**South Carolina General Assembly**

118th Session, 2009-2010

**S. 1229**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Davis, Mulvaney, Shoopman, Campsen, Bryant, Rose, Verdin and Bright

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Introduced in the Senate on February 25, 2010

Currently residing in the Senate Committee on **Finance**

Summary: Economic Incentive Transparency Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/25/2010 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2010\02-25-10.docx)‑10

2/25/2010 Senate Referred to Committee on **Finance** [SJ](file:///h:\SJ%20Archive\2010\02-25-10.docx)‑10

**VERSIONS OF THIS BILL**

[2/25/2010](file:///p:\pprever\2009-10\1229_20100225.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 66 TO TITLE 12 SO AS TO PROVIDE THAT LEGISLATION PROVIDING TAX INCENTIVES OR SUBSIDIES MUST BE INTRODUCED IN SEPARATE BILLS AND IS SUBJECT TO A RECORDED VOTE, TO PROVIDE THAT TAX INCENTIVES AND SUBSIDIES 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 TAX INCENTIVE AND SUBSIDY APPLICATIONS, TO PROVIDE THAT THE BOARD OF ECONOMIC ADVISORS AND DEPARTMENT OF COMMERCE SHALL CONDUCT ANALYSES AND REVIEWS OF TAX INCENTIVES AND SUBSIDIES; AND TO AMEND SECTION 30‑4‑40, RELATING TO MATTERS EXEMPT FROM DISCLOSURE PURSUANT TO THE FREEDOM OF INFORMATION ACT, SO AS TO PROVIDE THAT CERTAIN EXEMPTIONS ARE SUBJECT TO DISCLOSURE AS REQUIRED BY CHAPTER 66, TITLE 12.

Whereas, the government of South Carolina has increased state incentives spending from $34 million in 1994 to $250 million in 2007; and

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

Whereas, the public has a right to know how their tax dollars are spent. Now, therefore,

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

SECTION 1. Title 12 of the 1976 Code is amended by adding:

“CHAPTER 66

The Economic Incentive Transparency Act

Section 12‑66‑100. The provisions of this chapter apply to tax incentives and business subsidies provided for by law after the effective date of this chapter, and on the effective date of this chapter, all tax incentives and business subsidies provided for by law must meet the requirements and procedures of this chapter.

Section 12-66-110. For the purposes of this chapter, the following words, phrases, and terms are defined as follows:

(1) ‘Taxpayer’ means any corporation, sole proprietorship or individual who applies to the department for any tax incentives.

(2) ‘Department’ refers to the South Carolina Department of Commerce.

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

Section 12‑66‑120. (A) Any legislation implementing or providing a targeted tax incentive must be introduced as a separate bill separate and apart from any other tax incentives or business subsidies. A recorded vote shall be required for second and third reading of the bill. A bill implementing or providing a targeted tax incentive must appear on the calendar at least five days before it may be considered for a second reading.

(B) Any legislation implementing or providing a targeted tax incentive shall automatically expire after five years unless it is extended by the General Assembly. A cost‑benefit analysis provided by the State Budget and Control Board’s Board of Economic Advisors and concurrently conducted by an independent economist must accompany any legislation extending a tax incentive beyond five years.

(C) All tax incentives available to businesses shall be structured as loans in which the taxpayer is entitled to have up to one hundred percent of the loan plus interest canceled if the taxpayer meets the job creation estimates in the recipient’s application submitted pursuant to Section 12‑66‑150. The interest rate on such 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) After a public notice and hearing held pursuant to Section 12‑66‑140, the grantor of the incentive or its appropriate entity administering the incentive may extend the period for meeting the wage and job creation goals provided in the incentive agreement by up to one hundred and eighty days. After this one hundred and eighty day extension, a recipient who fails to meet the wage and job creation estimates may be eligible 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 recipient’s application submitted pursuant to Section 12‑66‑150. A recipient who fails to meet the wage and job creation estimates shall be ineligible for any future tax incentives.

Section 12‑66‑130. (A) Any legislation implementing or providing a business subsidy must be introduced as a separate bill separate and apart from any other tax incentives or business subsidies. A recorded vote shall be required for second and third reading of a bill implementing or providing a business subsidy. A bill implementing or providing a business subsidy must appear on the calendar at least five days before it may be considered for a second reading

(B)(1) All subsidies available to businesses through grants, loans, or economic bonds shall be structured as loans in which the subsidy recipient is entitled to have up to one hundred percent of the loan plus interest canceled if the recipient meets the wage and job creation estimates in the recipient’s application submitted pursuant to Section 12‑66‑150.

