
Coates' Canons Blog: NC Local Governments, Meet Your New State Partner for Economic Development

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Article: <https://canons.sog.unc.edu/nc-local-governments-meet-your-new-state-partner-for-economic-development/>

This entry was posted on September 16, 2014 and is filed under Community & Economic Development, Economic Development

North Carolina local governments have a new partner in their economic development efforts. Session Law 2014-18 authorizes the North Carolina Department of Commerce to enter into a contract with a nonprofit entity in order to carry out many of the Department's economic development recruiting and marketing functions for the state. The nonprofit entity has already been incorporated and dubbed the Economic Development Partnership of North Carolina. In order to assist local governments with understanding their new economic development partner, this post describes the enabling legislation and some of the significant requirements imposed on the entity.

Session Law 2014-18 enacts new G.S. 143B-431A, which sets forth parameters for the Department of Commerce ("Commerce") to follow in contracting with a nonprofit entity ("contracted entity") to carry out several of the department's economic development functions. Those parameters are broken down in this post into the following categories: contracted functions, private funding, oversight and governance, and mandatory reporting. Each will be described in turn.

Contracted Functions

General Statute (G.S.) 143B-431 lists the functions of Commerce, which include "all of the executive functions of the State in relation to economic development and employment security, including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the administration of unemployment insurance, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, and energy resource management and energy policy development," among others.

New G.S. 143B-431A authorizes the department to contract with a nonprofit entity for carrying out many of those listed functions, but media reports have focused on the economic development *recruiting and marketing functions* of Commerce. The legislation does not transfer all functions—it specifically prohibits Commerce from assigning the following functions to the contracted entity:

1. Commerce may not contract with the nonprofit for the administration of any funds received from the federal government.
2. Commerce may not delegate its responsibility to obligate or commit Commerce funds provided under Article 10 of G.S. Chapter 143B, to include state economic development incentives such as the One North Carolina Fund, the Job Development Investment Grant (JDIG) Program, the Industrial Development Fund, and the Job Maintenance and Capital Development Fund.
3. Commerce may not contract for the functions of the Division of Employment Security or authorities it controls pursuant to G.S. 143B-431(a)(2), such as the State Board of Alcoholic Control, the Utilities Commission, the North Carolina Industrial Commission, the Commissioner of Banks, and the Rural Electrification Authority.

Private (and Local Government?) Funding

One of the selling points for moving some Commerce functions to a contracted entity was the possibility of conducting private fundraising to support those functions. The Commerce Secretary has stated that the primary target of fundraising efforts will be corporate. The underlying assumption is that large corporations with a vested interest in regional economic development—e.g., energy companies—may be willing to contribute funding for the contracted entity's operations.

To this end, the legislation includes a requirement for the contracted entity to raise money from "sources other than State

funds.” Before Commerce can enter into a contract with the entity, at least \$250,000 in “other than State funds” must have been raised. The entity is then required to raise an additional \$750,000 in the first year of its five-year contract and \$1.25 million in each of the remaining four years of its contract. Perhaps these goals will motivate the contracted entity to engage in private fundraising, but the legislation does not specify the consequences for a failure to reach the statutory fundraising goals.

Local governments should be aware of another possible consequence of these fundraising goals. While the Commerce Secretary has indicated an intent to raise funds from private sources, the legislation does not actually restrict fundraising to private sources. Rather, the requirement specifies only that the funds shall come from “sources other than State funds.” This could create an appetite for *local government* contributions. Are local governments already anticipating this funding model? One county recently withdrew funding from its regional economic development partnership with the stated intent of using the funds to align more closely with the new contracted entity. Regardless of whether or not that decision was influenced by the contracted entity’s funding model, the legislation does not prohibit the contracted entity from asking local governments to contribute funds. It is too early to tell whether the entity’s level of effort in recruiting and marketing for a particular area will be influenced by the amount of funds provided by local governments and other development partners in that area. Presumably, the governance of the contracted entity, discussed in the next section, will prevent wealthier areas of the state from wielding too much influence over the new entity.

Oversight and Governance

Oversight of the contracted entity will be conducted by Commerce and by a new Economic Development Accountability & Standards Committee. The new committee, which is required to meet quarterly, has seven members: the Secretary of Commerce (Chair), three other agency secretaries, and three representatives appointed by the House and Senate.

