

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1761*
Committee Substitute Favorable 7/25/07
Senate Appropriations/Base Budget Committee Substitute Adopted 7/31/07

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 the five-year period commencing January 1, 2007, in
14 improvements to real property and additions to tangible personal
15 property used in the business.

16 (2) The project employs at least 2,400 full-time employees at the
17 establishment that is the subject of the grant at the time the application
18 is made.

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

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

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

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

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

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

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

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

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

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

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

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

31 a. The conditions for eligibility have been met.

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

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

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

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

42 (6) Recommendations. – If the Committee recommends a project for a
43 grant under this section, it shall recommend the amount of State funds
44 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 thirty-five million dollars (\$35,000,000), and the annual
6 aggregate cost of all agreements entered into under this section may not exceed three
7 million five hundred thousand dollars (\$3,500,000). The total annual cost of an
8 agreement entered into under this section may not exceed the lesser of three million five
9 hundred thousand dollars (\$3,500,000) or fifty percent (50%) of the withholding of the
10 full-time employees for the preceding year."

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

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

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

19 ...

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

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