

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1734
Committee Substitute Favorable 8/5/02
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Short Title: NC Economic Stimulus and Job Creation Act.

(Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

1 AN ACT TO RAISE THE INVESTMENT THRESHOLD FOR THE CREDIT FOR
2 INVESTING IN MACHINERY AND EQUIPMENT; TO ESTABLISH TIERED
3 RATES FOR THE CREDIT FOR INVESTING IN MACHINERY AND
4 EQUIPMENT; TO REQUIRE A TAXPAYER AND ITS RELATED ENTITIES TO
5 SATISFY ANY OUTSTANDING STATE TAX ASSESSMENTS BEFORE
6 RECEIVING A BILL LEE ACT CREDIT; TO MODIFY THE WAGE
7 STANDARD FOR THE CREDIT FOR WORKER TRAINING; TO MODIFY THE
8 WAGE STANDARD FOR ENTERPRISE TIER ONE AND TWO COUNTIES; TO
9 MODIFY THE WAGE STANDARD FOR TAXPAYERS WITH A TAX YEAR
10 OTHER THAN A CALENDAR YEAR; TO TREAT CERTAIN PARCELS OF
11 LAND PARTIALLY LOCATED IN A DEVELOPMENT ZONE AS IF THE
12 ENTIRE PARCEL WERE LOCATED WITHIN THE DEVELOPMENT ZONE;
13 TO ENACT A JOB DEVELOPMENT INVESTMENT GRANT PROGRAM TO
14 PROVIDE ECONOMIC STIMULUS, TO CREATE JOBS, AND TO AID IN THE
15 DEVELOPMENT OF BUSINESS AND INDUSTRIAL PROJECTS AND
16 EXPANSIONS IN NORTH CAROLINA; TO MODIFY THE INDUSTRIAL
17 DEVELOPMENT FUND TO ALLOW FOR EXPENDITURES RELATED TO
18 TELECOMMUNICATIONS AND BROADBAND LINES AND EQUIPMENT
19 AND TO ALLOW FOR EXPENDITURES FROM THE UTILITY ACCOUNT IN
20 ENTERPRISE TIER THREE AREAS; AND TO MAKE A TECHNICAL
21 CORRECTION REGARDING THE AUTHORITY OF A LOCAL
22 GOVERNMENT TO LEVY A PROPERTY TAX FOR ECONOMIC
23 DEVELOPMENT.

24
25 The General Assembly of North Carolina enacts:

26 **SECTION 1.** G.S. 105-129.9(a) and (c) read as rewritten:

"(a) General Credit. – If a taxpayer that has purchased or leased eligible machinery and equipment places them in service in this State during the taxable year, the taxpayer is allowed a credit equal to ~~seven percent (7%)~~ the applicable percentage of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment are eligible if they are capitalized by the taxpayer for tax purposes under the Code and not leased to another party. In addition, in the case of a large investment, machinery and equipment that are not capitalized by the taxpayer are eligible if the taxpayer leases them from another party. The credit may not be taken for the taxable year in which the machinery and equipment are placed in service but shall be taken in equal installments over the seven years following the taxable year in which they are placed in service. The applicable percentage is as follows:

<u>Area Enterprise Tier</u>	<u>Applicable Percentage</u>
<u>Tier One</u>	<u>7%</u>
<u>Tier Two</u>	<u>7%</u>
<u>Tier Three</u>	<u>6%</u>
<u>Tier Four</u>	<u>5%</u>
<u>Tier Five</u>	<u>4%</u>

...
 (c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service at more than one establishment in an enterprise tier during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service at each establishment. If the taxpayer places eligible machinery and equipment in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	\$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000 <u>1,000,000</u>
Tier Five	1,000,000 <u>2,000,000</u> "

SECTION 1.1. G.S. 105-129.4 is amended by adding a new subsection to read:

"(b6) Final Assessments. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims an installment or carryforward of the credit, the taxpayer or a related entity of the taxpayer has received a notice of final assessment and that assessment has not been satisfied or otherwise resolved."