The contracted entity itself is required to have 17 voting members on its board of directors. Nine (including the Chair) are appointed by the Governor, four are appointed by the House, and four are appointed by the Senate. The appointments are to reflect “best efforts” to obtain members representing key industry expertise and the state’s geographic diversity, and the appointments must include a certain number of directors from relatively more distressed Tier 1 and Tier 2 counties. In addition, the board membership must reflect some diversity across a new regional zone system called “Collaboration for Prosperity Zones.” This zone system was enacted as part of Session Law 2014-18 through a new statute, G.S. 143B-28.1, which assigns each county to one of eight zones and directs the Departments of Commerce, Environment and Natural Resources, and Transportation to co-locate a representative in each zone in order to coordinate “with the other departments and with local governments, schools and colleges, planning and development bodies, and businesses in that zone.” The county zone assignments are listed at the end of this post.

To address concerns raised about ethical issues at similar nonprofit entities in other states, Commerce is directed to require, as part of its contract, that the entity adopt and publish a conflict of interest policy and a gift policy. G.S. 143B-431A provides significant detail about the required policies. In general, gifts are not permitted, and any gifts or conflicts must be disclosed in accordance with the statute. Private companies are permitted to make gifts of travel and entertainment expenses to employees of the contracted entity, provided the travel is associated with recruitment or marketing activities and the gifts are fully disclosed.

The nonprofit is permitted to engage in lobbying activities, provided the limits imposed on charitable organizations by Section 501(c)(3) of the Internal Revenue Code are respected. Generally, lobbying cannot be a substantial part of the activities of a 501(c)(3) organization.

The legislation explicitly subjects the contracted entity to North Carolina public records and open meetings laws, though the entity likely would have been subject to those transparency laws anyway (see Frayda Bluestein’s blog post, *When Do Government Transparency Laws Apply to Private Entities?*). The legislation, as modified by Section 56.1 of the technical corrections bill (S.L. 2014-115), also creates special rules for Commerce and the contracted entity in North Carolina’s Public Records Law, specifically G.S. 132-6(d). The special rules include a provision prohibiting the release of most public records about a project if the project is not awarded state discretionary incentives. For a recent example, public records were released in August showing that Toyota selected Texas as the location of its next facility, even though North Carolina offered more cash incentives. Had the new public records rule been operative, the size and composition of North Carolina’s incentive offer to Toyota would not have been revealed.

Mandatory Reporting

Each year, the contracted entity must provide an annual report about its performance to Commerce. The report must include all “jobs anticipated to result” from the efforts of the entity, regardless of whether or not state economic development incentives were requested or received. The contracted entity must develop performance metrics and report those metrics by (1) development tier designation as defined by G.S. 143B-437.08 and (2) “Collaboration for Prosperity Zone” as defined by G.S. 143B-28.1 (and listed at the end of this post).

With respect to employees of the contracted entity, the report must provide a “detailed explanation” of how salaries and bonuses were determined and the amount of private and public funding for each position. At least 25% of any “funds raised from sources other than State funds [such as from local governments or private businesses] shall be used for the benefit of or for salaried positions located in or working solely on development in development tier one or two areas.”

The nonprofit must also provide audited financials each year. Public and private funds may not be commingled, and no funds of the nonprofit may be used to award grants of any kind.

To understand how the oversight and reporting requirements enacted in Session Law 2014-18 relate to experiences with public-private partnerships for economic development in other states, see Jonathan Morgan’s post on the School of Government Community and Economic Development blog: *The Promise and Perils of Privatizing State Economic Development Agencies*.

Collaboration for Prosperity Zones

As noted above, the General Assembly created new “Collaboration for Prosperity Zones” and assigned each county to a zone. The assignments appear in G.S. 143B-28.1 as follows:

“(1) Western Region, consisting of Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Rutherford, Swain, and Transylvania Counties.

(2) Northwest Region, consisting of Alleghany, Ashe, Alexander, Avery, Burke, Caldwell, Catawba, McDowell, Mitchell, Watauga, Wilkes, and Yancey Counties.

(3) Southwest Region, consisting of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union Counties.

(4) Piedmont-Triad (Central) Region, consisting of Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties.

(5) North Central Region, consisting of Chatham, Durham, Edgecombe, Franklin, Granville, Harnett, Johnston, Lee, Nash, Orange, Person, Vance, Wake, Warren, and Wilson Counties.

(6) Sandhills (South Central) Region, consisting of Bladen, Columbus, Cumberland, Hoke, Montgomery, Moore, Richmond, Robeson, Sampson, and Scotland Counties.

(7) Northeast Region, consisting of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington Counties.

(8) Southeast Region, consisting of Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, and Wayne Counties.”

*This post was previously published on the School of Government blog, *Community and Economic Development in North Carolina and Beyond*.*



Links

- www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H1031v6.pdf
- www.bizjournals.com/triad/news/2014/05/06/decker-all-pieces-in-place-for-n-c-commerce.html?ana=e_du_pub&s=article_du&ed=2014-05-06&u=o0GEpa%2FjJYSWh7V9KPDTmeTHVVz&t=1399427902
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