

Article 10.

Department of Commerce.

Part 1. General Provisions.

**§ 143B-427. Department of Commerce – creation.**

There is hereby recreated and reconstituted a Department to be known as the "Department of Commerce," with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1977, c. 198, s. 1; 1989, c. 751, s. 7(23); 1991 (Reg. Sess., 1992), c. 959, ss. 44, 45.)

**§ 143B-428. Department of Commerce – declaration of policy.**

It is hereby declared to be the policy of the State of North Carolina to actively encourage the expansion of existing environmentally sound North Carolina industry; to actively encourage the recruitment of environmentally sound national and international industry into North Carolina through industrial recruitment efforts and through effective advertising, with an emphasis on high-wage-paying industry; to promote the development of North Carolina's labor force to meet the State's growing industrial needs; to promote the growth and development of our travel and tourist industries; to promote the development of our State ports; and to assure throughout State government, the coordination of North Carolina's economic development efforts. (1977, c. 198, s. 1; 1989, c. 751, s. 7(24); 1991 (Reg. Sess., 1992), c. 959, s. 46; 2003-340, s. 1.10.)

**§ 143B-429. Department of Commerce – duties.**

It shall be the duty of the Department of Commerce to provide for and promote the implementation of the declared policy of the State of North Carolina as provided in G.S. 143B-428, to promote and assist in the total economic development of North Carolina in accord with such declared policy and to perform such other duties and functions as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. (1977, c. 198, s. 1; 1989, c. 751, s. 7(25); 1991 (Reg. Sess., 1992), c. 959, s. 47.)

**§ 143B-430. Secretary of Commerce – powers and duties.**

(a) The head of the Department of Commerce is the Secretary of Commerce. The Secretary of Commerce shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. The Secretary of Commerce shall be responsible for effectively and efficiently organizing the Department of Commerce to promote the policy of the State of North Carolina as outlined in G.S. 143B-428 and to promote statewide economic development in accord with that policy. Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the functions, powers, duties and obligations of every agency or subunit in the Department of Commerce shall be prescribed by the Secretary of Commerce.

(b) The Secretary of Commerce shall have the power and duty to accept and administer federal funds provided to the State through the Job Training Partnership Act, Pub. L. No. 97-300, 96 Stat. 1322, 29 U.S.C. § 1501 et seq., as amended.

(c) The Secretary of Commerce may adopt rules to administer a program or fulfill a duty assigned to the Department of Commerce or the Secretary of Commerce. (1977, c. 198, s. 1; 1989, c. 727, s. 6, c. 751, ss. 7(26), 8(18); 1991 (Reg. Sess., 1992), c. 959, s. 48; 2003-284, s. 12.6A(c).)

**§ 143B-431. Department of Commerce – functions.**

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

- (1) All of the executive functions of the State in relation to economic development and employment security, including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the administration of unemployment insurance, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, and energy resource management and energy policy development;
- (2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:
  - a. Repealed by Session Laws 2014-100, s. 15.2A(b), effective October 1, 2014.
  - b. The North Carolina Utilities Commission,
  - c. Repealed by Session Laws 2011-401, s. 1.4, effective November 1, 2011.
  - d. Repealed by Session Laws 2017-57, s. 15.19A(b), effective July 1, 2017.
  - e. State Banking Commission and the Commissioner of Banks,
  - f. Savings Institutions Division,
  - g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
  - h. Credit Union Commission,
  - i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
  - j. The North Carolina Mutual Burial Association Commission,
  - k. The North Carolina Rural Electrification Authority,
  - l. Repealed by Session Laws 2011-145, s. 14.6(f), effective July 1, 2011.all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and
- (3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter.

(b) The Department of Commerce is authorized to establish and provide for the operation of North Carolina nonprofit corporations for any of the following purposes:

- (1) To aid the development of small businesses.
- (2) To achieve the purposes of the United States Small Business Administration's 504 Certified Development Company Program.
- (3) To acquire options and hold options for the purchase of land under G.S. 143B-437.02.

(b1) The Department of Commerce is authorized to contract for the preparation of proposals and reports in response to requests for proposals for location or expansion of major industrial projects.

(c) The Department of Commerce shall have the following powers and duties with respect to local planning assistance:

- (1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.
- (2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.
- (3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.
- (4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.
- (5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.
- (6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

- (1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.
- (2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes

of service, and different schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals.

- (3) To pledge current and future federal fund appropriations to the State from the Community Development Block Grant (CDBG) program for use as loan guarantees in accordance with the provisions of the Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq., authorized by the Housing and Community Development Act of 1974 and amendments thereto. The Department may enter into loan guarantee agreements in support of projects sponsored by individual local governments or in support of pools of two or more projects supported by local governments with authorized State and federal agencies and other necessary parties in order to carry out its duties under this subdivision. In making loan guarantees and grants under this subdivision the Department shall take into consideration project applications, geographic diversity and regional balance in the entire community development block grant program. In making loan guarantees authorized under this subdivision, the Department shall ensure that apportionment of the risks involved in pledging future federal funds in accordance with State policies and priorities for financial support of categories of assistance is made primarily against the category from which the loan guarantee originally derived. A pledge of future CDBG funds under this subdivision is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subdivision does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes, nor may pledges exceed twice the amount of annual CDBG funds.

Prior to issuing a Section 108 Loan Guarantee agreement, the Department of Commerce must make the following findings:

- a. The minimum size of the Section 108 Loan Guarantee is (i) seven hundred fifty thousand dollars (\$750,000) for a project supported by an individual local government and (ii) two hundred fifty thousand dollars (\$250,000) for a project supported as part of a loan pool; and the maximum size is five million dollars (\$5,000,000) per project.
- b. The Section 108 Loan Guarantee cannot constitute more than fifty percent (50%) of total project costs.
- c. The project has ten percent (10%) equity from the corporation, partnership, or sponsoring party. "Equity" means cash, real estate, or other hard assets contributed to the project and loans that are subordinated in payment and collateral during the term of the Section 108 Loan Guarantee.
- d. The project has the personal guarantee of any person owning ten percent (10%) or more of the corporation, partnership, or sponsoring entity, except for projects involving Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code or Historic Tax Credits under section 47 of the Internal Revenue Code. Collateral on the loan must be sufficient to cover outstanding debt obligations.

- e. The project has sufficient cash flow from operations for debt service to repay the Section 108 loan.
- f. The project meets all underwriting and eligibility requirements of the North Carolina Section 108 Guarantee Program Guidelines and of the Department of Housing and Urban Development regulations, except that projects involving hotels, motels, private recreational facilities, private entertainment facilities, and convention centers are ineligible for Section 108 loan guarantees.

The Department shall create a loan loss reserve fund as additional security for loans guaranteed under this section and may deposit federal program income or other funds governed by this section into the loan loss reserve fund. The Department shall maintain a balance in the reserve fund of no less than ten percent (10%) of the outstanding indebtedness secured by Section 108 loan guarantees.

(e) The Department of Commerce may establish a clearinghouse for State business license information and shall perform the following duties:

- (1) Establish a license information service detailing requirements for establishing and engaging in business in the State.
- (2) Provide the most recent forms and information sheets for all State business licenses.
- (3) Prepare, publish, and distribute a complete directory of all State licenses required to do business in North Carolina.
- (4) Upon request, the Department shall assist a person as provided below:
  - a. Identify the type and source of licenses that may be required and the potential difficulties in obtaining the licenses based on an informal review of a potential applicant's business at an early stage in its planning. Information provided by the Department is for guidance purposes only and may not be asserted by an applicant as a waiver or release from any license requirement. However, an applicant who uses the services of the Department as provided in this subdivision, and who receives a written statement identifying required State business licenses relating to a specific business activity, shall not be assessed a penalty for failure to obtain any State business license which was not identified, provided that the applicant submits an application for each such license within 60 days after written notification by the Department or the agency responsible for issuing the license.
  - b. Arrange an informal conference between the person and the appropriate agency to clarify licensing requirements or standards, if necessary.
  - c. Assist in preparing the appropriate application and supplemental forms.
  - d. Monitor the license review process to determine the status of a particular license. If there is a delay in the review process, the Department may demand to know the reasons for the delay, the action required to end the delay, and shall provide this information to the applicant. The Department may assist the applicant in resolving a dispute with an agency during the application process. If a request for a license is refused, the Department may explain the recourse available to the person under the Administrative Procedure Act.

- (5) Collaborate with the business license coordinator designated in State agencies in providing information on the licenses and regulatory requirements of the agency, and in coordinating conferences with applicants to clarify license and regulatory requirements.

Each agency shall designate a business license coordinator. The coordinator shall have the following responsibilities:

- a. Provide to the Department the most recent application and supplemental forms required for each license issued by the agency, the most recent information available on existing and proposed agency rules, the most recent information on changes or proposed changes in license requirements or agency rules and how those changes will affect the business community, and agency publications that would be of aid or interest to the business community.
- b. Work with the Department in scheduling conferences for applicants as provided under this subsection.
- c. Determine, upon request of an applicant or the Department, the status of a license application or renewal, the reason for any delay in the license review process, and the action needed to end the delay; and to notify the applicant or Department, as appropriate, of those findings.
- d. Work with the Department or applicant, upon request, to resolve any dispute that may arise between the agency and the applicant during the review process.
- e. Review agency regulatory and license requirements and to provide a written report to the Department that identifies the regulatory and licensing requirements that affect the business community; indicates which, if any, requirements should be eliminated, modified, or consolidated with other requirements; and explains the need for continuing those requirements not recommended for elimination.
- f. Report, on an annual basis, to the Department on the number of licenses issued during the previous fiscal year on a form prescribed by the Department.

(f) Financial statements submitted to the Department by a private company or an individual seeking assistance from the Department are not public records as defined in G.S. 132-1. (1977, c. 198, s. 1; 1987, c. 214; 1989, c. 76, s. 25; c. 751, s. 2; 1991, c. 689, s. 153; 1991 (Reg. Sess., 1992), c. 959, s. 49; 1995, c. 310, s. 1; 1995 (Reg. Sess., 1996), c. 575, s. 1; 2001-193, s. 10; 2004-124, ss. 6.26(c), 6.26(d), 13.9A(c); 2004-199, s. 27(c); 2011-145, s. 14.6(f); 2011-297, s. 3; 2011-401, s. 1.4; 2012-187, s. 10.3; 2014-100, s. 15.2A(b); 2017-57, s. 15.19A(b).)

**§ 143B-431.01. Department of Commerce – contracting of functions.**

(a) Purpose. – The purpose of this section is to establish a framework whereby the Department of Commerce may contract with a North Carolina nonprofit corporation to assist the Department in fostering and retaining jobs and business development, international investment recruiting, international trade, marketing, and travel and tourism. It is the intent of the General Assembly that the Department develop a plan to work cooperatively with a nonprofit corporation for these purposes while safeguarding programmatic transparency and accountability as well as the fiscal integrity of economic development programs of the State.

(b) Contract. – The Department of Commerce is authorized to contract with a North Carolina nonprofit corporation to perform one or more of the Department's functions, powers, duties, and obligations set forth in G.S. 143B-431, except as provided in this subsection. The contract entered into pursuant to this section between the Department and the Economic Development Partnership of North Carolina is exempt from Articles 3 and 3C of Chapter 143 of the General Statutes and G.S. 143C-6-23. If the Department contracts with a North Carolina nonprofit corporation to promote and grow the travel and tourism industries, then all funds appropriated to the Department for tourism marketing purposes shall be used for a research-based, comprehensive marketing program directed toward consumers in key markets most likely to travel to North Carolina and not for ancillary activities, such as statewide branding and business development marketing. The Department may not contract with a North Carolina nonprofit corporation regarding any of the following:

- (1) The obligation or commitment of funds under this Article, such as the One North Carolina Fund, the Job Development Investment Grant Program, the Industrial Development Fund, or the Job Maintenance and Capital Development Fund.
- (2) The Division of Employment Security, including the administration of unemployment insurance.
- (3) The functions set forth in G.S. 143B-431(a)(2).
- (4) The administration of funds or grants received from the federal government or its agencies, except for the following:
  - a. The State Trade and Export Promotion Program.
  - b. The Manufacturing Extension Program.
- (5) The administration of a site certification program. Nothing in this subdivision prohibits the contracting of responsibility for creating or maintaining a Web site with data on unutilized or underutilized properties in the State with potential commercial or industrial reuses.

(c) Oversight. – There is established the Economic Development Accountability & Standards Committee, which shall be treated as a board for purposes of Chapter 138A of the General Statutes. The Committee shall consist of seven members as follows: the Secretary of Commerce as Chair of the Committee, the Secretary of Transportation, the Secretary of Environmental Quality, the Secretary of Revenue, the Chair of the North Carolina Travel and Tourism Board, one member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate. Members appointed by the General Assembly shall be appointed for four-year terms beginning July 1 and may not be members of the General Assembly.

The Committee shall be administratively housed in the Department of Commerce. The Department of Commerce shall provide for the administrative costs of the Committee and shall provide staff to the Committee. The Committee shall meet at least quarterly upon the call of the Chair. The duties of the Committee shall include all of the following:

- (1) Monitoring and oversight of the performance of a contract entered into pursuant to this section by the Department with a North Carolina nonprofit corporation.
- (2) Receiving, reviewing, and referring complaints regarding the contract or the performance of the North Carolina nonprofit corporation, as appropriate.