SECTION 2. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs ~~or the credit for worker training~~ in an enterprise tier three, four, or five area if, for the calendar year the jobs are created or the worker training is provided, created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage

1 of all jobs at the location with respect to which the credit is claimed meets the wage
2 standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer
3 is eligible for the credit for investing in machinery and equipment, the credit for
4 research and development, or the credit for investing in real property for a central office
5 or aircraft facility, or the credit for substantial investment in other property facility in a
6 tier three, four, or five area if, for the calendar year the taxpayer engages in the activity
7 that qualifies for the credit, the average wage of all jobs at the location with respect to
8 which the credit is claimed meets the wage standard. In making the wage calculation,
9 the taxpayer must include any positions that were filled for at least 1,600 hours during
10 the calendar year the taxpayer engages in the activity that qualifies for the credit even if
11 those positions are not filled at the time the taxpayer claims the credit. For a taxpayer
12 with a taxable year other than a calendar year, the taxpayer must use the wage standard
13 for the calendar year in which the taxable year begins. No wage standard applies to
14 credits for activities in an enterprise tier one or two area.

15 Jobs meet the wage standard if they pay an average weekly wage that is at least
16 equal to ~~the applicable percentage times one hundred ten percent (110%)~~ of the
17 applicable average weekly wage for the county in which the jobs will be located, as
18 computed by the Secretary of Commerce from data compiled by the Employment
19 Security Commission for the most recent period for which data are available. ~~The~~
20 ~~applicable percentage for jobs located in an enterprise tier one area is one hundred~~
21 ~~percent (100%). The applicable percentage for all other jobs is one hundred ten percent~~
22 ~~(110%).~~ The applicable average weekly wage is the lowest of the following: (i) the
23 average wage for all insured private employers in the county, (ii) the average wage for
24 all insured private employers in the State, and (iii) the average wage for all insured
25 private employers in the county multiplied by the county income/wage adjustment
26 factor. The county income/wage adjustment factor is the county income/wage ratio
27 divided by the State income/wage ratio. The county income/wage ratio is average per
28 capita income in the county divided by the annualized average wage for all insured
29 private employers in the county. The State income/wage ratio is the average per capita
30 income in the State divided by the annualized average wage for all insured private
31 employers in the State. The Department of Commerce must annually publish the wage
32 standard for each county."

33 **SECTION 3.** G.S. 105-129.3A is amended by adding a new subsection to
34 read:

35 "(d) Parcel of Property Partially in a Development Zone. – For the purposes of this
36 section, a parcel of property that is located partially within a development zone is
37 considered entirely within the development zone if all of the following conditions are
38 satisfied:

- 39 (1) At least fifty percent (50%) of the parcel is located within the
40 development zone.
41 (2) The parcel was in existence and under common ownership prior to the
42 most recent federal decennial census.

- 1 (3) The parcel is a portion of land made up of one or more tracts or tax
 2 parcels of land that is surrounded by a continuous perimeter
 3 boundary."

4 **SECTION 4.** In addition to heightening the incentive effect of the William
 5 S. Lee Quality Jobs and Business Expansion Act in lower-tiered counties, the changes
 6 in Section 1 of this act are intended to reduce the cost of the Act and make more
 7 revenues available to the State of North Carolina in future years. It is the intent of the
 8 General Assembly in making these changes to provide a source of funds that could be
 9 used in future years to support other, more targeted economic development programs
 10 aimed at helping create new jobs in North Carolina.

11 **SECTION 5.(a)** Article 10 of Chapter 143B of the General Statutes is
 12 amended by adding a new Part to read:

13 "Part 2F.

14 "Job Development Investment Grant Program.

15 **"§ 143B-437.44. Legislative findings and purpose.**

16 The General Assembly finds that:

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

- 1 (5) The purpose of this Part is to stimulate economic activity and to create
2 new jobs within the State.
- 3 (6) The grants provided through this Part shall not be used as venture
4 capital funds, business incubator funds, or business start-up funds or to
5 otherwise fund the initial capitalization needs of new businesses.
- 6 (7) Nothing in this Part shall be construed to constitute a guarantee or
7 assumption by the State of any debt of any business or to authorize the
8 taxing power or the full faith and credit of the State to be pledged.

