

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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HOUSE BILL 921

Short Title: Preconstruction Grant Development Fund. (Public)

Sponsors: Representatives McComas, Iler, T. Moore, and Bryant (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Finance.

May 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE PRECONSTRUCTION GRANT DEVELOPMENT FUND.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.(a)** Findings. – The General Assembly finds that:

- 5 (1) It is the policy of the State of North Carolina to stimulate economic activity
6 and to create new jobs for the citizens of the State by encouraging and
7 promoting the expansion of existing business and industry within the State
8 and by recruiting and attracting new business and industry to the State.
- 9 (2) Both short-term and long-term economic trends at the State, national, and
10 international levels have made the successful implementation of the State's
11 economic development policy and programs both more critical and more
12 challenging; and the decline in the State's traditional industries, and the
13 resulting adverse impact upon the State and its citizens, have been
14 exacerbated in recent years by adverse national and State economic trends
15 that contribute to the reduction in the State's industrial base and that inhibit
16 the State's ability to sustain or attract new and expanding businesses.
- 17 (3) The economic condition of the State is not static and recent changes in the
18 State's economic condition have created economic distress that requires the
19 enactment of a new program as provided in this act that is designed to
20 stimulate new economic activity and to create new jobs within the State.
- 21 (4) The enactment of this act is necessary to stimulate the economy, facilitate
22 economic recovery, and create new jobs in North Carolina, and this act will
23 promote the general welfare and confer, as its primary purpose and effect,
24 benefits on citizens throughout the State through the creation of new jobs, an
25 enlargement of the overall tax base, an expansion and diversification of the
26 State's industrial base, and an increase in revenue to the State and its political
27 subdivisions.
- 28 (5) The purpose of this act is to stimulate economic activity and to create new
29 jobs within the State.

30 **SECTION 1.(b)** Fund. – The Preconstruction Grant Development Fund is created
31 as a restricted reserve in the Department of Commerce. Funds in the fund do not revert but
32 remain available to the Department for these purposes. The Department may use the funds in
33 the fund only for the following purposes:

- 34 (1) For preconstruction development in accordance with this act.



- 1 (2) To acquire options and hold options for the purchase of land in accordance
2 with subsection (l) of this act.

3 **SECTION 1.(c)** Definitions. – The definitions in G.S. 143B-437.51 apply in this
4 act. In addition, the following definitions apply in this act:

- 5 (1) Department. – The Department of Commerce.

- 6 (2) Preconstruction development. – Any of the following:

- 7 a. A restricted grant or a forgivable loan made to a business to enable
8 the business to acquire land, improve land, or both.
9 b. A grant to one or more State agencies or nonprofit corporations to
10 enable the grantees to acquire land, improve land, or both, and to
11 lease the property to a business.
12 c. A grant to one or more local government units to enable the units to
13 acquire land, improve land, or both, and to lease the property to a
14 business.

15 **SECTION 1.(d)** Eligibility. – To be eligible for consideration for preconstruction
16 development for a project, a business must meet both of the following conditions:

- 17 (1) The business will invest at least one hundred million dollars (\$100,000,000)
18 of private funds in the project.
19 (2) The project will employ at least 100 new employees.

20 **SECTION 1.(e)** Health Insurance. – A business is eligible for consideration for
21 preconstruction development under this act only if the business provides health insurance for
22 all of the full-time employees of the project with respect to which the application is made. For
23 the purposes of this subsection, a business provides health insurance if it pays at least fifty
24 percent (50%) of the premiums for health care coverage that equals or exceeds the minimum
25 provisions of the basic health care plan of coverage recommended by the Small Employer
26 Carrier Committee pursuant to G.S. 58-50-125.

27 Each year that a contract for preconstruction development under this act is in effect,
28 the business must provide the Department of Commerce a certification that the business
29 continues to provide health insurance for all full-time employees of the project governed by the
30 contract. If the business ceases to provide health insurance to all full-time employees of the
31 project, the Department shall provide for reimbursement of an appropriate portion of the
32 preconstruction development funds provided to the business.

33 **SECTION 1.(f)** Safety and Health Programs. – In order for a business to be
34 eligible for consideration for preconstruction development under this act, the business must
35 have no citations under the Occupational Safety and Health Act that have become a final order
36 within the past three years for willful serious violations or for failing to abate serious violations
37 with respect to the location for which the grant is made. For the purposes of this subsection,
38 "serious violation" has the same meaning as in G.S. 95-127.

39 **SECTION 1.(g)** Environmental Impact. – A business is eligible for consideration
40 for preconstruction development under this part only if the business certifies that, at the time of
41 the application, the business satisfies the environmental impact standard under
42 G.S. 105-129.83.

43 **SECTION 1.(h)** Selection. – The Department of Commerce shall administer the
44 selection of projects to receive preconstruction development. The selection process shall
45 include the following components:

- 46 (1) Criteria. – The Department of Commerce must develop criteria to be used to
47 identify and evaluate eligible projects for possible preconstruction
48 development.
49 (2) Initial evaluation. – The Department must evaluate major competitive
50 projects to determine if preconstruction development is merited and to

1 determine whether the project is eligible and appropriate for consideration
2 for preconstruction development.

