GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 2007

H 1

HOUSE BILL 4

Short Title:	Job Maintenance and Capital Development Fund. (Public)
Sponsors:	Representatives Dickson, Glazier, Lucas, McAllister (Primary Sponsors); Brisson, Farmer-Butterfield, Tolson, and Williams.
Referred to:	Appropriations.

September 11, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE AN ECONOMIC DEVELOPMENT TOOL TO RETAIN HIGH-QUALITY JOBS IN THE STATE BY PROVIDING GRANT INCENTIVES FOR CAPITAL IMPROVEMENTS TO BUSINESSES THAT ARE PROPORTIONALLY RELATED TO EMPLOYEE RETENTION WITHIN THE STATE FOR POSITIONS MEETING CERTAIN WAGE, INSURANCE, HEALTH, ENVIRONMENTAL, AND OTHER RELEVANT STANDARDS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

(3) The enactment of this section is necessary to stimulate the economy and maintain high-quality jobs in North Carolina, and this section will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the maintenance of high-quality jobs, an enlargement of the overall tax

base, continued diversity in the State's industrial base, and an increase in revenue to the State's political subdivisions.

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

(5) The benefits that flow to the State from job maintenance and capital investment are many and include increased tax revenues related to the capital investment, increased corporate income and franchise taxes due to the placement of additional resources in the State, a better trained, highly skilled workforce, and the continued receipt of personal income tax withholdings from workers who remain employed in high-paying jobs.

(b) Fund. – The Job Maintenance and Capital Development Fund is created as a restricted reserve in the Department of Commerce. Monies in the Fund do not revert but remain available to the Department for these purposes. The Department may use monies in the Fund only to encourage businesses to maintain high-paying jobs and make further capital investments in the State as provided in this section, and funds are hereby appropriated for these purposes in accordance with G.S. 143C-1-2.

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

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

(1) The Department certifies that the business has invested or intends to invest at least two hundred million dollars ($200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences.

(2) The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.

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

(e) Wage Standard. – A business is eligible for consideration for a grant under this section only if the business satisfies a wage standard at the project that is the subject of the agreement. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to one hundred forty percent (140%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county. In making the wage calculation, the business shall include any jobs that were filled for at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time positions or equivalent full-time contract positions. Each year that a grant agreement is in effect, the business shall provide the Department a certification that the business continues to satisfy the wage standard. If a business fails to satisfy the wage standard for a year, the business is not eligible for a grant payment for that year.

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

Each year that a grant agreement under this section is in effect, the business shall provide the Department a certification that the business continues to make available health insurance for all full-time employees of the project governed by the agreement. If a business fails to satisfy the requirements of this subsection, the business is not eligible for a grant payment for that year.

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

(h) Environmental Impact. – A business is eligible for consideration for a grant under this section only if the business has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last three years with respect to the location for which the grant is made. For the purposes of this subsection, a significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d).

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

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

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

(3) Application. – The Department shall require a business to submit an application in order for a project to be considered for a grant under this section. The Department shall prescribe the form of the application, the application process, and the information to be provided, including

all information necessary to evaluate the project in accordance with the applicable criteria.

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

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

a. The conditions for eligibility have been met.

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

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

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

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

(6) Recommendations. – If the Committee recommends a project for a grant under this section, it shall recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.

(j) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department. Each grant agreement shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required. A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

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

(k) Safeguards. – To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives a grant under this section shall agree to meet performance criteria to protect the State's investment and ensure that the projected benefits of the project are secured. The performance criteria to be required shall include maintenance of an appropriate level of employment at specified levels of compensation, maintenance of health insurance for all full-time employees, investment of a specified amount over the term of the agreement, and any other criteria the Department considers appropriate. The agreement shall require the business to repay or reimburse an appropriate portion of the grant based on the extent of any failure by the business to meet the performance criteria. The agreement shall require the business to repay all amounts received under the agreement and to forfeit any future grant payments if the business fails to satisfy the investment eligibility requirement of subdivision (d)(1) of this section.

(l) Calculation of Grant Amounts. – The Committee shall consider the following factors in determining the amount of a grant that would be appropriate, but is not necessarily limited to these factors:

(1) Ninety-five percent (95%) of the privilege and sales and use taxes paid by the business on machinery and equipment installed at the project that is the subject of the agreement.

(2) Ninety-five percent (95%) of the sales and use taxes paid by the business on building materials used to construct, renovate, or repair facilities at the project that is the subject of the agreement.

(3) Ninety-five percent (95%) of the additional income and franchise taxes that are not offset by tax credits. For the purposes of this subdivision, 'additional income and franchise taxes' are the additional taxes that would be due because of the investment in machinery and equipment and real property at the project that is the subject of the agreement during the investment period specified in subsection (d) of this section.

(4) Ninety-five percent (95%) of the sales and use taxes paid on electricity, the excise tax paid on piped natural gas, and the privilege tax paid on other fuel for electricity, piped natural gas, and other fuel consumed at the project that is the subject of the agreement.

(5) One hundred percent (100%) of worker training expenses, including wages paid for on-the-job training, associated with the project that is the subject of the agreement.

(6) One hundred percent (100%) of any State permitting fees associated with the capital expansion at the project that is the subject of the agreement.

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

Within two months after the end of each calendar quarter, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Job Maintenance and Capital Development Fund. This report shall include a listing of each grant awarded and each agreement entered into under this section during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding quarter. The Department shall publish this report on its Web site and shall make printed copies available upon request.

(n) Limitations. – The Department may enter into no more than five agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed sixty million dollars ($60,000,000). The total annual cost of an agreement entered into under this section may not exceed four million dollars ($4,000,000)."

SECTION 2. There is appropriated from the General Fund to the Job Maintenance and Capital Development Fund, created under Section 1 of this act, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year.

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

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

…

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

SECTION 4. The Joint Select Committee on Economic Development Incentives shall compile a report that lists and quantifies all economic development incentives offered by the State. The report shall be a comprehensive listing of economic development incentives and shall include information on tax expenditures, grant and loan programs, State appropriations that directly or indirectly support economic development, State appropriations to other public and private entities for economic development initiatives, and the use of State trust funds. The Committee shall make a final report, including any recommendations or legislative proposals, to the 2009 General Assembly and may make an interim report to the 2008 Regular Session of the 2007 General Assembly.

SECTION 5. This act becomes effective July 1, 2007.