9 **§ 143B-437.45. Definitions.**

10 The following definitions apply in this Part:

- 11 (1) Agreement. – A community economic development agreement under
12 G.S. 143B-437.51.
- 13 (2) Base years. – The first two complete calendar years following the
14 effective date of an agreement.
- 15 (3) Business. – A corporation, sole proprietorship, cooperative association,
16 partnership, S corporation, limited liability company, nonprofit
17 corporation, or other form of business organization, located either
18 within or outside this State.
- 19 (4) Committee. – The Economic Investment Committee established
20 pursuant to G.S. 143B-437.48.
- 21 (5) Eligible position. – A position created by a business and filled by a
22 new full-time employee in this State during the base years or in
23 subsequent years of a grant.
- 24 (6) Full-time employee. – A person who is employed for consideration for
25 at least 35 hours a week, whose wages are subject to withholding
26 under Article 4A of Chapter 105 of the General Statutes, and who is
27 determined by the Committee to be employed in a permanent position
28 according to criteria it develops. The term does not include any person
29 who works as an independent contractor or on a consulting basis for
30 the business.
- 31 (7) New employee. – A full-time employee who represents a net increase
32 in the number of the business's employees statewide and who is first
33 employed on the project that is the subject of an agreement. The term
34 includes an employee rehired or called back from a layoff that occurs
35 during or following the base years to a vacant position previously held
36 by that employee or to a new position established during or following
37 the base years.
- 38 (8) Related member. – Defined in G.S. 105-130.7A.
- 39 (9) Withholdings. – The amount withheld by a business from the wages of
40 employees in eligible positions under Article 4A of Chapter 105 of the
41 General Statutes.

42 **§ 143B-437.46. Job Development Investment Grant Program.**

43 (a) Program. – There is established the Job Development Investment Grant
44 Program to be administered by the Economic Investment Committee. In order to foster

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

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

21 (b) Cap. – The maximum number of agreements the Committee may enter into
 22 each fiscal year is 25.

23 (c) Ceiling. – The maximum amount of total annual liability for grants for
 24 agreements entered into in any single fiscal year may not exceed fifteen million dollars
 25 (\$15,000,000). No agreement may be entered into that, when considered together with
 26 other existing agreements entered into during that fiscal year, could cause the State's
 27 potential total annual liability for grants entered into in that fiscal year to exceed this
 28 amount.

29 **"§ 143B-437.47. Eligible projects.**

30 (a) Minimum Number of Eligible Positions. – A business may apply to the
 31 Committee for a grant for any project that creates the minimum number of eligible
 32 positions as set out in the table below. If the project will be located in more than one
 33 enterprise tier area, the location with the highest enterprise tier area designation
 34 determines the minimum number of eligible positions that must be created.

<u>Enterprise Tier Area</u>	<u>Number of Eligible Positions</u>
<u>Tier One</u>	<u>10</u>
<u>Tier Two</u>	<u>10</u>
<u>Tier Three</u>	<u>10</u>
<u>Tier Four</u>	<u>20</u>
<u>Tier Five</u>	<u>20</u>

41 (b) Ineligible Businesses. – A project that consists solely of retail facilities is not
 42 eligible for a grant under this Part. If a project consists of both retail facilities and
 43 nonretail facilities, only the portion of the project consisting of nonretail facilities is
 44 eligible for a grant, and only the withholdings from employees in eligible positions that

1 are employed exclusively in the portion of the project that represents nonretail facilities
2 may be used to determine the amount of the grant. If a warehouse facility is part of a
3 retail facility and supplies only that retail facility, the warehouse facility is not eligible
4 for a grant. For the purposes of this Part, catalog distribution centers are not retail
5 facilities.

6 A project that consists of a professional or semiprofessional sports team or club is
7 not eligible for a grant under this Part.

8 (c) Health Insurance. – A business is eligible for a grant under this Part only if
9 the business provides health insurance for all of the full-time employees of the project
10 with respect to which the grant is made. For the purposes of this subsection, a business
11 provides health insurance if it pays at least fifty percent (50%) of the premiums for
12 health care coverage that equals or exceeds the minimum provisions of the basic health
13 care plan of coverage recommended by the Small Employer Carrier Committee
14 pursuant to G.S. 58-50-125.

15 Each year that a business receives a grant under this Part, the business must provide
16 with the submission required under G.S. 143B-437.52 a certification that the business
17 continues to provide health insurance for all full-time employees of the project with
18 respect to which the grant is made. If the business ceases to provide health insurance to
19 all full-time employees of the project with respect to which a grant is made, the
20 Committee shall amend or terminate the agreement as provided in G.S. 143B-437.53.

21 (d) Wage Standard. – In order for a business to be eligible for a grant under this
22 Part, the average wage of all jobs at the location with respect to which a grant is made
23 must meet the wage standard set out in G.S. 105-129.4(b). If a project is to be located at
24 more than one location, the average wage of all jobs at a location must meet the wage
25 standard set out in G.S. 105-129.4(b) in order for that location to be included in the
26 agreement.

27 **"§ 143B-437.48. Economic Investment Committee established.**

28 (a) Membership. – The Economic Investment Committee is established. The
29 Committee consists of the following members:

30 (1) The Secretary of Commerce.

31 (2) The Secretary of Revenue.

32 (3) The Co-Chair, other than the Secretary of Commerce, of the North
33 Carolina Partnership for Economic Development.

