

NEXT CHALLENGE. NEXT LEVEL.

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DON'T LEAVE MONEY ON THE TABLE

RECRUITMENT AND EXPANSION INCENTIVES FOR BUSINESSES

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DEFINITIONS

- ▶ Incentives: grant(s), tax credits, reduced cost of land or building, training assistance, or other financial benefits intended to induce a company to locate a new facility or expand an existing facility at a certain location
- ▶ Infrastructure grants: grants from state or federal sources which are utilized to develop, extend, expand or improve infrastructure that may, in whole or in part, support the needs of a company placing a new facility or expanding an existing facility at a certain location,
- ▶ Infrastructure grants are not looked upon by companies as incentives.

- ▶ But as explained later, infrastructure grant funds can sometimes be adjusted to deliver tangible financial benefits to a company.



HISTORY OF INCENTIVES

- ▶ Not a relatively new tool
- ▶ Used in colonial times
- ▶ Local Development Act, GS §158-7.1, originally adopted in 1924
- ▶ Community college training has been used since early 1960's.



MORE RECENT HISTORY OF STATE INCENTIVES IN N.C.

- ▶ Mid 1980's General Assembly enacted the first job creation tax credit
 - ▶ Limited at first to 20 most economically distressed counties
 - ▶ Expanded later to 25 and then to 30
 - ▶ Failed to exclude retail at outset
- ▶ 1993 General Assembly established and funded Governor's "Deal Closing Fund"
 - ▶ Limited amount of money each year for two years
 - ▶ Poorly managed and was over committed
 - ▶ Quickly became an upfront expectation and not a deal closing fund

MORE RECENT HISTORY OF LOCAL INCENTIVES IN N.C.

- ▶ Subsection (a) of Local Development Act in place since 1924
- ▶ Very limited utilization of authority until 1994
- ▶ To utilize the authority of the Act a local government had to opt under it by passage of a local bill
- ▶ Bristol Compressors project in Alleghany County was first highly publicized use of local incentives in 1993
 - ▶ Referred to often (sometimes derisively) as the “Bristol project”
- ▶ 1994 Local Development Act amended to apply to all local governments without opting in under the Act

IS THE USE OF INCENTIVES A CONSTITUTIONAL PUBLIC PURPOSE?

- ▶ Hotly debated issue in the early use of authority under the Local Development Act.
- ▶ Many local attorneys did not agree that public money could be used for incentives
 - ▶ Not for a public purpose
 - ▶ Only resulted in a private benefit
- ▶ Bill Maready, an attorney in Winston-Salem filed an action challenging the use of incentives by Winston-Salem and Forsythe County in several recruitment projects.
- ▶ Resulted in N.C. Supreme Court decision on *Maready v. City of Winston-Salem* 342 N.C. 708 (1996)

MAREADY DECISION

- ▶ Ruled on a number of issues:
 - ▶ Is the use of incentives for a constitutional public purpose?
 - ▶ Was the use of incentives a permissible use of tax proceeds?
 - ▶ Was the proceeding in which the local governments approved the incentives permissible under the open meetings law?
- ▶ Most important part of the Court's ruling found that the use of incentives was for a constitutionally permitted public purpose.

MAREADY – INCENTIVES ARE CONSTITUTIONAL

- ▶ The Supreme Court held:

“Viewed in this light, section 158-7.1 clearly serves a public purpose. Its self-proclaimed end is to ‘increase the population, taxable property, agricultural industries and business prospects of any city or county’ The public advantages are not indirect, remote, or incidental; rather, they are directly aimed at furthering the general economic welfare of the people of the communities affected. While private actors will necessarily benefit from the expenditures authorized, such benefit is merely incidental. It results from the local government’s efforts to better serve the interests of its people.”

EXPLOSION OF STATE/LOCAL INCENTIVES SINCE MID-1990'S

- ▶ *Maready* decision cleared the way on local incentives
- ▶ General Assembly enacted William S. Lee Tax Credit with state tax credits for
 - ▶ Jobs created
 - ▶ Capital investments
 - ▶ R&D expenditures
- ▶ Later changed to Article 3J Tax Credit
- ▶ Repealed effective January 1, 2014 in conjunction with reduction in tax rules
- ▶ More and more states started offering incentives, e.g. Alabama Mercedes project
- ▶ Virtually every company project listed incentives as an upfront expectation
- ▶ Normal ratcheting up of bidding process

SO WHERE ARE WE NOW? – CURRENT MAJOR INCENTIVES

- ▶ State
 - ▶ Job Development Investment Grants (JDIG)
 - ▶ One NC Fund Grants
 - ▶ Community College Training Assistance
- ▶ Local
 - ▶ Local Development Act subsection (a)
 - ▶ Local Development Act subsection (b)

