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SENATE BILL DRS35228-MQa-52

Short Title: Rural Job Retention Act.

(Public)

Sponsors: Senators McInnis, Rabon, and Brown (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE JOB MAINTENANCE AND CAPITAL DEVELOPMENT FUND
3 TO INCLUDE HERITAGE MANUFACTURING PROJECTS.

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 (a) Findings. – The General Assembly finds that:

- 8 (1) It is the policy of the State of North Carolina to stimulate economic activity,
9 to maintain high-paying jobs for the citizens of the State, and to encourage
10 capital investment by encouraging and promoting the maintenance of existing
11 business and industry within the State.
- 12 (2) The economic condition of the State is not static, and recent changes in the
13 State's economic condition have created economic distress that requires the
14 enactment of a new program as provided in this section that is designed to
15 encourage the retention of significant numbers of high-paying jobs and the
16 addition of further large-scale capital investment.
- 17 (3) The enactment of this section is necessary to stimulate the economy and
18 maintain high-quality jobs in North Carolina, and this section will promote
19 the general welfare and confer, as its primary purpose and effect, benefits on
20 citizens throughout the State through the maintenance of high-quality jobs, an
21 enlargement of the overall tax base, continued diversity in the State's industrial
22 base, and an increase in revenue to the State's political subdivisions.
- 23 (4) The purpose of this section is to stimulate economic activity and to maintain
24 high-paying jobs within the State while increasing the property tax base for
25 local governments.
- 26 (5) The benefits that flow to the State from job maintenance and capital
27 investment are many and include increased tax revenues related to the capital
28 investment, increased corporate income and franchise taxes due to the
29 placement of additional resources in the State, a better trained, highly skilled
30 workforce, and the continued receipt of personal income tax withholdings
31 from workers who remain employed in high-paying jobs.

32 (b) Fund. – The Job Maintenance and Capital Development Fund is created as a restricted
33 reserve in the Department of Commerce. Monies in the Fund do not revert but remain available
34 to the Department for these purposes. The Department may use monies in the Fund only to
35 encourage businesses to maintain high-paying jobs and make further capital investments in the



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1 State as provided in this section, and funds are hereby appropriated for these purposes in
2 accordance with G.S. 143C-1-2.

3 (c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In addition,
4 as used in this section, the term "Department" means the Department of Commerce.

5 (d) Eligibility. – A business is eligible for consideration for a grant under this section if
6 it satisfies the conditions of ~~either~~ subdivision (1), (1a), ~~or (2)(2), or (2a)~~ of this subsection and
7 satisfies subdivision (4) of this subsection:

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

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

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

21 c. The project is located in a development tier one area at the time the
22 business applies for a grant.

23 (1a) The business previously received a grant as a major employer under this
24 section and meets the following requirements:

25 a. The Department certifies that the business has invested or intends to
26 invest at least one hundred fifty million dollars (\$150,000,000) of
27 private funds in improvements to real property and additions to
28 tangible personal property in the project within a six-year period
29 beginning with the time the investment commences. Amounts certified
30 as invested under sub-subdivision a. of subdivision (1) of this
31 subsection shall not be included in the amount required by this
32 sub-subdivision.

33 b. The business employs at least 2,000 full-time employees or equivalent
34 full-time contract employees at the project that is the subject of the
35 grant at the time the application is made and the business agrees to
36 maintain at least 2,000 full-time employees or equivalent full-time
37 contract employees at the project for the full term of the grant
38 agreement.

39 c. The project is at the same location as that for which a grant was
40 previously awarded under subdivision (1) of this subsection.

41 (2) The business is a large manufacturing employer. A business is a large
42 manufacturing employer if the business meets the following requirements:

43 a. The business is in manufacturing, as defined in G.S. 105-129.81, and
44 is converting its manufacturing process to change the product it
45 manufactures or is investing in its manufacturing process by
46 enhancing pollution controls or transitioning the manufacturing
47 process from using coal to using natural gas for the purpose of
48 becoming more energy efficient or reducing emissions.

49 b. The Department certifies that the business has invested or intends to
50 invest at least fifty million dollars (\$50,000,000) of private funds in
51 improvements to real property and additions to tangible personal

1 property in the project within a five-year period beginning with the
2 time the investment commences.

3 c. The business meets one of the following employment requirements:

4 1. If in a development tier one area, the business employs at least
5 320 full-time employees at the project that is the subject of the
6 grant at the time the application is made, and the business
7 agrees to maintain at least 320 full-time employees at the
8 project for the full term of the grant.

9 2. If in a development tier two area with a population of less than
10 60,000 as of July 1, 2013, the business employs at least 800
11 full-time employees or equivalent full-time contract employees
12 at the project that is the subject of the grant at the time the
13 application is made, and the business agrees to maintain at least
14 800 full-time employees or equivalent full-time contract
15 employees at the project for the full term of the grant.