34 (4) The President of the Community College System.

35 (5) The Commissioner of Labor.

36 (6) One member appointed by the General Assembly upon the
37 recommendation of the Speaker of the House of Representatives. This
38 member may not be a member of the General Assembly; a State or
39 local government employee; a person engaged in economic
40 development, business recruitment, or related consulting; or a person
41 employed by an entity that engages in economic development,
42 business recruitment, or related consulting.

1 (7) One member appointed by the General Assembly upon the
2 recommendation of the President Pro Tempore of the Senate. This
3 member must be a local government official.

4 The members of the Committee appointed by the General Assembly serve at the
5 pleasure of the General Assembly.

6 (b) Decision Required. – The Committee may act only upon a decision of five of
7 its seven members.

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

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

22 (d) Sunshine. – Meetings of the Committee are subject to the open meetings
23 requirements of Article 33C of Chapter 143 of the General Statutes. All documents of
24 the Committee, including applications for grants, are public records governed by
25 Chapter 132 of the General Statutes, including applicable provisions of that Chapter
26 protecting confidential information.

27 **§ 143B-437.49. Applications; fees; reports; study.**

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

30 (1) The name of the business, the proposed location of the project, and the
31 type of activity in which the business will engage at the project site or
32 sites.

33 (2) The names and addresses of the principals or management of the
34 business, the nature of the business, and the form of business
35 organization under which it is operated.

36 (3) The most recent audited financial statements of the business and any
37 other financial information the Committee considers necessary.

38 (4) The number of eligible positions proposed to be created during the
39 base years and thereafter and the salaries for these positions.

40 (5) An estimate of the total withholdings.

41 (6) Certification that the business will provide health insurance to all
42 full-time employees of the project.

43 (7) Information concerning other locations, including locations in other
44 states and countries, being considered for the project and the nature of

1 any benefits that would accrue to the business if the project were to be
2 located in one of those locations.

3 (8) Information concerning any other State or local government incentives
4 for which the business is applying or that it has an expectation of
5 receiving.

6 (9) Any other information necessary for the Committee to evaluate the
7 application.

8 (10) Certification that the project will not be undertaken in North Carolina
9 unless the applicant is awarded a grant.

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

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

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

32 (b) Application Fee. – When filing an application under this section, the business
33 must pay the Committee a fee of five thousand dollars (\$5,000). The fee is due at the
34 time the application is filed. The Committee shall determine the allocation of the fee
35 imposed by this section among the agencies whose heads make up the Committee. The
36 proceeds of the fee are receipts of the agency to which they are credited.

37 (c) Annual Reports. – The Committee shall publish a report on the Job
38 Development Investment Grant Program on or before October 31 of each year. The
39 report shall include the following:

40 (1) A listing of each community economic development agreement
41 negotiated and entered into during the preceding fiscal year, including
42 the name of the business, the cost/benefit analysis conducted by the
43 Committee during the application process, a description of the project,
44 the term of the agreement, the percentage used to determine the

- 1 amount of the grant, and the amount of the grant made under the
2 agreement during that year.
- 3 (2) An update on the status of projects under agreements entered into
4 before the preceding fiscal year.
- 5 (3) The number and enterprise tier area of eligible positions created by
6 projects with respect to which grants were awarded.
- 7 (4) The wage levels of all eligible positions created by projects with
8 respect to which grants are awarded, aggregated and listed in
9 increments of five thousand dollars (\$5,000).
- 10 (5) The amount of new income tax revenue received from withholdings
11 related to the projects for which grants were awarded.
- 12 (6) The criteria developed by the Committee to implement this Part and
13 any changes in those criteria from the previous fiscal year.
- 14 (7) The effectiveness of the program in recruiting new and expanding
15 businesses.
- 16 (8) The environmental impact of businesses that have received grants
17 under the program.
- 18 (9) The geographic distribution of grants, by number and amount, awarded
19 under the program.
- 20 (10) An explanation of whether the projects with respect to which
21 agreements are entered into involve new businesses in the State or
22 expanding existing businesses in the State.
- 23 (11) A listing of all businesses making an application under this Part and an
24 explanation of whether each business ultimately located the project in
25 this State regardless of whether the business was awarded a grant for
26 the project under this Part.
- 27 (12) The distribution by congressional district of grants by number and
28 amount, awarded under the program during that year, and the
29 distribution by congressional district of the total number of grants and
30 the total amount awarded since the implementation of the program.
31 The information required under this subdivision shall be reported to
32 each member of the General Assembly on or before October 31 of
33 each year.
- 34 (d) Quarterly Reports. – The Committee shall publish a report on the Job
35 Development Investment Grant Program within two months of the end of each fiscal
36 quarter. This report shall include a listing of each community economic development
37 agreement negotiated and entered into during the preceding fiscal quarter, including the
38 name of the business, the cost/benefit analysis conducted by the Committee during the
39 application process, a description of the project, and the amount of the grant expected to
40 be made under the agreement during the current fiscal year.
- 41 (e) Study. – The Committee shall conduct a study to determine the minimum
42 funding level required to implement the Job Development Investment Grant Program
43 successfully. The Committee shall report the results of this study to the House of
44 Representatives Finance Committee, the Senate Finance Committee, the House of

