

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

2

HOUSE BILL 462
Committee Substitute Favorable 4/27/09

Short Title: Solar Equip. Manuf. Incentive Grant Program.

(Public)

Sponsors:

Referred to:

March 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE SOLAR EQUIPMENT MANUFACTURING INCENTIVE
3 GRANT PROGRAM WITHIN THE DEPARTMENT OF COMMERCE.

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 Part to read:

7 "Part 2C. Solar Equipment Manufacturing Incentive Grant Program.
8 **§ 143B-437.12. Solar Equipment Manufacturing Incentive Grant Program.**

9 (a) Definitions. – The following definitions apply in this Part:

10 (1) Agreement. – A community economic development agreement for solar
11 equipment manufacturing under G.S. 143B-437.17.

12 (2) Business. – A corporation, sole proprietorship, cooperative association,
13 partnership, S corporation, limited liability company, nonprofit corporation,
14 or other form of business organization, located either within or outside this
15 State.

16 (3) Committee. – The Solar Investment Committee established pursuant to
17 G.S. 143B-437.14.

18 (4) Eligible position. – A position created by a business and filled by a new
19 full-time employee in this State.

20 (5) Full-time employee. – A person who is employed for consideration for at
21 least 35 hours a week, whose wages are subject to withholding under Article
22 4A of Chapter 105 of the General Statutes, and who is determined by the
23 Committee to be employed in a permanent position according to criteria it
24 develops in consultation with the Attorney General. The term does not
25 include any person who works as an independent contractor or on a
26 consulting basis for the business.

27 (6) Overdue tax debt. – Defined in G.S. 105-243.1.

28 (7) Related member. – Defined in G.S. 105-130.7A.

29 (8) Withholdings. – The amount withheld by a business from the wages of
30 employees in eligible positions under Article 4A of Chapter 105 of the
31 General Statutes.

32 (b) Program. – There is established the Solar Equipment Manufacturing Incentive Grant
33 Program to be administered by the Solar Investment Committee. In order to foster job creation
34 and investment in the economy of this State, the Committee may enter into negotiated
35 agreements with businesses to provide grants in accordance with the provisions of this Part.
36 The Committee, in consultation with the Attorney General, shall develop criteria to be used in
37 determining whether the conditions of this section are satisfied and whether the project



1 described in the application is otherwise consistent with the purposes of this Part. Before
2 entering into an agreement, the Committee shall find that all the following conditions are met:

- 3 (1) The project will benefit the people of this State by increasing opportunities
4 for employment and by strengthening this State's economy by, for example,
5 providing worker training opportunities, constructing and enhancing critical
6 infrastructure, increasing development in strategically important industries,
7 or increasing the State and local tax base.
8 (2) The project is consistent with economic development goals for the State and
9 for the area where it will be located.
10 (3) A grant under this Part is necessary for the completion of the project in this
11 State.
12 (4) The total benefits of the project to the State outweigh its costs and render the
13 grant appropriate for the project.

14 **"§ 143B-437.13. Eligibility for and receipt of grant funds.**

15 (a) Health Insurance. – A business is eligible for a grant under this Part only if the
16 business provides health insurance for all of the applicable full-time employees of the project
17 with respect to which the grant is made. For the purposes of this subsection, an applicable
18 full-time employee is one who earns from the business less than one hundred fifty thousand
19 dollars (\$150,000) in taxable compensation on an annualized basis or three and one-half times
20 the annualized average State wage for all insured private employers in the State employing
21 between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a
22 business provides health insurance if it pays at least fifty percent (50%) of the premiums for
23 health care coverage that equals or exceeds the minimum provisions of the basic health care
24 plan of coverage recommended by the Small Employer Carrier Committee pursuant to
25 G.S. 58-50-125.

26 Each year that a business receives a grant under this Part, the business shall provide with
27 the submission required under G.S. 143B-437.15(d) a certification that the business continues
28 to provide health insurance, as required by this subsection, for all applicable full-time
29 employees of the project with respect to which the grant is made. If the business ceases to
30 provide the required health insurance, the Committee shall amend or terminate the agreement
31 as provided in G.S. 143B-437.18.