16 (2a) The business is a heritage manufacturing employer. A business is a heritage
17 manufacturing employer if the business meets the following requirements:

18 a. The business is in manufacturing, as defined in G.S. 143B-437.01, and
19 has been operating in this State for over 100 years.

20 b. The Department certifies that the business has invested or intends to
21 invest at least three hundred twenty-five million dollars
22 (\$325,000,000) of private funds in improvements to real property and
23 additions to tangible personal property in the project within a four-year
24 period beginning with the time the investment commences.

25 c. The business employs at least 1,050 full-time employees or equivalent
26 full-time contract employees in the State at the time the application is
27 made and the business agrees to (i) maintain at least 1,050 full-time
28 employees or equivalent full-time contract employees in the State for
29 the full term of the grant and (ii) retrain and relocate to a development
30 tier two area at least 400 of those full-time employees or equivalent
31 full-time contract employees upon the commencement of commercial
32 production at its tier two area facility.

33 d. The business is operating in a development tier three area at the time
34 the business applies for a grant and the business is relocating to a
35 development tier two area with an estimated population of less than
36 63,000, according to the 2017 Certified County Population Estimates
37 published by the State Demographer's Office.

38 (3) Repealed by Session Laws 2014-118, s. 1, effective July 1, 2014.

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

42 (e) Wage Standard. – A business is eligible for consideration for a grant under this section
43 only if the business satisfies a wage standard at the project that is the subject of the agreement.
44 A business satisfies the wage standard if it pays an average weekly wage that is at least equal to
45 one hundred forty percent (140%) of the average wage for all insured private employers in the
46 county. The Department of Commerce shall annually publish the wage standard for each county.
47 In making the wage calculation, the business shall include any jobs that were filled for at least
48 1,600 hours during the calendar year, regardless of whether the jobs are full-time positions or
49 equivalent full-time contract positions. Each year that a grant agreement is in effect, the business
50 shall provide the Department a certification that the business continues to satisfy the wage

1 standard. If a business fails to satisfy the wage standard for a year, the business is not eligible for
2 a grant payment for that year.

3 (f) Health Insurance. – A business is eligible for consideration for a grant under this
4 section only if the business makes available health insurance for all of the full-time employees
5 and equivalent full-time contract employees of the project with respect to which the application
6 is made. For the purposes of this subsection, a business makes available health insurance if it
7 pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds
8 the minimum provisions of the basic health care plan of coverage under G.S. 58-50-125.

9 Each year that a grant agreement under this section is in effect, the business shall provide the
10 Department a certification that the business continues to make available health insurance for all
11 full-time employees of the project governed by the agreement. If a business fails to satisfy the
12 requirements of this subsection, the business is not eligible for a grant payment for that year.

13 (g) Safety and Health Programs. – A business is eligible for consideration for a grant
14 under this section only if the business has no citations under the Occupational Safety and Health
15 Act that have become a final order within the last three years for willful serious violations or for
16 failing to abate serious violations with respect to the location for which the grant is made. For
17 the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

18 (h) Environmental Impact. – A business is eligible for consideration for a grant under this
19 section only if the business certifies that, at the time of the application, there has not been a final
20 determination unfavorable to the business with respect to an environmental disqualifying event.
21 For the purposes of this section, a "final determination unfavorable to the business" occurs when
22 there is no further opportunity for the business to seek administrative or judicial appeal, review,
23 certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has
24 not been reversed or withdrawn.

25 (i) Selection. – The Department shall administer the selection of projects to receive
26 grants under this section. The selection process shall include the following components:

- 27 (1) Criteria. – The Department shall develop criteria to be used to identify and
28 evaluate eligible projects for possible grants under this section.
- 29 (2) Initial evaluation. – The Department shall evaluate projects to determine if a
30 grant under this section is merited and to determine whether the project is
31 eligible and appropriate for consideration for a grant under this section.
- 32 (3) Application. – The Department shall require a business to submit an
33 application in order for a project to be considered for a grant under this section.
34 The Department shall prescribe the form of the application, the application
35 process, and the information to be provided, including all information
36 necessary to evaluate the project in accordance with the applicable criteria.
- 37 (4) Committee. – The Department shall submit to the Economic Investment
38 Committee the applications for projects the Department considers eligible and
39 appropriate for a grant under this section. The Committee shall evaluate
40 applications to choose projects to receive a grant under this section. In
41 evaluating each application, the Committee shall consider all criteria adopted
42 by the Department under this section and, to the extent applicable, the factors
43 set out in Section 2.1(b) of S.L. 2002-172.
- 44 (5) Findings. – The Committee shall make all of the following findings before
45 recommending a project receive a grant under this section:
 - 46 a. The conditions for eligibility have been met.
 - 47 b. A grant under this section for the project is necessary to carry out the
48 public purposes provided in subsection (a) of this section.
 - 49 c. The project is consistent with the economic development goals of the
50 State and of the area where it is located.

