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SENATE BILL DRS15166-MQ-84A (03/16)

Short Title: Site and Building Development Fund. (Public)

Sponsors: Senators Gunn, Horner, and McInnis (Primary Sponsors).

Referred to:

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-437.022. 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 in this section.

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

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

17 b. A county.

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

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

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

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

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

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

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

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

34 2. Nonbinding pledge to repay the Fund if the corporation fails  
35 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 shall 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 shall 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        shall 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 shall administer the selection of qualified business  
27        facilities to receive loans from the Fund. The Department shall develop written guidelines to  
28        identify and evaluate qualified business facilities. The Department shall issue written findings  
29        addressing any application approved for a loan from the Fund. The Department shall 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 shall 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 shall obtain a strategic analysis of potential  
42        qualified business facilities and an update to the analysis every four years. The Department  
43        shall 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 shall 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)   Maximum Award to Tier Three Counties. – The maximum outstanding loan balance  
49        from the Fund to qualified business facilities located in tier three counties, based on the  
50        designation assigned pursuant to G.S. 143B-437.08, shall be thirty percent (30%) of the

1 difference between the cumulative total appropriations into the Fund and total expenses paid  
2 from the Fund.

3 (i) Loan Terms. – Loans from the Fund shall meet the following requirements:

4 (1) The loan is evidenced by a promissory note and secured by a first deed of  
5 trust on the qualified business facility.

6 (2) The maximum duration of a loan is 15 years.

7 (3) The loan is due upon the sale or long-term lease of the qualified business  
8 facility. Principal and accrued interest must be paid when the loan is due or  
9 more frequently.

10 (4) The interest rate of a loan is zero percent (0%) for tier one counties, one  
11 percent (1%) for tier two counties, and two percent (2%) for tier three  
12 counties, based on the designation assigned to counties pursuant to  
13 G.S. 143B-437.08.

14 (5) The loan agreement shall require the local government unit to obtain from  
15 any entity leasing or purchasing the qualified business facility the following:

16 a. An agreement that the entity will not use the qualified business  
17 facility for retail, professional office, sporting event, museum, or  
18 governmental purposes for at least five years after the lease or  
19 purchase.

20 b. A legal opinion based on a search of public records that the entity  
21 leasing or purchasing the qualified business facility has no debts  
22 related to unpaid taxes.

23 (j) Multiple Loans. – One or more financial institutions may hold a security interest on  
24 the qualified business facility with a priority equal to the security interest for the loan from the  
25 Fund if there is a written intercreditor agreement between the Department and other equal  
26 priority creditors that provides that, in the event of default, any loss is shared among the  
27 creditors in proportion to the amount loaned.

28 (k) Payments. – The Department shall be responsible for monitoring the loan and  
29 administering the repayment. The Department shall remit all amounts paid under this section to  
30 the Fund.

31 (l) Release. – The Department, at its discretion, may release property from the first  
32 deed of trust if adequate security remains for the outstanding balance of the loan from the Fund.  
33 The Department may use this authority to release property to restructure the terms of the loan  
34 and participate in financing transactions involving the qualified business facility.

35 (m) Limitation. – Nothing in this section constitutes or authorizes a guarantee or  
36 assumption by the State of any debt of any business or authorizes the taxing power or the full  
37 faith and credit of the State to be pledged.

38 (n) Notice of Guidelines. – At least 20 days before the effective date of any guidelines,  
39 the Department shall publish the proposed guidelines on the Department's Web site and provide  
40 notice to persons who have requested notice. In addition, the Department shall accept written  
41 comments on the proposed guidelines during the 15 business days beginning on the first day  
42 the Department has completed the notice requirement of this subsection. Amendments to the  
43 guidelines to correct spelling, grammatical, or typographical errors do not require notice.

44 (o) Reports. – On September 1 of each year until the Fund has no assets, the  
45 Department shall submit a written report on the Fund to the Joint Legislative Commission on  
46 Governmental Operations and publish this report on its Web site. This report shall contain at  
47 least all of the following:

48 (1) A listing of each outstanding loan, including the date of loan, amount of  
49 loan, outstanding amount of loan, interest rate, maturity date, location of  
50 qualified business facility acting as security, brief property description,  
51 identity of local government unit receiving the loan, status of repayment,

1                    current use of the qualified business facility, and identification of loans made  
2                    since the last report.  
3                    (2)    Written findings addressing any application approved for a loan from the  
4                    Fund since the last report, as required by subsection (e) of this section.  
5                    (3)    Detailed information about any defaults and repayment since the last report.  
6                    (4)    Information contained in the report required by G.S. 105-277.15A(g)."  
7                    **SECTION 2.** G.S. 150B-1(d) is amended by adding a new subdivision to read:  
8                    "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the  
9 following:  
10                    ...  
11                    (29)   The Department of Commerce in developing criteria and guidelines under  
12                    G.S. 143B-437.021."  
13                    **SECTION 3.** The provisions of this act are not subject to the terms of  
14 G.S. 160A-20.  
15                    **SECTION 4.** This act does not obligate the General Assembly to appropriate funds  
16 to implement it.  
17                    **SECTION 5.** This act is effective when it becomes law.