32 (b) Safety and Health Programs. – A business is eligible for a grant under this Part only
33 if the business has no citations under the Occupational Safety and Health Act that have become
34 a final order within the past three years for willful serious violations or for failing to abate
35 serious violations with respect to the location for which the grant is made. For the purposes of
36 this subsection, "serious violation" has the same meaning as in G.S. 95-127.

37 (c) Overdue Tax Debts. – A business may not receive an annual disbursement of a grant
38 if, at the time of disbursement, the business has received a notice of an overdue tax debt and
39 that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an
40 annual disbursement of a grant only after the Committee has certified that there are no
41 outstanding overdue tax debts and that the business has met the terms and conditions of the
42 agreement. No amount shall be disbursed to a business as a grant under this Part in any year
43 until the Secretary of Revenue has certified to the Committee that there are no outstanding
44 overdue tax debts of the business. A business that has met the terms of the agreement shall
45 make an annual certification of this to the Committee. The Committee shall require the
46 business to provide any necessary evidence of compliance to verify that the terms of the
47 agreement have been met. The Committee shall certify the grant amount for which the business
48 is eligible under the agreement. The Department of Commerce shall remit a check to the
49 business in the amount of the certified grant amount within 90 days of receiving the
50 certification of the Committee.

51 **"§ 143B-437.14. Solar Investment Committee established.**

1 (a) Membership. – The Solar Investment Committee is established. The Committee
2 consists of the following members:

- 3 (1) The Secretary of Commerce.
- 4 (2) The Director of the State Energy Office.
- 5 (3) The Director of the Office of State Budget and Management.
- 6 (4) One member appointed by the General Assembly upon the recommendation
7 of the Speaker of the House of Representatives.
- 8 (5) One member appointed by the General Assembly upon the recommendation
9 of the President Pro Tempore of the Senate.

10 The members of the Committee appointed by the General Assembly may not be members
11 of the General Assembly. The members of the Committee appointed by the General Assembly
12 serve two-year terms that begin upon appointment.

13 (b) Decision Required. – The Committee may act only upon a decision of three of its
14 five members.

15 (c) Conflict of Interest. – It is unlawful for a current or former member of the
16 Committee to, while serving on the Committee or within two years after the end of service on
17 the Committee, provide services for compensation, as an employee, consultant, or otherwise, to
18 any business or a related member of the business that is awarded a grant under this Part while
19 the member is serving on the Committee. Violation of this subsection is a Class 1
20 misdemeanor. In addition to the penalties imposed under G.S. 15A-1340.23, the court shall also
21 make a finding as to what compensation was received by the defendant for services in violation
22 of this section and shall order the defendant to forfeit that compensation.

23 If a person is convicted under this section, the person shall not provide services for
24 compensation, as an employee, consultant, or otherwise, to any business or a related member of
25 the business that was awarded a grant under this Part while the member was serving on the
26 Committee until two years after the person's conviction under this section.

27 (d) Public Notice. – At least 20 days before the effective date of any criteria or
28 nontechnical amendments to criteria, the Committee shall publish the proposed criteria on the
29 Department of Commerce's Web site and provide notice to persons who have requested notice
30 of proposed criteria. In addition, the Committee shall accept oral and written comments on the
31 proposed criteria during the 15 business days beginning on the first day that the Committee has
32 completed these notifications. For the purpose of this subsection, a technical amendment is
33 either of the following:

- 34 (1) An amendment that corrects a spelling or grammatical error.
- 35 (2) An amendment that makes a clarification based on public comment and
36 could have been anticipated by the public notice that immediately preceded
37 the public comment.

38 (e) Sunshine. – Meetings of the Committee are subject to the open meetings
39 requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the
40 Committee, including applications for grants, are public records governed by Chapter 132 of
41 the General Statutes and any applicable provisions of the General Statutes protecting
42 confidential information.

43 **"§ 143B-437.15. Applications; fees; reports; study.**

44 (a) Application. – A business shall apply, under oath, to the Committee for a grant on a
45 form prescribed by the Committee that includes at least all of the following:

- 46 (1) The name of the business and the proposed location of the project.
- 47 (2) The names and addresses of the principals or management of the business,
48 the nature of the business, and the form of business organization under
49 which it is operated.