- (3) Requesting enforcement of the contract by the Attorney General or the Department.
  - (4) Auditing, at least biennially, by the Office of State Budget and Management, State Auditor, or internal auditors of the Department, the records of the North Carolina nonprofit corporation with which the Department has contracted pursuant to this section during and after the term of the contract to review financial documents of the corporation, performance of the corporation, and compliance of the corporation with applicable laws. A copy of any audit performed at the request of the Committee shall be forwarded to the North Carolina Travel and Tourism Board.
  - (5) Coordination of economic development grant programs of the State between the Department of Commerce, the Department of Transportation, and the Department of Environmental Quality.
  - (6) Any other duties deemed necessary by the Committee.
- (d) Limitations. – Prior to contracting with a North Carolina nonprofit corporation pursuant to this section and in order for the North Carolina nonprofit corporation to receive State funds, the following conditions shall be met:
- (1) At least 45 days prior to entering into or amending in a nontechnical manner a contract authorized by this section, the Department shall submit the contract or amendment, along with a detailed explanation of the contract or amendment, to the chairs of both the Senate Committee on Appropriations/Base Budget and the House of Representatives Committee on Appropriations, [the] chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division.
  - (2) The nonprofit corporation adheres to the following governance provisions related to its governing board:
    - a. The board shall be composed of 18 voting members as follows: the Secretary of Commerce, as an ex officio member, eight members and the chair appointed by the Governor, four members appointed by the Speaker of the House of Representatives, and four members appointed by the President Pro Tempore of the Senate. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each use best efforts to select members so as to reflect the diversity of the State's geography. The Speaker of the House and the President Pro Tempore shall each select their appointed members so that one-fourth come from a development tier one area, one-fourth come from a development tier two area, and no two members come from the same Collaboration for Prosperity Zone. The Governor shall select appointed members so that two-ninths come from a development tier one area, two-ninths come from a development tier two area, and no more than two members come from the same Collaboration for Prosperity Zone. The Governor shall use best efforts to ensure that each member appointed by the Governor has expertise in one or more of the following areas:



1. Agribusiness, as recommended by the Commissioner of Agriculture.
  2. Financial services.
  3. Information technology.
  4. Biotechnology or life sciences.
  5. Energy.
  6. Manufacturing.
  7. Military or defense.
  8. Tourism, as recommended by the North Carolina Travel and Tourism Coalition.
  9. Tourism, as recommended by the North Carolina Travel Industry Association.
- b. The nonprofit corporation shall comply with the limitations on lobbying set forth in section 501(c)(3) of the Internal Revenue Code.
  - c. No State employee, other than the Secretary of Commerce, may serve on the board.
  - d. The board shall meet at least quarterly at the call of its chair.
  - e. The board is required to perform the following duties if the Department contracts pursuant to this section for the performance of the Secretary's responsibilities under G.S. 143B-434.01:
    1. To provide advice concerning economic and community development planning for the State, including a strategic business facilities development analysis of existing, available buildings or shell or special-use buildings and sites.
    2. To recommend economic development policy to the General Assembly and the Governor.
    3. To recommend annually to the Governor biennial and annual appropriations for economic development programs.
    4. To recommend how best to coordinate economic development efforts among the various agencies and entities, including those created by executive order of the Governor, that receive economic development appropriations, including the assignment of key responsibilities for different aspects of economic development and resource allocation and planning designed to encourage each agency to focus on its area of primary responsibility and not diffuse its resources by conducting activities assigned to other agencies.
- (3) The amount of State funds that may be used for the annual salary of any one officer or employee of the nonprofit corporation with which the Department contracts pursuant to this section shall not exceed the greater of (i) one hundred twenty thousand dollars (\$120,000) or (ii) the amount most recently set by the General Assembly in a Current Operations Appropriations Act. Members of the governing board may receive only per diem and allowances pursuant to G.S. 138-5.
  - (4) The nonprofit corporation shall have received from fundraising efforts and sources, other than State funds, an amount totaling at least two hundred fifty

thousand dollars (\$250,000) to support operations and functions of the corporation.

(e) Mandatory Contract Terms. – Any contract entered into under this section shall include all of the following:

- (1) A provision requiring the North Carolina nonprofit corporation provide to the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Department of Commerce, and the Fiscal Research Division a copy of the corporation's annual audited financial statement within seven days of issuance of the statement.
- (2) A provision requiring the nonprofit corporation to provide by January 31 of each year, and more frequently as requested, a report to the Department on prior calendar year program activities, objectives, and accomplishments and prior calendar year itemized expenditures and fund sources. The report shall also include all of the following:
  - a. Jobs anticipated to result from efforts of the nonprofit corporation. This includes project leads that were not submitted to the Department for possible discretionary incentives pursuant to Chapter 143B of the General Statutes.
  - b. Developed performance metrics of economic development functions itemized by county, by development tier area designation, as defined by G.S. 143B-437.08, and by Collaboration for Prosperity Zones created pursuant to G.S. 143B-28.1.
  - c. Any proposed amendments to the areas of expertise required to be represented on the governing board of the nonprofit corporation.
  - d. A detailed explanation of how annual salaries are determined, including base pay schedules and any additional salary amounts or bonuses that may be earned as a result of job performance. The explanation shall include the proportion of State and private funds for each position and shall include the means used by the nonprofit corporation to foster employee efforts for economic development in rural and low-income areas in the State. Any bonuses paid to employees shall be based upon overall job performance and not be based on a specific project lead.
  - e. Any other information requested by the Department.
- (3) A provision providing that, upon termination of the contract, or upon dissolution of, or repeal by the General Assembly of, the charter of the nonprofit corporation with which the Department has contracted under this section, all assets and funds of the nonprofit corporation, including interest on funds, financial and operational records, and the right to receive future funds pursuant to the contract, will be surrendered to the Department within 30 days of the termination, dissolution, or repeal. During the 30-day period, the corporation may not further encumber any assets or funds. For purposes of this subdivision, assets and funds of the nonprofit corporation include assets and funds of any subsidiary or affiliate of the nonprofit corporation. An affiliate of the nonprofit corporation exists when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether

the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

- (4) A provision providing that the nonprofit corporation shall adopt and publish a resolution or policy containing a conflict of interest policy and gift policy to guide actions by the governing board members, officers, and employees of the nonprofit corporation in the performance of their duties.
- (5) The conflict of interest policy required by subdivision (4) of this subsection shall contain at a minimum the information in this subdivision. No subject person of the nonprofit corporation may take any official action or use the subject person's official position to profit in any manner the subject person, the subject person's immediate family, a business with which the subject person or the subject person's immediate family has a business association, or a client of the subject person or the subject person's immediate family with whom the subject person, or the subject person's immediate family, has an existing business relationship. No subject person shall attempt to profit from a proposed project lead if the profit is greater than that which would be realized by other persons living in the area where the project lead is located. If the profit under this subdivision would be greater for the subject person than other persons living in the area where the project lead is located, not only shall the subject person abstain from voting on that issue, but once the conflict of interest is apparent, the subject person shall not discuss the project lead with any other subject person or representative of the Department except to state that a conflict of interest exists. Under this subdivision, a subject person is presumed to profit if the profit would be realized by the subject person, the subject person's immediate family, a business with which the subject person or the subject person's immediate family has a business association, or a client of the subject person or the subject person's immediate family with whom the subject person, or the subject person's immediate family, has an existing business relationship with a company that is the subject of a proposed project lead. No subject person, in contemplation of official action by the subject person, or in reliance on information that was made known to the subject person in the subject person's official capacity and that has not been made public, shall (i) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by such information or official action or (ii) intentionally aid another to do any of the above acts. As used in this subdivision, the following terms mean:
  - a. Board. – The governing board of the nonprofit corporation with which the Department contracts pursuant to this section.
  - b. Board member. – A member of the board.
  - c. Business association. – A director, employee, officer, or partner of a business entity, or owner of more than ten percent (10%) interest in any business entity.
  - d. Department. – The Department of Commerce.
  - e. Immediate family. – Spouse, children, parents, brothers, and sisters.
  - f. Official action. – Actions taken in connection with the subject person's duties, including, but not limited to, voting on matters before the board,

proposing or objecting to proposals for economic development actions by the Department, discussing economic development matters with other subject persons or Department staff in an effort to further the matter after the conflict of interest has been discovered, or taking actions in the course and scope of the position as a subject person and actions leading to or resulting in profit.

- g. Profit. – Receive monetary or economic gain or benefit, including an increase in value whether or not recognized by sale or trade.
  - h. Subject person. – A board member, officer, or employee of the nonprofit corporation.
- (6) The gift policy required by subdivision (4) of this subsection shall at a minimum prohibit an employee, officer, or member of the board of the corporation from knowingly accepting a gift from a person whom the employee, officer, or member of the board knows or has reason to know (i) is seeking to do business of any kind in the State or (ii) has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of official duties of the employee, officer, or member of the board. This prohibition shall not apply to either of the following:
- a. Gifts given to the employee, officer, or member of the board where the gift is food or beverages, transportation, lodging, entertainment or related expenses associated with industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the employee, officer, or member of the board is responsible for conducting the business on behalf of the State, provided (i) the employee, officer, or member of the board did not solicit the gift and did not accept the gift in exchange for the performance or nonperformance of corporate duties, and (ii) the employee, officer, or member of the board reports electronically to the corporation within 30 days of receipt of the gift, including a description and value of the gift and a description of how the gift contributed to industry recruitment, promotion of international trade, or the promotion of travel and tourism.
  - b. Gifts of personal property valued at less than one hundred dollars (\$100.00) given to the employee, officer, or member of the board in the commission of corporate duties if the gift is given as a personal gift in another country as part of an overseas trade mission and the giving and receiving of such personal gifts is considered a customary protocol in the other country.
- (7) A provision providing that the nonprofit corporation maintain a record containing the name of all persons who have contributed to the nonprofit corporation, the date of each contribution, and the aggregate total of all contributions to the nonprofit corporation. The nonprofit corporation shall include the record in the report required to be filed with the Department pursuant to subdivision (2) of subsection (e) of this section.
- (8) A provision requiring the nonprofit corporation to maintain separate accounting records for and separate accounts for State and private funds and prohibiting

- any commingling of State and private funds. Records and accounts must be maintained according to generally accepted accounting principles.
- (9) A provision stating that the nonprofit corporation will not engage in the awarding of grants of the public or private funds of the nonprofit corporation.
  - (10) A provision limiting the term of renewal of the contract to no more than three years. In the event of renewal, the Department shall provide notice of intention to renew the contract for the initial renewal no less than five months prior to the expiration of the remaining term of the contract, and the Department shall provide notice of intention to renew the contract for a subsequent renewal no less than one year prior to the expiration of the remaining term of the contract, including the term of any extension. A contract extension may not extend the remaining term of the contract, including the term of the extension, to more than four years. A contract entered into under this section shall be on a calendar year basis.
  - (11) A provision prohibiting the use of State funds for the severance pay of the chief executive officer and other officers of the nonprofit corporation and otherwise limiting the severance pay from funds other than State funds to no more than the lesser of the following:
    - a. The salary limitation contained in subdivision (3) of subsection (d) of this section.
    - b. The salary limitation contained in subdivision (3) of subsection (d) of this section multiplied by a fraction, the numerator of which is the number of whole years the chief officer has been chief officer of the corporation and the denominator of which is four.
  - (12) A provision requiring annual certification by the nonprofit corporation that it is in compliance with the following:
    - a. The requirements of Chapter 55A of the General Statutes.
    - b. The requirements of each of the provisions listed in subsection (e) of this section. For any provision in this subsection that the nonprofit corporation did not comply with, the corporation shall provide a detailed explanation of the circumstances and time of the noncompliance.
  - (13) A provision requiring the nonprofit corporation to comply with and perform the duties set out in G.S. 143B-434.2 in the event the Department contracts with the nonprofit corporation to promote and market tourism.
  - (14) A provision allowing the nonprofit corporation to receive funds from fund-raising efforts and sources other than State funds.
  - (15) A provision that the limitation of G.S. 143C-6-8 applies.
  - (16) For any entity reported pursuant to subdivision (6) of subsection (f) of this section for a gift, contribution, or item or service of value for which fair market value exceeds one thousand dollars (\$1,000) and was not paid, a provision requiring the nonprofit corporation to publish within seven days of the award:
    - (i) the entity,
    - (ii) the fair market value and description of that which was received from the entity by the nonprofit corporation or the affiliate entity of the corporation, and
    - (iii) the date and amount of the award to the entity. This publication requirement is satisfied if the Department publishes the information

required in this subdivision within seven days of the award either separately or as part of a press release concerning the award.

- (17) A provision requiring the nonprofit to provide international investment recruiting resources to market and advertise the State as a business destination.

(f) Report. – By March 1 of each year, and more frequently as requested, the Department shall submit a report to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Fiscal Research Division on any performance for which the Department has contracted pursuant to this section. The report shall contain, at a minimum, each of the following presented on a calendar year basis:

- (1) A copy of the most recent report required by the Department pursuant to subdivision (2) of subsection (e) of this section.
- (2) An executive summary of the report required by subdivision (1) of this subsection.
- (3) A listing of each entity referred to the Department by a North Carolina nonprofit corporation with which the Department contracts pursuant to this section and any other information the Secretary determines is necessary or that is specifically requested in writing.
- (4) An explanation of the response by the Department to any notifications of noncompliance submitted to the Department by the nonprofit corporation, as required by G.S. 143B-431.01(e), including actions taken by the Department to prevent repeat or similar instances of noncompliance.
- (5) For each activity in which the Secretary of Commerce solicits funds for the corporation, as permitted by subsection (i) of this section, a listing of each activity, including the date and the name of each person or entity from whom funds were solicited.
- (6) If the nonprofit corporation or any affiliated entity of the corporation has received, directly or indirectly, any gift, contribution, or item or service of value for which fair market value was not paid and if an entity making the gift or contribution receives an award, a list of the entity and the amount of the award.

(g) Public Funds. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section shall comply with the requirements provided in this subsection regarding the use of State funds:

- (1) Interest earned on State funds after receipt of the funds by the nonprofit corporation shall be used for the same purposes for which the principal was to be used.
- (2) The travel and personnel policies and regulations of the State of North Carolina Budget Manual limiting reimbursement for expenses of State employees apply to reimbursements for expenses of officers, employees, or members of a governing board of the nonprofit corporation. Deviations from the policies and regulations shall be approved by the Secretary.
- (3) State funds shall not be used to hire a lobbyist.

(h) Applicable Laws. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section is subject to the requirements of (i) Chapter 132 of the General Statutes and (ii) Article 33C of Chapter 143 of the General Statutes. Officers, employees, and

members of the governing board of the corporation are public servants, as defined in 138A-3, and are subject to the requirements of Chapter 138A of the General Statutes. Employees of the corporation whose annual compensation is less than eighty thousand dollars (\$80,000) are not subject to G.S. 138A-22.

(i) Prohibition. – A State officer or employee shall not solicit funds for a North Carolina nonprofit corporation with which the Department contracts pursuant to this section.

(j) Benefits. – An officer, employee, or member of a governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to this section is not a State employee, is not covered by Chapter 126 of the General Statutes, and is not entitled to State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees.

(k) Raised Funds. – For funds raised from sources other than State funds by the nonprofit corporation, at least twenty-five percent (25%) of the funds shall be used for the benefit of or for salaried positions located in or working solely on development in development tier one or two areas, as defined in G.S. 143B-437.08. (2014-18, s. 1.1(a); 2014-109, s. 1; 2014-115, s. 57; 2015-7, s. 10; 2015-241, ss. 14.30(u), (v), 15.1; 2015-264, s. 19; 2016-94, s. 15.6(b); 2017-6, s. 3; 2017-57, ss. 14.1(r), 15.3(a); 2018-5, ss. 15.5(b), 15.5(c); 2018-142, s. 13(a); 2018-146, ss. 3.1(a), (b), 6.1; 2019-50, ss. 1-4.)

#### **§ 143B-431.1. Toll-free number for information on housing assistance.**

There shall be established in the Department of Commerce a toll-free telephone number to provide information on housing assistance to the citizens of the State. (1989, c. 751, s. 6; 1991 (Reg. Sess., 1992), c. 959, s. 50.)

#### **§ 143B-431.2. Department of Commerce – limitation on grants and loans.**

The Department of Commerce may not make a loan nor award a grant to any individual, organization, or governmental unit if that individual, organization, or governmental unit is currently in default on any loan made by the Department of Commerce. (2000-56, s. 4.)

