

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 462
PROPOSED COMMITTEE SUBSTITUTE H462-PCS10881-TAf-4

Short Title: Solar Equip. Manuf. Incentive Grant Program.

(Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE SOLAR EQUIPMENT MANUFACTURING INCENTIVE
GRANT PROGRAM WITHIN THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

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

"Part 2C. Solar Equipment Manufacturing Incentive Grant Program.

"§ 143B-437.12. Solar Equipment Manufacturing Incentive Grant Program.

(a) Definitions. – The following definitions apply in this Part:

- (1) Agreement. – A community economic development agreement for solar equipment manufacturing under G.S. 143B-437.17.
- (2) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.
- (3) Committee. – The Solar Investment Committee established pursuant to G.S. 143B-437.14.
- (4) Eligible position. – A position created by a business and filled by a new full-time employee in this State.
- (5) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.
- (6) Overdue tax debt. – Defined in G.S. 105-243.1.
- (7) Related member. – Defined in G.S. 105-130.7A.
- (8) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes.

(b) Program. – There is established the Solar Equipment Manufacturing Incentive Grant Program to be administered by the Solar Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated



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1 agreements with businesses to provide grants in accordance with the provisions of this Part.
2 The Committee, in consultation with the Attorney General, shall develop criteria to be used in
3 determining whether the conditions of this section are satisfied and whether the project
4 described in the application is otherwise consistent with the purposes of this Part. Before
5 entering into an agreement, the Committee shall find that all the following conditions are met:

- 6 (1) The project will benefit the people of this State by increasing opportunities
7 for employment and by strengthening this State's economy by, for example,
8 providing worker training opportunities, constructing and enhancing critical
9 infrastructure, increasing development in strategically important industries,
10 or increasing the State and local tax base.
11 (2) The project is consistent with economic development goals for the State and
12 for the area where it will be located.
13 (3) A grant under this Part is necessary for the completion of the project in this
14 State.
15 (4) The total benefits of the project to the State outweigh its costs and render the
16 grant appropriate for the project.

17 **"§ 143B-437.13. Eligibility for and receipt of grant funds.**

18 (a) Health Insurance. – A business is eligible for a grant under this Part only if the
19 business provides health insurance for all of the applicable full-time employees of the project
20 with respect to which the grant is made. For the purposes of this subsection, an applicable
21 full-time employee is one who earns from the business less than one hundred fifty thousand
22 dollars (\$150,000) in taxable compensation on an annualized basis or three and one-half times
23 the annualized average State wage for all insured private employers in the State employing
24 between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a
25 business provides health insurance if it pays at least fifty percent (50%) of the premiums for
26 health care coverage that equals or exceeds the minimum provisions of the basic health care
27 plan of coverage recommended by the Small Employer Carrier Committee pursuant to
28 G.S. 58-50-125.

29 Each year that a business receives a grant under this Part, the business shall provide with
30 the submission required under G.S. 143B-437.15(d) a certification that the business continues
31 to provide health insurance, as required by this subsection, for all applicable full-time
32 employees of the project with respect to which the grant is made. If the business ceases to
33 provide the required health insurance, the Committee shall amend or terminate the agreement
34 as provided in G.S. 143B-437.18.

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

40 (c) Overdue Tax Debts. – A business may not receive an annual disbursement of a grant
41 if, at the time of disbursement, the business has received a notice of an overdue tax debt and
42 that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an
43 annual disbursement of a grant only after the Committee has certified that there are no
44 outstanding overdue tax debts and that the business has met the terms and conditions of the
45 agreement. No amount shall be disbursed to a business as a grant under this Part in any year
46 until the Secretary of Revenue has certified to the Committee that there are no outstanding
47 overdue tax debts of the business. A business that has met the terms of the agreement shall
48 make an annual certification of this to the Committee. The Committee shall require the
49 business to provide any necessary evidence of compliance to verify that the terms of the
50 agreement have been met. The Committee shall certify the grant amount for which the business
51 is eligible under the agreement. The Department of Commerce shall remit a check to the

1 business in the amount of the certified grant amount within 90 days of receiving the
2 certification of the Committee.