STATE –JOB DEVELOPMENT INVESTMENT GRANTS

- ▶ Statutory authority G.S. §§ 143B-437.50-437.63
- ▶ Department of Commerce guidelines on program
- ▶ Discretionary program only used when competitively necessary
- ▶ Reserved for large job creation projects 100 plus
- ▶ Caps on amounts of grants (formerly number of grants)
- ▶ Managed by Economic Investment Committee (EIC)
 - ▶ Five members (Secretary of Commerce, Secretary of Revenue, Director of Office of Budget & Management, one each appointed by Senate and House)
 - ▶ Follows guidance of Commerce Finance Center
- ▶ Application fee; annual reporting fee
- ▶ Must show positive ROI (IMPLAN economic model.)

STATE –JOB DEVELOPMENT INVESTMENT GRANTS

- ▶ Incentive grants are paid each year over a stated number of years.
- ▶ Performance based: if a company does not meet expectations of jobs created and capital investments company loses part or all of grants
- ▶ Self-funded: grants are paid out of state income tax withholdings on employees of company
- ▶ Can be a stated percentage of withholdings ranging from 10% to 75%
- ▶ Can be for a stated number of years up to 12 years (but new authority for more years for high impact project)

STATE –JOB DEVELOPMENT INVESTMENT GRANTS

- ▶ Company must meet certain requirements
 - ▶ Provision of health care benefits
 - ▶ Meeting workplace safety requirements
 - ▶ Environmentally sound

STATE –JOB DEVELOPMENT INVESTMENT GRANTS

- ▶ Rigorous findings by EIC required
 - ▶ The economic impact of the project, including cost and benefits to the State.
 - ▶ The strategic importance of the project to the State, region, or locality.
 - ▶ The number and quality of jobs.
 - ▶ The type of industry and project.
 - ▶ Any environmental impacts of the project.
 - ▶ Special consideration is generally given to companies that locate in areas that have experienced sudden and severe economic disruptions.
 - ▶ The project must be competitive with another state or country to be considered.

- ▶ Rigorous annual reporting requirements
 - ▶ Mandatory training each year
 - ▶ Very detailed, complex report
- ▶ N.C. program has been recognized as one of most accountable in the country

STATE –ONE NC FUND GRANTS

- ▶ Discretionary direct grant program
- ▶ Used for projects that create smaller number of jobs than required by JDIG program
- ▶ Statutory authority is in G.S. §§ 143B-437.71 to 437.73
- ▶ Guidelines for it are promulgated by Department of Commerce
- ▶ Funded by non-recurring appropriations from General Assembly
- ▶ Approved by Secretary of Commerce/Governor

STATE – ONE NC FUND GRANTS

- ▶ Grants are typically:
 - ▶ Stated as a set amount per job with a maximum amount
 - ▶ Performance based, such that when company attains certain percentage of employment, it gets same percentage of grants (e.g. 30%, 30%, 40%)

STATE – ONE NC FUND GRANTS

- ▶ Factors considered by Commerce Finance Center in deciding on whether to provide a grant and how much:
 - ▶ The economic impact of the project, including cost and benefits to the State
 - ▶ The strategic importance of the project to the State, region, or locality,
 - ▶ The number and quality of jobs
 - ▶ The type of industry and project
 - ▶ Any environmental impacts of the project
 - ▶ Special consideration is generally given to companies that locate in areas that have experienced sudden and severe economic disruptions
 - ▶ The project must be competitive with another state or country to be considered

STATE – ONE NC FUND GRANTS

- ▶ Purpose for which grant funds can be used are:
 - ▶ Installation or purchase of equipment
 - ▶ Structural repairs, improvements, or renovations of existing buildings to be used for an expansion.
 - ▶ Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines
 - ▶ To purchase equipment for an existing building

STATE – COMMUNITY COLLEGE TRAINING ASSISTANCE

- ▶ Very flexible program
- ▶ On the front end State Community College System provides a letter that commits to training costs of a range of money per employee (e.g. \$1500-\$1700 per employee) with a maximum total range based on the number of employees
- ▶ After the company chooses a site and is beginning to hire employees, the company and the local community college work together on the details of the training plan

STATE – COMMUNITY COLLEGE TRAINING ASSISTANCE

- ▶ Funding and in-kind assistance can take various forms, which can include some combination of the following:
 - ▶ Reimbursement of travel costs for lead employees to go to another company location to be trained in the process
 - ▶ Salaries for lead employees during periods of time that they are working exclusively to train other employees
 - ▶ Customized production of training videos
 - ▶ Provision of “off the shelf” training materials that might be available through the community college
 - ▶ Others that may be unique to a particular company.