#### **§ 143B-431.3. Human trafficking public awareness sign.**

The Secretary of the Department of Commerce shall require that every JobLink or other center under its authority that offers employment or training services to the public prominently display in a place that is clearly conspicuous and visible to employees and the public a public awareness sign created and provided by the North Carolina Human Trafficking Commission that contains the National Human Trafficking Resource hotline information. (2017-57, s. 17.4(f); 2017-197, s. 5.8.)

#### **§ 143B-432. Transfers to Department of Commerce.**

(a) The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, and the Science and Technology Research Center of the Department of Natural and Economic Resources are each hereby transferred to the Department of Commerce by a Type I transfer, as defined in G.S. 143A-6.

(b) All functions, powers, duties, and obligations heretofore vested in the following subunits of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Commerce by a Type I transfer as defined in G.S. 143A-6:

- (1) Community Assistance Division.
- (2) Employment and Training Division.

(c) All functions, powers, duties, and obligations heretofore vested in the following councils of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Commerce by a Type II transfer as defined in G.S. 143A-6:

- (1) Repealed by Session Laws 2021-90, s. 9(b), effective July 22, 2021.
- (2) Job Training Coordinating Council. (1977, c. 198, s. 1; 1989, c. 727, s. 7; c. 751, s. 7(27); 1989 (Reg. Sess., 1990), c. 1004, s. 32; 1991 (Reg. Sess., 1992), c. 959, s. 51; 2010-180, s. 7(e); 2012-201, s. 9; 2021-90, s. 9(b).)

**§ 143B-432.1. Department of Commerce – Small Business Ombudsman.**

A Small Business Ombudsman is created in the Department of Commerce to work with small businesses to ensure they receive timely answers to questions and timely resolution of issues involving State government. The Small Business Ombudsman shall have the authority to make inquiry of State agencies on behalf of a business, to receive information concerning the status of a business's inquiry, and to convene representatives of various State agencies to discuss and resolve specific issues raised by a business. The Small Business Ombudsman shall also work with the small business community to identify problems in State government related to unnecessary delays, inconsistencies between regulatory agencies, and inefficient uses of State resources. (2004-124, s. 13.9A(e).)

**§ 143B-432.2: Repealed by Session Laws 2018-5, s. 15.5(d), effective July 1, 2018.**

**§ 143B-433. Department of Commerce – organization.**

The Department of Commerce shall be organized to include:

- (1) The following agencies:
  - a. Repealed by Session Laws 2014-100, s. 15.2A(c), effective October 1, 2014.
  - b. The North Carolina Utilities Commission.
  - c. Repealed by Session Laws 2011-401, s. 1.5, effective November 1, 2011.
  - d. Repealed by Session Laws 2017-57, s. 15.19A(b), effective July 1, 2017.
  - e. State Banking Commission.
  - f. Savings Institutions Division.
  - g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
  - h. Credit Union Commission.
  - i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17, 2004.
  - j. The North Carolina Mutual Burial Association Commission.
  - k. Repealed by Session Laws 2012-120, s. 3(g), effective June 28, 2012.
  - l. The North Carolina Rural Electrification Authority.
  - m. Repealed by Session Laws 1985, c. 757, s. 179(d).
  - n. North Carolina Science and Technology Research Center.
  - o. Repealed by Session Laws 2011-145, s. 14.6(g), effective July 1, 2011.



- p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2, 2010.
- q. Economic Development Board.
- r. Labor Force Development Council.
- s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective September 30, 2000.
- u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
- v. Repealed by Session Laws 1993, c. 321, s. 313b.
- w. The Rural Economic Development Division.
- x. The Rural Infrastructure Authority.
- (2) Those agencies which are transferred to the Department of Commerce including the:
  - a. Community Assistance Division.
  - b. Repealed by Session Laws 2021-90, s. 9(c), effective July 22, 2021.
  - c. Employment and Training Division.
  - d. Job Training Coordinating Council.
- (3) The Division of Employment Security.
- (4) Such divisions as may be established pursuant to Article 1 of this Chapter. (1977, c. 198, s. 1; 1979, c. 668, s. 2; 1981, c. 412, ss. 4, 5; 1983, c. 899, s. 1; 1985, c. 757, s. 179(d); 1989, c. 76, s. 26; c. 727, s. 8; c. 751, s. 7(28); 1991 (Reg. Sess., 1992), c. 959, s. 52; 1993, c. 321, s. 313(b); 1998-217, s. 19; 2000-140, s. 76(j); 2001-193, s. 11; 2004-199, s. 27(d); 2010-180, s. 7(f); 2011-145, s. 14.6(g); 2011-401, s. 1.5; 2012-120, s. 3(g); 2013-360, s. 15.10(e); 2014-100, s. 15.2A(c); 2017-57, s. 15.19A(b); 2021-90, s. 9(c).)

Part 1A. Housing Coordination and Policy Council.

**§§ 143B-433.1 through 143B-433.3: Repealed by Session Laws 1993, c. 321, s. 305(c).**

Part 2. Economic Development.

**§ 143B-434: Repealed by Session Laws 2014-18, s. 1.2(a), effective July 1, 2014.**

**§ 143B-434.01. Comprehensive Strategic Economic Development Plan.**

- (a) Definitions. – The following definitions apply in this section:
  - (1) Repealed by Session Laws 2014-18, s. 1.2(b), effective July 1, 2014.
  - (2) Department. – The Department of Commerce.
  - (3) Economic distress. – The presence of at least one trend indicator or at least one status indicator:
    - a. Trend indicators:
      - 1. Weighted average age of industrial plants exceeding statewide average age.
      - 2. Loss of population over the most recent three- to five-year period.
      - 3. Below average job growth over the most recent three- to five-year period.
      - 4. Outmigration over the most recent three- to five-year period.

5. Decline in real wages over the most recent three- to five-year period.
  6. Above average rate of business failures over the most recent three- to five-year period.
- b. Status indicators:
1. Per capita income below the State average.
  2. Earnings or wages per job below the State average.
  3. Unemployment above the State average.
  4. Poverty rate above the State average.
  5. Below average fiscal capacity.
- (4) Plan. – The Comprehensive Strategic Economic Development Plan.
- (5) Region. – One of the major geographic regions of the State defined in the Plan as an economic region based on compatible economic development factors.
- (6) Secretary. – The Secretary of Commerce or the governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431.01 for the performance of the Secretary's responsibilities under this section.

(b) Plan. – The Secretary shall review and update the existing Plan on or before April 1 of each year. The Plan shall cover a period of four years and each annual update shall extend the time frame by one year so that a four-year plan is always in effect. The Secretary shall provide copies of the Plan and each annual update to the Governor, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee. The Plan shall encompass all of the components set out in this section.

(c) Purpose. – The purpose of this section is to require the Secretary to apply strategic planning principles to its economic development efforts. This requirement is expected to result in all of the following:

- (1) The selection of a set of priority development objectives that recognizes the increasingly competitive economic environment and addresses the changing needs of the State in a more comprehensive manner.
  - (2) The effective utilization of available and limited resources.
  - (3) A commitment to achieve priority objectives and to sustain the process.
- (d) Public and Private Input. –
- (1) At each stage as it develops and updates the Plan, the Secretary shall solicit input from all parties involved in economic development in North Carolina, including:
    - a. Each of the programs and organizations that, for State budget purposes, identifies economic development as one of its global goals.
    - b. Local economic development departments and regional economic development organizations.
    - c. The Board of Governors of The University of North Carolina.
  - (2) The Secretary shall also hold hearings in each of the Regions to solicit public input on economic development before the initial Plan is completed. The purposes of the public hearings are to do all of the following:

- a. Assess the strengths and weaknesses of recent regional economic performance.
- b. Examine the status and competitive position of the regional resource base.
- c. Identify and seek input on issues that are key to improving the economic well-being of the Region.

The Secretary shall hold additional hearings from time to time to solicit public input regarding economic development activities.

- (3) Each component of the Plan shall be based on this broad input and, to the extent possible, upon a consensus among all affected parties. The Secretary shall coordinate its planning process with any State capital development planning efforts affecting State infrastructure such as roads and water and sewer facilities.

(e) Environmental Scan. – The first step in developing the Plan shall be to develop an environmental scan based on the input from economic development parties and the public and on information about the economic environment in North Carolina. To prepare the scan, the Secretary shall gather the information required in this subsection and ensure that the information is updated periodically. The updated information may be provided in whatever format and through whatever means is most efficient. The information required to prepare the scan includes all of the following:

- (1) Compilation of the latest economic and demographic data on North Carolina by State, Region, and county including population, population projections, employment, and employment projections, income and earnings status and outlook, migration and commuting patterns, unemployment, poverty, and other similar data.
- (2) Compilation of the latest data on the strength of the business environment by State, Region, and county with emphasis on the following dynamics of job creation: start-ups, expansions, locations, contractions, and failures. Special assessments are to be made of rural, small, and minority business components of overall activity.
- (3) Compilation of the latest data on labor compensation, construction costs, utility rates, payroll costs, taxes, and other cost data normally considered by manufacturing firms and new businesses and shall be tabulated by State, Region, and county.
- (4) Compilation of data on assets within the State and by Region and county to include the following:
  - a. Available buildings, bona fide industrial parks, and sites.
  - b. Characteristics of the available labor force (number, demographic attributes, skill levels, etc.).
  - c. Special labor situations, such as military base discharges and large plant closings.
  - d. Available infrastructure capacities by county and Region including water, sewer, electrical, natural gas, telecommunication, highway access, and other pertinent services.
  - e. The fiscal capacity of counties and localities within counties to support the infrastructure development necessary to participate in the development process.

- f. Analyses of assimilative capacity of riverine, estuarine, or ocean outfalls, or other environmental cost considerations.
  - g. Proximity analyses of counties in close alignment with major urban areas in bordering states.
  - h. Special educational and research capabilities.
  - i. Special transportation situations such as major airports, ports, and railyards.
  - j. Available data on the performance, contribution, and impact each economic sector (including, but not limited to, agriculture, finance, manufacturing, public utilities, trade, services, tourism, and government) is having on individual counties, Regions, and the State.
  - k. Available tourist and service assets.
  - l. Analyses of seasonal population and absentee ownership in resort and tourism areas and their impact on the delivery of public services.
  - m. Cost and availability of natural gas and electricity.
- (5) Compilation and analyses of data on economic and industrial changes in competitor states by Region, as applicable. This data shall be entered into a database and kept current. It shall include, specifically, all new plant location information such as origin of the plant, Standard Industrial Classification Code, employment, and investment.
  - (6) Compilation of cost data, policies, and strategies in competitive Southeastern states as well as other United States regions and foreign countries.
  - (7) Compilation of incentives and special programs being offered by other states.
  - (8) Compilation and analyses of other data relating to economic development such as regulatory or legal matters, structural problems, and social considerations, e.g. unemployment, underemployment, poverty, support services, equity concerns, etc.
  - (9) The cost of doing business in North Carolina and other competing states, as it may affect decisions by firms to locate in this State.
  - (10) Competitive assets within the State and by Region and county, including infrastructure, tourist assets, natural resources, labor, educational and research resources, and transportation.
  - (11) Other information relating to economic development such as regulatory or legal matters and social considerations.
- (f) Repealed by Session Laws 2012-142, s. 13.4(a), effective July 1, 2012.
  - (g) Vision and Mission Statements. – The Secretary shall develop a vision statement for economic development that would describe the preferred future for North Carolina and what North Carolina would be like if all economic development efforts were successful. The Secretary shall then develop a mission statement that outlines the basic purpose of each of North Carolina's economic development programs. Because special purpose nonprofit organizations are uniquely situated to conduct the entrepreneurial and high-risk activity of investing in and supporting new business creation in the State, they should be assigned a dominant role in this key component of economic development activity.
  - (h) Goals and Objectives. – The Secretary, using data from the public input and the environmental scan, shall formulate a list of goals and objectives. Goals shall be long-range, four years or more, and shall address both needs of economically distressed Regions and counties as

well as opportunities for Regions and counties not distressed. The goals shall be developed with realism but should also be selected so as to encourage every Region and county within the State to develop to its maximum potential. Objectives shall be one year or less in scope and shall, if achieved, lead to the realization of the goals formulated by the Secretary as provided in this section.

Both goals and objectives should be stated largely in economic terms, that is, they should be related to specific population, employment, demographic targets, or economic sector targets. Both efficiency and equity considerations are to be addressed and balanced with special emphasis placed on the needs of disadvantaged or economically distressed populations and communities. The goals and objectives should not state how the economic targets are to be reached, but rather what the economic conditions will be if they are obtained. So that the progress of North Carolina's economic development efforts can be monitored, the Secretary shall set objectives for each goal that allow measurement of progress toward the goal. Objectives should be quantifiable and time-specific in order to serve as performance indicators.

(i) Formulation of Economic Development Strategy. – The Plan shall have as its action component a strategy set forth in a blueprint for directing resources of time and dollars toward the satisfaction of the goals and objectives stated in subsection (h) of this section. As a practical consequence of the economic environment, a focus on the competitiveness of indigenous industries and entrepreneurial development is required. The Plan shall include a strategy for the coordination of initiatives and activities for workforce preparedness, funded by federal or State sources, including, but not limited to, vocational education, applied technology education, remedial education, and job training, and the achievement of the economic development goals of the Plan. A balance of opportunity between rural and urban regions and between majority and minority populations should be an overriding consideration. Equity of opportunity for counties and communities across the State will involve the explicit consideration of local fiscal capacity and the fiscal ability to support development activities.

The concept of differentiation should be employed. The Plan should recognize the various strengths and weaknesses of the State and its component regions, subregions, and, in some cases, individual counties. The concept of market segmentation should be employed. Different Regions and subregions of the State should be promoted to different markets.

(j) Implementation Plan. – Based upon all of the foregoing steps, the Secretary shall establish an implementation plan assigning to the appropriate parties specific responsibilities for meeting measurable objectives. The implementation plan shall contain all necessary elements so that it may be used as a means to monitor performance, guide appropriations, and evaluate the outcomes of the parties involved in economic development in the State.

(k) Annual Evaluation. – The Secretary shall annually evaluate the State's economic performance based upon the statistics listed in this subsection and upon the Secretary's stated goals and objectives in its Plan. The statistics upon which the evaluation is made should be available to policymakers. The information may be provided in whatever format and through whatever means is most efficient. The statistics are as follows:

- (1) The net job change (expansions minus contractions) by the various economic sectors of the county, Region, and State.
- (2) Realized capital investment in plants and equipment by new and expanding industry in each county, Region, and State.