- 1 d. The affected local governments have participated in retention efforts
2 and offered incentives in a manner appropriate to the project.
3 e. A grant under this section is necessary for the sustainability and
4 maintenance of the project in this State.

5 (6) Recommendations. – If the Committee recommends a project for a grant under
6 this section, it shall recommend the amount of State funds to be committed,
7 the preferred form and details of the State participation, and the performance
8 criteria and safeguards to be required in order to protect the State's investment.

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

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

28 ~~Each~~ Except as provided in this subsection, for a major employer under subsections (c) and
29 (d) of this section, each grant agreement for a business that is a large manufacturing employer
30 under subdivision (2) of subsection (d) of this section shall contain a provision requiring the
31 business to maintain the employment level required under that subdivision at the project that is
32 the subject of the grant. The agreement shall further specify that the business is not eligible for a
33 grant in any year in which the business fails to maintain the employment level.

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

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

42 (k) Safeguards. – To ensure that public funds are used only to carry out the public
43 purposes provided in this section, the Department shall require that each business that receives a
44 grant under this section shall agree to meet performance criteria to protect the State's investment
45 and ensure that the projected benefits of the project are secured. The performance criteria to be
46 required shall include maintenance of an appropriate level of employment at specified levels of
47 compensation, maintenance of health insurance for all full-time employees, investment of a
48 specified amount over the term of the agreement, and any other criteria the Department considers
49 appropriate. The agreement shall require the business to repay or reimburse an appropriate
50 portion of the grant based on the extent of any failure by the business to meet the performance
51 criteria. The agreement shall require the business to repay all amounts received under the

1 agreement and to forfeit any future grant payments if the business fails to satisfy the investment
2 eligibility requirement of ~~subdivision (d)(1) or (d)(2)~~ of this section. The use of contract
3 employees shall not be used to reduce compensation at the project that is the subject of the
4 agreement.

5 (l) Calculation of Grant Amounts. – The Committee shall consider the following factors
6 in determining the amount of a grant that would be appropriate, but is not necessarily limited to
7 these factors:

- 8 (1) Ninety-five percent (95%) of the privilege and sales and use taxes paid by the
9 business on machinery and equipment installed at the project that is the subject
10 of the agreement.
- 11 (2) Ninety-five percent (95%) of the sales and use taxes paid by the business on
12 building materials used to construct, renovate, or repair facilities at the project
13 that is the subject of the agreement.
- 14 (3) Ninety-five percent (95%) of the additional income and franchise taxes that
15 are not offset by tax credits. For the purposes of this subdivision, "additional
16 income and franchise taxes" are the additional taxes that would be due because
17 of the investment in machinery and equipment and real property at the project
18 that is the subject of the agreement during the investment period specified in
19 subsection (d) of this section.
- 20 (4) Ninety-five percent (95%) of the sales and use taxes paid on electricity and
21 the excise tax paid on piped natural gas.
- 22 (5) One hundred percent (100%) of worker training expenses, including wages
23 paid for on-the-job training, associated with the project that is the subject of
24 the agreement.
- 25 (6) One hundred percent (100%) of any State permitting fees associated with the
26 capital expansion at the project that is the subject of the agreement.

27 (m) Monitoring and Reports. – The Department is responsible for monitoring compliance
28 with the performance criteria under each grant agreement and for administering the repayment
29 in case of default. The Department shall pay for the cost of this monitoring from funds
30 appropriated to it for that purpose or for other economic development purposes.

31 On September 1 of each year until all funds have been expended, the Department shall report
32 to the the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic
33 Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture
34 and Natural and Economic Resources, and the Joint Legislative Economic Development and
35 Global Engagement Oversight Committee regarding the Job Maintenance and Capital
36 Development Fund. This report shall include a listing of each grant awarded and each agreement
37 entered into under this section during the preceding year, including the name of the business, the
38 cost/benefit analysis conducted by the Committee during the application process, a description
39 of the project, and the amount of the grant expected to be paid under the agreement during the
40 current fiscal year. The report shall also include detailed information about any defaults and
41 repayment during the preceding year. The Department shall publish this report on its Web site
42 and shall make printed copies available upon request.

43 (n) Limitations. – The Department may enter into no more than ~~six~~seven agreements
44 under this section. The total aggregate cost of all agreements entered into under this section may
45 not exceed ~~one hundred thirty nine million dollars (\$139,000,000)~~one hundred fifty-four million
46 dollars (\$154,000,000). The total annual cost of an agreement entered into under this section may
47 not exceed six million dollars (\$6,000,000)."

48 **SECTION 2.** This act becomes effective July 1, 2019.