3 **"§ 143B-437.14. Solar Investment Committee established.**

4 (a) Membership. – The Solar Investment Committee is established. The Committee
5 consists of the following members:

6 (1) The Secretary of Commerce.

7 (2) The Director of the State Energy Office.

8 (3) The Director of the Office of State Budget and Management.

9 (4) One member appointed by the General Assembly upon the recommendation
10 of the Speaker of the House of Representatives.

11 (5) One member appointed by the General Assembly upon the recommendation
12 of the President Pro Tempore of the Senate.

13 The members of the Committee appointed by the General Assembly may not be members
14 of the General Assembly. The members of the Committee appointed by the General Assembly
15 serve two-year terms that begin upon appointment.

16 (b) Decision Required. – The Committee may act only upon a decision of three of its
17 five members.

18 (c) Conflict of Interest. – It is unlawful for a current or former member of the
19 Committee to, while serving on the Committee or within two years after the end of service on
20 the Committee, provide services for compensation, as an employee, consultant, or otherwise, to
21 any business or a related member of the business that is awarded a grant under this Part while
22 the member is serving on the Committee. Violation of this subsection is a Class 1
23 misdemeanor. In addition to the penalties imposed under G.S. 15A-1340.23, the court shall also
24 make a finding as to what compensation was received by the defendant for services in violation
25 of this section and shall order the defendant to forfeit that compensation.

26 If a person is convicted under this section, the person shall not provide services for
27 compensation, as an employee, consultant, or otherwise, to any business or a related member of
28 the business that was awarded a grant under this Part while the member was serving on the
29 Committee until two years after the person's conviction under this section.

30 (d) Public Notice. – At least 20 days before the effective date of any criteria or
31 nontechnical amendments to criteria, the Committee shall publish the proposed criteria on the
32 Department of Commerce's Web site and provide notice to persons who have requested notice
33 of proposed criteria. In addition, the Committee shall accept oral and written comments on the
34 proposed criteria during the 15 business days beginning on the first day that the Committee has
35 completed these notifications. For the purpose of this subsection, a technical amendment is
36 either of the following:

37 (1) An amendment that corrects a spelling or grammatical error.

38 (2) An amendment that makes a clarification based on public comment and
39 could have been anticipated by the public notice that immediately preceded
40 the public comment.

41 (e) Sunshine. – Meetings of the Committee are subject to the open meetings
42 requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the
43 Committee, including applications for grants, are public records governed by Chapter 132 of
44 the General Statutes and any applicable provisions of the General Statutes protecting
45 confidential information.

46 **"§ 143B-437.15. Applications; fees; reports; study.**

47 (a) Application. – A business shall apply, under oath, to the Committee for a grant on a
48 form prescribed by the Committee that includes at least all of the following:

49 (1) The name of the business and the proposed location of the project.

- 1 (2) The names and addresses of the principals or management of the business,
2 the nature of the business, and the form of business organization under
3 which it is operated.
- 4 (3) The financial statements of the business prepared by a certified public
5 accountant and any other financial information the Committee considers
6 necessary.
- 7 (4) The number of full-time positions, if any, proposed to be created for the
8 project and the salaries for these positions.
- 9 (5) Certification that the business will provide health insurance to full-time
10 employees of the project as required by G.S. 143B-437.13(a).
- 11 (6) Information concerning other locations, including locations in other states
12 and countries, being considered for the project and the nature of any benefits
13 that would accrue to the business if the project were to be located in one of
14 those locations.
- 15 (7) Information concerning any other State or local government incentives for
16 which the business is applying or that it has an expectation of receiving.
- 17 (8) Any other information necessary for the Committee to evaluate the
18 application.

19 A business may apply, in one consolidated application in a form and manner determined by
20 the Committee, for a grant on its own behalf as a business and for grants on behalf of the
21 related members of the business who may qualify under this Part.

