**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 66 TO TITLE 12 SO AS TO ENACT THE “SOUTH CAROLINA ECONOMIC INCENTIVE TRANSPARENCY ACT OF 2011” WHICH PROVIDES THAT LEGISLATION PROVIDING AN INCENTIVE FOR A BUSINESS ENTERPRISE TO LOCATE OR EXPAND IN THIS STATE MUST BE INTRODUCED AS A SEPARATE BILL, TO PROVIDE SPECIFIC REQUIREMENTS AND PROCEDURES FOR THESE INCENTIVES AND THE APPLICABILITY OF THESE REQUIREMENTS AND PROCEDURES TO CURRENT INCENTIVES, TO PROVIDE THAT INCENTIVES ARE TO BE GRANTED AS FORGIVABLE LOANS, TO PROVIDE THE CONDITIONS THAT MUST BE MET FOR THE LOANS TO BE FORGIVEN, TO PROVIDE THE REQUIREMENTS FOR INCENTIVE APPLICATIONS, AND TO PROVIDE THAT THE BOARD OF ECONOMIC ADVISORS AND DEPARTMENT OF COMMERCE SHALL CONDUCT ANALYSES AND REVIEWS OF THESE INCENTIVES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds as follows:

(1) the government of South Carolina has increased the total annual amount of economic incentive tax credits from $35 million in 1998 to $525 million in 2008;

(2) the state government has also created special exemptions to the state sales tax which totaled $2.75 billion in 2010;

(3) the government of South Carolina has not released comprehensive information, including cost‑benefit analyses, regarding the details of these incentives;

(4) increasing tax credits and sales tax exemptions to targeted individuals, entities, and industries makes it more difficult for the government of South Carolina to reduce taxes across‑the‑board for all taxpayers; and

(5) the public has a right to know the actual economic effect of these incentives.

SECTION 2. Title 12 of the 1976 Code is amended by adding:

“CHAPTER 66

Economic Incentive Transparency Act

Section 12‑66‑100. This chapter is known and may be cited as the ‘South Carolina Economic Incentive Transparency Act of 2011’.

Section 12‑66‑110. The provisions of this chapter apply to all incentives, as defined in this chapter, provided for by law after the effective date of this chapter, and on the effective date of this chapter, all incentives provided for by law must thereafter be conformed by the General Assembly to the provisions, requirements, and procedures of this chapter to the extent possible within two years of the effective date of this chapter or they shall be deemed to have no further force and effect.

Section 12‑66‑120. For the purposes of this chapter:

(1) ‘Applicant’ means any corporation, partnership, limited liability company, sole proprietorship, individual, or other entity who applies to the department for an incentive.

(2) ‘Beneficiary’ means any corporation, sole proprietorship, or individual who receives an incentive.

(3) ‘Department’ means the South Carolina Department of Commerce.

(4) ‘Incentive’ means any tax credit, subsidy, tax exemption, loan, workforce training, or other service, grant, or property, as well as anything else that has a fair market value to a single recipient that, when combined with proposed or existing tax incentives, exceeds one hundred thousand dollars over a five‑year period, and is offered by state government to a beneficiary or sought from state government by an applicant as an inducement to locate, expand, or improve a business enterprise in South Carolina.

(5) ‘Independent economist’ means an economist not currently employed by a state or local governmental entity, excepting a public four‑year university.

Section 12‑66‑130. (A) Any legislation implementing or providing an incentive must be introduced as a separate bill separate and apart from any other matter.

(B) Any legislation implementing or providing an incentive automatically expires after five years from its effective date.

(C) All incentives must be structured as loans in which the beneficiary is entitled to have up to one hundred percent of the loan plus interest canceled if the beneficiary meets the job creation estimates in the application submitted pursuant to Section 12‑66‑150. The interest rate on these loans must be set at no less than the implicit price deflator for government prepared consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the twelve‑month period ending March thirty‑first of the previous year.

(D) A beneficiary who fails to come within ten percent of the wage and job creation estimates may be eligible in the discretion of the department for a prorated forgiveness of the loan in proportion to the wage and job estimates met, with the addition of a ten percent penalty, calculated according to the total value of the incentive, for failing to meet the wage and job estimates specified in the beneficiary’s application submitted pursuant to Section 12‑66‑150. A beneficiary who fails to meet the wage and job creation estimates is ineligible for any future incentive.

(E)(1) The Board of Economic Advisors shall conduct an economic analysis on the impact of any proposed incentive to a beneficiary. This analysis must be posted on the board’s website for public viewing at the same time public notice is given in accordance with Section 12‑66‑140.