3 (3) Application. – The Department must require a business to submit an
4 application in order for a project to be considered for preconstruction
5 development. The Department must prescribe the form of the application,
6 the application process, and the information to be provided, including all
7 information necessary to evaluate the project in accordance with the
8 applicable criteria.

9 (4) Committee. – The Department must submit to the Economic Investment
10 Committee the applications for projects the Department considers eligible
11 and appropriate for consideration for preconstruction development. In
12 evaluating each application, the Committee must consider all of the factors
13 set out in Section 2.1(b) of S.L. 2002-172.

14 (5) Findings. – In order to recommend a project for preconstruction
15 development, the Committee must make all of the following findings:

16 a. The conditions for eligibility have been met.

17 b. Preconstruction development for the project is necessary to carry out
18 the public purposes provided in subsection (a) of this act.

19 c. The project is consistent with the economic development goals of the
20 State and of the area where it will be located.

21 d. The affected local governments have participated in recruitment and
22 offered incentives in a manner appropriate to the project.

23 e. The price and nature of any real property to be acquired is
24 appropriate to the project and not unreasonable or excessive.

25 f. Preconstruction development under this act is necessary for the
26 completion of the project in this State.

27 (6) Recommendations. – If the Committee recommends a project for
28 preconstruction development, it must recommend the amount of State funds
29 to be committed, the preferred form and details of the State participation,
30 and the performance criteria and safeguards to be required in order to protect
31 the State's investment.

32 **SECTION 1.(i)** Agreement. – Unless the Secretary of Commerce determines that
33 the project is no longer eligible or appropriate for preconstruction development, the Department
34 shall enter into an agreement to provide preconstruction development within available funds for
35 a project recommended by the Committee. Each preconstruction development agreement is
36 binding and constitutes a continuing contractual obligation of the State and the business. The
37 preconstruction development agreement must include all of the performance criteria, remedies,
38 and other safeguards recommended by the Committee or required by the Department to secure
39 the State's investment. Each preconstruction development agreement must contain a provision
40 prohibiting a business from receiving a payment or other benefit under the agreement at any
41 time when the business has received a notice of an overdue tax debt and the overdue tax debt
42 has not been satisfied or otherwise resolved. Nothing in this act constitutes or authorizes a
43 guarantee or assumption by the State of any debt of any business or authorizes the taxing power
44 or the full faith and credit of the State to be pledged.

45 The Department shall cooperate with the Department of Administration and the
46 Attorney General's Office in preparing the documentation for the preconstruction development
47 agreement. The Attorney General shall review the terms of all proposed agreements to be
48 entered into under this act. To be effective against the State, an agreement entered into under
49 this act must be signed personally by the Attorney General.

50 **SECTION 1.(j)** Safeguards. – To ensure that public funds are used only to carry
51 out the public purposes provided in this act, the Department shall require that each business that

1 receives State-funded preconstruction development must agree to meet performance criteria to
2 protect the State's investment and assure that the projected benefits of the project are secured.
3 The performance criteria to be required shall include creation and maintenance of an
4 appropriate level of employment and investment over the term of the agreement and any other
5 criteria the Department considers appropriate. The agreement must require the business to
6 repay or reimburse an appropriate portion of the State funds expended for the preconstruction
7 development, based on the extent of any failure by the business to meet the performance
8 criteria. The agreement must provide a method for securing these payments from the business,
9 such as structuring the preconstruction development as a conditional grant, a forgivable loan, or
10 a revocable lease.

11 **SECTION 1.(k) Monitoring and Reports.** – The Department is responsible for
12 monitoring compliance with the performance criteria under each preconstruction development
13 agreement and for administering the repayment in case of default. The Department shall pay for
14 the cost of this monitoring from funds appropriated to it for that purpose or for other economic
15 development purposes.

16 On September 1 of each year until all funds have been expended, the Department
17 shall report to the Joint Legislative Commission on Governmental Operations regarding the
18 Preconstruction Grant Development Program. This report shall include a listing of each
19 agreement negotiated and entered into during the preceding year, including the name of the
20 business, the cost/benefit analysis conducted by the Committee during the application process,
21 a description of the project, and the amount of the preconstruction development incentive
22 expected to be paid under the agreement during the current fiscal year. The report shall also
23 include detailed information about any defaults and repayment during the preceding year. The
24 Department shall publish this report on its Web site and shall make printed copies available
25 upon request.

26 **SECTION 1.(l) Options.** – The Department of Commerce may acquire options and
27 hold options for the purchase of land for an anticipated industrial site if all of the following
28 conditions are met:

- 29 (1) The options are necessary to provide a large, regional industrial site that
30 cannot be assembled by local governments.
- 31 (2) The acquisition of the options is approved by the Committee.

32 **SECTION 2.** This act is effective when it becomes law.