- (3) Manufacturing changes by county, Region, and State that affect the value of firms, total payrolls, average wages, value of shipments, contributions to gross State product, and value added.
- (4) The net change in the number of firms by county, Region, and State with statistics on the dynamics of change: relocations in versus relocations out; births versus deaths; and expansions versus contractions.
- (5) A measure of the status and performance of all sectors of the county, Region, and State economy including, but not limited to, manufacturing, agriculture, trade, finance, communications, transportation, utilities, services, and travel and tourism.
- (6) An assessment of the relative status and performance of rural business development as opposed to that in urban areas.
- (7) An analysis of the status of minority-owned businesses throughout the State.
- (8) An assessment of the development capability of the various Regions of the State in terms of their environmental, fiscal, and administrative capacity. Those areas that are handicapped by barriers to development should be highlighted.
- (9) Repealed by Session Laws 2012-142, s. 13.4(a), effective July 1, 2012.

(l) **Accountability.** – The Secretary shall make all data, plans, and reports available to the Joint Legislative Economic Development and Global Engagement Oversight Committee, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources at appropriate times and upon request. The Secretary shall prepare and make available on an annual basis public reports on each of the major sections of the Plan and the Annual Report indicating the degree of success in attaining each development objective. (1993, c. 321, s. 313(c); 1997-456, s. 27; 2012-142, s. 13.4(a); 2014-18, s. 1.2(b); 2017-57, s. 14.1(q), (y); 2018-142, s. 13(c); 2020-78, s. 6.1.)

**§ 143B-434.1. The North Carolina Travel and Tourism Board – creation, duties, membership.**

(a) There is created within the Department of Commerce the North Carolina Travel and Tourism Board. The Secretary of Commerce and the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431.01(b) to promote and market tourism will work with the Board to fulfill the duties and requirements set forth in this section, and to promote the sound development of the travel and tourism industry in North Carolina.

(b) The function and duties of the Board shall be:

- (1) To advise the Secretary of Commerce in the formulation of policy and priorities for the promotion and development of travel and tourism in the State.
- (2) To advise the Secretary of Commerce in the development of a budget for achieving the goals of the Travel and Tourism Policy Act, as provided in G.S. 143B-434.2 and the nonprofit corporation contracted to promote and market tourism.
- (3) To recommend programs to the Secretary of Commerce that will promote the State as a travel and tourism destination and that will develop travel and tourism opportunities throughout the State.
- (4) To advise the Secretary of Commerce every three months as to the effectiveness of agencies with which the Department has contracted for advertising and

regarding the selection of an advertising agency that will assist the Department in the promotion of the State as a travel and tourism destination.

- (5) Repealed by Session Laws 2016-94, s. 15.6(a), effective July 14, 2016, and applicable to appointments made on or after that date.
  - (6) To advise the Secretary of Commerce from time to time as to the effectiveness of the overall operations of the travel and tourism programs under the authority of the Department of Commerce.
  - (7) To promote the exchange of ideas and information on travel and tourism between State and local governmental agencies, and private organizations and individuals.
  - (8) To advise the Secretary of Commerce upon any matter that the Secretary, chief executive officer of the nonprofit corporation, or Governor may refer to it.
  - (9) To promote policies that support tourism in North Carolina.
  - (10) To advise the General Assembly on tourism policy matters upon request of the Joint Legislative Oversight Committee on Governmental Operations or the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources.
- (c) The Board shall consist of 19 members as follows:
- (1) The Secretary of Commerce, who shall not be a voting member.
  - (2) The chief executive officer of the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431.01(b), who shall not be a voting member.
  - (3) One member designated by the Board of Directors of the North Carolina Restaurant and Lodging Association, representing the lodging sector.
  - (4) One member designated by the Board of Directors of the North Carolina Restaurant and Lodging Association, representing the restaurant sector.
  - (5) One member of the Destination Marketing Association of North Carolina designated by the Board of Directors of the Destination Marketing Association of North Carolina.
  - (6) The Chair of the Travel and Tourism Coalition or the Chair's designee.
  - (7) One person who is a member of the Travel and Tourism Coalition designated by the Board of Directors of the Travel and Tourism Coalition.
  - (8) A member designated by the Board of Directors of the North Carolina Travel Industry Association.
  - (9), (10) Repealed by Session Laws 2016-94, s. 15.6(a), effective July 14, 2016, and applicable to appointments made on or after that date.
  - (11) Four persons appointed by the Speaker of the House of Representatives; one of whom shall be associated with the tourism industry and one of whom shall not be a member of the General Assembly.
  - (12) Four persons appointed by the President Pro Tempore of the Senate; one of whom shall be associated with the tourism industry and one of whom shall not be a member of the General Assembly.
  - (13) Repealed by Session Laws 2016-94, s. 15.6(a), effective July 14, 2016, and applicable to appointments made on or after that date.
  - (14) Two members appointed by the Governor, one of whom is involved in the tourism industry.

(15) One at-large member appointed by the Board of the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431.01(b).

(16), (17) Repealed by Session Laws 2016-94, s. 15.6(a), effective July 14, 2016, and applicable to appointments made on or after that date.

(d) The members of the Board shall serve the following terms: the Secretary of Commerce, the chief executive officer of the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431.01(b), and the Chair of the Travel and Tourism Coalition shall serve on the Board while they hold their respective offices. Each member of the Board appointed by the Governor shall serve during his or her term of office. The members of the Board appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve two-year terms beginning on September 1 of even-numbered years and ending on August 31. The first such term shall begin on September 1, 2016, or as soon thereafter as the member is appointed to the Board, and end on August 31, 2018. All other members of the Board shall serve a term which includes the portion of calendar year 2016 that remains following their appointment or designation and ends on August 31, 2017, and, thereafter, two-year terms which shall begin on September 1 of an odd-numbered year and end on August 31. The first such two-year term shall begin on September 1, 2017, and end on August 31, 2019.

(e) No member of the Board, except a member serving by virtue of his or her office, shall serve during more than five consecutive calendar years, except that a member shall continue to serve until his or her successor is appointed.

(f) Appointments to fill vacancies in the membership of the Board that occur due to resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term and shall be made by the same appointing authority that made the initial appointment.

(g) Board members who are employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. Board members who are legislators shall be reimbursed for travel and subsistence in accordance with G.S. 120-3.1. All other Board members, except those serving pursuant to subdivisions (3) through (7) of subsection (c) of this section, shall receive per diem, subsistence, and travel expenses, paid by the Department of Commerce, at the rate set forth in G.S. 138-5. Board members serving pursuant to subdivisions (3) through (7) of subsection (c) of this section shall not receive per diem, subsistence, or travel expenses but shall be reimbursed at the discretion of the appointing organization.

(h) The Board shall elect one of its voting members to serve as Chairperson. At its last regularly scheduled meeting each year, the Board shall elect one of its voting members to serve as Chairperson for the coming calendar year. No person shall serve as Chairperson during more than three consecutive calendar years. The Chairperson shall continue to serve until his or her successor is elected.

(i) A majority of the current voting membership shall constitute a quorum.

(j) The Secretary of Commerce shall provide clerical and other services as required by the Board. (1991, c. 406, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 54; 1997-495 s. 89(a); 2000-140, s. 79(a); 2007-67, s. 1; 2007-484, ss. 32(a), (b); 2009-550, s. 7; 2009-570, s. 8(f), (g); 2015-241, s. 15.4(b); 2016-94, s. 15.6(a); 2017-57, s. 15.2.)

#### **§ 143B-434.2. Travel and Tourism Policy Act.**

(a) This section shall be known as the Travel and Tourism Policy Act.

(b) The General Assembly of North Carolina finds that:



- (1) The State of North Carolina is endowed with great scenic beauty, historical sites, and cultural resources, and with a population whose ethnic diversity and traditions are attractive to visitors.
  - (2) These resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the State's own residents.
  - (3) Tourism provides economic well-being by contributing to employment and economic development, generating State revenues and receipts for local businesses, and increasing international trade.
  - (4) Tourism is an educational and informational medium for personal growth which informs residents about their State's geography and history, their political institutions, their cultural resources, and their environment, and about each other.
  - (5) Tourism instills State pride and a sense of common interest among the people of the State.
  - (6) Tourism enhances the quality of life and well-being of the State's residents by affording recreation, new experiences, and opportunities for relief from job stress.
  - (7) Tourism promotes international understanding and goodwill, and contributes to intercultural appreciation.
  - (8) Tourism engenders appreciation of the State's cultural, architectural, technological, and industrial achievements.
  - (9) The development and promotion of tourism to and within the State is in the interest of the people of North Carolina.
  - (10) Tourism should develop in an orderly manner in order to provide the maximum benefit to the State and its residents.
  - (11) A comprehensive tourism policy is essential if tourism is to grow in an orderly way.
- (c) The policy of the State of North Carolina is to:
- (1) Encourage the orderly growth and development of travel and tourism to and within the State.
  - (2) Promote the State's travel and tourism resources to the residents of the State, and to potential visitors from other states and other countries.
  - (3) Instill a sense of history in the State's young people by encouraging family visits to State historic sites, and by promoting the preservation and restoration of historic sites, trails, buildings, and districts.
  - (4) Promote the mental, emotional, and physical well-being of the people of North Carolina by encouraging outdoor recreational activities within the State.
  - (5) Strengthen a sense of common interest among the residents of the State by encouraging them to visit each other's communities and discover each other's traditions and ways of life.
  - (6) Increase national and international awareness of the State's cultural contributions by encouraging attendance at orchestral, operatic, dramatic, and other productions by artistic groups performing in the State.
  - (7) Cultivate the State's commercial interests by encouraging local and county fairs so that visitors may learn about local products and crafts.

- (8) Encourage the talents and strengthen the economic independence of State residents by encouraging the preservation of traditional craft skills; the production of handicrafts and folk art by private artisans and craftspeople; and the holding of craft demonstrations.
- (9) Provide visitors to the State with a hospitable reception.
- (10) Develop and maintain a statewide tourism data base.
- (11) Encourage the protection of wildlife and natural resources and the preservation of geological, archaeological, and cultural treasures in tourist areas.
- (12) Encourage, assist, and coordinate, where possible, the tourism activities of local and area promotional organizations.
- (13) Ensure that the tourism interest of the State is fully considered by State agencies and the General Assembly in their deliberations; and coordinate, to the maximum extent possible, all State activities in support of tourism with the needs of the general public, the political subdivisions of the State, and the tourism industry.

(d) The Department of Commerce, and the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431.01(b) to promote and market tourism, shall implement the policies set forth in this section. The nonprofit corporation shall make an annual report to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee regarding the status of the travel and tourism industry in North Carolina; the report shall be submitted to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee by October 15 of each year beginning October 15, 2015. The duties and responsibilities of the nonprofit corporation shall be to:

- (1) Organize and coordinate programs designed to promote tourism within the State and to the State from other states and foreign countries.
- (2) Measure and forecast tourist volume, receipts, and impact, both social and economic.
- (3) Develop a comprehensive plan to promote tourism to the State.
- (4) Encourage the development of the State's tourism infrastructure, facilities, services, and attractions.
- (5) Cooperate with neighboring states and the federal government to promote tourism to the State from other countries.
- (6) Develop opportunities for professional education and training in the tourism industry.
- (7) Provide advice and technical assistance to local public and private tourism organizations in promoting tourism to the State.
- (8) Encourage cooperation between State agencies and private individuals and organizations to advance the State's tourist interests and seek the views of these agencies and the private sector in the development of State tourism programs and policies.
- (9) Give leadership to all concerned with tourism in the State.

- (10) Perform other functions necessary to the orderly growth and development of tourism.
- (11) Develop informational materials for visitors which, among other things, shall:
  - a. Describe the State's travel and tourism resources and the State's history, economy, political institutions, cultural resources, outdoor recreational facilities, and principal festivals.
  - b. Urge visitors to protect endangered species, natural resources, archaeological artifacts, and cultural treasures.
  - c. Instill the ethic of stewardship of the State's natural resources.
- (12) Foster an understanding among State residents and civil servants of the economic importance of hospitality and tourism to the State.
- (13) Work with local businesses, including banks and hotels, with educational institutions, and with the United States Travel and Tourism Administration, to provide special services for international visitors, such as currency exchange facilities.
- (14) Encourage the reduction of architectural and other barriers which impede travel by physically handicapped persons. (1991, c. 144, ss. 1-4; 1991 (Reg. Sess., 1992), c. 959, s. 85; 2000-140, s. 79(b); 2011-145, s. 14.3; 2015-241, s. 15.4(c); 2017-57, s. 14.1(q); 2018-142, s. 13(a).)

**§ 143B-434.3: Repealed by Session Laws 2003-284, s. 12.6A.(a), effective on and after August 2, 2000.**

**§ 143B-434.4: Repealed by Session Laws 2005-276, s. 39.1(d), effective July 1, 2005.**

**§ 143B-435. Publications.**

The Department of Commerce may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such information shall be published and distributed as the Department of Commerce may direct. The costs of publishing and distributing such information shall be paid from:

- (1) State funds as other public documents; or
- (2) Private funds received:
  - a. As donations, or
  - b. From the sale of appropriate advertising in such published information. (1925, c. 122, s. 11; 1973, c. 1262, s. 28; 1977, c. 198, ss. 20, 26; 1989, c. 751, s. 7(30); 1989 (Reg. Sess., 1990), c. 1066, s. 55; 1991 (Reg. Sess., 1992), c. 959, s. 55.)

**§ 143B-435.1. Clawbacks.**

(a) **Clawback Defined.** – For the purpose of this Article, a clawback is a requirement that all or part of an economic development incentive will be returned or forfeited if the recipient business does not fulfill its responsibilities under the incentive law, contract, or both.

(b) Findings. – The General Assembly finds that in order for a clawback to be effective, there must be monitoring and reporting regarding the business's performance of its responsibilities and a mechanism for obtaining repayment if the clawback requiring the return of previously disbursed funding is triggered. Clawback provisions are essential to protect the State's investment in a private business and ensure that the public benefits from the incentive will be secured.

(c) Catalog. – The Department of Commerce shall catalog all clawbacks in State and federal programs it administers, whether provided by statute, by rule, or under a contract. The catalog must include a description of each clawback, the program to which it applies, and a citation to its source. The Department shall publish the catalog on its Web site and update it every six months.

(d) Report. – By April 1 and October 1 of each year, the Department of Commerce shall report to the Revenue Laws Study Committee, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the Legislative Services Commission on (i) all clawbacks that have been triggered under the One North Carolina Fund established pursuant to G.S. 143B-437.71, the Job Development Investment Grant Program established pursuant to G.S. 143B-437.52, Job Maintenance and Capital Development Fund established pursuant to G.S. 143B-437.012, the Utility Account established pursuant to G.S. 143B-437.01, and the Site Infrastructure Fund established pursuant to G.S. 143B-437.02 and (ii) its progress on obtaining repayments. The report must include the name of each business, the event that triggered the clawback, and the amount forfeited or to be repaid. (2007-515, s. 6; 2012-142, s. 13.4(b); 2013-360, s. 15.18(d); 2017-57, s. 14.1(s); 2018-142, s. 13(a).)