- 1 (3) The financial statements of the business prepared by a certified public
2 accountant and any other financial information the Committee considers
3 necessary.
4 (4) The number of full-time positions, if any, proposed to be created for the
5 project and the salaries for these positions.
6 (5) Certification that the business will provide health insurance to full-time
7 employees of the project as required by G.S. 143B-437.13(a).
8 (6) Information concerning other locations, including locations in other states
9 and countries, being considered for the project and the nature of any benefits
10 that would accrue to the business if the project were to be located in one of
11 those locations.
12 (7) Information concerning any other State or local government incentives for
13 which the business is applying or that it has an expectation of receiving.
14 (8) Any other information necessary for the Committee to evaluate the
15 application.

16 A business may apply, in one consolidated application in a form and manner determined by
17 the Committee, for a grant on its own behalf as a business and for grants on behalf of the
18 related members of the business who may qualify under this Part.

19 The Committee will consider an application by a business for grants on behalf of its related
20 members only if the related members for whom the application is submitted have assigned to
21 the business any claim of right the related members may have under this Part to apply for
22 grants individually during the term of the agreement and have agreed to cooperate with the
23 business in providing to the Committee all the information required for the initial application
24 and the agreement, and any other information the Committee may require for the purposes of
25 this Part. The applicant business is responsible for providing to the Committee all the
26 information required under this Part.

27 If a business applies for a grant on behalf of its related members, the related members
28 included in the application may be permitted to meet the qualifications for a grant collectively
29 by participating in a project that meets the requirements of this Part. The amount of a grant may
30 be calculated under the terms of this Part as if the related members were all collectively one
31 business entity. Any conditions for a grant, other than the number of eligible positions created,
32 apply to each related member who is listed in the application as participating in the project. The
33 grants awarded shall be paid to the applicant business. A grant received under this Part by a
34 business may be apportioned to the related members in a manner determined by the business. In
35 order for an agreement to be executed, each related member included in the application shall
36 sign the agreement and agree to abide by its terms.

37 (b) Application Fee. – When filing an application under this section, the business shall
38 pay the Committee a fee of five thousand dollars (\$5,000). The fee is due at the time the
39 application is filed. The Secretary of Commerce, the Director of the State Energy Office, and
40 the Director of the Office of State Budget and Management shall determine the allocation of
41 the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the
42 agency to which they are credited.

43 (c) Committee Reports. – The Committee shall publish a report on the Solar Equipment
44 Manufacturing Investment Grant Program on or before September 1 of each year. The report
45 shall include the following:

- 46 (1) A listing of each agreement negotiated and entered into during the preceding
47 calendar year, including the name of the business, the cost/benefit analysis
48 conducted by the Committee during the application process, a description of
49 the project, the term of the agreement, the formula used to determine the
50 amount of the grant, and the amount of the grant made under the agreement
51 during that year.

- 1 (2) An update on the status of projects under agreements entered into before the
2 preceding calendar year.
- 3 (3) A listing of the employment level for all businesses receiving a grant and
4 any changes in those levels from the level of the next preceding year.
- 5 (4) The criteria developed by the Committee, in consultation with the Attorney
6 General, to implement this Part and any changes in those criteria from the
7 previous calendar year.
- 8 (5) The effectiveness of the program in recruiting new and expanding
9 businesses.
- 10 (6) The environmental impact of businesses that have received grants under the
11 program.
- 12 (7) The geographic distribution of grants, by number and amount, awarded
13 under the program.
- 14 (8) An explanation of whether the projects with respect to which agreements are
15 entered into involve new businesses in the State or expanding existing
16 businesses in the State.
- 17 (9) A listing of all businesses making an application under this Part and an
18 explanation of whether each business ultimately located the project in this
19 State regardless of whether the business was awarded a grant for the project
20 under this Part.

21 In addition to the annual report required by this subsection, the Committee shall publish a
22 report on the Solar Equipment Manufacturing Investment Grant Program within two months of
23 direction to do so by either the General Assembly or the Fiscal Research Division.

