase, construction, or
33 renovation of structures; purchase and installation of machinery and
34 equipment; and the creation or implementation of interpretive and
35 educational programs. The term does not include fees paid to the
36 developer of the project. The term does not include the costs of
37 developing any lodging facilities associated with the project.

38 (7) Division. – The Division of Tourism, Film, and Sports Development
39 of the Department.

40 (8) Enterprise tier. – The classification assigned to an area pursuant to
41 G.S. 105-129.3.

42 (9) Program. – The Tourism Development Investment Grant Program
43 established under this Part.

1 (10) State sales and privilege taxes. – The net State sales tax collected by
2 the project and any privilege tax paid by the project under
3 G.S. 105-37.1.

4 **"§ 143B-437.72. Tourism Development Investment Grant Program.**

5 There is established the Tourism Development Investment Grant Program to be
6 administered by the Department. In order to foster job creation and investment in the
7 economy of this State, the Department may enter into agreements with businesses to
8 provide grants in accordance with the provisions of this Part. The Department, in
9 consultation with the Attorney General, shall develop criteria to be used in
10 administering this Part and in determining whether projects are otherwise consistent
11 with the purposes of this Part. In order for a project to be eligible for consideration
12 under this Program, the Department must determine that the project satisfies the
13 following conditions:

- 14 (1) The business will incur at least twenty-five million dollars
15 (\$25,000,000) in development costs for the project.
- 16 (2) The project will be open to the public for a minimum of 100 days per
17 year.
- 18 (3) The project is consistent with economic development goals for the
19 State and for the area in which it will be located.
- 20 (4) The project will have a significant and positive economic impact on
21 the State. In determining whether the project satisfies this condition,
22 the Department must consider the extent to which the project will
23 compete with existing tourism projects in the State and the total
24 amount of net new taxes associated with the project that will be
25 generated for the State and local governments.
- 26 (5) The project will attract at least twenty-five percent (25%) of its visitors
27 from outside the State during its first year of operation, thirty-five
28 percent (35%) of its visitors from outside the State in its second year of
29 operation, and fifty percent (50%) of its visitors from outside the State
30 thereafter.
- 31 (6) The project will have substantial and diverse local support.
- 32 (7) The project will involve one or more of the following:
- 33 a. A cultural or historic site.
- 34 b. A recreation or entertainment facility.
- 35 c. An area of scenic beauty or distinctive natural phenomena.
- 36 d. An entertainment destination center.
- 37 e. A North Carolina crafts and products center.
- 38 (8) A grant under this Part is necessary for the completion of the project in
39 this State.

40 **"§ 143B-437.73. Tourism Project Review Committee established; Tourism Project**
41 **Commission established.**

42 (a) Committee Membership. – The Tourism Project Review Committee is
43 established. The Secretary of Commerce shall appoint members to the Committee and

1 shall appoint one of those members as chair of the Committee. Members of the
2 Committee shall have experience evaluating major commercial projects.

3 (b) Commission Membership. – The Tourism Project Commission is established.
4 The Commission consists of the following members:

5 (1) The Secretary of Commerce.

6 (2) The Secretary of Revenue.

7 (3) The State Controller.

8 (c) Decision Required. – The Committee and the Commission each may act only
9 upon a decision of a majority of its respective members.

10 (d) Conflict of Interest. – It is unlawful for a current or former member of the
11 Committee or Commission to, while serving on the Committee or Commission or
12 within two years after the end of service on the Committee or Commission, provide
13 services for compensation, as an employee, consultant, or otherwise, to any business
14 that is awarded a grant under this Part while the member is serving on the Committee or
15 Commission. Violation of this subsection is a Class 1 misdemeanor. In addition to the
16 penalties imposed under G.S. 15A-1340.23, the court shall also make a finding as to
17 what compensation was received by the defendant for services in violation of this
18 section and shall order the defendant to forfeit that compensation.

19 If a person is convicted under this section, the person shall not provide services for
20 compensation, as an employee, consultant, or otherwise, to any business that was
21 awarded a grant under this Part while the member was serving on the Committee or
22 Commission until two years after the person's conviction under this section.

