

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 223
Rules and Operations of the Senate Committee Substitute Adopted 3/23/17
House Committee Substitute Favorable 6/6/17
PROPOSED HOUSE COMMITTEE SUBSTITUTE S223-PCS15237-BGf-28

Short Title: North Carolina Rural Job Creation Fund.

(Public)

Sponsors:

Referred to:

March 9, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA RURAL JOB CREATION FUND.

3 The General Assembly of North Carolina enacts:

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

6 "Part 2L. North Carolina Rural Job Creation Fund.

7 "§ 143B-437.135. Short title.

8 This Part shall be known and may be cited as the "North Carolina Rural Job Creation
9 Fund."

10 "§ 143B-437.136. Definitions.

11 The following definitions apply in this Part:

- 12 (1) Affiliate. – An entity that, directly or indirectly, through one or more
13 intermediaries, controls, is controlled by, or is under common control with
14 another entity. For the purposes of this subdivision, an entity is "controlled
15 by" another entity if the controlling entity holds, directly or indirectly, the
16 majority voting or ownership interest in the controlled entity or has control
17 over the day-to-day operations of the controlled entity by contract or law.
- 18 (2) Business concern. – An operating company that, at the time of the initial
19 investment in the company by a rural fund, has fewer than 150 employees
20 and the business's principal business operations are located in North Carolina
21 other than in a development tier three area located outside a census tract with
22 the median household income at or below eighty percent (80%) of the
23 median household income of the State for a family of four.
- 24 (3) Closing date. – The date on which a rural fund has collected all of the
25 amounts specified by G.S. 143B-437.137.
- 26 (4) Department. – The Department of Commerce.
- 27 (5) Development tier area. – Defined in G.S. 143B-437.08.
- 28 (6) Earned job factor. – An amount equal to eleven thousand two hundred fifty
29 dollars (\$11,250) per year per full-time employee employed by a business
30 concern located in a development tier two or tier three area or fifteen
31 thousand dollars (\$15,000) per year per full-time employee employed by a
32 business concern located in a development tier one area.
- 33 (7) Full-time employee. – An employee who is employed by a business concern
34 for consideration for at least 35 hours per week or who renders any other



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- 1 standard of service generally accepted by custom or practice as full-time
2 employment.
- 3 (8) Growth investment. – Any capital or equity investment in a business concern
4 or any loan to a business concern with a stated maturity at least one year
5 after the date of issuance.
- 6 (9) Investment authority. – The amount stated on the notice issued under
7 G.S.143B-437.137(e) certifying the rural fund. A rural fund's investment
8 authority shall be comprised of equal amounts of repayable grant
9 contributions and private contributions at the closing date.
- 10 (10) Net full-time employee. – The difference between (i) the number of full-time
11 employees at the business concern on the date of the initial growth
12 investment and (ii) the quarterly average of full-time employees at the
13 business concern for the preceding year, annualized from the date of the
14 initial growth investment.
- 15 (11) Principal business operations. – For a business concern, the place or places
16 where at least eighty percent (80%) of its employees work or where
17 employees that are paid at least eighty percent (80%) of its payroll work. An
18 out-of-state business that has agreed to relocate employees using the
19 proceeds of a growth investment to establish its principal business operations
20 in this State shall be deemed to have its principal business operations in this
21 new location, provided it satisfies this definition within 180 days after
22 receiving the growth investment or a later date, if agreed to by the
23 Department.
- 24 (12) Private contributions. – An investment of cash in a rural fund to match
25 dollar-for-dollar the repayable grant amount up to the investment authority
26 of the rural fund. A rural fund's private contributions shall be comprised as
27 follows: ten percent (10%) shall be comprised of equity investments
28 contributed by affiliates of the rural fund, including employees, officers, and
29 directors of such affiliates, and the remainder shall be comprised of equity
30 investments contributed by nonaffiliates of the rural fund.
- 31 (13) Repayment amount. – The amount for a rural fund that is fifty percent (50%)
32 of its investment authority pursuant to G.S. 143B-437.137(b) minus the sum
33 of (i) the product of net full-time employees reported to the State in each of
34 the rural fund's annual reports submitted pursuant to
35 G.S. 143B-437.141(a)(3) and the earned job factor and (ii) the product of
36 full-time employees at the time of the initial growth investment in a business
37 concern and fifty percent (50%) of the business concern's applicable earned
38 job factor. The amount of the repayable grant that is available for repayment
39 shall be reduced by thirty percent (30%) upon meeting the one hundred
40 percent (100%) investment requirement under G.S. 143B-437.139(a)(1).
- 41 (14) Repayable grant. – An investment of cash by the Department into a rural
42 fund that will be matched dollar-for-dollar with private contributions up to
43 the investment authority of the rural fund.
- 44 (15) Rural county. – A development tier one or two area.
- 45 (16) Rural fund. – An entity certified by the Department under
46 G.S. 143B-437.137.