22 The Committee will consider an application by a business for grants on behalf of its related
23 members only if the related members for whom the application is submitted have assigned to
24 the business any claim of right the related members may have under this Part to apply for
25 grants individually during the term of the agreement and have agreed to cooperate with the
26 business in providing to the Committee all the information required for the initial application
27 and the agreement, and any other information the Committee may require for the purposes of
28 this Part. The applicant business is responsible for providing to the Committee all the
29 information required under this Part.

30 If a business applies for a grant on behalf of its related members, the related members
31 included in the application may be permitted to meet the qualifications for a grant collectively
32 by participating in a project that meets the requirements of this Part. The amount of a grant may
33 be calculated under the terms of this Part as if the related members were all collectively one
34 business entity. Any conditions for a grant, other than the number of eligible positions created,
35 apply to each related member who is listed in the application as participating in the project. The
36 grants awarded shall be paid to the applicant business. A grant received under this Part by a
37 business may be apportioned to the related members in a manner determined by the business. In
38 order for an agreement to be executed, each related member included in the application shall
39 sign the agreement and agree to abide by its terms.

40 (b) Application Fee. – When filing an application under this section, the business shall
41 pay the Committee a fee of five thousand dollars (\$5,000). The fee is due at the time the
42 application is filed. The Secretary of Commerce, the Director of the State Energy Office, and
43 the Director of the Office of State Budget and Management shall determine the allocation of
44 the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the
45 agency to which they are credited.

46 (c) Committee Reports. – The Committee shall publish a report on the Solar Equipment
47 Manufacturing Investment Grant Program on or before September 1 of each year. The report
48 shall include the following:

- 49 (1) A listing of each agreement negotiated and entered into during the preceding
50 calendar year, including the name of the business, the cost/benefit analysis
51 conducted by the Committee during the application process, a description of

1 the project, the term of the agreement, the formula used to determine the
2 amount of the grant, and the amount of the grant made under the agreement
3 during that year.

4 (2) An update on the status of projects under agreements entered into before the
5 preceding calendar year.

6 (3) A listing of the employment level for all businesses receiving a grant and
7 any changes in those levels from the level of the next preceding year.

8 (4) The criteria developed by the Committee, in consultation with the Attorney
9 General, to implement this Part and any changes in those criteria from the
10 previous calendar year.

11 (5) The effectiveness of the program in recruiting new and expanding
12 businesses.

13 (6) The environmental impact of businesses that have received grants under the
14 program.

15 (7) The geographic distribution of grants, by number and amount, awarded
16 under the program.

17 (8) An explanation of whether the projects with respect to which agreements are
18 entered into involve new businesses in the State or expanding existing
19 businesses in the State.

20 (9) A listing of all businesses making an application under this Part and an
21 explanation of whether each business ultimately located the project in this
22 State regardless of whether the business was awarded a grant for the project
23 under this Part.

24 In addition to the annual report required by this subsection, the Committee shall publish a
25 report on the Solar Equipment Manufacturing Investment Grant Program within two months of
26 direction to do so by either the General Assembly or the Fiscal Research Division.

27 (d) Grant Recipient Report. – No later than March 1 of each year, for the preceding
28 grant year, every entity that is awarded a grant under this section shall submit to the
29 Department, as a condition of its continuation in the grant program, a report showing the
30 number of full-time employees, the amount and date of capital investments in real property or
31 eligible business property, and the number of watts of rated capacity of panels. Annual reports
32 submitted to the Committee shall include social security numbers of individual employees
33 identified in the reports. Upon request of the Committee, the business shall also submit a copy
34 of its State and federal tax returns. Payroll and tax information, including social security
35 numbers of individual employees and State and federal tax returns, submitted under this
36 subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax
37 information submitted or derived under this subsection is not tax information subject to
38 G.S. 105-259. When making a submission under this section, the business shall pay the
39 Committee a fee of one thousand five hundred dollars (\$1,500). The fee is due at the time the
40 submission is made. The Secretary of Commerce, the Director of the State Energy Office, and
41 the Director of the Office of State Budget and Management shall determine the allocation of
42 the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the
43 agency to which they are credited. The Committee may require any information that it
44 considers necessary to effectuate the provisions of this Part. The Committee may require any
45 business receiving a grant to submit to an audit at any time. The reporting procedures of this
46 section are in lieu of any other general reporting requirements relating to private entities that
47 receive State funds.