23 (e) Sunshine. – Meetings of the Committee and of the Commission are subject to
24 the open meetings requirements of Article 33C of Chapter 143 of the General Statutes.
25 All documents of the Committee and Commission, including applications for grants, are
26 public records governed by Chapter 132 of the General Statutes and any applicable
27 provisions of the General Statutes protecting confidential information.

28 (f) Professional Advisors. – The Committee shall retain one or more professional
29 advisors to assist in the evaluation of projects under this Part.

30 **"§ 143B-437.74. Criteria.**

31 The Department shall develop criteria related to the administration of the Program
32 and to the selection of projects to receive grants under this Part. At least 20 days before
33 the effective date of any criteria or nontechnical amendments to criteria, the Department
34 must publish the proposed criteria on the Department's web site and provide notice to
35 persons who have requested notice of proposed criteria. In addition, the Department
36 must accept oral and written comments on the proposed criteria during the 15 business
37 days beginning on the first day that the Department has completed these notifications.
38 For the purpose of this section, a technical amendment is either of the following:

39 (1) An amendment that corrects a spelling or grammatical error.

40 (2) An amendment that makes a clarification based on public comment
41 and could have been anticipated by the public notice that immediately
42 preceded the public comment.

43 **"§ 143B-437.75. Applications; fees.**

1 (a) Application. – A business shall apply, under oath, to the Department for a
2 grant on a form prescribed by the Department that includes at least all of the following:

3 (1) The name of the business, the proposed location of the project, and the
4 type of activity in which the business will engage at the project site or
5 sites.

6 (2) An estimate of development costs associated with the project.

7 (3) An estimate of the percentage of visitors to the project who will come
8 from outside the State.

9 (4) An estimate of the proposed revenues from the project and the
10 estimated State sales and privilege taxes directly associated with the
11 project.

12 (5) Information concerning any other State or local government incentives
13 for which the business is applying or that it has an expectation of
14 receiving.

15 (6) Any other information necessary for the Committee to evaluate the
16 application.

17 (b) Application Fee. – When filing an application under this section, the business
18 must pay the Department a fee equal to one-quarter of one percent (0.25%) of the
19 estimated development costs of the project. The fee is due at the time the application is
20 filed. The proceeds of the fee are receipts of the Department and shall be used to offset
21 the costs associated with evaluating the application. The fee will be returned to the
22 business if the application is not forwarded for review to the Committee.

23 (c) Evaluation Process. – When an application under this Part is submitted to the
24 Department, staff in the Division shall review the application to determine if all
25 necessary information has been provided. Staff in the Division shall also work with
26 applicant businesses to answer any questions about the Program and to facilitate the
27 submission of applications. Once the Division has determined that the application is
28 complete, the Division shall forward the application to the Committee. The advisor
29 retained by the Committee shall evaluate the application to determine if the project
30 satisfies the conditions of this Part and the criteria developed by the Department and
31 shall submit a written report to the Committee regarding these findings. The report may
32 contain other comments from the advisor, such as the advisor's opinion of the project's
33 prospects. The Committee shall evaluate the application and the report of its advisor and
34 make a written recommendation regarding approval of the project for participation
35 under the Program. If the Committee recommends approval of the project, the
36 Committee shall forward the application to the Commission. The Commission shall
37 review the application, the advisor's report, and the Committee's recommendation. The
38 Commission shall approve the project for participation in the Program if it finds that all
39 of the eligibility criteria are satisfied and that the development of the project is in the
40 best interests of the State.

41 **"§ 143B-437.76. Grant amounts; agreements.**

42 If a project is selected for participation in the Program, the Department shall enter
43 into a tourism development agreement with the business regarding grant payments
44 under the Program. For projects that are selected to participate in the Program, the

1 Department shall award an annual grant for each of the first 10 years in which the
2 project is in operation. The amount of grant shall be equal to fifty percent (50%) of the
3 State sales and privilege taxes associated with the project if the project is located in an
4 enterprise tier three, four, or five area. The amount of the grant shall be equal to
5 seventy-five percent (75%) of the State sales and privilege taxes associated with the
6 project if the project is located in an enterprise tier one or two area. The total cumulative
7 amount of grants received by a business under this Part may not exceed twenty-five
8 percent (25%) of the development costs incurred by the business in relation to the
9 project. Grants will not be awarded in any year in which the project fails to satisfy the
10 eligibility requirements of G.S. 143B-437.72 or any term of the agreement. Each
11 agreement shall contain, at a minimum, the following terms:

- 12 (1) The estimated development costs of the project and the maximum
13 cumulative amount of grant payments allowed under the agreement.
- 14 (2) A commitment by the business to provide the Department any
15 information necessary for the Department to confirm compliance with
16 the requirements of this Part and the agreement.
- 17 (3) A provision allowing the Department to obtain confidential tax
18 information regarding the project from the Department of Revenue in
19 order to compute grant amounts under this Part.

20 **"§ 143B-437.77. Disbursement of grant.**

21 A business may receive an annual disbursement of a grant only after the Department
22 has certified to the State Controller that the business has met the terms and conditions of
23 the agreement. No amount shall be disbursed to a business as a grant under this Part in
24 any year until the Secretary of Revenue has certified to the Department the amount of
25 State sales and privilege taxes associated with the project. A business that has met the
26 terms of the agreement shall make an annual certification of this to the Department. The
27 Department shall verify this information and certify to the State Controller that the
28 terms of the agreement have been met. The Department shall further certify to the State
29 Controller the amount of a grant for which the business is eligible. The State Controller
30 shall remit a check to the business in the amount of the certified grant amount within 90
31 days of receiving the certification of the Department.

32 **"§ 143B-437.78. Transfer to Tourism Development Account.**

33 At the time the State Controller remits a check to a business under
34 G.S. 143B-437.77, the State Controller shall transfer to the Tourism Development
35 Account created under G.S. 143B-434.5 an amount equal to ten percent (10%) of the
36 State sales and privilege taxes associated with the project.

37 **"§ 143B-437.79. Reports.**

38 The Department shall publish a report on the Program at the end of each fiscal
39 quarter. The report shall contain information on projects approved for participation in
40 the Program, agreements entered into under the Program, and grant payments made to
41 businesses under the Program. The report is due no later than one month after the end of
42 the fiscal quarter and must be submitted to the Joint Legislative Commission on
43 Governmental Operations and the Fiscal Research Division of the General Assembly."

1 **SECTION 2.** Part 2 of Article 10 of Chapter 143B of the General Statutes is
2 amended by adding a new section to read:

3 **"§ 143B-434.5. Tourism Development Account.**

4 (a) Creation of Account. – There is created in the Department of Commerce,
5 Division of Tourism, Film, and Sports Development, the Tourism Development
6 Account to provide grants to encourage the development of tourism projects within the
7 State. The Account is established as a special reserve fund.

8 (b) Administration. – The Division of Tourism, Film, and Sports Development
9 shall administer this Account in accordance with the following provisions:

10 (1) Only projects with total development costs less than twenty-five
11 million dollars (\$25,000,000) are eligible to receive a grant under this
12 section. For purposes of this section, 'development costs' has the same
13 meaning as under G.S. 143B-437.71.

14 (2) A grant may not exceed one hundred thousand dollars (\$100,000) per
15 project.

16 (c) Reports. – The Department of Commerce shall report annually to the General
17 Assembly concerning the applications made to the account, the payments made from the
18 account, and the effect of the payments on job creation in the State. The Department of
19 Commerce shall also report quarterly to the Joint Legislative Commission on
20 Governmental Operations and the Fiscal Research Division of the General Assembly on
21 the use of the moneys in the account, including information regarding to whom
22 payments were made and in what amounts."

23 **SECTION 3.** G.S. 150B-1(d) is amended by adding a new subdivision to
24 read:

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

27 ...

28 (12) The Department of Commerce in developing criteria for the Tourism
29 Development Investment Grant Program under Part 2H of Article 10
30 of Chapter 143B of the General Statutes."

31 **SECTION 4.** There is appropriated from the General Fund to the
32 Department of Commerce the sum of five hundred thousand dollars (\$500,000) for the
33 2004-2005 fiscal year for the Tourism Development Account.

34 **SECTION 5.** This act becomes effective July 1, 2004.