24 (d) Grant Recipient Report. – No later than March 1 of each year, for the preceding
25 grant year, every entity that is awarded a grant under this section shall submit to the
26 Department, as a condition of its continuation in the grant program, a report showing the
27 number of full-time employees, the amount and date of capital investments in real property or
28 eligible business property, and the number of watts of rated capacity of panels. Annual reports
29 submitted to the Committee shall include social security numbers of individual employees
30 identified in the reports. Upon request of the Committee, the business shall also submit a copy
31 of its State and federal tax returns. Payroll and tax information, including social security
32 numbers of individual employees and State and federal tax returns, submitted under this
33 subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax
34 information submitted or derived under this subsection is not tax information subject to
35 G.S. 105-259. When making a submission under this section, the business shall pay the
36 Committee a fee of one thousand five hundred dollars (\$1,500). The fee is due at the time the
37 submission is made. The Secretary of Commerce, the Director of the State Energy Office, and
38 the Director of the Office of State Budget and Management shall determine the allocation of
39 the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the
40 agency to which they are credited. The Committee may require any information that it
41 considers necessary to effectuate the provisions of this Part. The Committee may require any
42 business receiving a grant to submit to an audit at any time. The reporting procedures of this
43 section are in lieu of any other general reporting requirements relating to private entities that
44 receive State funds.

45 (e) Study. – The Committee shall conduct a study to determine the minimum funding
46 level required to implement the Solar Equipment Manufacturing Investment Grant Program
47 successfully. The Committee shall report the results of this study to the House of
48 Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate
49 Appropriations Committee on Natural and Economic Resources, and the Fiscal Research
50 Division no later than March 1 of each year.

51 "§ 143B-437.16. Grant eligibility and calculation.

1 (a) Eligibility. – Any entity that is certified at an investment level pursuant to
 2 subsection (b) of this section that either commences the manufacture of solar photovoltaic
 3 panels in the State on or after January 1, 2010, or expands its manufacture of such panels in the
 4 State by at least 40,000,000 watts in total annual production capacity shall be eligible to apply
 5 for an annual solar photovoltaic manufacturing incentive grant under this Part.

6 (b) Certification. – The Secretary of Commerce shall certify the investment level of
 7 entities eligible for grants under this Part. The Secretary shall make a written determination that
 8 the entity is an Investment Level I, Investment Level II, or Investment Level III entity. For
 9 purposes of this Part, an Investment Level I business is one that will make a capital investment
 10 of at least one hundred fifty million dollars (\$150,000,000) over the grant term and employs at
 11 least 150 full-time employees during each year of the grant term; an Investment Level II
 12 business is a business that makes a capital investment of at least two hundred twenty-five
 13 million dollars (\$225,000,000) over the grant term and employs at least 200 full-time
 14 employees during the third and fourth years of the grant term; and an Investment Level III
 15 business is a business that makes a capital investment of at least three hundred million dollars
 16 (\$300,000,000) over the grant term and employs at least 250 full-time employees during the
 17 fifth year of the grant term.

18 (c) Amount of Grant. – The grant shall be awarded in equal amounts over six years.
 19 The yearly maximum amount of the grant shall be determined using the following rates:

<u>Year</u>	<u>Investment Level</u>	<u>Rate</u>
<u>1 and 2</u>	<u>I, II, and III</u>	<u>2.5¢/watt</u>
<u>3 and 4</u>	<u>I</u>	<u>1.75¢/watt</u>
	<u>II and III</u>	<u>2.5¢/watt</u>
<u>5 and 6</u>	<u>I and II</u>	<u>1.25¢/watt</u>
	<u>III</u>	<u>2.5¢/watt.</u>

26 (d) Limitation. – In the event applications for grants pursuant to this section exceed the
 27 funds available in the Solar Equipment Manufacturing Incentive Program Fund, established
 28 pursuant to G.S. 143B-437.19, the grant awarded shall be apportioned among the eligible
 29 applicants on a first-come, first-served basis. No applicant may be eligible to receive more than
 30 a total of six million dollars (\$6,000,000) per grant term.

