

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1761\*  
Committee Substitute Favorable 7/25/07

Short Title: Job Maintenance and Capital Development Fund. (Public)

Sponsors:

Referred to:

April 19, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE THE JOB MAINTENANCE AND CAPITAL  
3 DEVELOPMENT FUND.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is  
6 amended by adding a new section to read:

7 **"§ 143B-437.11. Job Maintenance and Capital Development Fund.**

8 (a) Findings. – The General Assembly finds that:

9 (1) It is the policy of the State of North Carolina to stimulate economic  
10 activity, to maintain high-paying jobs for the citizens of the State, and  
11 to encourage capital investment by encouraging and promoting the  
12 maintenance of existing business and industry within the State.

13 (2) The economic condition of the State is not static, and recent changes in  
14 the State's economic condition have created economic distress that  
15 requires the enactment of a new program as provided in this section  
16 that is designed to encourage the retention of significant numbers of  
17 high-paying jobs and the addition of further large-scale capital  
18 investment.

19 (3) The enactment of this section is necessary to stimulate the economy  
20 and maintain high-quality jobs in North Carolina, and this section will  
21 promote the general welfare and confer, as its primary purpose and  
22 effect, benefits on citizens throughout the State through the  
23 maintenance of high-quality jobs, an enlargement of the overall tax  
24 base, continued diversity in the State's industrial base, and an increase  
25 in revenue to the State's political subdivisions.

26 (4) The purpose of this section is to stimulate economic activity and to  
27 maintain high-paying jobs within the State while increasing the  
28 property tax base for local governments.

1       **(b) Fund.** – The Job Maintenance and Capital Development Fund is created as a  
2 restricted reserve in the Department of Commerce. Monies in the Fund do not revert but  
3 remain available to the Department for these purposes. The Department may use monies  
4 in the Fund only to encourage businesses to maintain high-paying jobs and make further  
5 capital investments in the State as provided in this section.

6       **(c) Definitions.** – The definitions in G.S. 143B-437.51 apply in this section. In  
7 addition, as used in this section, the term 'Department' means the Department of  
8 Commerce.

9       **(d) Eligibility.** – A business that satisfies all of the following conditions is  
10 eligible for consideration for a grant under this section:

11           **(1)** The Department certifies that the business intends to invest at least two  
12 hundred million dollars (\$200,000,000) of private funds in the project  
13 within a five-year period in improvements to real property and  
14 additions to tangible personal property used in the business.

15           **(2)** The project employs at least 2,400 full-time employees at the  
16 establishment that is the subject of the grant at the time the application  
17 is made, and the business agrees to maintain at least 2,400 full-time  
18 employees at the establishment for the full term of the grant  
19 agreement.

20           **(3)** The project is located in a development tier one area at the time the  
21 business applies for a grant.

22       **(e) Health Insurance.** – A business is eligible for consideration for a grant under  
23 this section only if the business provides health insurance for all of the full-time  
24 employees of the project with respect to which the application is made. For the purposes  
25 of this subsection, a business provides health insurance if it pays at least fifty percent  
26 (50%) of the premiums for health care coverage that equals or exceeds the minimum  
27 provisions of the basic health care plan of coverage under G.S. 58-50-125.

28       Each year that a grant agreement under this section is in effect, the business shall  
29 provide the Department a certification that the business continues to provide health  
30 insurance for all full-time employees of the project governed by the agreement. Failure  
31 of the business to satisfy the requirements of this subsection shall result in recapture of a  
32 portion of the grant proceeds as provided in the grant agreement.

33       **(f) Safety and Health Programs.** – A business is eligible for consideration for a  
34 grant under this section only if the business has no citations under the Occupational  
35 Safety and Health Act that have become a final order within the last three years for  
36 willful serious violations or for failing to abate serious violations with respect to the  
37 location for which the grant is made. For the purposes of this subsection, 'serious  
38 violation' has the same meaning as in G.S. 95-127.

39       **(g) Environmental Impact.** – A business is eligible for consideration for a grant  
40 under this section only if the business has no pending administrative, civil, or criminal  
41 enforcement action based on alleged significant violations of any program implemented  
42 by an agency of the Department of Environment and Natural Resources, and has had no  
43 final determination of responsibility for any significant administrative, civil, or criminal  
44 violation of any program implemented by an agency of the Department of Environment

1 and Natural Resources within the last three years with respect to the location for which  
2 the grant is made. For the purposes of this subsection, a significant violation is a  
3 violation or alleged violation that does not satisfy any of the conditions of  
4 G.S. 143-215.6B(d).

5 (h) Selection. – The Department shall administer the selection of projects to  
6 receive grants under this section. The selection process shall include the following  
7 components:

8 (1) Criteria. – The Department shall develop criteria to be used to identify  
9 and evaluate eligible projects for possible grants under this section.

10 (2) Initial evaluation. – The Department shall evaluate projects to  
11 determine if a grant under this section is merited and to determine  
12 whether the project is eligible and appropriate for consideration for a  
13 grant under this section.

14 (3) Application. – The Department shall require a business to submit an  
15 application in order for a project to be considered for a grant under this  
16 section. The Department shall prescribe the form of the application,  
17 the application process, and the information to be provided, including  
18 all information necessary to evaluate the project in accordance with the  
19 applicable criteria.