(2) The interest rate on such 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.

(C) After a public notice and hearing held pursuant to Section 12‑66‑140, the subsidy grantor or its appropriate entity administering the subsidy may extend the period for meeting the wage and job creation goals provided in the incentive agreement by up to one hundred and eighty days. After this one hundred and eighty day extension, a recipient who fails to meet the wage and job creation estimates may be eligible 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 recipient’s application submitted pursuant to Section 12‑66‑150. A recipient who fails to meet the wage and job creation estimates shall be ineligible for any future business subsidies.

(D) All business subsidy agreements must state the fair market value of the subsidy, including subsidies in which property is conveyed to the recipient at less than fair‑market value.

(E)(1) The Board of Economic Advisors shall conduct an economic analysis on the impact of any proposed state or local subsidy to a single recipient that exceeds one hundred thousand dollars over a five year period. The board shall conduct an economic analysis on the impact of any proposed state or local subsidy to a single recipient that, when combined with proposed or existing tax incentives, exceeds one hundred thousand dollars over a five year period. This analysis shall 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 conducted by an economist not employed by any state agency, except a four‑year university. This review shall 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 analysis and review shall be assessed to the subsidy applicant.

(4) The analysis and review shall include:

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

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

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

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

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

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

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

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

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

(G) The grantor or entity administering a state tax incentive or business subsidy is deemed to be the State Budget and Control Board.

Section 12‑66‑140. Before approving a tax incentive agreement or subsidy agreement that exceeds one hundred thousand dollars, the grantor of the tax incentive or subsidy must provide public notice and a hearing. The public notice shall 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 subsidy is available. The grantor must provide at least a five day notice for the public hearing.

Section 12‑66‑150. (A) Any business seeking a state or local tax incentive or subsidy exceeding one hundred thousand dollars over a five‑year period must submit a written application that must be made available through the Department of Commerce website. Any business seeking a state or local subsidy that, when combined with applicable tax credits, exceeds one hundred thousand dollars over five years 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 or pertinent locality, there shall be a waiting period of thirty days, during which time a public hearing on the incentives or subsidies shall occur.

(B) The application shall include:

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

(2) the street address of the project site;

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

(4) the total number of individuals employed by the applicant at the project site, categorized by full‑time, part‑time, and temporary 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;

(6) the tax incentive, subsidy or subsidies being applied for with the state or locality, and the value of each tax incentive and subsidy;

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

(8) a statement of why the tax incentive or subsidy 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;

(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 all tax incentives and subsidies applied for, and the name of any other granting body from which tax incentives or subsidies are sought; and

(13) an impact statement regarding the potential impact the tax incentive or subsidy 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. Any business receiving a tax incentive or subsidy 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 shall include a statement of how the subsidy was used and whether it was effective for the recipient. The report shall 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 subsidy 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 and local appropriated expenditures for economic development;

(2) all uncollected state and local tax revenues resulting from every corporate tax credit, abatement, exemption, and reduction provided by the state or local governments, 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 tax credit, abatement, exemption, or other money, along with the total amount received.

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

Section 12‑66‑180. Any new fee‑in‑lieu of property tax provisions of law are exempt from the provisions of this chapter.”

SECTION 2. Section 30‑4‑40 of the 1976 Code, as last amended by Act 380 of 2006, is further amended to read:

“Section 30‑4‑40.(~~a~~A) A public body must exempt from disclosure the following information:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person‑to‑person commercial solicitation of handicapped persons solely by virtue of their handicap. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

(3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

(~~A~~a) disclosing identity of informants not otherwise known;

(~~B~~b) the premature release of information to be used in a prospective law enforcement action;

(~~C~~c) disclosing investigatory techniques not otherwise known outside the government;

(~~D~~d) by endangering the life, health, or property of any person; or

(~~E~~e) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.

(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property; however:

(a) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;

(b) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;

(c) confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed, except as provided by Chapter 66, Title 12.