#### **§ 143B-436. Advertising of State resources and advantages.**

It is hereby declared to be the duty of the Department of Commerce to map out and to carry into effect a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the State of North Carolina and all of its resources. (1937, c. 160; 1953, c. 808, s. 4; 1973, c. 1262, s. 86; 1977, c. 198, ss. 20, 26; 1989, c. 751, s. 7(31); 1991 (Reg. Sess., 1992), c. 959, s. 56.)

#### **§ 143B-437. Investigation of impact of proposed new and expanding industry.**

The Department of Commerce shall conduct an evaluation in conjunction with the Department of Environmental Quality of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina. (1971, c. 824; 1973, c. 1262, ss. 28, 86; 1977, c. 198, ss. 19, 26; c. 771, s. 4; 1989, c. 727, s. 218(153); c. 751, s. 7(32); 1991 (Reg. Sess., 1992), c. 959, s. 57; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

#### **§ 143B-437.01. Industrial Development Fund Utility Account.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce a special account to be known as the Industrial Development Fund Utility Account ("Utility Account") to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs. The Department of Commerce shall adopt rules

providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the account:

- (1) The funds shall be used for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed buildings. To be eligible for funding, the water, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the job creation activity. To be eligible for funding, the sewer infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the job creation activity, even if the sewer infrastructure is located in a county other than the county in which the building is located.
- (1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars (\$100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.
- (2) The funds shall be used by the city and county governments for projects that are reasonably anticipated to result in the creation of new jobs. There shall be no maximum funding amount per new job to be created or per project.
- (3) There shall be no local match requirement if the project is located in a county that has one of the 25 highest rankings under G.S. 143B-437.08.
- (4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.
- (5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environmental Quality that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.
- (6) The funds shall not be used for any retail, entertainment, or sports projects. The funds shall not be used for any nonmanufacturing project that does not meet the wage standard for the development tier area or zone in which the project is located. There is no wage standard for a development tier one area. If an urban progress zone or an agrarian growth zone is not in a development tier one area, then the wage standard for that zone is an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county in which the project is located. The wage standard for a development tier two area or a development tier three area is an average weekly

wage that is at least equal to one hundred ten percent (110%) of the lesser of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county in which the project is located.

- (7) Priority for the use of funds shall be given to eligible industries.
- (a1) Definitions. – The following definitions apply in this section:
  - (1) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.
  - (2) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.
  - (2a) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate regional basis.
  - (3) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.
  - (4) Economically distressed county. – A county that is defined as a development tier one or two area under G.S. 143B-437.08.
  - (5) Eligible industry. – A company headquarters or a person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade.
  - (6) Information technology and services. – An industry in one of the following, as defined by NAICS:
    - a. Data processing industry group 518.
    - b. Software publishers industry group 5112.
    - c. Computer systems design and related services industry group 5415.
    - d. An Internet activity included in industry group 519130.
  - (7) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.
  - (8) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.
  - (9) Reserved.
  - (10) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.
  - (11) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.
- (b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.
- (b1) Repealed by Session Laws 2013-360, s. 15.18(a), effective July 1, 2013, and applicable to projects for which funds are initially provided on or after July 1, 2013.
- (c), (c1) Repealed by Session Laws 2012-142, s. 13.4(c), effective July 1, 2012.
- (d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5. (1989, c. 751, s. 9(c); c. 754, s. 54; 1991 (Reg. Sess., 1992), c. 959, s. 60; 1993, c. 444, s. 1; 1996, 2nd Ex. Sess., c. 13, s. 3.5; 1997-456, s. 27; 1998-55, s. 6; 1999-360, s. 17; 2000-56, s. 3(b); 2002-172, ss. 2.2(a), (b); 2003-416, s. 2; 2005-276, s. 13.5; 2006-252, s. 2.4; 2007-323, s. 13.18(i); 2009-523, s.

1(a)-(c); 2010-31, s. 14.9; 2012-74, s. 4; 2012-142, s. 13.4(c); 2013-360, s. 15.18(a); 2015-241, s. 14.30(u); 2016-5, s. 5.5(c); 2017-102, s. 44; 2018-5, s. 15.2(b).)

**§ 143B-437.02. Site infrastructure development.**

(a) Findings. – The General Assembly finds that:

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

(b) Fund. – The Site Infrastructure Development Fund is created as a restricted reserve in the Department of Commerce. Funds in the fund do not revert but remain available to the Department for these purposes. The Department may use the funds in the fund only for site development in accordance with this section.

(c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In addition, the following definitions apply in this section:

- (1) Department. – The Department of Commerce.
- (2) Site development. – Any of the following:
  - a. A restricted grant or a forgivable loan made to a business to enable the business to acquire land, improve land, or both.
  - b. A grant to one or more State agencies or nonprofit corporations to enable the grantees to acquire land, improve land, or both and to lease the property to a business.
  - c. A grant to one or more local government units to enable the units to acquire land, improve land, or both and to lease the property to a business.

(d) Eligibility. – To be eligible for consideration for site development for a project, a business must satisfy the conditions of subdivision (1) or (2) of this subsection:

(1) The business is a manufacturing employer. A business is a manufacturing employer if it meets both of the following:

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

(2) The business is a sports championship employer. A business is a sports championship employer if all of the requirements of this subdivision are met. For purposes of calculating the economic benefits required by this subdivision, the minimum amounts are satisfied if supported by Departmental estimates made prior to the time of entering the agreement. [The requirements are as follows:]

- a. The business will invest at least five million dollars (\$5,000,000) of private funds in the project. The investments required by this sub-subdivision must be completed no later than December 31, 2023, and must be used by the business, along with other funds, to complete facilities consisting of at least two buildings totaling no less than 30,000 square feet, designed and built in a style consistent with the surrounding campus, which will house at a minimum an equipment testing center for research for advancements pertaining to the business and associated support staff, a museum and visitor center, and departments within the business. These facilities must be maintained in service for a continuous period of at least 10 years.
- b. The project will produce for the State a total economic benefit of at least eight hundred million dollars (\$800,000,000) over the term of the agreement.
- c. The project will employ at least 35 new employees and at least 50 total employees with an average annual salary of not less than eighty thousand dollars (\$80,000). These positions must be maintained for a continuous period of at least 10 years.
- d. The business is a national sports nonprofit, event organizer, and governing body that is responsible for staging and holding championship events and agrees to hold championship events in the State with an aggregate economic benefit of five hundred million dollars (\$500,000,000) over the term of the agreement. The championship events must include (i) at least one men's major professional championship event every five to seven years having an economic benefit of ninety million dollars (\$90,000,000) per event, (ii) at least one women's major professional championship event every 10 years, and (iii) at least 13 additional championship events not otherwise required in this subdivision at venues in this State.
- e. At each men's major professional championship event held in this State as required by this subdivision, the business provides at no cost a hospitality pavilion to the Department or a nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431.01 or both



that will accommodate at least 40 people. The requirement of this section does not include costs for staffing the hospitality pavilion or catering costs. This provision constitutes a gift accepted on behalf of the State for use by the State or for the benefit of the State as permitted under G.S. 138A-32(f)(5).

(e) Health Insurance. – A business is eligible for consideration for site development under this section only if the business provides health insurance for all of the full-time employees of the project with respect to which the application is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum requirements for small group health benefit plans under State or federal law.

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

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

(g) Environmental Impact. – A business is eligible for consideration for site development under this part only if the business certifies that, at the time of the application, there has not been a final determination unfavorable to the business with respect to an environmental disqualifying event. For the purposes of this section, a "final determination unfavorable to the business" occurs when there is no further opportunity for the business to seek administrative or judicial appeal, review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has not been reversed or withdrawn.

(h) Selection. – The Department of Commerce shall administer the selection of projects to receive site development. The selection process shall include the following components:

- (1) Criteria. – The Department of Commerce must develop criteria to be used to identify and evaluate eligible projects for possible site development.
- (2) Initial evaluation. – The Department must evaluate major competitive projects to determine if site development is merited and to determine whether the project is eligible and appropriate for consideration for site development.
- (3) Application. – The Department must require a business to submit an application in order for a project to be considered for site development. The Department must prescribe the form of the application, the application process, and the information to be provided, including all information necessary to evaluate the project in accordance with the applicable criteria.
- (4) Committee. – The Department must submit to the Economic Investment Committee the applications for projects the Department considers eligible and appropriate for consideration for site development. In evaluating each application, the Committee must consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.

- (5) Findings. – In order to recommend a project for site development, the Committee must make all of the following findings:
- a. The conditions for eligibility have been met.
  - b. Site development for the project is necessary to carry out the public purposes provided in subsection (a) of this section.
  - c. The project is consistent with the economic development goals of the State and of the area where it will be located.
  - d. The affected local governments have participated in recruitment and offered incentives in a manner appropriate to the project.
  - e. The price and nature of any real property to be acquired is appropriate to the project and not unreasonable or excessive.
  - f. Site development under this section is necessary for the completion of the project in this State.
- (6) Recommendations. – If the Committee recommends a project for site development, it must recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.
- (i) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for site development, the Department shall enter into an agreement to provide site development within available funds for a project recommended by the Committee. Each site development agreement is binding and constitutes a continuing contractual obligation of the State and the business. The site development agreement must include all of the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department to secure the State's investment. Each site development agreement must contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.
- The Department shall cooperate with the Department of Administration and the Attorney General's Office in preparing the documentation for the site development agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section must be signed personally by the Attorney General.
- (j) Safeguards. – To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives State-funded site development must agree to meet performance criteria to protect the State's investment and assure that the projected benefits of the project are secured. The performance criteria to be required shall include creation and maintenance of an appropriate level of employment and investment over the term of the agreement and any other criteria the Department considers appropriate. The agreement must require the business to repay or reimburse an appropriate portion of the State funds expended for the site development, based on the extent of any failure by the business to meet the performance criteria. The agreement must provide a method for securing these payments from the business, such as structuring the site development as a conditional grant, a forgivable loan, or a revocable lease. The agreement must encourage the business to partner with and use The

University of North Carolina and the North Carolina Community College System for needs related to research for advancements pertaining to the business.

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

On September 1 of each year the Fund has unexpended funds until all funds have been expended, the Department shall report to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee regarding the Site Infrastructure Development Program. This report shall include a listing of each agreement negotiated and entered into during the preceding year, 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 site development incentive expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding year and the information contained in the report required by G.S. 105-277.15A(g). The Department shall publish this report on its web site and shall make printed copies available upon request.

(l) **Limitations.** – The Department may enter into no more than two agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed forty-nine million dollars (\$49,000,000).

(m) Repealed by Session Laws 2020-96, s. 1, effective September 4, 2020. (2003-435, 2nd Ex. Sess., s. 1; 2004-124, s. 6.26(a), (b); 2009-451, s. 14.5(a); 2010-147, s. 1.5; 2013-130, s. 4; 2016-5, s. 5.5(e); 2017-57, s. 14.1(s); 2018-142, s. 13(a); 2020-96, s. 1; 2021-180, s. 11.16(a); 2022-74, s. 11.7(a).)

#### **§ 143B-437.02A. The Film and Entertainment Grant Fund.**

(a) **Creation and Purpose of Fund.** – There is created in the Department of Commerce a special, nonreverting account to be known as the Film and Entertainment Grant Fund to provide funds to encourage the production of motion pictures, television shows, movies for television, productions intended for on-line distribution, and commercials and to develop the filmmaking industry within the State. The Department of Commerce shall adopt guidelines providing for the administration of the program. Those guidelines may provide for the Secretary to award the grant proceeds over a period of time, not to exceed three years. Those guidelines shall include the following provisions, which shall apply to each grant from the account:

- (1) The funds are reserved for a production on which the production company has qualifying expenses of at least the following:
  - a. For a feature-length film:
    1. One million five hundred thousand dollars (\$1,500,000), if for theatrical viewing.
    2. Five hundred thousand dollars (\$500,000), if a movie for television.
  - b. For a television series, five hundred thousand dollars (\$500,000) per episode.

- c. For a commercial for theatrical or television viewing or on-line distribution, two hundred fifty thousand dollars (\$250,000).
- (2) The funds are not used to provide a grant in excess of any of the following:
- a. An amount more than twenty-five percent (25%) of the qualifying expenses for the production.
  - b. An amount more than seven million dollars (\$7,000,000) for a feature-length film, more than fifteen million dollars (\$15,000,000) for a single season of a television series, or two hundred fifty thousand dollars (\$250,000) for a commercial for theatrical or television viewing or on-line distribution.
- (3) The funds are not used to provide a grant to more than one production company for a single production.
- (4) The funds are not used to provide a grant for a production that meets one or more of the following:
- a. It contains material that is “obscene,” as defined in G.S. 14-190.1, or that is “harmful to minors,” as defined in G.S. 14-190.13.
  - b. It has the primary purpose of political advertising, fundraising, or marketing, other than by commercial, a product, or service.
  - c. News programming, including weather, financial market, and current events reporting.
  - d. Live sporting event programming, including pre-event and post-event coverage and scripted sports entertainment. For purposes of this exception, a live sporting event is a scheduled sporting competition, game, or race that is originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. The term does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.
  - e. Radio productions.
  - f. It is a talk, game, or awards show or other gala event. For purposes of this exception, an awards show is television programming involving the filming of a ceremony in which individuals, groups, or organizations are given an award.
  - g. It fails to contain, in the end credits of the production, a statement that the production was “Filmed in North Carolina,” a logo provided by the North Carolina Film Office, and an acknowledgement of the regional film office responsible for the geographic area in which the filming of the production occurred. Additionally, the production company will offer marketing opportunities to be evaluated by the North Carolina Film Office to ensure that they offer promotional value to the State.
- (5) Priority for the use of funds shall be given to productions that are reasonably anticipated to maximize the benefit to the State, in consideration of at least the following factors:
- a. Percentage of employees that are permanent residents in the State.

- b. The extent to which the production features identifiable attractions or State locales in a manner that would be reasonably expected to induce visitation by nonresidents of the State to the attraction or locale.
  - c. The extent to which the production invests in permanent improvements to open public spaces, commercial districts, traditional downtown areas, public landmarks, residential areas, or similar properties or areas.
  - d. The extent to which the production will be filmed in an economically distressed county or area of the State.
  - e. The duration of production activities in the State.
- (b) Definitions. – The following definitions apply in this section:
- (1) Department. – The Department of Commerce.
  - (2) Employee. – A person who is employed for consideration and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes.
  - (3) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars (\$1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.
  - (4) Loan-out company. – A personal service corporation that employs an individual who is hired by a film or digital media production company.
  - (5) Production. – Any of the following:
    - a. A motion picture intended for commercial distribution to a motion picture theater or directly to the consumer viewing market that has a running time of at least 75 minutes.
    - b. A television series or a commercial for theatrical or television viewing, made-for-television movie, or production intended for on-line distribution. For video and television series, a production is all of the episodes of the series produced for a single season.
  - (6) Production company. – Defined in G.S. 105-164.3.
  - (7) Qualifying expenses. – The sum of the amounts listed in this subdivision, substantiated pursuant to subsection (d) of this section, and spent in this State by a production company in connection with a production, less the amount paid in excess of one million dollars (\$1,000,000) to a highly compensated individual:
    - a. Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed. Goods and services includes the costs of tangible and intangible property used for, and services performed primarily and customarily in, production, including preproduction and postproduction and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. Goods and services exclude costs for development, marketing, and distribution; costs of financing for the production, of bonding related to the production, of production-related insurance coverage obtained on the production; and expenses for insurance coverage purchased from a related member.

