

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 108
PROPOSED COMMITTEE SUBSTITUTE H108-PCS40148-TM-4

Short Title: Site and Building Development Fund.

(Public)

Sponsors:

Referred to:

February 27, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A FUND TO PROVIDE LOANS TO LOCAL GOVERNMENT
3 UNITS FOR THE DEVELOPMENT OF SITES AND BUILDINGS.

4 The General Assembly of North Carolina enacts:

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

7 **"§ 143B-437.021. Site and Building Development Fund.**

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

9 (1) Code. – Defined in G.S. 105-228.90.

10 (2) Department. – The Department of Commerce.

11 (3) Development plan. – A strategic analysis of potential qualified business
12 facilities required by this section to be maintained by the Department and
13 updated every four years.

14 (4) Fund. – The Site and Building Development Fund established by subsection
15 (b) of this section.

16 (5) Local government. – Any of the following:

17 a. A city as defined in G.S. 160A-1.

18 b. A county.

19 c. A consolidated city-county as defined in G.S. 160B-2.

20 (6) Local government unit. – The term includes a local government, a nonprofit
21 economic development corporation, and any combination of local
22 governments or nonprofit economic development corporations.

23 (7) Long-term lease. – A lease agreement with a maximum duration exceeding
24 three years, including any extensions allowed by the lease agreement.

25 (8) Nonprofit economic development corporation. – A corporation meeting all
26 of the following requirements:

27 a. Exempt from income tax under section 501(c)(3) or 501(c)(6) of the
28 Code.

29 b. Established to assist one or more local governments in reducing the
30 burden of economic development efforts.

31 c. Acknowledged through a resolution of one or more local
32 governments that contains all of the following:

33 1. Statement that the corporation is acting in support of the local
34 government in economic development efforts.

35 2. Nonbinding pledge to repay the Fund if the corporation fails
36 to make any required loan payments.



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- 1 (9) Qualified business facilities. – Real property, improvements to real property,
2 and planned improvements to real property. Improvements to real property
3 include the following:
4 a. New buildings, renovations to buildings, and upfitting buildings.
5 b. Water lines, sewer lines, and other utility improvements.
6 c. Roads, grading, signage, and other access improvements.
7 d. Measures necessary for permitting, including services.
8 e. Any other measures necessary for the land to be marketable for
9 immediate use in commercial operations, including necessary
10 services.
- 11 (10) Sale. – Any transfer of ownership, including involuntary transfers.
- 12 (b) Fund Established. – The Site and Building Development Fund is created as a
13 restricted reserve in the Department. The Fund does not revert but remains available to the
14 Department for the purposes of this section.
- 15 (c) Use of the Fund. – The Department must use the Fund for the following purposes:
- 16 (1) Loans to local government units for the acquisition and development of
17 qualified business facilities in accordance with this section.
- 18 (2) Expenses directly related to the operation of the Fund and administering
19 loans from the Fund, including the cost of the development plan required by
20 this section.
- 21 (d) Application. – The Department must require a local government unit to submit an
22 application in order for a project to be considered for a loan from the Fund. The Department
23 must prescribe the form of the application, the application process, and the information to be
24 provided, including all information necessary to evaluate the qualified business facility in
25 accordance with this section.
- 26 (e) Selection. – The Department must administer the selection of qualified business
27 facilities to receive loans from the Fund. The Department must develop written guidelines to
28 identify and evaluate qualified business facilities. The Department must issue written findings
29 addressing any application approved for a loan from the Fund. The Department must consider
30 the following factors in approving applications for loans from the Fund:
- 31 (1) Consistency with the economic development goals of the State and of the
32 area where the qualified business facility will be located.
- 33 (2) The Department must consider, but is not bound by, the priority
34 recommendations in the development plan.
- 35 (3) Preference for qualified business facilities located in rural or less-developed
36 areas of the State.
- 37 (4) Evaluation of the application to determine if the qualified business facilities
38 are merited and appropriate for the proposed use.
- 39 (5) Necessity of a loan from the Fund for the completion of the qualified
40 business facility.
- 41 (f) Development Plan. – The Department must obtain a strategic analysis of potential
42 qualified business facilities and an update to the analysis every four years. The Department
43 must contract with another entity with demonstrated experience in site selection services for
44 businesses and in evaluating sites for business recruitment purposes.
- 45 (g) Awards. – If the Department approves an application for a qualified business
46 facility, the Department must determine the amount of the loan from the Fund, the preferred
47 form and details of the loan participation, and the safeguards to protect the State's investment.
- 48 (h) Loan Terms. – Loans from the Fund must meet the following requirements:
- 49 (1) The loan must be evidenced by a promissory note and secured by a first deed
50 of trust on the qualified business facility.
- 51 (2) The maximum duration of a loan is 15 years.