20 (4) Committee. – The Department shall submit to the Economic  
21 Investment Committee the applications for projects the Department  
22 considers eligible and appropriate for a grant under this section. The  
23 Committee shall evaluate applications to choose projects to receive a  
24 grant under this section. In evaluating each application, the Committee  
25 shall consider all criteria adopted by the Department under this section  
26 and, to the extent applicable, the factors set out in Section 2.1(b) of  
27 S.L. 2002-172.

28 (5) Findings. – The Committee shall make all of the following findings  
29 before recommending a project receive a grant under this section:

30 a. The conditions for eligibility have been met.

31 b. A grant under this section for the project is necessary to carry  
32 out the public purposes provided in subsection (a) of this  
33 section.

34 c. The project is consistent with the economic development goals  
35 of the State and of the area where it is located.

36 d. The affected local governments have participated in retention  
37 efforts and offered incentives in a manner appropriate to the  
38 project.

39 e. A grant under this section is necessary for the sustainability and  
40 maintenance of the project in this State.

41 (6) Recommendations. – If the Committee recommends a project for a  
42 grant under this section, it shall recommend the amount of State funds  
43 to be committed, the preferred form and details of the State

1                    participation, and the performance criteria and safeguards to be  
2                    required in order to protect the State's investment.

3            (i)    Agreement. – Unless the Secretary of Commerce determines that the project  
4 is no longer eligible or appropriate for a grant under this section, the Department shall  
5 enter into an agreement to provide a grant or grants for a project recommended by the  
6 Committee. Each grant agreement is binding and constitutes a continuing contractual  
7 obligation of the State and the business. The grant agreement shall include the  
8 performance criteria, remedies, and other safeguards recommended by the Committee or  
9 required by the Department. Each grant agreement shall contain a provision prohibiting  
10 a business from receiving a payment or other benefit under the agreement at any time  
11 when the business has received a notice of an overdue tax debt and the overdue tax debt  
12 has not been satisfied or otherwise resolved. A grant agreement may obligate the State  
13 to make a series of grant payments over a period of up to 10 years. Nothing in this  
14 section constitutes or authorizes a guarantee or assumption by the State of any debt of  
15 any business or authorizes the taxing power or the full faith and credit of the State to be  
16 pledged.

17            The Department shall cooperate with the Attorney General's Office in preparing the  
18 documentation for the grant agreement. The Attorney General shall review the terms of  
19 all proposed agreements to be entered into under this section. To be effective against the  
20 State, an agreement entered into under this section shall be signed personally by the  
21 Attorney General.

22            (j)    Safeguards. – To ensure that public funds are used only to carry out the  
23 public purposes provided in this section, the Department shall require that each business  
24 that receives a grant under this section shall agree to meet performance criteria to  
25 protect the State's investment and ensure that the projected benefits of the project are  
26 secured. The performance criteria to be required shall include maintenance of an  
27 appropriate level of employment at specified levels of compensation, maintenance of  
28 health insurance for all full-time employees, investment of a specified amount over the  
29 term of the agreement, and any other criteria the Department considers appropriate. The  
30 agreement shall require the business to repay or reimburse an appropriate portion of the  
31 grant based on the extent of any failure by the business to meet the performance criteria.

32            (k)    Monitoring and Reports. – The Department is responsible for monitoring  
33 compliance with the performance criteria under each grant agreement and for  
34 administering the repayment in case of default. The Department shall pay for the cost of  
35 this monitoring from funds appropriated to it for that purpose or for other economic  
36 development purposes.

37            Within two months after the end of each calendar quarter, the Department shall  
38 report to the Joint Legislative Commission on Governmental Operations regarding the  
39 Job Maintenance and Capital Development Fund. This report shall include a listing of  
40 each grant awarded and each agreement entered into under this section during the  
41 preceding quarter, including the name of the business, the cost/benefit analysis  
42 conducted by the Committee during the application process, a description of the project,  
43 and the amount of the grant expected to be paid under the agreement during the current  
44 fiscal year. The report shall also include detailed information about any defaults and

1 repayment during the preceding quarter. The Department shall publish this report on its  
2 Web site and shall make printed copies available upon request.

3 (l) Limitations. – The Department may enter into no more than five agreements  
4 under this section. The total aggregate cost of all agreements entered into under this  
5 section may not exceed forty million dollars (\$40,000,000), and the annual aggregate  
6 cost of all agreements entered into under this section may not exceed four million  
7 dollars (\$4,000,000)."

8 **SECTION 2.** There is appropriated from the General Fund to the Job  
9 Maintenance and Capital Development Fund, created under Section 1 of this act, the  
10 sum of three million five hundred thousand dollars (\$3,500,000) for the 2008-2009  
11 fiscal year.

12 **SECTION 3.** G.S. 150B-1(d) is amended by adding a new subdivision to  
13 read:

14 "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to  
15 the following:

16 ...

17 (14) The Department of Commerce and the Economic Investment  
18 Committee in developing criteria and administering the Job  
19 Maintenance and Capital Development Fund under  
20 G.S. 143B-437.11."

21 **SECTION 4.** This act becomes effective July 1, 2007.