- b. Compensation and wages and payments on which withholding payments are remitted to the Department of Revenue under Article 4A of Chapter 105 of the General Statutes. Payments made to a loan-out company for services provided in North Carolina shall be subject to gross income tax withholding at the applicable rate under the Article 4 of Chapter 105 of the General Statutes.
- c. Employee fringe contributions, including health, pension, and welfare contributions.
- d. Per diems, stipends, and living allowances paid for work being performed in this State.

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

(9) Secretary. – The Secretary of Commerce.

(c) Application. – A production company shall apply to the Secretary for a grant on a form prescribed by the Secretary. The Secretary shall evaluate the applications to ensure the production’s content is created for entertainment purposes. The application shall include all documentation and information the Secretary deems necessary to evaluate the grant application.

(d) Substantiation. – The Secretary shall work with the North Carolina Film Office to adopt guidelines to provide a process to verify the actual qualifying expenses of a certified production. The Secretary may not release grant funds until the substantiation process required by this subsection is complete and the final verified amount of qualified expenses is determined. The process shall require each of the following:

- (1) The production company shall submit all the qualifying expenses for the production and data substantiating the qualifying expenses, including documentation on the net expenditure on equipment and other tangible personal property to an independent certified public accountant licensed in this State.
- (2) The accountant shall conduct a compliance audit, at the certified production’s expense, pursuant to guidelines established by the Secretary and submit the results as a report, along with the required substantiating data, to the production company and the North Carolina Film Office.
- (3) The North Carolina Film Office shall review the report and advise the Department on the final verified amount of qualifying expenses made by the certified production.

(e) Report. – The Department shall provide to the Department of Revenue, and the Department of Revenue must include in the economic incentives report required by G.S. 105-256, the following information, itemized by production company:

- (1) The location of sites used in a production for which a grant was awarded.
- (2) The qualifying expenses, classified by whether the expenses were for goods, services, or compensation paid by the production company.
- (3) The number of people employed in the State with respect to grants awarded, including the number of residents of the State employed.
- (4) The total cost of the grants awarded.

(f) NC Film Office. – To claim a grant under this section, a production company must notify the Department of Commerce of its intent to apply for a grant. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to begin filming the production, and any other information required by the Department.

(g) Guidelines. – The Department of Commerce shall develop guidelines related to the administration of the Film and Entertainment Grant Fund and to the selection of productions that will receive grants from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to the guidelines, the Department of Commerce shall publish the proposed guidelines on the Department’s Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. (2014-100, s. 15.14B(a); 2015-241, ss. 15.4(d), 15.25(a); 2017-212, s. 4.3; 2018-5, s. 15.4(a); 2021-180, s. 11.6(a).)

**§ 143B-437.02B. The Esports Industry Grant Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce a special, nonreverting account to be known as the Esports Industry Grant Fund to provide funds to encourage esports events to be held within the State. The Department of Commerce shall adopt guidelines providing for the administration of the program. The guidelines may provide for the Secretary to award the grant proceeds over a period of time, not to exceed three years. The guidelines shall include the following provisions, which shall apply to each grant from the account:

- (1) The funds are reserved for a production for which a production company has qualifying expenses of at least one hundred fifty thousand dollars (\$150,000) with respect to a single production.
- (2) The funds may not be used to provide a grant in excess of an amount more than twenty-five percent (25%) of the qualifying expenses for a single production.
- (3) The funds shall not be used to provide a grant to more than one production company for a single production.
- (4) The funds shall not be used to provide a grant for a production that meets one or more of the following:
  - a. It contains material that is “obscene,” as defined in G.S. 14-190.1, or that is “harmful to minors,” as defined in G.S. 14-190.13.
  - b. It has the primary purpose of political advertising, fundraising, or marketing, other than by commercial, a product, or service.
  - c. It consists of live sporting event programming, including pre-event and post-event coverage and scripted sports entertainment. For purposes of this exception, a live sporting event is a scheduled sporting competition, game, or race that is originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. The term does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.
  - d. It fails to display a promotional logo, website link, statement, or some combination thereof that has been approved by the Department indicating that the production was recorded in or broadcast from North Carolina. The production company shall offer additional marketing opportunities to be evaluated by the Department that offer promotional value to the State.

- (5) Priority for the use of funds shall be given to productions that are reasonably anticipated to maximize the benefit to the State, in consideration of at least the following factors:
  - a. Percentage of employees that are permanent residents in the State.
  - b. The anticipated number of in-person spectators.
  - c. The extent to which the production invests in permanent improvements to open public spaces, commercial districts, traditional downtown areas, public landmarks, residential areas, or similar properties or areas or in programs that develop the esports industry in the State.
  - d. The duration of the production activities in the State.
- (b) Definitions. – The following definitions apply in this section:
  - (1) Department. – The Department of Commerce.
  - (2) Employee. – A person who is employed for consideration and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes.
  - (3) Esports event. – A scheduled form of multiplayer video game competition, particularly between professional players, individually or as teams, organized by an amateur, collegiate, or professional organization, institution, or association that is broadcast live or in a recorded format. An esports event does not include a live sporting event.
  - (4) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars (\$1,000,000) for personal services with respect to an esports event. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.
  - (5) Loan-out company. – A personal service corporation that employs an individual who is hired by a production company.
  - (6) Production. – An esports event held in this State with in-person spectators, in addition to participants or competitors, that is intended for commercial distribution on television, websites, the internet, or other digital platforms.
  - (7) Production company. – A person engaged in the business of producing esports productions.
  - (8) Qualifying expenses. – The sum of the amounts listed in this subdivision, substantiated pursuant to subsection (d) of this section, and spent in this State by a production company in connection with a production, less the amount paid in excess of one million dollars (\$1,000,000) to a highly compensated individual:
    - a. Goods and services leased or purchased in this State from a North Carolina vendor. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed. Goods and services include the cost of tangible and intangible property used for, and services performed primarily and customarily in, production, including preproduction and postproduction and other direct costs of producing the production in accordance with generally accepted entertainment industry practices. Goods and services exclude costs for development, marketing, and distribution; costs of financing for the event, of bonding related to the



event, of production-related insurance coverage obtained on the event; and expenses for insurance coverage purchased from a related member.

- b. Compensation and wages and payments on which withholding payments are remitted to the Department of Revenue under Article 4A of Chapter 105 of the General Statutes. Payments made to a loan-out company for services provided in North Carolina shall be subject to gross income tax withholding at the applicable rate under Article 4 of Chapter 105 of the General Statutes.
  - c. Employee fringe contributions, including health, pension, and welfare contributions.
  - d. Per diems, stipends, and living allowances paid for work being performed in this State.
- (9) Related member. – Defined in G.S. 105-130.7A.
  - (10) Secretary. – The Secretary of Commerce.
  - (11) Video game. – A game that employs electronics to create an interactive system between one or more players and a user interface or input device to generate visual feedback on a video display device for the player or players.

(c) Application. – A production company shall apply to the Secretary for a grant on a form prescribed by the Secretary. The Secretary shall evaluate the applications to ensure the production is created for entertainment purposes. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to hold the event, the proposed location of the event, and any other information required by the Department. The application shall include all documentation and information the Secretary deems necessary to evaluate the grant application.

(d) Award. – The amounts committed for grants allowed under this section in a single fiscal year may not exceed five million dollars (\$5,000,000).

(e) Substantiation. – The Secretary shall work with the North Carolina Division of Tourism, Film, and Sports Development to adopt guidelines to provide a process to verify the actual qualifying expenses of a certified production. The Secretary may not release grant funds until the substantiation process required by this subsection is complete and the final verified amount of qualified expenses is determined. The process shall require each of the following:

- (1) The production company shall submit all the qualifying expenses for the production and data substantiating the qualifying expenses, including documentation on the net expenditure on equipment and other tangible personal property to an independent certified public accountant licensed in this State.
- (2) The accountant shall conduct a compliance audit, at the certified production's expense, pursuant to guidelines established by the Secretary and submit the results as a report, along with the required substantiating data, to the production company and the North Carolina Division of Tourism, Film, and Sports Development.
- (3) The North Carolina Division of Tourism, Film, and Sports Development shall review the report and advise the Department on the final verified amount of qualifying expenses made by the certified production.

(f) Report. – The Department shall provide to the Department of Revenue, and the Department of Revenue must include in the economic incentives report required by G.S. 105-256, the following information, itemized by production company:

- (1) The location of the site used in the production for which a grant was awarded.
- (2) The qualifying expenses, classified by whether the expenses were for goods, services, or compensation paid by the production company.
- (3) The number of people employed in the State with respect to grants awarded, including the number of residents of the State employed.
- (4) The total number of in-person attendees at the event, including both participants and observers.
- (5) The total cost of the grants awarded.

(g) Guidelines. – The Department of Commerce shall develop guidelines related to the administration of the Esports Industry Grant Fund and to the selection of events that will receive grants from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to the guidelines, the Department of Commerce shall publish the proposed guidelines on the Department’s website and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications.

(h) Administrative Expenses. – The Department may use three percent (3%) of the funds appropriated to the Grant Fund each fiscal year for administrative costs associated with administration of the Fund. These funds may be used for up to two full-time equivalent positions or to contract with a third party to administer the program. (2021-180, s. 11.13(a); 2021-189, s. 4.3, s. 4.3.)

**§ 143B-437.03: Repealed by Session Laws 2014-18, s. 1.2(c), effective July 1, 2014.**

**§ 143B-437.04. Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

- (1) No local match is required for grants awarded for projects located in counties that have one of the 25 highest rankings under G.S. 143B-437.08.
- (2) To the extent practicable, priority consideration for grants is given to projects located in counties that have met the conditions of subdivision (a)(1) of this section or in urban progress zones that have met the conditions of subsection (b) of this section.
- (3) Priority consideration is given to projects located in areas annexed by a municipality under Article 4A of Chapter 160A of the General Statutes in order to provide water or sewer services to low-income residents. For purposes of this section, low-income residents are those with a family income that is eighty percent (80%) or less of median family income.

(b) In order to qualify for the benefits of this section, after an area is designated an urban progress zone under G.S. 143B-437.09, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish an urban progress zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce. (1996, 2nd Ex. Sess., c. 13, s. 3.6; 1997-456, s. 27; 1998-55, s. 3; 2006-252, s. 2.5; 2007-323, s. 13.18(h); 2011-396, s. 11.1; 2018-5, s. 15.2(e).)

**§ 143B-437.05. Regional Development.**

The Department of Commerce shall review the Economic Development Board's annual report on economic development to evaluate the progress of development in each of the economic regions defined by the Board in its Comprehensive Strategic Economic Development Plan. In its recruitment and development work, the Department shall strive for balance and equality among the economic regions and shall use its best efforts to locate new industries in the less developed areas of the State. (1996, 2nd Ex. Sess., c. 13, s. 3.10; 1997-456, s. 27.)

**§ 143B-437.06: Repealed by Session Laws 2004-124, s. 13.6(c) effective July 1, 2004.**

**§ 143B-437.07. Economic development grant reporting.**

(a) Report. – The Department of Commerce shall publish on or before October 1 of each year the information required by this subsection, itemized by business entity, for each business or joint private venture to which the State has, in whole or in part, granted one or more economic development incentives during the relevant time period. The relevant time period ends June 30 preceding the publication date of this subsection and begins (i) for incentives not awarded under Part 2G of this Article with the 2007 calendar year and (ii) for incentives awarded under Part 2G of this Article with the 2002 calendar year. The information in the report shall include all of the following:

- (1) A unique project identification number and a unique descriptor or title.
- (2) The date of the award and the date of the award agreement.
- (3) The name, mailing address, telephone number, and Web site of the business recipient, or recipients if a joint venture, and the physical location of the site receiving the incentive. If the physical location of the site is undecided, then the name of the county in which the site will be located. The information regarding the physical location shall indicate whether the physical location is a new or expanded facility.
- (3a) A determination of whether the award is to a business that is new to the State or an expansion of an existing business within the State.
- (4) The development tier designation of the county in which the site is located on the date the incentive is awarded.
- (5) The NAICS six-digit code and NAICS category of business receiving the incentive. The term "NAICS" has the same meaning as defined in G.S. 105-164.3.
- (6) The sources and dollar value of eligible State incentives by program name.
- (7) The sources and dollar value of local government funds provided by any locality and the nature of the local funding. Examples of the nature of local funding include cash, fee-waivers, in-kind services, and donation of land, buildings, or other assets.
- (8) The intended use of the incentive by any category or categories to which State law restricts or limits uses of incentive funds. If the use of the incentive funds is not restricted, then the intended purpose of the funds.
- (9) The amount of incentive monies disbursed taken during the period.
- (10) The amount of potential future liability under the applicable incentive program.
- (11) The number, type, and wage level of jobs required to be created or retained to receive a disbursement of incentive monies.

- (12) The actual full-time equivalent jobs employed by the recipient during the period.
- (13) The projected cost per job created or retained, including State and local funds.
- (14) Any amount recaptured from the business entity during the period for failure to satisfy the terms of the grant agreement.

(b) Online Posting/Written Submission. – The Department of Commerce shall post on its Internet Web site a summary of the report compiled in subsection (a) of this section. The summary report shall include the information required by subdivisions (2), (9), (11), and (12) of subsection (a) of this section. By October 1 of each year, the Department of Commerce shall submit the written report required by subsection (a) of this section to the Joint Legislative Commission on Governmental Operations, the Revenue Laws Study Committee, the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the General Assembly.

(c) Economic Development Incentive. – An economic development incentive includes any grant from the following programs: Job Development Investment Grant Program; the Job Maintenance and Capital Development Fund; One North Carolina Fund; and the Utility Account. The State also incents economic development through the use of tax expenditures in the form of tax credits and refunds. The Department of Revenue shall report annually on these statutory economic development incentives, as required under G.S. 105-256.

