

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 462

Short Title: Solar Manufacturing Incentive Grant Program. (Public)

Sponsors: Representatives Goforth, Holliman, Crawford, Faison (Primary Sponsors);  
Coates, Harrison, Hughes, Insko, Lucas, Mackey, Owens, and Wray.

Referred to: Energy and Energy Efficiency, if favorable, Finance.

March 9, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE SOLAR ENERGY INCENTIVE GRANT PROGRAM  
3 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 Manufacturing Incentive Grant Program.

8 **"§ 143B-437.12. Solar Manufacturing Incentive Grant Program.**

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

10 (1) Agreement. – A solar manufacturing incentive agreement under  
11 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) New employee. – A full-time employee who represents a net increase in the  
28 number of the business's employees statewide.

29 (7) Overdue tax debt. – Defined in G.S. 105-243.1.

30 (8) Related member. – Defined in G.S. 105-130.7A.

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

34 (b) Program. – There is established the Solar Manufacturing Incentive Grant Program to  
35 be administered by the Solar Investment Committee. In order to foster job creation and  
36 investment in the economy of this State, the Committee may enter into negotiated agreements



1 with businesses to provide grants in accordance with the provisions of this Part. The  
2 Committee, in consultation with the Attorney General, shall develop criteria to be used in  
3 determining whether the conditions of this section are satisfied and whether the project  
4 described in the application is otherwise consistent with the purposes of this Part. Before  
5 entering into an agreement, the Committee must find that all the following conditions are met:

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

17 **"§ 143B-437.13. Eligibility for and receipt of grant funds.**

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

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

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

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

1 business in the amount of the certified grant amount within 90 days of receiving the  
2 certification of the Committee.

3 **"§ 143B-437.14. Solar Investment Committee established.**

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

6 (1) The Secretary of Commerce.

7 (2) The Director of the State Energy Office.

8 (3) The Director of the Office of State Budget and Management.

9 (4) One member appointed by the General Assembly upon the recommendation  
10 of the Speaker of the House of Representatives.

11 (5) One member appointed by the General Assembly upon the recommendation  
12 of the President Pro Tempore of the Senate.

13 The members of the Committee appointed by the General Assembly may not be members  
14 of the General Assembly. The members of the Committee appointed by the General Assembly  
15 serve two-year terms that begin upon appointment.

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

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

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

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

37 (1) An amendment that corrects a spelling or grammatical error.

38 (2) An amendment that makes a clarification based on public comment and  
39 could have been anticipated by the public notice that immediately preceded  
40 the public comment.

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

46 **"§ 143B-437.15. Applications; fees; reports; study.**

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

49 (1) The name of the business and the proposed location of the project.

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

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

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

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

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

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

- 49           (1)   A listing of each agreement negotiated and entered into during the preceding  
50           calendar year, including the name of the business, the cost/benefit analysis  
51           conducted by the Committee during the application process, a description of

1 the project, the term of the agreement, the formula used to determine the  
2 amount of the grant, and the amount of the grant made under the agreement  
3 during that year.

4 (2) An update on the status of projects under agreements entered into before the  
5 preceding calendar year.

6 (3) A listing of the employment level for all businesses receiving a grant and  
7 any changes in those levels from the level of the next preceding year.

8 (4) The criteria developed by the Committee, in consultation with the Attorney  
9 General, to implement this Part and any changes in those criteria from the  
10 previous calendar year.

11 (5) The effectiveness of the program in recruiting new and expanding  
12 businesses.

13 (6) The environmental impact of businesses that have received grants under the  
14 program.

15 (7) The geographic distribution of grants, by number and amount, awarded  
16 under the program.

17 (8) An explanation of whether the projects with respect to which agreements are  
18 entered into involve new businesses in the State or expanding existing  
19 businesses in the State.

20 (9) A listing of all businesses making an application under this Part and an  
21 explanation of whether each business ultimately located the project in this  
22 State regardless of whether the business was awarded a grant for the project  
23 under this Part.

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

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

48 (e) Study. – The Committee shall conduct a study to determine the minimum funding  
49 level required to implement the Solar Investment Grant Program successfully. The Committee  
50 shall report the results of this study to the House of Representatives Appropriations  
51 Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on

1 Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of  
 2 each year.

3 **"§ 143B-437.16. Calculation of grants.**

4 (a) Existing Manufacturer Grant. – Any manufacturer commencing eligible sales at any  
 5 time subsequent to December 31, 2009, of solar photovoltaic panels it manufactured within the  
 6 State shall be entitled to receive an annual solar photovoltaic manufacturing incentive grant in  
 7 an amount of seventy-five cents (75¢) per watt of the rated capacity of panels sold in a calendar  
 8 year. No manufacturer shall be eligible to receive grants pursuant to this subsection for more  
 9 than five years.

10 (b) New or Expanded Grant. – Any entity (i) that commences the manufacture of solar  
 11 photovoltaic panels in the State on or after January 1, 2010, or expands its manufacture of such  
 12 panels in the State by at least fifty percent (50%) above the baseline production level of six  
 13 million watts and (ii) for which the Secretary of Commerce has made a written determination  
 14 that the entity is an Investment Level I, Investment Level II, or Investment Level III entity shall  
 15 be entitled to receive an annual solar photovoltaic manufacturing incentive grant for six years at  
 16 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>75¢/watt</u>
<u>3 and 4</u>	<u>I</u>	<u>50¢/watt</u>
	<u>II and III</u>	<u>75¢/watt</u>
<u>5 and 6</u>	<u>I and II</u>	<u>25¢/watt</u>
	<u>III</u>	<u>75¢/watt.</u>

23 For purposes of this Part, an Investment Level I business is one that the Secretary of  
 24 Commerce has certified will make a capital investment of at least twenty-five million dollars  
 25 (\$25,000,000) over the grant term and employs at least 230 full-time employees during each  
 26 year of the grant term; an Investment Level II business is a business that makes a capital  
 27 investment of at least seventy million dollars (\$70,000,000) over the grant term and employs at  
 28 least 200 full-time employees during the third through sixth years of the grant term above the  
 29 employment level required for Investment Level I businesses; and an Investment Level III  
 30 business is a business that makes a capital investment of at least one hundred forty million  
 31 dollars (\$140,000,000) over the grant term and employs at least 700 full-time employees during  
 32 the fifth and sixth years of the grant term above the employment level required for Investment  
 33 Level I businesses.