48 (e) Study. – The Committee shall conduct a study to determine the minimum funding
49 level required to implement the Solar Equipment Manufacturing Investment Grant Program
50 successfully. The Committee shall report the results of this study to the House of
51 Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate

1 Appropriations Committee on Natural and Economic Resources, and the Fiscal Research
 2 Division no later than March 1 of each year.

3 **"§ 143B-437.16. Grant eligibility and calculation.**

4 (a) Eligibility. – Any entity that is certified at an investment level pursuant to
 5 subsection (b) of this section that either commences the manufacture of solar photovoltaic
 6 panels in the State on or after January 1, 2010, or expands its manufacture of such panels in the
 7 State by at least 40,000,000 watts in total annual production capacity shall be eligible to apply
 8 for an annual solar photovoltaic manufacturing incentive grant under this Part.

9 (b) Certification. – The Secretary of Commerce shall certify the investment level of
 10 entities eligible for grants under this Part. The Secretary shall make a written determination that
 11 the entity is an Investment Level I, Investment Level II, or Investment Level III entity. For
 12 purposes of this Part, an Investment Level I business is one that will make a capital investment
 13 of at least one hundred fifty million dollars (\$150,000,000) over the grant term and employs at
 14 least 150 full-time employees during each year of the grant term; an Investment Level II
 15 business is a business that makes a capital investment of at least two hundred twenty-five
 16 million dollars (\$225,000,000) over the grant term and employs at least 200 full-time
 17 employees during the third and fourth years of the grant term; and an Investment Level III
 18 business is a business that makes a capital investment of at least three hundred million dollars
 19 (\$300,000,000) over the grant term and employs at least 250 full-time employees during the
 20 fifth year of the grant term.

21 (c) Amount of Grant. – The grant shall be awarded in equal amounts over six years.
 22 The yearly maximum amount of the grant shall be determined using the following rates:

<u>Year</u>	<u>Investment Level</u>	<u>Rate</u>
24 <u>1 and 2</u>	<u>I, II, and III</u>	<u>2.5¢/watt</u>
25 <u>3 and 4</u>	<u>I</u>	<u>1.75¢/watt</u>
26	<u>II and III</u>	<u>2.5¢/watt</u>
27 <u>5 and 6</u>	<u>I and II</u>	<u>1.25¢/watt</u>
28	<u>III</u>	<u>2.5¢/watt.</u>

29 (d) Limitation. – In the event applications for grants pursuant to this section exceed the
 30 funds available in the Solar Equipment Manufacturing Incentive Program Fund, established
 31 pursuant to G.S. 143B-437.19, the grant awarded shall be apportioned among the eligible
 32 applicants on a first-come, first-served basis. No applicant may be eligible to receive more than
 33 a total of six million dollars (\$6,000,000) per grant term.

34 **"§ 143B-437.17. Community economic development agreement.**

35 (a) Terms. – Each agreement shall include at least the following:

- 36 (1) A detailed description of the proposed project.
- 37 (2) The number of eligible positions that are subjects of the grant and a
 38 description of those positions and the location of those positions.
- 39 (3) A provision permitting an audit of the payroll records of the business by the
 40 Committee from time to time as the Committee considers necessary.
- 41 (4) A provision that requires the Committee to amend an agreement pursuant to
 42 G.S. 143B-437.18.
- 43 (5) A provision that requires the business to maintain operations at the project
 44 location or another location approved by the Committee for the term of the
 45 grant and a provision to permit the Committee to recapture all or part of the
 46 grant at its discretion if the business does not remain at the site for the
 47 required term.
- 48 (6) A provision establishing the conditions under which the grant agreement
 49 may be terminated, in addition to those under G.S. 143B-437.18, and under
 50 which grant funds may be recaptured by the Committee.