1 Representatives Appropriations Subcommittee on Natural and Economic Resources, the
2 Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal
3 Research Division no later than March 1 of each year.

4 **"§ 143B-437.50. Calculation of minimum and maximum grants; factors considered.**

5 (a) Subject to the limitations of subsection (d) of this section, the amount of the
6 grant awarded in each case shall be a percentage of the withholdings of eligible
7 positions. The percentage shall be no less than ten percent (10%) and no more than
8 seventy-five percent (75%) of the withholdings of the eligible positions for a period of
9 years. The percentage used to determine the amount of the grant shall be based on
10 criteria developed by the Committee after considering at least the following:

11 (1) The number of eligible positions to be created.

12 (2) The expected duration of those positions.

13 (3) The type of contribution the business can make to the long-term
14 growth of the State's economy.

15 (4) The amount of other financial assistance the project will receive from
16 the State or local governments.

17 (5) The total dollar investment the business is making in the project.

18 (6) Whether the project utilizes existing infrastructure and resources in the
19 community.

20 (7) Whether the project is located in a development zone.

21 (8) The number of eligible positions that would be filled by residents of a
22 development zone.

23 (9) The extent to which the project will mitigate unemployment in the
24 State and locality.

25 (b) The term of the grant shall not exceed 12 years starting with the first year a
26 grant is made.

27 (c) The grant may be based only on eligible positions created during the base
28 years, unless the Committee makes an explicit determination that the grant shall also be
29 based on additional eligible positions created during the remainder of the term of the
30 grant.

31 (d) The percentage established in the agreement shall be reduced by one-fourth
32 for any eligible position that is located in an enterprise tier four or five area.

33 (e) A business that is receiving any other grant by operation of State law may not
34 receive an amount as a grant pursuant to this Part that, when combined with any other
35 grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless
36 the Committee makes an explicit finding that the additional grant is necessary to secure
37 the project.

38 **"§ 143B-437.51. Community economic development agreement.**

39 Each community economic development agreement shall include at least the
40 following:

41 (1) A detailed description of the proposed project that will result in job
42 creation and the number of new employees to be hired in the base
43 years and later years.

- 1 (2) The term of the grant and the criteria used to determine the first year
2 for which the grant may be claimed.
- 3 (3) The number of eligible positions that are subjects of the grant and a
4 description of those positions and the location of those positions.
- 5 (4) The amount of the grant based on a percentage of withholdings.
- 6 (5) A method for determining the number of new employees hired during
7 a grant year.
- 8 (6) A method for the business to report annually to the Committee the
9 number of eligible positions for which the grant is to be made.
- 10 (7) A requirement that the business report to the Committee annually the
11 aggregate amount of withholdings during the grant year.
- 12 (8) A provision permitting an audit of the payroll records of the business
13 by the Committee from time to time as the Committee considers
14 necessary.
- 15 (9) A provision that permits the Committee to amend an agreement
16 pursuant to G.S. 143B-437.53.
- 17 (10) A provision that requires the business to maintain operations at the
18 project location or another location approved by the Committee for at
19 least one hundred fifty percent (150%) of the term of the grant and a
20 provision to permit the Committee to recapture all or part of the grant
21 at its discretion if the business does not remain at the site for the
22 required term.
- 23 (11) A provision that requires the business to maintain employment levels
24 in this State at the level of the year immediately preceding the base
25 years.
- 26 (12) A provision establishing the conditions under which the grant
27 agreement may be terminated, in addition to those under G.S.
28 143B-437.53, and under which grant funds may be recaptured by the
29 Committee.
- 30 (13) A provision stating that unless the agreement is amended or terminated
31 pursuant to G.S. 143B-437.53, the agreement is binding and
32 constitutes a pledge and a continuing appropriation of the amount of
33 the grant.
- 34 (14) A provision setting out any allowed variation in the terms of the
35 agreement that will not subject the business to amendment or
36 termination of the agreement under G.S. 143B-437.53.
- 37 (15) A provision that prohibits the business from manipulating or
38 attempting to manipulate employee withholdings with the purpose of
39 increasing the amount of the grant and that requires the Committee to
40 terminate the agreement and take action to recapture grant funds if the
41 Committee finds that the business has manipulated or attempted to
42 manipulate withholdings with the purpose of increasing the amount of
43 the grant.