(6) All compensation paid by public bodies except as follows:

(~~A~~a) For those persons receiving compensation of fifty thousand dollars or more annually, for all part‑time employees, for any other persons who are paid honoraria or other compensation for special appearances, performances, or the like, and for employees at the level of agency or department head, the exact compensation of each person or employee;

(~~B~~b) For classified and unclassified employees, including contract instructional employees, not subject to item ~~(A)~~(a) above who receive compensation between, but not including, thirty thousand dollars and fifty thousand dollars annually, the compensation level within a range of four thousand dollars, such ranges to commence at thirty thousand dollars and increase in increments of four thousand dollars;

(~~C~~c) For classified employees not subject to item ~~(A)~~(a) above who receive compensation of thirty thousand dollars or less annually, the salary schedule showing the compensation range for that classification including longevity steps, where applicable;

(~~D~~d) For unclassified employees, including contract instructional employees, not subject to item ~~(A)~~(a) above who receive compensation of thirty thousand dollars or less annually, the compensation level within a range of four thousand dollars, such ranges to commence at two thousand dollars and increase in increments of four thousand dollars.

(~~E~~e) For purposes of this subsection (6), ‘agency head’ or ‘department head’ means any person who has authority and responsibility for any department of any institution, board, commission, council, division, bureau, center, school, hospital, or other facility that is a unit of a public body.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney‑client relationships.

(8) Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

(9)(a) Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body to attract business or industry to invest within South Carolina; however, an incentive agreement made with an industry or business:

~~(1)~~(i) requiring the expenditure of public funds or the transfer of anything of value;

~~(2)~~(ii) reducing the rate or altering the method of taxation of the business or industry, or

~~(3)~~(iii) otherwise impacting the offer or fiscally, is not exempt from disclosure after

: (~~a)~~(aa) the offer to attract an industry or business to invest or locate in the offeror’s jurisdiction is accepted by the industry or business to whom the offer was made; and

(~~b~~)(bb) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

(b) Once an offer is accepted, the recipient also must adhere to the reporting requirements specified in Chapter 66, Title 12.

(10) Any standards used or to be used by the South Carolina Department of Revenue for the selection of returns for examination, or data used or to be used for determining such standards, if the commission determines that such disclosure would seriously impair assessment, collection, or enforcement under the tax laws of this State.

(11) Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. For the purposes of this item, ‘gift to a public body’ includes, but is not limited to, gifts to any of the state‑supported colleges or universities and museums. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure.

(12) Records are exempt pursuant to Sections 9‑16‑80(B) and 9‑16‑320(D).

(13) All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item ‘materials relating to not fewer than the final three applicants’ do not include an applicant’s income tax returns, medical records, social security number, or information otherwise exempt from disclosure by this section.

(14)(~~A~~a) data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data, records, or information has not been publicly released, published, copyrighted, or patented, except as provided by Chapter 66, Title 12.

(~~B~~b) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education or any public or private entity supporting or participating in the activities of a state institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until the information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This item applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative works.

(~~C~~c) The exemptions in this item do not extend to the institution’s financial or administrative records.

(15) The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a state regulatory agency.

(16) Records are exempt pursuant to Sections 59‑153‑80(B) and 59‑153‑320(D).

(17) Structural bridge plans or designs unless~~:~~  ~~(a)~~ the release is necessary for procurement purposes; or ~~(b)~~ the plans or designs are the subject of a negligence action, an action set forth in Section 15‑3‑530, or an action brought pursuant to Chapter 78, Title 15, and the request is made pursuant to a judicial order.

(18) Photographs, videos, and other visual images, and audio recordings of and related to the performance of an autopsy, except that the photographs, videos, images, or recordings may be viewed and used by the persons identified in Section 17‑5‑535 for the purposes contemplated or provided for in that section.

(19) Private investment and other proprietary financial data provided to the Venture Capital Authority by a designated investor group or an investor as those terms are defined by Section 11‑45‑30.

(~~b~~B) If any public record contains material which is not exempt under subsection ~~(a)~~(A) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

(~~c~~C) Information identified in accordance with the provisions of Section 30‑4‑45 is exempt from disclosure except as provided therein and pursuant to regulations promulgated in accordance with this chapter. Sections 30‑4‑30, 30‑4‑50, and 30‑4‑100 notwithstanding, no custodian of information subject to the provisions of Section 30‑4‑45 shall release the information except as provided therein and pursuant to regulations promulgated in accordance with this chapter.

(~~d~~D) A public body may not disclose a ‘privileged communication’, ‘protected information’, or a ‘protected identity’, as defined in Section 23‑50‑15 pursuant to a request under the South Carolina Freedom of Information Act. These matters may only be disclosed pursuant to the procedures set forth in Section 23‑50‑45.”

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

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