- 1 (3) The loan is due upon the sale or long-term lease of the qualified business
2 facility. Principal and accrued interest must be paid when the loan is due or
3 more frequently.
- 4 (4) The interest rate of a loan is zero percent (0%) for tier one counties, one
5 percent (1%) for tier two counties, and two percent (2%) for tier three
6 counties, based on the classification assigned to counties by
7 G.S. 143B-437.08.
- 8 (5) The loan agreement must require the local government unit to obtain from
9 any entity leasing or purchasing the qualified business facility the following:
- 10 a. An agreement that the entity will not use the qualified business
11 facility for retail, professional office, sporting event, museum, or
12 governmental purposes for at least five years after the lease or
13 purchase.
- 14 b. A legal opinion based on a search of public records that the entity
15 leasing or purchasing the qualified business facility has no debts
16 related to unpaid taxes.
- 17 (i) Multiple Loans. – One or more financial institutions may hold a security interest on
18 the qualified business facility with a priority equal to the security interest for the loan from the
19 Fund if there is a written intercreditor agreement between the Department and other equal
20 priority creditors that provides that, in the event of default, any loss is shared among the
21 creditors in proportion to the amount loaned.
- 22 (j) Payments. – The Department is responsible for monitoring the loan and
23 administering the repayment. The Department must remit all amounts paid under this section to
24 the Fund.
- 25 (k) Release. – The Department at its discretion may release property from the first deed
26 of trust if adequate security remains for the outstanding balance of the loan from the Fund. The
27 Department may use this authority to release property to restructure the terms of the loan and
28 participate in financing transactions involving the qualified business facility.
- 29 (l) Limitation. – Nothing in this section constitutes or authorizes a guarantee or
30 assumption by the State of any debt of any business or authorizes the taxing power or the full
31 faith and credit of the State to be pledged.
- 32 (m) Notice of Guidelines. – At least 20 days before the effective date of any guidelines,
33 the Department must publish the proposed guidelines on the Department's Web site and provide
34 notice to persons who have requested notice. In addition, the Department must accept written
35 comments on the proposed guidelines during the 15 business days beginning on the first day
36 the Department has completed the notice requirement of this subsection. Amendments to the
37 guidelines to correct spelling, grammatical, or typographical errors do not require notice.
- 38 (n) Reports. – On September 1 of each year until the Fund has no assets, the
39 Department must submit a written report on the Fund to the Joint Legislative Commission on
40 Governmental Operations and publish this report on its Web site. This report must at a
41 minimum contain the following:
- 42 (1) Listing of each outstanding loan, including the date of loan, amount of loan,
43 outstanding amount of loan, interest rate, maturity date, location of qualified
44 business facility acting as security, brief property description, identity of
45 local government unit receiving the loan, status of repayment, current use of
46 the qualified business facility, and identification of loans made since the last
47 report.
- 48 (2) Written findings addressing any application approved for a loan from the
49 Fund since the last report, as required by subsection (e) of this section.
- 50 (3) Detailed information about any defaults and repayment since the last report.
- 51 (4) Information contained in the report required by G.S. 105-277.15A(g)."

1 **SECTION 2.** G.S. 150B-1(d) is amended by adding a new subdivision to read:
2 "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the
3 following:
4 ...
5 (21) The Department of Commerce in developing criteria and guidelines under
6 G.S. 143B-437.021.
7 "
8 **SECTION 3.** The provisions of this act are not subject to the terms of
9 G.S. 160A-20.
10 **SECTION 4.** This act does not obligate the General Assembly to appropriate funds
11 to implement it.
12 **SECTION 5.** This act is effective when it becomes law.