47 **"§ 143B-437.137. Application process and allocations.**

48 (a) Beginning October 1, 2018, the Department shall accept applications for approval as
49 a rural fund. The application shall include all of the following:

- 50 (1) The total investment authority sought by the applicant.

1 (2) A copy of the applicant's license or the license of an affiliate of the applicant
2 as a (i) rural business investment company under 7 U.S.C. § 2009cc or (ii)
3 small business investment company under 15 U.S.C. § 68.

4 (3) Evidence that, as of the date the application, the applicant or the affiliate has
5 invested at least one hundred million dollars (\$100,000,000) in nonpublic
6 companies located in communities throughout the United States with fewer
7 than 50,000 residents.

8 (4) A signed affidavit from each investor stating the investor's amount of private
9 contributions to the rural fund.

10 (b) The Department shall make application determinations by November 30, 2018, in
11 the order in which the applications are received. The Department shall deem applications
12 received on the same day to have been received simultaneously. The Department shall not
13 approve more than one hundred million dollars (\$100,000,000) in investment authority. If
14 requests for investment authority received simultaneously would result in the limitation
15 provided in this subsection being exceeded, the Department shall proportionally allot the
16 investment authority among the approved applications. Upon approval of an application, the
17 Department shall provide a grant certificate to the applicant designating the applicant as a rural
18 fund and specifying the amount of the rural fund's investment authority.

19 (c) The Department may deny an application submitted under this section only for the
20 following reasons:

21 (1) The applicant does not satisfy all the criteria described in subsection (a) of
22 this section.

23 (2) The signed affidavits of investors indicate private contributions of less than
24 fifty percent (50%) of the total amount of investment authority sought by the
25 applicant.

26 (3) The Department has already approved the maximum amount of investment
27 authority allowed under subsection (b) of this section.

28 (d) If the Department denies an application, the applicant may provide additional
29 information to the Department within five days of the notice of denial. The Department shall
30 review and reconsider the application and additional information within 10 days but not beyond
31 November 30, 2018. A reconsidered application shall retain the original date of receipt
32 provided under subsection (b) of this section for purposes of priority.

33 (e) A rural fund shall do all of the following:

34 (1) Within 60 days after receiving the approval issued under subsection (b) of
35 this section, collect the private contributions from each investor that, when
36 added to the repayable grant, equal the rural fund's investment authority.

37 (2) Within 65 days after receiving the approval issued under subsection (b) of
38 this section, send to the Department documentation sufficient to prove that
39 the amounts described in subdivision (1) of this subsection have been
40 collected.

41 (f) If the rural fund fails to fully comply with subsection (e) of this section, the rural
42 fund's approval is forfeited, and the Department may award the corresponding investment
43 authority to existing applicants who received an investment authority lower than the amount
44 requested due to a reduction pursuant to subsection (b) of this section or to new applicants.

45 **"§ 143B-437.138. Grant established.**

46 (a) The North Carolina Rural Job Creation Fund is established as a special revenue fund
47 in the Department. The Department shall provide allocations from the Fund to a rural fund as of
48 the closing date in an amount equal to one-half of the investment authority provided to the rural
49 fund in the grant certificate issued pursuant to G.S. 143B-437.137(b).

50 (b) The rural fund and the Department shall execute a binding agreement enumerating
51 the duties of the Department, including the right of the rural fund to receive allocations as

1 provided in subsection (a) of this section, the duties of the rural fund to invest in business
2 concerns, and stating terms of grant repayment, consistent with the provisions of this Part.

3 **"§ 143B-437.139. Demand of repayment.**

4 (a) The Department shall demand immediate repayment of the grant issued under
5 G.S. 143B-437.138 if any of the following occurs with respect to the rural fund before it is
6 certified to exit the program in accordance with G.S. 143B-437.143:

7 (1) The rural fund does not invest all of its investment authority in growth
8 investments in this State within three years of the closing date and does not
9 invest at least seventy percent (70%) of its investment authority in growth
10 investments in development tier one or two areas.

11 (2) The rural fund, after satisfying subdivision (1) of this subsection, fails to
12 maintain growth investments equal to one hundred percent (100%) of its
13 investment authority in growth investments in this State until the sixth
14 anniversary of the closing date. For the purposes of this subsection, an
15 investment is "maintained" even if the investment is sold or repaid so long as
16 the rural fund reinvests an amount equal to the capital returned or recovered
17 by the rural fund from the original investment, exclusive of any profits
18 realized, in other growth investments in this State within 12 months of the
19 receipt of such capital. Amounts received periodically by a rural fund shall
20 be treated as continually invested in growth investments if the amounts are
21 reinvested in one or more growth investments by the end of the following
22 calendar year. A rural fund is not required to reinvest capital returned from
23 growth investments after the fifth anniversary of the closing date, and such
24 growth investments shall be considered held continuously by the rural fund
25 through the sixth anniversary of the closing date.