1 (16) A provision requiring that the business engage in fair employment
2 practices as required by State and federal law and that the business
3 endeavor to use small contractors, minority contractors, physically
4 handicapped contractors, and women contractors whenever practicable
5 in the conduct of its business.

6 (17) A provision requiring that the business give priority consideration to
7 hiring North Carolina residents.

8 **"§ 143B-437.52. Grant recipient to submit records.**

9 (a) No later than February 1 of each year, for the preceding grant year, every
10 business that is awarded a grant under this Part shall submit to the Committee a copy of
11 its State and federal tax returns showing business and nonbusiness income and a report
12 showing withholdings as a condition of its continuation in the grant program. In
13 addition, the business shall submit to the Committee an annual payroll report showing
14 the eligible positions that are created during the base years and the new eligible
15 positions created during each subsequent year of the grant. When making a submission
16 under this section, the business must pay the Committee a fee of one thousand five
17 hundred dollars (\$1,500). The fee is due at the time the submission is made. The
18 Committee shall determine the allocation of the fee imposed by this section among the
19 agencies whose heads make up the Committee. The proceeds of the fee are receipts of
20 the agency to which they are credited.

21 (b) The Committee may require any information that it considers necessary to
22 effectuate the provisions of this Part.

23 (c) The Committee may require any business receiving a grant to submit to an
24 audit at any time.

25 (d) Grant recipients are encouraged to use the State ports of North Carolina and
26 must include in the report required by subsection (a) of this section a report on the
27 tonnage of any freight moved in ocean-borne commerce through the State ports and
28 through any other United States port. If freight is moved through a United States port
29 other than the State ports, then the report must disclose the reasons for using that port.

30 (e) No later than February 1 of each year, for the preceding grant year, every
31 business that is awarded a grant under this Part shall submit a detailed report of its
32 compliance with the provisions required by G.S. 143B-437.51(16).

33 **"§ 143B-437.53. Failure to comply with agreement.**

34 (a) If the business receiving a grant fails to meet or comply with any condition or
35 requirement set forth in an agreement or with criteria developed by the Committee, the
36 Committee may amend the agreement to reduce the amount of the grant or the term of
37 the agreement. Any reduction of the grant is applicable to the grant year immediately
38 following the grant year in which the Committee amends the agreement.

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

42 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, if
43 the Committee finds that the business has manipulated or attempted to manipulate
44 employee withholdings with the purpose of increasing the amount of a grant, the

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

5 **"§ 143B-437.54. Disbursement of grant.**

6 A business may not receive an annual disbursement of a grant if, at the time of
7 disbursement, the business or a related member of the business has received a notice of
8 final assessment of State tax due and that assessment has not been satisfied or otherwise
9 resolved. A business may receive an annual disbursement of a grant only after the
10 Committee has certified to the State Controller that there are no outstanding final
11 assessments of State tax due and that the business has met the terms and conditions of
12 the agreement. No amount shall be disbursed to a business as a grant under this Part in
13 any year until the Secretary of Revenue has certified to the Committee (i) that there are
14 no outstanding final assessments of State tax due against the business or a related
15 member of the business and (ii) the amount of withholdings received in that year by the
16 Department of Revenue from the business. A business that has met the terms of the
17 agreement shall make an annual certification of this to the Committee. The Committee
18 shall verify this information and certify to the State Controller that the terms of the
19 agreement have been met. The Committee shall further certify to the State Controller
20 the amount of a grant for which the business is eligible under the agreement and the
21 amount of a grant for which the business would be eligible under the agreement without
22 regard to G.S. 143B-437.50(d). The State Controller shall remit a check to the business
23 in the amount of the certified grant amount within 90 days of receiving the certification
24 of the Committee.

25 **"§ 143B-437.55. Transfer to Industrial Development Fund.**

26 At the time the State Controller remits a check to a business under G.S.
27 143B-437.54, the State Controller shall transfer to the Utility Account of the Industrial
28 Development Fund an amount equal to the amount certified by the Committee as the
29 difference between the amount of the grant and the amount of the grant for which the
30 business would be eligible without regard to G.S. 143B-437.50(d).