(d) County Economic Growth Assessments and Assistance. – Beginning in 2018 and every five years thereafter, the Department of Commerce shall determine the statewide value for each of the development factors listed in G.S. 143B-437.08. The Department shall annually (i) compare the latest determined statewide values to each county's development factors, (ii) report to each county any areas of performance below that of the statewide value, and (iii) offer assistance to each county, upon request, regarding how to improve performance relative to the economic indicator identified. The Department shall collate the reports and submit them on or before April 1 of each year to the Joint Legislative Economic Development and Global Engagement Oversight Committee with a comparison of each county's performance for the previous year. The collated report shall also include a list of each county requesting assistance and the Department's response to the request. (2005-429, s. 1.3; 2011-145, s. 14.2(b); 2012-142, s. 13.4(d); 2013-360, s. 15.18(e); 2015-241, s. 15.10(a); 2017-57, s. 14.1(t); 2018-5, s. 15.2(f).)

#### **§ 143B-437.08. Development tier designation.**

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.
- (2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.
- (4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e), (f) Repealed by Session Laws 2018-5, s. 15.2(a), effective June 12, 2018, and applicable to economic development awards made and related determinations occurring on or after January 1, 2019.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

- (1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.
- (2) At least one-third of the park is located in the county with the lower tier designation.
- (3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
- (4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.
- (5) Expired, effective July 1, 2012, pursuant to Session Laws 2009-524, s. 2.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4, and parcels of land located within the industrial park that are subsequently transferred and used for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1, have the lowest development tier designation of the designations of the counties in which they are located if all of the following conditions are satisfied:

- (1) The industrial park is located, at one or more sites, in three or more contiguous counties.
- (2) At least one of the counties in which the industrial park is located is a development tier one area.

- (3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.
- (4) In each county with the lowest development tier designation of the designations of the counties in which the industrial park is located, the park has at least 65 developable acres. In any other county in which the industrial park is located, the park has at least 250 developable acres. A transfer of acreage that reduces the number of developable acres below the required developable acres in a county does not affect an industrial park's eligibility under this subsection if the transfer is to an owner who uses or develops the acreage for industrial or commercial purposes authorized for cities and counties under G.S. 158-7.1. For the purposes of this subdivision, "developable acres" includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.
- (5) The total population of all of the counties in which the industrial park is located is less than 200,000 based on the 2010 federal decennial census.
- (6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.
  - (i) Expired, effective July 1, 2013, pursuant to Session Laws 2009-505, s. 2, as amended by Session Laws 2012-36, s. 1.
  - (j) Exception for Eco-Industrial Park. – An Eco-Industrial Park has a development tier one designation. An Eco-Industrial Park is an industrial park that the Secretary of Commerce has certified meets the following requirements:
    - (1) It has at least 100 developable acres.
    - (2) It is located in a county that is not required under G.S. 143-215.107A to perform motor vehicle emissions inspections.
    - (3) Each building located in the industrial park is constructed in accordance with energy-efficiency and water-use standards established in G.S. 143-135.37 for construction of a major facility.
    - (4) Each business located in the park is in a clean-industry sector according to the Toxic Release Inventory by the United States Environmental Protection Agency.
  - (k) Report. – By November 30 of each year, the Secretary of Commerce shall submit a written report to the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the Joint Legislative Economic Development and Global Engagement Oversight Committee on the tier rankings required by subsection (c) of this section, including a map of the State whereupon the tier ranking of each county is designated. (2006-252, s. 1.2; 2008-147, s. 1; 2009-505, s. 1; 2009-524, s. 1; 2010-147, s. 5.1; 2012-36, s. 1; 2012-142, s. 13.4(e); 2017-57, s. 14.1(t); 2018-5, s. 15.2(a); 2021-180, s. 11.17(a).)

**§ 143B-437.09. Urban progress zone designation.**

(a) Urban Progress Zone Defined. – An urban progress zone is an area that meets all of the following conditions:

- (1) It is comprised of part or all of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.
- (2) All of the area is located in whole within the primary corporate limits of a municipality with a population in excess of 10,000 according to the most recent annual population estimates certified by the State Budget Officer.
- (3) Every census tract and census block group that comprises the area meets at least one of the following conditions:
  - a. It has a population that meets the poverty level threshold. The population of a census tract or census block group meets the poverty level threshold if more than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.
  - b. It is located adjacent to a census tract or census block group whose population meets the poverty level threshold and at least fifty percent (50%) of the part of it that is included in the area is zoned as nonresidential. No more than thirty-five percent (35%) of the area of a zone may consist of census tracts or census block groups that satisfy this condition only.
  - c. It has a population that has a poverty level that is greater than the poverty level of the population of the State and a per capita income that is at least ten percent (10%) below the per capita income of the State according to the most recent federal decennial census, and it has experienced a major plant closing and layoff within the past 10 years. A census tract or census block group has experienced a major plant closing and layoff if one of its industries has closed one or more facilities in the census tract or census block group resulting in a layoff of at least 3,000 employees working in the census tract or census block group and if the number of employees laid off is greater than seven percent (7%) of the population of the municipality according to the most recent federal decennial census.

(b) Limitations. – No census tract or block group may be located in more than one urban progress zone. The total area of all zones within a municipality may not exceed fifteen percent (15%) of the total area of the municipality unless the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality. In the case of a municipality where the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality, the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section may be designated as an urban poverty zone.

(c) Designation. – Upon application of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that satisfies the conditions and limitations of subsections (a) and (b) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of

Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

- (1) A map showing the census tracts and block groups that would comprise the zone.
  - (2) A detailed description of the boundaries of the area that would comprise the zone.
  - (3) A zoning map for the municipality with the proposed zone clearly delineated upon it.
  - (4) A certification regarding the size of the proposed zone and the areas within the proposed zone zoned as nonresidential.
  - (5) Detailed census information on the municipality and the proposed zone.
  - (6) A resolution of the governing body of the municipality requesting the designation of the area as an urban progress zone.
  - (7) Any other material required by the Secretary of Commerce.
- (d) Parcel of Property Partially in Urban Progress Zone. – For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:
- (1) At least fifty percent (50%) of the parcel is located within the zone.
  - (2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
  - (3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary. (2006-252, s. 1.2; 2007-515, s. 2.)

**§ 143B-437.010. Agrarian growth zone designation.**

(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area that meets all of the following conditions:

- (1) It is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.
- (2) All of the area is located in whole within a county that has no municipality with a population in excess of 10,000.
- (3) Every census tract and census block group that comprises the area either has more than twenty percent (20%) of its population below the poverty level or is adjacent to another census tract or census block group in the zone that has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.
- (4) The zone as a whole has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(b) Limitation and Designation. – The area of a county that is included in one or more agrarian growth zones shall not exceed five percent (5%) of the total area of the county. Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that satisfies the conditions of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all agrarian growth zones with a description of their boundaries.



- (1) A map showing the census tracts and block groups that would comprise the zone.
  - (2) A detailed description of the boundaries of the area that would comprise the zone.
  - (3) A certification regarding the size of the proposed zone.
  - (4) Detailed census information on the county and the proposed zone.
  - (5) A resolution of the board of county commissioners requesting the designation of the area as an agrarian growth zone.
  - (6) Any other material required by the Secretary of Commerce.
- (c) Parcel of Property Partially in Agrarian Growth Zone. – For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:
- (1) At least fifty percent (50%) of the parcel is located within the zone.
  - (2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
  - (3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary. (2006-252, s. 1.2; 2007-484, s. 33(a); 2007-515, s. 3; 2010-147, s. 1.2.)

**§ 143B-437.011: Repealed by Session Laws 2010-31, s. 14.6(b), effective July 1, 2010.**

**§ 143B-437.012. Job Maintenance and Capital Development Fund.**

- (a) Findings. – The General Assembly finds that:
- (1) It is the policy of the State of North Carolina to stimulate economic activity, to maintain high-paying jobs for the citizens of the State, and to encourage capital investment by encouraging and promoting the maintenance of existing business and industry within the State.
  - (2) The economic condition of the State is not static, and recent changes in the State's economic condition have created economic distress that requires the enactment of a new program as provided in this section that is designed to encourage the retention of significant numbers of high-paying jobs and the addition of further large-scale capital investment.
  - (3) The enactment of this section is necessary to stimulate the economy and maintain high-quality jobs in North Carolina, and this section will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the maintenance of high-quality jobs, an enlargement of the overall tax base, continued diversity in the State's industrial base, and an increase in revenue to the State's political subdivisions.
  - (4) The purpose of this section is to stimulate economic activity and to maintain high-paying jobs within the State while increasing the property tax base for local governments.
  - (5) The benefits that flow to the State from job maintenance and capital investment are many and include increased tax revenues related to the capital investment, increased corporate income and franchise taxes due to the placement of additional resources in the State, a better trained, highly skilled workforce, and

the continued receipt of personal income tax withholdings from workers who remain employed in high-paying jobs.

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

(c) Definitions. – The definitions in G.S. 143B-437.51 apply in this section. In addition, as used in this section, the term "Department" means the Department of Commerce.

(d) Eligibility. – A business is eligible for consideration for a grant under this section if it satisfies the conditions of subdivision (1), (1a), (2), (2a), or (2b) of this subsection and satisfies subdivision (4) of this subsection:

- (1) The business is a major employer. A business is a major employer if the business meets the following requirements:
  - a. The Department certifies that the business has invested or intends to invest at least two hundred million dollars (\$200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences.
  - b. The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.
  - c. The project is located in a development tier one area at the time the business applies for a grant.
- (1a) The business previously received a grant as a major employer under this section and meets the following requirements:
  - a. The Department certifies that the business has invested or intends to invest at least one hundred fifty million dollars (\$150,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences. Amounts certified as invested under sub-subdivision a. of subdivision (1) of this subsection shall not be included in the amount required by this sub-subdivision.
  - b. The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.
  - c. The project is at the same location as that for which a grant was previously awarded under subdivision (1) of this subsection.
- (2) The business is a large manufacturing employer. A business is a large manufacturing employer if the business meets the following requirements:

- a. The business is in manufacturing, as defined in G.S. 105-129.81, and is converting its manufacturing process to change the product it manufactures or is investing in its manufacturing process by enhancing pollution controls or transitioning the manufacturing process from using coal to using natural gas for the purpose of becoming more energy efficient or reducing emissions.
  - b. The Department certifies that the business has invested or intends to invest at least fifty million dollars (\$50,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a five-year period beginning with the time the investment commences.
  - c. The business meets one of the following employment requirements:
    - 1. If in a development tier one area, the business employs at least 320 full-time employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 320 full-time employees at the project for the full term of the grant.
    - 2. If in a development tier two area with a population of less than 60,000 as of July 1, 2013, the business employs at least 800 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 800 full-time employees or equivalent full-time contract employees at the project for the full term of the grant.
- (2a) The business is a heritage manufacturing employer. A business is a heritage manufacturing employer if the business meets the following requirements:
- a. The business is in manufacturing, as defined in G.S. 143B-437.01, and has been operating in this State for over 100 years.
  - b. The Department certifies that the business has invested or intends to invest at least three hundred twenty-five million dollars (\$325,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a four-year period beginning with the time the investment commences.
  - c. The business employs at least 1,050 full-time employees or equivalent full-time contract employees in the State at the time the application is made and the business agrees to (i) maintain at least 1,050 full-time employees or equivalent full-time contract employees in the State for the full term of the grant and (ii) retrain and relocate to a development tier two area at least 400 of those full-time employees or equivalent full-time contract employees upon the commencement of commercial production at its tier two area facility.
  - d. The business is operating in a development tier three area at the time the business applies for a grant and the business is relocating to a development tier two area with an estimated population of less than 63,000, according to the 2017 Certified County Population Estimates published by the State Demographer's Office.

- e. An agreement with a business under this subdivision may provide that the grant paid out over the term of the agreement be in unequal annual payments and in amounts deviating from the factors listed in subsection (l) of this section for any individual annual payment, provided the factors are considered in the aggregate award to be paid to the business over the entire term of the agreement.
- (2b) The business is a supply-chain-impact manufacturing employer. A business is a supply-chain-impact manufacturing employer if the business meets the following requirements:
- a. The business is in manufacturing, as defined in G.S. 105-129.81, manufactures a product used primarily and significantly in the construction of residential and commercial buildings, and is investing in its manufacturing process to transition away from utilizing coal-based energy byproducts to other alternatives.
  - b. The Department certifies that the business has invested or intends to invest at least one hundred ten million dollars (\$110,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a five-year period beginning with the time the investment commences.
  - c. The business and its affiliated companies (i) employ at least 420 full-time employees or equivalent full-time contract employees in the State at the time the application is made and (ii) agree to maintain at least 420 full-time employees or equivalent full-time contract employees in the State for the full term of the grant.
  - d. The business has operations in a development tier two area at the time the business applies for a grant, and the business agrees to maintain or increase the development tier two area operations for the term of the agreement.
- (3) Repealed by Session Laws 2014-118, s. 1, effective July 1, 2014.
- (4) All newly hired employees of the business must be citizens of the United States or have proper identification and documentation of their authorization to reside and work in the United States.

(e) **Wage Standard.** – A business is eligible for consideration for a grant under this section only if the business satisfies a wage standard at the project that is the subject of the agreement. For an agreement with a business and its affiliated companies, the wage standard is met if (i) the pay for employees located in the lowest development tier is at least equal to one hundred forty percent (140%) of the average wage for all insured in the county and (ii) the pay for all other employees is at least equal to one hundred forty percent (140%) of the greater of the average wage for all insured in the county where the position was located at the time the agreement was entered or, if the position is transferred to another area in the State, the average wage for all insured in the county to which the position is transferred. For any other agreement, a business satisfies the wage standard if it pays an average weekly wage that is at least equal to one hundred forty percent (140%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county. In making the wage calculation, the business shall include any jobs that were filled for at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time positions or equivalent full-time contract positions. Each year that a

grant agreement is in effect, the business shall provide the Department a certification that the business continues to satisfy the wage standard. If a business fails to satisfy the wage standard for a year, the business is not eligible for a grant payment for that year.

(f) Health Insurance. – A business is eligible for consideration for a grant under this section only if the business makes available health insurance for all of the full-time employees and equivalent full-time contract employees of the project with respect to which the application is made. For the purposes of this subsection, a business makes available health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage under G.S. 58-50-125.

Each year that a grant agreement under this section is in effect, the business shall provide the Department a certification that the business continues to make available health insurance for all full-time employees of the project governed by the agreement. If a business fails to satisfy the requirements of this subsection, the business is not eligible for a grant payment for that year.

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

(h) Environmental Impact. – A business is eligible for consideration for a grant under this section only if the business certifies that, at the time of the application, there has not been a final determination unfavorable to the business with respect to an environmental disqualifying event. For the purposes of this section, a "final determination unfavorable to the business" occurs when there is no further opportunity for the business to seek administrative or judicial appeal, review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has not been reversed or withdrawn.

