

GENERAL ASSEMBLY OF NORTH CAROLINA  
EXTRA SESSION 2007

H

2

HOUSE BILL 4  
Committee Substitute Favorable 9/11/07

Short Title: Job Maintenance and Capital Development Fund.

(Public)

Sponsors:

Referred to:

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.

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

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

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

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

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

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

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

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

35           (4)   All newly hired employees of the business must be citizens of the  
36           United States, or have proper identification and documentation of their  
37           authorization to reside and work in the United States.

38          (e)   Wage Standard. – A business is eligible for consideration for a grant under  
39          this section only if the business satisfies a wage standard at the project that is the subject  
40          of the agreement. A business satisfies the wage standard if it pays an average weekly  
41          wage that is at least equal to one hundred forty percent (140%) of the average wage for  
42          all insured private employers in the county. The Department of Commerce shall  
43          annually publish the wage standard for each county. In making the wage calculation, the  
44          business shall include any jobs that were filled for at least 1,600 hours during the

1 calendar year, regardless of whether the jobs are full-time positions or equivalent  
2 full-time contract positions. Each year that a grant agreement is in effect, the business  
3 shall provide the Department a certification that the business continues to satisfy the  
4 wage standard. If a business fails to satisfy the wage standard for a year, the business is  
5 not eligible for a grant payment for that year.

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

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

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

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

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

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

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

43 (3) Application. – The Department shall require a business to submit an  
44 application in order for a project to be considered for a grant under this

1           section. The Department shall prescribe the form of the application,  
2           the application process, and the information to be provided, including  
3           all information necessary to evaluate the project in accordance with the  
4           applicable criteria.

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

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

15           a.     The conditions for eligibility have been met.

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

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

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

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

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

31           (j) Agreement. – Unless the Secretary of Commerce determines that the project  
32           is no longer eligible or appropriate for a grant under this section, the Department shall  
33           enter into an agreement to provide a grant or grants for a project recommended by the  
34           Committee. Each grant agreement is binding and constitutes a continuing contractual  
35           obligation of the State and the business. The grant agreement shall include the  
36           performance criteria, remedies, and other safeguards recommended by the Committee or  
37           required by the Department. Each grant agreement shall contain a provision prohibiting  
38           a business from receiving a payment or other benefit under the agreement at any time  
39           when the business has received a notice of an overdue tax debt and the overdue tax debt  
40           has not been satisfied or otherwise resolved. Each grant agreement shall contain a  
41           provision requiring the business to maintain the employment level at the project that is  
42           the subject of the agreement that is the lesser of the level it had at the time it applied for  
43           a grant under this section or that it had at the time that the investment required under  
44           subsection (d) of this section began. For the purposes of this subsection, the

1 employment level includes full-time employees and equivalent full-time contract  
2 employees. The agreement shall further specify that the amount of a grant shall be  
3 reduced in proportion to the extent the business fails to maintain employment at this  
4 level and that the business shall not be eligible for a grant in any year in which its  
5 employment level is less than eighty percent (80%) of that required. A grant agreement  
6 may obligate the State to make a series of grant payments over a period of up to 10  
7 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the  
8 State of any debt of any business or authorizes the taxing power or the full faith and  
9 credit of the State to be pledged.

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

15 (k) Safeguards. – To ensure that public funds are used only to carry out the  
16 public purposes provided in this section, the Department shall require that each business  
17 that receives a grant under this section shall agree to meet performance criteria to  
18 protect the State's investment and ensure that the projected benefits of the project are  
19 secured. The performance criteria to be required shall include maintenance of an  
20 appropriate level of employment at specified levels of compensation, maintenance of  
21 health insurance for all full-time employees, investment of a specified amount over the  
22 term of the agreement, and any other criteria the Department considers appropriate. The  
23 agreement shall require the business to repay or reimburse an appropriate portion of the  
24 grant based on the extent of any failure by the business to meet the performance criteria.  
25 The agreement shall require the business to repay all amounts received under the  
26 agreement and to forfeit any future grant payments if the business fails to satisfy the  
27 investment eligibility requirement of subdivision (d)(1) of this section. The use of  
28 contract employees shall not be used to reduce compensation at the project that is the  
29 subject of the agreement.

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

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

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

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

- 1           (4) Ninety-five percent (95%) of the sales and use taxes paid on  
2 electricity, the excise tax paid on piped natural gas, and the privilege  
3 tax paid on other fuel for electricity, piped natural gas, and other fuel  
4 consumed at the project that is the subject of the agreement.  
5           (5) One hundred percent (100%) of worker training expenses, including  
6 wages paid for on-the-job training, associated with the project that is  
7 the subject of the agreement.  
8           (6) One hundred percent (100%) of any State permitting fees associated  
9 with the capital expansion at the project that is the subject of the  
10 agreement.

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

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

26       (n) Limitations. – The Department may enter into no more than five agreements  
27 under this section. The total aggregate cost of all agreements entered into under this  
28 section may not exceed sixty million dollars (\$60,000,000). The total annual cost of an  
29 agreement entered into under this section may not exceed four million dollars  
30 (\$4,000,000)."

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

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

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

- 38       ...
- 39       (18) The Department of Commerce and the Economic Investment  
40 Committee in developing criteria and administering the Job  
41 Maintenance and Capital Development Fund under  
42 G.S. 143B-437.11."

43       **SECTION 4.** The Joint Select Committee on Economic Development  
44 Incentives shall compile a report that lists and quantifies all economic development

1 incentives offered by the State. The report shall be a comprehensive listing of economic  
2 development incentives and shall include information on tax expenditures, grant and  
3 loan programs, State appropriations that directly or indirectly support economic  
4 development, State appropriations to other public and private entities for economic  
5 development initiatives, and the use of State trust funds. The Committee shall make a  
6 final report, including any recommendations or legislative proposals, to the 2009  
7 General Assembly and may make an interim report to the 2008 Regular Session of the  
8 2007 General Assembly.

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