- 1 (7) A provision stating that unless the agreement is amended or terminated
2 pursuant to G.S. 143B-437.18, the agreement is binding and constitutes a
3 continuing contractual obligation of the State and the business.
- 4 (8) A provision setting out any allowed variation in the terms of the agreement
5 that will not subject the business to amendment or termination of the
6 agreement under G.S. 143B-437.18.
- 7 (9) A provision requiring that the business engage in fair employment practices
8 as required by State and federal law and a provision encouraging the
9 business to use small contractors, minority contractors, physically
10 handicapped contractors, and women contractors whenever practicable in the
11 conduct of its business.
- 12 (10) A provision encouraging the business to hire North Carolina residents.
- 13 (11) A provision encouraging the business to use the North Carolina State ports.
- 14 (12) A provision describing the manner in which the amount of a grant will be
15 measured and administered to ensure compliance with the provisions of
16 G.S. 143B-437.16(d).
- 17 (13) A provision stating that any recapture of a grant and any amendment to an
18 agreement reducing the amount of the grant or the term of the agreements
19 shall, at a minimum, be proportional to the failure to comply measured
20 relative to the condition or criterion with respect to which the failure
21 occurred.
- 22 (14) A provision stating that any disputes over interpretation of the agreement
23 shall be submitted to binding arbitration.
- 24 (15) A provision stating that the business agrees to submit to an audit at any time
25 that the Committee requires one.
- 26 (16) A provision encouraging the business to contract with small businesses
27 headquartered in the State for goods and services.
- 28 (17) A provision stating that grant awards are subject to the availability of funds.

29 (b) Approval of Attorney General. – The Attorney General shall review the terms of all
30 proposed agreements entered into by the Committee. To be effective against the State, an
31 agreement entered into under this Part shall be signed personally by the Attorney General.

32 **"§ 143B-437.18. Failure to comply with agreement.**

33 (a) If the business receiving a grant fails to meet or comply with any condition or
34 requirement set forth in an agreement or with criteria developed by the Committee in
35 consultation with the Attorney General, the Committee shall amend the agreement to reduce the
36 amount of the grant or the term of the agreement and may terminate the agreement. Any
37 reduction of the grant is applicable to the grant year immediately following the grant year in
38 which the business fails to comply with the agreement. The reduction in the amount or the term
39 shall, at a minimum, be proportional to the failure to comply measured relative to the condition
40 or criterion with respect to which the failure occurred.

41 (b) If a business fails to maintain employment at the levels stipulated in the agreement
42 or otherwise fails to comply with any condition of the agreement for any two consecutive years,
43 the Committee shall terminate the agreement.

44 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the
45 Committee finds that the business has manipulated or attempted to manipulate reported
46 material with the knowledge that such action will increase the amount of a grant, the
47 Committee shall immediately terminate the agreement and take action to recapture any grant
48 funds disbursed in any year in which the Committee finds the business manipulated or
49 attempted to manipulate employee withholdings with the purpose of increasing the amount of
50 the grant.

51 **"§ 143B-437.19. Solar Equipment Manufacturing Incentive Program Fund.**

1 The Solar Equipment Manufacturing Incentive Program Fund is created as a restricted
2 reserve in the Department of Commerce. Monies in the Fund do not revert but remain available
3 to the Department for these purposes. The Department may use monies in the Fund only to
4 encourage businesses to maintain high-paying jobs and make further capital investments in the
5 State as provided in this section, and funds are hereby appropriated for these purposes in
6 accordance with G.S. 143C-1-2."

7 **SECTION 3.** This act becomes effective July 1, 2009, and applies to agreements
8 entered on or after that date.