

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**SESSION LAW 2009-520  
HOUSE BILL 884**

AN ACT TO MODIFY THE REQUIREMENTS FOR A GRANT FROM THE JOB  
MAINTENANCE AND CAPITAL DEVELOPMENT FUND.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143B-437.012 reads as rewritten:

**"§ 143B-437.012. Job Maintenance and Capital Development Fund.**

...

(d) Eligibility. – A business ~~that satisfies all of the following conditions~~ is eligible for consideration for a grant under this ~~section~~section if it satisfies the conditions of either subdivision (1) or (2) of this subsection and satisfies the conditions of both subdivisions (3) and (4) of this subsection:

- (1) The business is a major employer. A business is a major employer if the business meets the following requirements:
  - a. 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.
  - b. 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.
- (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.~~ is a large manufacturing employer. A business is a large manufacturing employer if the business meets the following requirements:
  - a. The business is in manufacturing, as defined in G.S. 105-129.81, and is converting its manufacturing process to change the product it manufactures.
  - b. The Department certifies that the business has invested or intends to invest at least sixty-five million dollars (\$65,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a three-year period beginning with the time the investment commences.
  - c. The business employs at least 320 full-time 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 320 full-time employees at the project for the full term of the grant.

- (3) The project is located in a development tier one area at the time the business applies for a grant.
- (4) All newly hired employees of the business must be citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.

...

(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~~

Each grant agreement for a business that is a major employer under subdivision (1) of subsection (d) of this section 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

Each grant agreement for a business that is a large manufacturing employer under subdivision (2) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level required under that subdivision at the project that is the subject of the grant. The agreement shall further specify that the business is not eligible for a grant in any year in which the business fails to maintain the employment level.

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) or (d)(2) of this section. The use of contract employees shall not be used to reduce compensation at the project that is the subject of the agreement.

...

(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-sixty-nine~~ million dollars ~~(\$60,000,000).~~ (\$69,000,000). The total annual cost of an agreement entered into under this section may not exceed ~~four-six~~ million dollars ~~(\$4,000,000).~~ (\$6,000,000)."

**SECTION 2.** This act becomes effective July 1, 2010.

In the General Assembly read three times and ratified this the 11<sup>th</sup> day of August, 2009.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 3:32 p.m. this 26<sup>th</sup> day of August, 2009