(2) The Department of Commerce shall have a separate review of any proposed incentive conducted by an independent economist not employed by any state agency. This review must be posted on the department’s website for public viewing at the same time public notice is given in accordance with Section 12‑66‑140.

(3) The costs of the analyses and reviews must be assessed to and paid by the applicant.

(4) The analyses and reviews must include the:

(a) estimated number of full‑time, part‑time, and temporary jobs created for existing South Carolina residents, and the salary ranges for those jobs;

(b) estimated number of new non‑South Carolina residents that will be employed in a full‑time, part‑time, or temporary capacity, and the salary ranges for those jobs;

(c) number of jobs lost for existing employees due to relocation or expansion of the recipient business, if the recipient is already located in South Carolina;

(d) estimated impact on existing South Carolina businesses including, but not limited to, competitors in the same industry;

(e) estimated impact on the local job market and wages;

(f) estimated impact on state and local tax revenue, including unemployment and other public assistance programs;

(g) estimated per capita benefit for state and local taxpayers;

(h) estimated impact on private investment displaced by public investment; and

(i) ratio of public spending to each job created.

(F) An incentive must not be awarded if the cost for each job exceeds the average per capita income in South Carolina. The cost of each job must be determined by dividing the amount of the incentive by the number of full‑time and pro‑rated part‑time jobs created or maintained.

(G) The grantor of an incentive is deemed to be the Department of Commerce, which must approve the granting of an incentive provided by law to a particular applicant before the incentive shall be applicable to that applicant.

Section 12‑66‑140. Before approving an agreement for an incentive, the grantor of the incentive shall provide public notice and a hearing. The public notice must be posted on the Department of Commerce website and provided to the general media through email. The notice must identify the date, time and location of the hearing, and location at which information about the incentive is available. The grantor must provide at least a five‑day notice for the public hearing.

Section 12‑66‑150. (A) An applicant seeking an incentive must submit a written application that must be made available through the Department of Commerce website. Once the application is received and made publicly available by the State, there must be a waiting period of thirty days, during which time a public hearing on the incentive must occur. No bill or other legislation in regard to an incentive may be introduced in the General Assembly until this application process has been completed and, if so, is deemed out of order, and state agencies and public officials are expressly prohibited from making any representations to an applicant in regard to the likelihood of an incentive not then authorized by state law being approved by the General Assembly.

(B) The application must include:

(1) the name, address, phone number and website of the applicant;

(2) the street address of the project site;

(3) the three digit North American Industry Classification System number of the project site;

(4) the number of full‑time, part‑time, and temporary positions, and the salary ranges for these positions;

(5) the total number of individuals employed in South Carolina by the applicant in the prior fiscal year, categorized by full‑time, part‑time, and temporary positions, and the salary range for these positions;

(6) the value of each incentive;

(7) a statement of the public purpose of the incentive that includes measurable, specific, and tangible job creation and investment goals;

(8) a statement of why the incentive is needed;

(9) the number of new jobs to be created by the applicant at the project site, categorized by full‑time, part‑time, and temporary positions, and the salary range for these positions;

(10) the average hourly wage to all current and future employees at the site, categorized by full‑time, part‑time, temporary positions, and hourly wage;

(11) the specific time frames during which job creation and wage targets will be reached;

(12) a list of each incentive applied for, and the name of any other granting body from which the incentive is sought; and

(13) an impact statement regarding the potential impact the incentive will have on employment in the State, including, but not limited to, potential sources of labor, impact on employment, and wage levels in surrounding localities.

Section 12‑66‑160. A beneficiary receiving an incentive shall submit an annual report to the Department of Revenue that includes a summary of jobs required, created, and lost, categorized by full‑time, part‑time, temporary positions, and hourly wage. The summary report must include a statement of how the incentive was used and whether it was effective for the beneficiary. The report must be made available to the public via the department’s website.

The Department of Revenue shall review the report and determine if the provisions of the incentive have been adequately met and take steps to enforce any contracts that are in default.

Section 12‑66‑170. (A) The Department of Revenue, with assistance from the Department of Commerce, shall submit an annual unified economic development budget report containing:

(1) all state appropriated expenditures for economic development;

(2) all uncollected state and local tax revenues resulting from incentives provided by the state government including, but not limited to, gross receipts, income, sales, use, raw materials, excise, property, utility, and inventory taxes; and

(3) the name of each entity that received any incentive, along with the total amount received.

(B) The report must be sent to the General Assembly and the Governor, and must be maintained by the Department of Revenue in a conspicuous location on its website.”

SECTION 3. This act takes effect upon approval by the Governor.

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