LOCAL DEVELOPMENT ACT

BROAD AUTHORITY UNDER SUBSECTION (a)

- ▶ Subsection (a) of G.S. 158-7.1, gives local governments very broad authority to make appropriations for economic development purposes
- ▶ Appropriations can be made if the governing board determines it will “increase the population, taxable property, agricultural industries, employment, industrial output, or business projects” within the local government’s territory
- ▶ Appropriations may be funded by “Levy of property taxes...and by the allocation of other revenues whose use is not otherwise restricted by law.”
- ▶ Breadth of authority confirmed by language which says “(t)he specific activities listed in subsection (b)... are not intended to limit the grant of authority provided by this section.”

LOCAL DEVELOPMENT ACT

CALCULATION OF GRANT AMOUNT

- ▶ Typically calculated as certain percentage of future property tax collections each year for certain number of years.
- ▶ But can be based wholly or partly on other taxes or revenues created by the project such as sales taxes for retail facilities
- ▶ Can even extend to indirect or imputed economic impacts
- ▶ Typical ranges of percentage amounts and years depending on locality, and size and type of project would be from 40% to 90% of anticipated property taxes each year for up to 9 years, but can be more.
- ▶ Most local governments have qualifying factors
 - ▶ Types of industry/business
 - ▶ Size of project in terms of jobs and capital investments
 - ▶ Wage levels
 - ▶ Bound by agreement

LOCAL DEVELOPMENT ACT

GRANTS OVER NUMBER OF YEARS

- ▶ Most frequent form of grants are annual grants each year, for a stated number of years into the future
 - ▶ Performance based, paid as performance goals on jobs and capital investments are attained
 - ▶ Paid after property taxes are paid
- ▶ If performance goals on jobs and/or capital investments not met typically a decrease in one or more grant years proportional to shortfall
- ▶ If company operations cease or fall below a certain minimal level
 - ▶ Grants stop
 - ▶ May be a reimbursement requirement for prior grants

LOCAL DEVELOPMENT ACT

GRANTS UPFRONT

- ▶ Some or all grants may be paid upfront
- ▶ Not most frequent form of grants
- ▶ If paid upfront amount is calculated on anticipated future property tax collections based on company's planned capital investments
- ▶ If company fails short on projected capital investments or jobs to be created in a specific year, the company would owe a reimbursement to the local government for that year, typically proportional to the shortfall(s)
- ▶ If the company ceases operations before expected the company would owe a reimbursement to the local government, typically proportional to the number of years in operation versus number of years short of expected operations

LOCAL DEVELOPMENT ACT

SPECIFIC AUTHORITIES UNDER SUBSECTION (b)

- ▶ Subsection (b) grants local governments authority to:
 - ▶ Acquire and develop land and buildings for industrial / business recruitment and to convey property to businesses without public bid
 - ▶ Assemble and acquire land suitable for commercial or industrial use and hold for resale
 - ▶ Acquire options on property
 - ▶ Acquire construct, convey or lease a building
 - ▶ Construct utility facilities
 - ▶ Extend utility services to site or building
 - ▶ Do site preparation or building updates on property owned publicly or privately
 - ▶ Make loans or grants for historic structure rehabilitation

LOCAL DEVELOPMENT ACT

AUTHORITIES UNDER SUBSECTION (b)

- ▶ Free land or reduced cost land
- ▶ Below fair market value conveyance of buildings
- ▶ Loan payments below fair market values
- ▶ Most areas have
 - ▶ Certified industrial sites
 - ▶ Buildings –previously existing and/or shell buildings

LOCAL DEVELOPMENT ACT

APPROVAL PROCESS

- ▶ Applies to all cash grants under subsection (a) and real estate based grants under subsection (b)
- ▶ Public notice of hearing at least 10 days prior in newspaper of general circulation
- ▶ Public hearing before vote
- ▶ Majority approval
- ▶ Specified finding of local government board

OTHER INCENTIVE SOURCES

- ▶ Duke Energy
- ▶ ElectriCities and Electric cooperatives
- ▶ NC Biotechnology Center
- ▶ Some regional economic development organizations
- ▶ NC DOT road improvement grants
- ▶ Turning infrastructure grants to benefit of company
 - ▶ Elevated water tank
 - ▶ Waste water pretreatment
 - ▶ Infrastructure lines internal to site
- ▶ Building reuse grants

PRACTICAL ADVICE

DON'T LEAVE MONEY ON THE TABLE

- ▶ “But for” or competitive necessity requirement
- ▶ Timing of incentive negotiations
- ▶ Incremental growth as expansion project
- ▶ Lack of experience in incentive matters



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