31 **"§ 143B-437.17. Community economic development agreement.**

32 (a) Terms. – Each agreement shall include at least the following:

- 33 (1) A detailed description of the proposed project.
- 34 (2) The number of eligible positions that are subjects of the grant and a
 35 description of those positions and the location of those positions.
- 36 (3) A provision permitting an audit of the payroll records of the business by the
 37 Committee from time to time as the Committee considers necessary.
- 38 (4) A provision that requires the Committee to amend an agreement pursuant to
 39 G.S. 143B-437.18.
- 40 (5) A provision that requires the business to maintain operations at the project
 41 location or another location approved by the Committee for the term of the
 42 grant and a provision to permit the Committee to recapture all or part of the
 43 grant at its discretion if the business does not remain at the site for the
 44 required term.
- 45 (6) A provision establishing the conditions under which the grant agreement
 46 may be terminated, in addition to those under G.S. 143B-437.18, and under
 47 which grant funds may be recaptured by the Committee.
- 48 (7) A provision stating that unless the agreement is amended or terminated
 49 pursuant to G.S. 143B-437.18, the agreement is binding and constitutes a
 50 continuing contractual obligation of the State and the business.

- 1 (8) A provision setting out any allowed variation in the terms of the agreement
2 that will not subject the business to amendment or termination of the
3 agreement under G.S. 143B-437.18.
- 4 (9) A provision requiring that the business engage in fair employment practices
5 as required by State and federal law and a provision encouraging the
6 business to use small contractors, minority contractors, physically
7 handicapped contractors, and women contractors whenever practicable in the
8 conduct of its business.
- 9 (10) A provision encouraging the business to hire North Carolina residents.
- 10 (11) A provision encouraging the business to use the North Carolina State ports.
- 11 (12) A provision describing the manner in which the amount of a grant will be
12 measured and administered to ensure compliance with the provisions of
13 G.S. 143B-437.16(d).
- 14 (13) A provision stating that any recapture of a grant and any amendment to an
15 agreement reducing the amount of the grant or the term of the agreements
16 shall, at a minimum, be proportional to the failure to comply measured
17 relative to the condition or criterion with respect to which the failure
18 occurred.
- 19 (14) A provision stating that any disputes over interpretation of the agreement
20 shall be submitted to binding arbitration.
- 21 (15) A provision stating that the business agrees to submit to an audit at any time
22 that the Committee requires one.
- 23 (16) A provision encouraging the business to contract with small businesses
24 headquartered in the State for goods and services.
- 25 (17) A provision stating that grant awards are subject to the availability of funds.

26 (b) Approval of Attorney General. – The Attorney General shall review the terms of all
27 proposed agreements entered into by the Committee. To be effective against the State, an
28 agreement entered into under this Part shall be signed personally by the Attorney General.

29 **"§ 143B-437.18. Failure to comply with agreement.**

30 (a) If the business receiving a grant fails to meet or comply with any condition or
31 requirement set forth in an agreement or with criteria developed by the Committee in
32 consultation with the Attorney General, the Committee shall amend the agreement to reduce the
33 amount of the grant or the term of the agreement and may terminate the agreement. Any
34 reduction of the grant is applicable to the grant year immediately following the grant year in
35 which the business fails to comply with the agreement. The reduction in the amount or the term
36 shall, at a minimum, be proportional to the failure to comply measured relative to the condition
37 or criterion with respect to which the failure occurred.

38 (b) If a business fails to maintain employment at the levels stipulated in the agreement
39 or otherwise fails to comply with any condition of the agreement for any two consecutive years,
40 the Committee shall terminate the agreement.

41 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the
42 Committee finds that the business has manipulated or attempted to manipulate reported
43 material with the knowledge that such action will increase the amount of a grant, the
44 Committee shall immediately terminate the agreement and take action to recapture any grant
45 funds disbursed in any year in which the Committee finds the business manipulated or
46 attempted to manipulate employee withholdings with the purpose of increasing the amount of
47 the grant.

48 **"§ 143B-437.19. Solar Equipment Manufacturing Incentive Program Fund.**

49 The Solar Equipment Manufacturing Incentive Program Fund is created as a restricted
50 reserve in the Department of Commerce. Monies in the Fund do not revert but remain available
51 to the Department for these purposes. The Department may use monies in the Fund only to

1 encourage businesses to maintain high-paying jobs and make further capital investments in the
2 State as provided in this section, and funds are hereby appropriated for these purposes in
3 accordance with G.S. 143C-1-2."

4 **SECTION 3.** This act becomes effective July 1, 2009, and applies to agreements
5 entered on or after that date.