34 (c) Election. – A business that qualifies both for an existing manufacturer grant under  
 35 subsection (a) of this section and for a new or expanded grant under subsection (b) of this  
 36 section must elect which grant to receive. This election is binding for the entire term of the  
 37 grant.

38 (d) Limitation. – In the event applications for grants pursuant to subsections (a) and (b)  
 39 of this section exceed nine million watts per calendar year, the grant payments will be  
 40 apportioned among the eligible applications, based upon the total wattage evidenced by such  
 41 applicants, the amount per watt the applicant is eligible to receive, and the total wattage eligible  
 42 for grants specified in this section.

43 **"§ 143B-437.17. Community economic development agreement.**

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

- 45 (1) A detailed description of the proposed project.
- 46 (2) The number of eligible positions that are subjects of the grant and a  
 47 description of those positions and the location of those positions.
- 48 (3) A provision permitting an audit of the payroll records of the business by the  
 49 Committee from time to time as the Committee considers necessary.
- 50 (4) A provision that requires the Committee to amend an agreement pursuant to  
 51 G.S. 143B-437.18.

- 1           (5) A provision that requires the business to maintain operations at the project  
2 location or another location approved by the Committee for the term of the  
3 grant and a provision to permit the Committee to recapture all or part of the  
4 grant at its discretion if the business does not remain at the site for the  
5 required term.
- 6           (6) A provision establishing the conditions under which the grant agreement  
7 may be terminated, in addition to those under G.S. 143B-437.18, and under  
8 which grant funds may be recaptured by the Committee.
- 9           (7) A provision stating that unless the agreement is amended or terminated  
10 pursuant to G.S. 143B-437.18, the agreement is binding and constitutes a  
11 continuing contractual obligation of the State and the business.
- 12           (8) A provision setting out any allowed variation in the terms of the agreement  
13 that will not subject the business to amendment or termination of the  
14 agreement under G.S. 143B-437.18.
- 15           (9) A provision requiring that the business engage in fair employment practices  
16 as required by State and federal law and a provision encouraging the  
17 business to use small contractors, minority contractors, physically  
18 handicapped contractors, and women contractors whenever practicable in the  
19 conduct of its business.
- 20           (10) A provision encouraging the business to hire North Carolina residents.
- 21           (11) A provision encouraging the business to use the North Carolina State ports.
- 22           (12) A provision describing the manner in which the amount of a grant will be  
23 measured and administered to ensure compliance with the provisions of  
24 G.S. 143B-437.16(d).
- 25           (13) A provision stating that any recapture of a grant and any amendment to an  
26 agreement reducing the amount of the grant or the term of the agreement  
27 must, at a minimum, be proportional to the failure to comply measured  
28 relative to the condition or criterion with respect to which the failure  
29 occurred.
- 30           (14) A provision stating that any disputes over interpretation of the agreement  
31 shall be submitted to binding arbitration.
- 32           (15) A provision stating that the business agrees to submit to an audit at any time  
33 that the Committee requires one.
- 34           (16) A provision encouraging the business to contract with small businesses  
35 headquartered in the State for goods and services.
- 36           (17) A provision stating that grant awards are subject to the availability of funds.
- 37           (b) Approval of Attorney General. – The Attorney General shall review the terms of all  
38 proposed agreements entered into by the Committee. To be effective against the State, an  
39 agreement entered into under this Part must be signed personally by the Attorney General.
- 40           **§ 143B-437.18. Failure to comply with agreement.**
- 41           (a) If the business receiving a grant fails to meet or comply with any condition or  
42 requirement set forth in an agreement or with criteria developed by the Committee in  
43 consultation with the Attorney General, the Committee shall amend the agreement to reduce the  
44 amount of the grant or the term of the agreement and may terminate the agreement. Any  
45 reduction of the grant is applicable to the grant year immediately following the grant year in  
46 which the business fails to comply with the agreement. The reduction in the amount or the term  
47 must, at a minimum, be proportional to the failure to comply measured relative to the condition  
48 or criterion with respect to which the failure occurred.
- 49           (b) If a business fails to maintain employment at the levels stipulated in the agreement  
50 or otherwise fails to comply with any condition of the agreement for any two consecutive years,  
51 the Committee shall terminate the agreement.

1       (c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the  
2 Committee finds that the business has manipulated or attempted to manipulate reported  
3 material with the knowledge that such action will increase the amount of a grant, the  
4 Committee shall immediately terminate the agreement and take action to recapture any grant  
5 funds disbursed in any year in which the Committee finds the business manipulated or  
6 attempted to manipulate employee withholdings with the purpose of increasing the amount of  
7 the grant.

8 **"§ 143B-437.19. SMIG Program cash flow requirements.**

9       The Job Maintenance and Capital Development Fund is created as a restricted reserve in the  
10 Department of Commerce. Monies in the Fund do not revert but remain available to the  
11 Department for these purposes. The Department may use monies in the Fund only to encourage  
12 businesses to maintain high-paying jobs and make further capital investments in the State as  
13 provided in this section, and funds are hereby appropriated for these purposes in accordance  
14 with G.S. 143C-1-2."

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