

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-394
HOUSE BILL 1516**

**AN ACT TO MAKE CERTAIN MODIFICATIONS TO AND EXTEND THE SUNSET OF
THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.52 reads as rewritten:

"§ 143B-437.52. Job Development Investment Grant Program.

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into ~~negotiated~~ agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

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

(b) Cap. – The maximum number of ~~agreements~~ grants the Committee may ~~enter into~~ award in each calendar year is 25.

(c) Ceiling. – ~~Except as provided in this section, the~~ The maximum amount of total annual liability for grants ~~for agreements entered into~~ awarded in any single calendar year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars (\$15,000,000). ~~The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars (\$30,000,000).~~ No agreement may be entered into that, when considered together with other existing agreements ~~entered into~~ governing grants awarded during ~~that a~~ a single calendar year, could cause the State's potential total annual liability for grants ~~entered into~~ awarded in ~~that a~~ a single calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

- (1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.



- (2) The agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 2. G.S. 143B-437.55 reads as rewritten:

"§ 143B-437.55. Applications; fees; reports; study.

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

- (1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
- (2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
- (3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
- (4) The number of eligible positions proposed to be created for the project and the salaries for these positions.
- (5) An estimate of the total withholdings.
- (6) Certification that the business will provide health insurance to full-time employees of the project as required by G.S. 143B-437.53(c).
- (7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
- (8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
- (9) Any other information necessary for the Committee to evaluate the application.

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

The Committee will consider an application by a business for ~~grants on behalf a grant that~~ includes performance of its related members only if the related members for whom the application is submitted ~~have assigned~~ assign to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and ~~have agreed~~ agree to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

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

...
(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

- (1) A listing of each ~~community economic development agreement negotiated and entered into~~ grant awarded during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the ~~agreement, grant,~~ grant, the percentage of withholdings used to

determine the amount of the grant, ~~the annual maximum State liability under the grant, and the amount of the grant made~~ maximum total lifetime State liability under the agreement during that year grant.

- (2) ~~An update on the status of projects under agreements entered into~~ grants awarded before the preceding calendar year.
- (3) ~~The number and development tier area of eligible positions to be created by projects with respect to which grants were have been awarded.~~
- (3a) ~~A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.~~
- (4) ~~The wage levels of all eligible positions to be created by projects with respect to which grants are have been awarded, aggregated and listed in increments of five thousand dollars (\$5,000), ten thousand dollars (\$10,000) or other appropriate increments.~~
- (5) ~~The amount of new income tax revenue received from withholdings related to the projects for which grants were have been awarded.~~
- (6) ~~The For the first annual report after adoption of the criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and Part, a copy of such criteria, and, for subsequent reports, identification of any changes in those criteria from the previous calendar year.~~
- (7) ~~The effectiveness of the program in recruiting~~ number of awards made to new businesses and the number of awards made to existing, expanding businesses in the preceding calendar year.
- (8) ~~The environmental impact of businesses that have received grants under the program.~~
- (9) ~~The geographic distribution of grants, by number and amount, awarded under the program.~~
- (10) ~~An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.~~
- (11) ~~A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.~~
- (12) ~~Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.~~
- (13) ~~The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.~~

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each ~~community economic development agreement negotiated and entered into~~ grant awarded during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

...."

SECTION 3. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

- ...
(9) ~~A provision that requires the Committee to amend an agreement~~ reduce the amount or term of a grant pursuant to G.S. 143B-437.59.
- ...
(13) ~~A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement~~ agreement, including any amendments pursuant to G.S. 143B-437.59, is binding and constitutes a continuing contractual obligation of the State and the business.
- (14) ~~A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment grant reduction, amendment, or termination of the agreement under G.S. 143B-437.59.~~

- ...
- (21) A provision stating that any recapture of a grant and any ~~amendment to an agreement reducing~~ reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

....

SECTION 4. G.S. 143B-437.58(a) reads as rewritten:

"(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee ~~a an annual payroll report~~ showing withholdings as a condition of its continuation in the grant program. ~~In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the program and identifying eligible positions that have been created during the preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions~~ base period that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars (\$1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited."

SECTION 5. G.S. 143B-437.59 reads as rewritten:

"§ 143B-437.59. Failure to comply with agreement.

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall ~~amend the agreement to reduce the amount of the grant or the term of the agreement and agreement, may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the business fails to comply with the agreement.~~ agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred. The Committee may reduce the amount or term of a grant by formally approving a motion to reduce such grant in accordance with program policies adopted by the Committee for the treatment of failures by businesses to meet or comply with a condition or requirement set forth in the grant agreement, and it shall not be necessary to execute an amendment to the applicable grant agreement. The Committee shall notify any such affected business of the reduction to its grant payment, reflected in any such motion.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years:

- (1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year after the second consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.
- (2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee

withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 6. G.S. 143B-437.62 reads as rewritten:

"§ **143B-437.62. Expiration.**

The authority of the Committee to ~~enter into~~award new ~~agreements~~grants expires January 1, ~~2010~~2016."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ William L. Wainwright
Speaker Pro Tempore of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:45 p.m. this 31st day of July, 2009