

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 825  
PROPOSED COMMITTEE SUBSTITUTE S825-PCS35387-RB-66

Short Title: JMAC Modifications.

(Public)

Sponsors:

Referred to:

March 25, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY THE REQUIREMENTS FOR A GRANT FROM THE JOB  
3 MAINTENANCE AND CAPITAL DEVELOPMENT FUND.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 143B-437.012. Job Maintenance and Capital Development Fund.**

7 ...

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

12 (1) The business is a major employer. A business is a major employer if the  
13 business meets the following requirements:

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

19 b. The business employs at least 2,000 full-time employees or  
20 equivalent full-time contract employees at the project that is the  
21 subject of the grant at the time the application is made, and the  
22 business agrees to maintain at least 2,000 full-time employees or  
23 equivalent full-time contract employees at the project for the full  
24 term of the grant agreement.

25 (2) ~~The business employs at least 2,000 full-time employees or equivalent~~  
26 ~~full-time contract employees at the project that is the subject of the grant at~~  
27 ~~the time the application is made, and the business agrees to maintain at least~~  
28 ~~2,000 full-time employees or equivalent full-time contract employees at the~~  
29 ~~project for the full term of the grant agreement.~~ is a large manufacturing  
30 employer. A business is a large manufacturing employer if the business  
31 meets the following requirements:

32 a. The business is in manufacturing, as defined in G.S. 105-129.81, and  
33 is converting its manufacturing process to change the product it  
34 manufactures.



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1           b.     The Department certifies that the business has invested or intends to  
2                 invest at least sixty-five million dollars (\$65,000,000) of private  
3                 funds in improvements to real property and additions to tangible  
4                 personal property in the project within a three-year period beginning  
5                 with the time the investment commences.

6           c.     The business employs at least 300 full-time employees or equivalent  
7                 full-time contract employees at the project that is the subject of the  
8                 grant at the time the application is made, and the business agrees to  
9                 maintain at least 300 full-time employees or equivalent full-time  
10                contract employees at the project for the full term of the grant.

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

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

16         ...

17         (j)     Agreement. – Unless the Secretary of Commerce determines that the project is no  
18                 longer eligible or appropriate for a grant under this section, the Department shall enter into an  
19                 agreement to provide a grant or grants for a project recommended by the Committee. Each  
20                 grant agreement is binding and constitutes a continuing contractual obligation of the State and  
21                 the business. The grant agreement shall include the performance criteria, remedies, and other  
22                 safeguards recommended by the Committee or required by the Department. ~~Each~~

23                 Each grant agreement for a business that is a major employer under subdivision (1) of  
24                 subsection (d) of this section shall contain a provision prohibiting a business from receiving a  
25                 payment or other benefit under the agreement at any time when the business has received a  
26                 notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise  
27                 resolved. Each grant agreement shall contain a provision requiring the business to maintain the  
28                 employment level at the project that is the subject of the agreement that is the lesser of the level  
29                 it had at the time it applied for a grant under this section or that it had at the time that the  
30                 investment required under subsection (d) of this section began. For the purposes of this  
31                 subsection, the employment level includes full-time employees and equivalent full-time  
32                 contract employees. The agreement shall further specify that the amount of a grant shall be  
33                 reduced in proportion to the extent the business fails to maintain employment at this level and  
34                 that the business shall not be eligible for a grant in any year in which its employment level is  
35                 less than eighty percent (80%) of that required. A

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

41                 A grant agreement may obligate the State to make a series of grant payments over a period  
42                 of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by  
43                 the State of any debt of any business or authorizes the taxing power or the full faith and credit  
44                 of the State to be pledged.

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

49                 (k)     Safeguards. – To ensure that public funds are used only to carry out the public  
50                 purposes provided in this section, the Department shall require that each business that receives  
51                 a grant under this section shall agree to meet performance criteria to protect the State's

1 investment and ensure that the projected benefits of the project are secured. The performance  
2 criteria to be required shall include maintenance of an appropriate level of employment at  
3 specified levels of compensation, maintenance of health insurance for all full-time employees,  
4 investment of a specified amount over the term of the agreement, and any other criteria the  
5 Department considers appropriate. The agreement shall require the business to repay or  
6 reimburse an appropriate portion of the grant based on the extent of any failure by the business  
7 to meet the performance criteria. The agreement shall require the business to repay all amounts  
8 received under the agreement and to forfeit any future grant payments if the business fails to  
9 satisfy the investment eligibility requirement of subdivision (d)(1) or (d)(2) of this section. The  
10 use of contract employees shall not be used to reduce compensation at the project that is the  
11 subject of the agreement.

12 ...

13 (n) Limitations. – The Department may enter into no more than five agreements under  
14 this section. The total aggregate cost of all agreements entered into under this section may not  
15 exceed ~~sixty-seventy~~ million dollars (~~\$60,000,000~~)-(~~\$70,000,000~~). The total annual cost of an  
16 agreement entered into under this section may not exceed ~~four~~-six million dollars  
17 (~~\$4,000,000~~)-(\$6,000,000)."

18 **SECTION 2.** This act is effective when it becomes law.