31 **"§ 143B-437.56. Sunset.**

32 The authority of the Committee to enter into new agreements expires January 1,
33 2006."

34 **SECTION 5.(b)** In developing criteria under G.S. 143B-437.46 for the
35 awarding of grants under Part 2F of Article 10 of Chapter 143B of the General Statutes
36 and under G.S. 143B-437.50 for determining the percentage upon which the amount of
37 a grant is based, the Economic Investment Committee may consider criteria that address
38 the following:

- 39 (1) Factors related to the economic impact of the project, such as the
40 following:
- 41 a. Impact on gross regional product and gross State product.
 - 42 b. Costs and benefits of the project to the State, including the
43 expected return on investment made in the project by the State.

- 1 c. Number of direct jobs that will be created by the project, the
2 wages of those jobs, and the total payroll for the project.
- 3 d. Number of induced short-term, project-related jobs expected to
4 be generated by the project as well as the number of long-term
5 permanent jobs expected to be generated indirectly in the
6 economy as a result of the project.
- 7 e. Dollar value of the investment, including the size of the
8 investment in real versus personal property and expected
9 depreciation rates.
- 10 f. Economic circumstances of the county and region, including the
11 extent to which the project will serve to mitigate
12 unemployment.
- 13 g. The expected time frame during which the project is expected
14 to pay back in State tax revenues the amount of any grants to be
15 paid out.
- 16 h. The economic demands the project is expected to place upon
17 the community or communities in which it will locate.
- 18 i. The number of eligible positions that would be filled by
19 residents of development zones.
- 20 (2) Factors related to the strategic importance of the project to the State,
21 region, or locality, such as the following:
 - 22 a. The extent to which the project builds or enhances an industrial
23 cluster.
 - 24 b. The extent to which the project falls within a classification of
25 business and industry that the Department of Commerce regards
26 as a target for growth and expansion in the State.
 - 27 c. The ability of the project to attract follow-on investment in the
28 State by suppliers and vendors.
 - 29 d. The extent to which the project serves to maintain and grow
30 jobs in the State in a business undergoing an internal
31 restructuring or rationalization process.
 - 32 e. The extent to which the project can be expected to contribute
33 significantly to and support the local community.
- 34 (3) Factors related to the quality of jobs, such as the following:
 - 35 a. The wage level and status of the jobs to be created.
 - 36 b. The quality and value of benefits offered by the company.
 - 37 c. The potential for employee advancement.
 - 38 d. The extent of training programs offered by the company.
 - 39 e. The sustainability of the jobs in the future.
 - 40 f. The workplace safety record of the company.
- 41 (4) Factors related to the quality of the industry and the project, such as
42 the following:
 - 43 a. The nature of the project and the projects' relationship to the
44 larger business of the company.

- 1 b. The nature of the industrial classification of the project and the
2 nature of the business of the company undertaking it.
3 c. The long-term prospects for growth at the project site or sites.
4 d. The long-term prospects for growth of the company and the
5 industry within the United States.
6 e. The financial stability of the company associated with the
7 project.
8 (5) Factors related to the environmental impact of the project, such as the
9 following:
10 a. The nature of the business to be conducted.
11 b. The ability of the project to satisfy State, federal, and local
12 environmental law and regulations.
13 (6) The degree to which use of the program has been geographically
14 dispersed among the various regions of the State and between rural and
15 urban areas.
16 (7) Other factors that the Economic Investment Committee considers
17 relevant that are not inconsistent with this section and that the
18 Committee determines will further the purposes of Part 2F of Article
19 10 of Chapter 143B of the General Statutes.

20 **SECTION 5.(c)** The General Assembly finds that the use of tax and other
21 financial incentives by the states to lure or retain businesses to their state has become a
22 burden on all states. The General Assembly finds that this burden falls on the shoulders
23 of other businesses and individuals in the form of higher taxes, higher fees, and fewer
24 government services in such areas as education, public health, and public safety. The
25 General Assembly further finds that in the current environment it is in the individual
26 interest of each state to offer ever-greater incentives to businesses in order to exceed the
27 incentives offered by other states, but that it is also in the collective interest of all states
28 to eliminate the use of all tax and other financial incentives to lure businesses.
29 Therefore, the General Assembly encourages the United States Congress to act in the
30 interests of the states and to ban the use of tax and other financial incentives by the
31 states in their efforts to attract businesses.

