**South Carolina General Assembly**

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**S. 134**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Davis, Campsen, Bryant and Sheheen

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Introduced in the Senate on January 13, 2015

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

12/3/2014 Senate Prefiled

12/3/2014 Senate Referred to Committee on **Finance**

1/13/2015 Senate Introduced and read first time ([Senate Journal‑page 93](file:///h:\SJ%20Archive\2015\01-13-15.docx))

1/13/2015 Senate Referred to Committee on **Finance** ([Senate Journal‑page 93](file:///h:\SJ%20Archive\2015\01-13-15.docx))

2/5/2015 Scrivener's error corrected

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=134&session=121&summary=B) at the website

**VERSIONS OF THIS BILL**

[12/3/2014](file:///p:\pprever\2015-16\134_20141203.docx)

[2/5/2015](file:///p:\pprever\2015-16\134_20150205.docx)

**A** **BILL**

TO AMEND TITLE 12 OF THE 1976 CODE OF LAWS, BY ADDING CHAPTER 66, TO PROVIDE THAT LEGISLATION PROVIDING TARGETED 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 TARGETED TAX INCENTIVE AND SUBSIDY APPLICATIONS; TO PROVIDE THAT THE BOARD OF ECONOMIC ADVISORS AND DEPARTMENT OF COMMERCE SHALL CONDUCT ANALYSES AND REVIEWS OF TARGETED TAX INCENTIVES AND SUBSIDIES; TO PROVIDE THAT A RECIPIENT BUSINESS OF A TARGETED TAX INCENTIVE OR A BUSINESS SUBSIDY IS PROHIBITED FROM MAKING CAMPAIGN CONTRIBUTIONS TO ANY CANDIDATE FOR NOMINATION OR ELECTION TO ANY PUBLIC OFFICE IN SOUTH CAROLINA, OR TO ANY POLITICAL PARTY COMMITTEE OR LEGISLATIVE LEADERSHIP COMMITTEE IN SOUTH CAROLINA, OR TO ANY GROUP, COMMITTEE, OR POLITICAL PARTY OTHER THAN THE INDIVIDUAL’S OWN CAMPAIGN; TO PROVIDE FOR PENALTIES FOR VIOLATING THE CAMPAIGN CONTRIBUTION PROHIBITION; AND BY AMENDING SECTION 30‑4‑40 OF THE 1976 CODE, RELATING TO MATTERS EXEMPT FROM DISCLOSURE PURSUANT TO THE FREEDOM OF INFORMATION ACT, TO PROVIDE THAT CERTAIN EXEMPTIONS ARE SUBJECT TO DISCLOSURE AS REQUIRED BY CHAPTER 66, TITLE 12 OF THE 1976 CODE OF LAWS.

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. (A) Any legislation implementing or providing a targeted tax incentive must be introduced as a separate bill. 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 be repealed after five years unless it is extended by the General Assembly. A cost‑benefit analysis provided by the Revenue and Fiscal Affairs Office and verified by an independent economist must accompany any legislation extending a tax incentive beyond five years.

(C)(1) 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 12‑66‑120. After a public hearing held pursuant to section 12‑66‑110, the subsidy grantor may extend the period for meeting the wage and job creation goals provided in the incentive agreement by up to one hundred eighty days. A recipient who fails to meet the wage and job creation estimates may not receive any future tax incentives.

(2) The interest rate 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) 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 Revenue and Fiscal Affairs Office 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.

(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.

(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.

Section 12‑66‑110. 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 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 12‑66‑120. 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 will be made available through the Department of Commerce’s 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 will be made available through the Department of Commerce’s website. Once the application is received and made publicly available by the state or appropriate locality, there shall be a waiting period of thirty days, during which time a public hearing on the subsidies shall occur. 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 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 and temporary positions, and hourly wage;

(11) 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 12‑66‑130. 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, and 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.

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 12‑66‑140. (A) 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 its website.

Section 12‑66‑150. (A) For the purposes of this section ‘recipient business’ means any non‑governmental person, business, corporation, association, operation, firm, partnership, trust, or other form of business association or other business entity during one or more calendar years in which the business receives a subsidy, a targeted tax incentive, or any benefit thereof.

(B) A recipient business, or any holding, affiliate, or subsidiary company, or any officer, director, key employee, or principal employee of a recipient business or of any holding, affiliate, or subsidiary company, or any person or agent on behalf of the recipient business, holding, affiliate, or subsidiary company, shall not directly or indirectly, pay or contribute any money or thing of value to any candidate for any public office in South Carolina, or to any state or local political party committee or state or local legislative leadership committee, or to any group, committee, or association organized in support of that candidate or political party, except that the provisions of this section shall not be construed to prohibit any individual who is a candidate for public office from contributing to the individual’s own campaign.

(C) Any recipient business or any candidate for public office in South Carolina who is determined by the State Election Commission to have willfully and intentionally made, caused to be made, accepted, or solicited a political contribution prohibited by subsection (B) is guilty of a misdemeanor and, upon conviction must be fined not more than five hundred percent of the amount of the contributions or anything of value but not less than five thousand dollars or imprisoned for not more than one year, or both.

(D) A recipient business which is determined by the State Election Commission to have willfully and intentionally made a contribution or failed to reveal a contribution prohibited by subsection (B) may be liable to a penalty of up to the value of its subsidy or targeted tax incentive, may be ineligible for any remaining amount of the subsidy or targeted tax incentive, and may be prohibited by the State Treasurer from receiving a subsidy or a targeted tax incentive for up to five years from the date of the violation.”

SECTION 2. A. Section 30‑4‑40(a)(5)(c) of the 1976 Code is amended to read:

“(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.”

B. Section 30‑4‑40(9) of the 1976 Code is amended to read:

“(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) requiring the expenditure of public funds or the transfer of anything of value, (2) reducing the rate or altering the method of taxation of the business or industry, or (3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:

~~(a)~~(1) 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)~~(2) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

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

C. Section 30‑4‑40(14)(A) of the 1976 Code is amended to read:

“(14)(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.”

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

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