26 (3) The rural fund, before exiting the program in accordance with
27 G.S. 143B-437.143, makes a distribution or payment that results in the rural
28 fund having less than one hundred percent (100%) of its investment
29 authority invested in growth investments in this State or available for
30 investment in growth investments and held in cash and other marketable
31 securities.

32 (4) The rural fund provides greater than five million dollars (\$5,000,000) in
33 growth investments in a single business concern, including growth
34 investments in affiliates of the business concern.

35 (5) The rural fund makes a growth investment in a business concern that directly
36 or indirectly, through an affiliate, owns, has the right to acquire an
37 ownership interest, makes a loan to, or makes an investment in the rural
38 fund, an affiliate of the rural fund, or an investor in the rural fund. For
39 purposes of this subdivision, a rural fund will not be considered an affiliate
40 of a business concern solely as a result of its growth investment.

41 (b) Before demanding repayment under this subsection, the Department shall notify the
42 rural fund of the reasons for the pending repayment. The rural fund shall have 90 days from the
43 date the notice was dispatched to correct any violation outlined in the notice to the satisfaction
44 of the Department and avoid repayment of the grant.

45 **"§ 143B-437.140. Request for determination.**

46 A rural fund, before making a growth investment, may request from the Department a
47 written opinion as to whether the business in which it proposes to invest is a business concern
48 as defined in this Part. The Department, not later than the fifteenth business day after the date
49 of receipt of the request, shall notify the rural fund of its determination. If the Department fails
50 to notify the rural fund by the fifteenth business day of its determination, the business in which
51 the rural fund proposes to invest shall be deemed to not be a business concern.

"§ 143B-437.141. Reports.

(a) A rural fund shall submit an annual report to the Department on or before the last day of February of each year until the rural fund has exited the program in accordance with G.S. 143B-437.143. The annual report shall provide documentation as to the rural fund's growth investments and include all of the following:

(1) A bank statement evidencing each growth investment.

(2) The name, location, and industry of each business concern receiving a growth investment, including either the determination letter set forth in G.S. 143B-437.140 or evidence that the business qualified as a business concern at the time the investment was made.

(3) The annualized number of net full-time employees and the number of full-time employees at the business concern on the date of the initial growth investment at each business concern.

(4) Any other information required by the Department.

(b) Within 60 days of receipt of an annual report, the Department shall provide written confirmation to the rural fund of the net full-time employees the rural fund has been credited for that year.

(c) By the fifth business day after the third anniversary of the closing date, a rural fund shall submit a report to the Department evidencing its compliance with the investment requirements of G.S. 143B-437.139(a)(1).

(d) The Department shall adopt rules necessary to implement this Part.

(e) The Department shall submit an annual report to the Joint Legislative Economic Development Oversight Committee on or before April 1, 2020. The annual report shall include all of the following:

(1) The rural funds certified to participate in the program.

(2) The amount of investment authority awarded to each rural fund.

(3) Any investments made by the rural funds, including the location of the investments.

(4) Whether the rural funds are in compliance with the statute and rules and regulations.

(5) Any other information required by the Department.

"§ 143B-437.142. Fee.

(a) The Department shall calculate an annual fee to be paid by each rural fund certified pursuant to G.S. 143B-437.137 by dividing twenty-five thousand dollars (\$25,000) by the number of applications certified pursuant to G.S. 143B-437.137 and notify each rural fund of the amount of the annual fee.

(b) The initial annual fee shall be due and payable to the Department with evidence of receipt of a cash investment as set forth in G.S. 143B-437.137(e)(2). After the initial annual fee, an annual fee shall be due and payable to the Department on or before that last day of February of each year.

(c) An annual fee shall not be required once a rural fund has exited the program in accordance with G.S. 143B-437.143.

(d) To maintain an aggregate annual fee of twenty-five thousand dollars (\$25,000) for all rural funds, the Department shall recalculate the annual fee as needed upon the lapse of any certification under G.S. 143B-437.137(b), the demand of repayment under G.S. 143B-437.139(a), or a rural fund's exit from the program pursuant to G.S. 143B-437.143.

"§ 143B-437.143. Exit.

(a) On or after the sixth anniversary of the closing date, a rural fund may exit the program and no longer be subject to the provisions of this Part. The Department shall respond to the application within 30 days of receipt and include a calculation of any repayment amount due.

1 (b) No distributions may be made with respect to the equity interests of the rural fund in
2 excess of the sum of the amount of equity capital invested with respect to such interests and an
3 amount equal to any projected increase in the federal or State tax liability of holders of such
4 interests related to the ownership, management, or operation of the rural fund until the rural
5 fund has made payments to the State equal to the repayment amount."

6 **SECTION 2.** The Department of Commerce shall adopt rules providing for the
7 administration of the Rural Job Creation Fund prior to the convening of the 2018 Regular
8 Session of the 2017 General Assembly.

9 **SECTION 3.** This act is effective when it becomes law.