32 **SECTION 6.(a)** G.S. 143B-437.01(a)(1) reads as rewritten:

- 33 "(1) The funds shall be used for (i) installation of or purchases of
34 equipment for eligible industries, (ii) structural repairs, improvements,
35 or renovations of existing buildings to be used for expansion of
36 eligible industries, or (iii) construction of or improvements to new or
37 existing water, sewer, gas, telecommunications, high-speed broadband,
38 or electrical utility distribution lines or equipment for existing or new
39 or proposed industrial buildings to be used for eligible industries. To
40 be eligible for funding, the water, sewer, gas, telecommunications,
41 high-speed broadband, or electrical utility lines or facilities shall be
42 located on the site of the building or, if not located on the site, shall be
43 directly related to the operation of the specific eligible industrial
44 activity."

1 **SECTION 6.(b)** G.S. 143B-437.01(b1) reads as rewritten:

2 "(b1) Utility Account. – There is created within the Industrial Development Fund a
3 special account to be known as the Utility Account to provide funds to assist the local
4 government units of enterprise tier ~~one and tier two~~one, two, and three areas, as defined
5 in G.S. 105-129.3, in creating jobs in eligible industries. The Department of Commerce
6 shall adopt rules providing for the administration of the program. Except as otherwise
7 provided in this subsection, those rules shall be consistent with the rules adopted with
8 respect to the Industrial Development Fund. The rules shall provide that the funds in the
9 Utility Account may be used only for construction of or improvements to new or
10 existing water, sewer, gas, telecommunications, high-speed broadband, or electrical
11 utility distribution lines or equipment for existing or new or proposed industrial
12 buildings to be used for eligible industrial operations. To be eligible for funding, the
13 water, sewer, gas, telecommunications, high-speed broadband, or electrical utility lines
14 or facilities shall be located on the site of the building or, if not located on the site, shall
15 be directly related to the operation of the specific industrial activity. There shall be no
16 maximum funding amount per new job to be created or per project."

17 **SECTION 7.** G.S. 105-259(b) is amended by adding a new subdivision to
18 read:

19 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
20 who has access to tax information in the course of service to or employment by the State
21 may not disclose the information to any other person unless the disclosure is made for
22 one of the following purposes:

23 ...

24 (28) To provide to the Economic Investment Committee established
25 pursuant to G.S. 143B-437.48 information necessary to implement
26 Part 2F of Article 10 of Chapter 143B of the General Statutes."

27 **SECTION 8.** G.S. 150B-1(d) is amended by adding a new subdivision to
28 read:

29 "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to
30 the following:

31 ...

32 (10) The Economic Investment Committee in developing guidelines for the
33 Job Development Investment Grant Program under Part 2F of Article
34 10 of Chapter 143B of the General Statutes."

35 **SECTION 9.(a)** G.S. 153A-149(c)(10b) reads as rewritten:

36 "(c) Each county may levy property taxes for one or more of the purposes listed in
37 this subsection up to a combined rate of one dollar and fifty cents (\$1.50) on the one
38 hundred dollars (\$100.00) appraised value of property subject to taxation. Authorized
39 purposes subject to the rate limitation are:

40 ...

41 (10b) Economic Development. – To provide for economic development as
42 authorized by G.S. 158-7.1 and G.S. 158-12."

43 **SECTION 9.(b)** G.S. 160A-209(c)(10b) reads as rewritten:

1 (c) Each city may levy property taxes for one or more of the following purposes
2 subject to the rate limitation set out in subsection (d):

3 ...

4 (10b) Economic Development. – To provide for economic development as
5 authorized by G.S. 158-7.1 and G.S. 158-12."

6 **SECTION 9.1.** The Revenue Laws Study Committee created in Article 12L
7 of Chapter 120 of the General Statutes shall study the use, the effectiveness, and the
8 cost versus benefits of the Job Development Investment Grant Program created in this
9 act, the Bill Lee Act credits in Chapter 105 of the General Statutes, and the Industrial
10 Recruitment Competitive Fund. The Study Committee may report the results of its
11 study and any recommendations to the 2004 Regular Session of the 2003 General
12 Assembly and shall make a final report by March 15, 2005, to the 2005 General
13 Assembly.

14 **SECTION 10.** Section 1 of this act is effective for taxable years beginning
15 on or after January 1, 2003, and applies to business activities that occur on or after
16 January 1, 2003, but does not apply to business activities that occur on or after January
17 1, 2003, that are subject to a letter of commitment signed under G.S. 105-129.9 before
18 January 1, 2003. Sections 2 and 3 of this act are effective for taxable years beginning
19 on or after January 1, 2003. The remainder of this act is effective when it becomes law.