(i) Selection. – The Department shall administer the selection of projects to receive grants under this section. The selection process shall include the following components:

- (1) Criteria. – The Department shall develop criteria to be used to identify and evaluate eligible projects for possible grants under this section.
- (2) Initial evaluation. – The Department shall evaluate projects to determine if a grant under this section is merited and to determine whether the project is eligible and appropriate for consideration for a grant under this section.
- (3) Application. – The Department shall require a business to submit an application in order for a project to be considered for a grant under this section. The Department shall prescribe the form of the application, the application process, and the information to be provided, including all information necessary to evaluate the project in accordance with the applicable criteria.
- (4) Committee. – The Department shall submit to the Economic Investment Committee the applications for projects the Department considers eligible and appropriate for a grant under this section. The Committee shall evaluate applications to choose projects to receive a grant under this section. In evaluating each application, the Committee shall consider all criteria adopted by the Department under this section and, to the extent applicable, the factors set out in Section 2.1(b) of S.L. 2002-172.
- (5) Findings. – The Committee shall make all of the following findings before recommending a project receive a grant under this section:

- a. The conditions for eligibility have been met.
  - b. A grant under this section for the project is necessary to carry out the public purposes provided in subsection (a) of this section.
  - c. The project is consistent with the economic development goals of the State and of the area where it is located.
  - d. The affected local governments have participated in retention efforts and offered incentives in a manner appropriate to the project.
  - e. A grant under this section is necessary for the sustainability and maintenance of the project in this State.
- (6) Recommendations. – If the Committee recommends a project for a grant under this section, it shall recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.

(j) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department.

Each grant agreement shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement for a business that is a major employer under subdivision (1) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required.

Each grant agreement for a business that is not a major employer under subdivision (1) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level required under that subdivision at the project that is the subject of the grant. The agreement shall further specify that the business is not eligible for a grant in any year in which the business fails to maintain the employment level.

A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General.

(k) Safeguards. – To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives a grant under

this section shall agree to meet performance criteria to protect the State's investment and ensure that the projected benefits of the project are secured. The performance criteria to be required shall include maintenance of an appropriate level of employment at specified levels of compensation, maintenance of health insurance for all full-time employees, investment of a specified amount over the term of the agreement, and any other criteria the Department considers appropriate. The agreement shall require the business to repay or reimburse an appropriate portion of the grant based on the extent of any failure by the business to meet the performance criteria. The agreement shall require the business to repay all amounts received under the agreement and to forfeit any future grant payments if the business fails to satisfy the investment eligibility requirement of this section. The use of contract employees shall not be used to reduce compensation at the project that is the subject of the agreement.

- (1) Ninety-five percent (95%) of the privilege and sales and use taxes paid by the business on machinery and equipment installed at the project that is the subject of the agreement.
  - (2) Ninety-five percent (95%) of the sales and use taxes paid by the business on building materials used to construct, renovate, or repair facilities at the project that is the subject of the agreement.
  - (3) Ninety-five percent (95%) of the additional income and franchise taxes that are not offset by tax credits. For the purposes of this subdivision, "additional income and franchise taxes" are the additional taxes that would be due because of the investment in machinery and equipment and real property at the project that is the subject of the agreement during the investment period specified in subsection (d) of this section.
  - (4) Ninety-five percent (95%) of the sales and use taxes paid on electricity and the excise tax paid on piped natural gas.
  - (5) One hundred percent (100%) of worker training expenses, including wages paid for on-the-job training, associated with the project that is the subject of the agreement.
  - (6) One hundred percent (100%) of any State permitting fees associated with the capital expansion at the project that is the subject of the agreement.
- (l) Calculation of Grant Amounts. – The Committee shall consider the following factors in determining the amount of a grant that would be appropriate, but is not necessarily limited to these factors:

(m) Monitoring and Reports. – The Department is responsible for monitoring compliance with the performance criteria under each grant agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

On September 1 of each year until all funds have been expended, the Department shall report to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee regarding the Job Maintenance and Capital Development Fund. This report shall include a listing of each grant awarded and each agreement entered into under this section during the preceding year, 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 paid under the agreement during the current

fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding year. The Department shall publish this report on its Web site and shall make printed copies available upon request.

(n) Limitations. – The Department may enter into no more than eight agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed one hundred fifty-nine million dollars (\$159,000,000). The total annual cost of an agreement entered into under this section may not exceed six million dollars (\$6,000,000). (2007-552, 1st Ex. Sess., s. 1; 2008-187, s. 26(a); 2009-451, s. 14.5(b); 2009-520, s. 1; 2010-95, ss. 37(a), 38(a); 2010-147, s. 1.6; 2013-360, s. 15.18(c); 2014-118, s. 1; 2016-5, s. 5.5(d); 2017-57, ss. 14.1(s), 15.14(a); 2018-142, s. 13(a); 2019-14, s. 1; 2019-146, s. 6; 2022-74, s. 11.6(a).)

### **§ 143B-437.013. Port enhancement zone designation.**

(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets all of the following conditions:

- (1) It is comprised of part or all of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.
- (2) All of the area is located within 25 miles of a State port and is capable of being used to enhance port operations.
- (3) Every census tract and census block group that comprises the area has at least eleven percent (11%) of households with incomes of fifteen thousand dollars (\$15,000) or less.

(b) Limitations and Designation. – The area of a county that is included in one or more port enhancement zones shall not exceed five percent (5%) of the total area of the county. Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is a port enhancement zone that satisfies the conditions of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all port enhancement zones with a description of their boundaries.

- (1) A map showing the census tracts and block groups that would comprise the zone.
- (2) A detailed description of the boundaries of the area that would comprise the zone.
- (3) A certification regarding the size of the proposed zone.
- (4) Detailed census information on the county and the proposed zone.
- (5) A resolution of the board of county commissioners requesting the designation of the area as a port enhancement zone.
- (6) Any other material required by the Secretary of Commerce. (2011-302, s. 5; 2012-74, s. 6(a); 2012-187, s. 15.2(a).)

### **§ 143B-437.020. Natural gas and propane gas for agricultural projects.**

(a) Definitions. –

- (1) Agriculture. – Activities defined in G.S. 106-581.1, whether performed on or off the farm.
- (2) Repealed by Session Laws 2014-100, s. 15.13(a), effective July 1, 2014.



- (3) Eligible project. – A discrete and specific economic development project for an agricultural operation or agricultural processing facility that requests natural gas or propane gas service. A project intended for the purpose of commercial resale of natural gas or propane gas shall not be an eligible project.
- (4) Excess infrastructure costs. – Any project carrying costs incurred by a natural gas local distribution company to provide new or expanded natural gas service to an eligible project that exceed the income the infrastructure generates for the local natural gas distribution company, including any standard rates, special contract rates, minimum margin agreements, and contributions in aid of construction collected by the natural gas local distribution company.
- (5) Project carrying costs. – All costs, including depreciation, taxes, operation and maintenance expenses, and, for a natural gas local distribution company, a return on investment equal to the rate of return approved by the Utilities Commission in the natural gas local distribution company's most recent general rate case under G.S. 62-133.
- (6) Secretary. – The Secretary of Commerce.
  - (a1) Establishment. – The Expanded Gas Products Service to Agriculture Fund is established as a special revenue fund in the Department of Commerce.
  - (b) Facilitation of New and Expanded Natural Gas Service to Agricultural Projects. – The Secretary may disburse moneys in the Expanded Gas Products Service to Agriculture Fund for the following purposes:
    - (1) To allow the owner of an eligible project to pay for excess infrastructure costs associated with the eligible project.
    - (2) To allow the owner of an eligible project to pay for cost-effective alternatives that would reduce excess infrastructure costs, including:
      - a. Relocating equipment that uses natural gas to a different location on the property nearer existing natural gas lines to reduce or eliminate the project carrying costs.
      - b. Adding supplemental uses of natural gas to increase annual volume throughput and enhance the feasibility of new natural gas service, including fuel for tractors and equipment, greenhouses, plant or animal production, feed grain drying, and natural gas powered irrigation pumps.
  - (c) Facilitation of New and Expanded Propane Gas Service to Agricultural Production. – The Secretary may disburse moneys in the Expanded Gas Products Service to Agriculture Fund to allow the owner of an eligible project to pay for cost-effective alternatives that would do any of the following:
    - (1) Reduce infrastructure costs.
    - (2) Increase energy efficiency or reduce energy consumption.
    - (3) Reduce energy costs.
    - (4) Enhance the feasibility of the project or the provision of propane gas service by adding supplemental uses of propane gas to increase annual volume throughput, including (i) to convert or repower tractors, trucks, vehicles, and mowers to use propane gas, (ii) to provide propane gas powered tractors, equipment, appliances, irrigation pumps, and dryers to service agricultural production

facilities or operations, or (iii) to provide a dispensing station for the project owner's use.

(d) Use of Funds. – Disbursements made pursuant to subsection (b) or (c) of this section shall be paid directly to the owner of the eligible project.

(e) Termination. – Disbursements made pursuant to subsection (b) of this section shall terminate when there are no longer excess infrastructure costs.

(f) Forfeiture. – An owner of an eligible project who receives a disbursement pursuant to subsection (b) or (c) of this section forfeits the amount disbursed if the owner fails to maintain business operations for a period of at least five years from the date of initial utilization of the disbursement. An owner that forfeits amounts disbursed under this section is liable for the amount disbursed plus interest at the rate established under G.S. 105-241.21, computed from the date of the disbursement.

(g) Allocation of Funds. – The Secretary shall transfer from the Utility Account to the Expanded Gas Products Service to Agriculture Fund at least five million dollars (\$5,000,000) per biennium, as defined in G.S. 143C-1-1. If funds appropriated for the Job Development Investment Grant Program, the One North Carolina Fund, or a combination of these programs remain unexpended and unencumbered at the end of the fiscal year, those unexpended and unencumbered funds shall be used to reimburse the Utility Account for transfers made during the fiscal year pursuant to this section, notwithstanding job creation or other statutory requirements otherwise applicable to the programs or funds.

(h) Mechanism not Exclusive. – The utilization of funds in accordance with subsections (b) or (c) of this section is intended to supplement other available mechanisms for the extension of service to new or expanding customers and may be used in conjunction with special contract arrangements, minimum margin agreements, and contributions in aid of construction.

(i) Reporting Requirement. – The Secretary shall publish a report each quarter on the program, including a list of the eligible projects that have applied for funding, a list of the eligible projects that have received funding, the amount of funds allocated to the program, and the amount of funds allocated to eligible projects. The Secretary must make the report available to the public and must submit the report to the Joint Legislative Commission on Energy Policy.

(j) The Department of Commerce shall develop guidelines related to the administration of the Expanded Gas Products Service to Agriculture Fund and to the selection of projects to receive allocations from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2013-367, s. 1; 2014-100, s. 15.13(a); 2015-263, s. 30; 2016-113, s. 15.)

**§ 143B-437.021. (Expires July 1, 2026 – see note) Natural gas economic development infrastructure.**

(a) Purpose and Definitions. – The purpose of this section is to provide eligibility criteria for projects that require natural gas service infrastructure. Costs of natural gas service infrastructure for projects the Department determines are eligible projects under this section may be recovered by natural gas local distribution companies with approval of the North Carolina Utilities Commission under G.S. 62-133.15. The definitions used in G.S. 143B-437.01 apply in this section. In addition, as used in this section, the term "Department" means the Department of Commerce.

(b) Eligibility. – An eligible project is an economic development project that the Department determines satisfies all of the following conditions:

- (1) The eligible project will provide opportunities for natural gas usage, jobs, and other economic development benefits in addition to those provided by the project.
- (2) The Department certifies that the business has invested or intends to invest at least two hundred million dollars (\$200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project.
- (3) The business employs or intends to employ at least 1,500 full-time employees or equivalent full-time contract employees at the project at the time the application is made and the business agrees to maintain at least 1,500 full-time employees or equivalent full-time contract employees at the project.

(c) Wage Standard. – A project may be considered an eligible project under this section only if the project is undertaken by a business that satisfies a wage standard at the project. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to one hundred and ten percent (110%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county. In making the wage calculation, the business shall include any jobs that were filled for at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time positions or equivalent full-time contract positions. Each year that a rate adjustment surcharge mechanism under G.S. 62-133.15 is in effect, the business shall provide the Department a certification that the business continues to satisfy the wage standard.

(d) Health Insurance. – A project may be considered an eligible project under this section only if the project is undertaken by a business that makes available health insurance for all of the full-time employees and equivalent full-time contract employees of the project with respect to which the application is made. For the purposes of this subsection, a business makes available health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage.

Each year that a rate adjustment surcharge mechanism under G.S. 62-133.15 is in effect, the business shall provide the Department a certification that the business continues to make available health insurance for all full-time employees of the project governed by the agreement.

(e) Safety and Health Programs. – A project may be considered an eligible project under this section only if the project is undertaken by a business that has no citations under the Occupational Safety and Health Act that have become a final order within the last three years for willful serious violations or for failing to abate serious violations with respect to the location for which the eligible project is located. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

(f) Environmental Impact. – A project may be considered an eligible project under this section only if the project is undertaken by a business that certifies that, at the time of the application, the business satisfies the environmental impact standard under G.S. 105-129.83.

(g) Limitations. – No more than three eligible projects are authorized under this section. (2016-118, s. 2; 2020-58, s. 7.3.)

Part 2A. Community Development Council.

**§ 143B-437.1: Repealed by Session Laws 2021-90, s. 9(a), effective July 22, 2021.**

**§ 143B-437.2: Repealed by Session Laws 2021-90, s. 9(a), effective July 22, 2021.**

**§ 143B-437.3: Repealed by Session Laws 2021-90, s. 9(a), effective July 22, 2021.**

Part 2B. NC Green Business Fund.

**§ 143B-437.4. NC Green Business Fund and grant program.**

(a) Fund. – The NC Green Business Fund is established as a special revenue fund in the Department of Commerce, and the Department shall be responsible for administering the Fund.

(b) Purposes. – Moneys in the NC Green Business Fund shall be allocated pursuant to this subsection. The Department of Commerce shall make grants from the Fund to private businesses with less than 100 employees, nonprofit organizations, local governments, and State agencies to encourage the expansion of small to medium size businesses with less than 100 employees to help grow a green economy in the State. Moneys in the NC Green Business Fund shall be used for projects that will focus on the following three priority areas listed in this subsection. In selecting between projects that are within a priority area, a project that is located in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project that is not located in a certified Eco-Industrial Park. The priority areas are:

- (1) To encourage the development of the biofuels industry in the State. The Department of Commerce may make grants available to maximize development, production, distribution, retail infrastructure, and consumer purchase of biofuels in North Carolina, including grants to enhance biofuels workforce development.
- (2) To encourage the development of the green building industry in the State. The Department of Commerce may make grants available to assist in the development and growth of a market for environmentally conscious and energy efficient green building processes. Grants may support the installation, certification, or distribution of green building materials; energy audits; and marketing and sales of green building technology in North Carolina, including grants to enhance workforce development for green building processes.
- (3) To attract and leverage private-sector investments and entrepreneurial growth in environmentally conscious clean technology and renewable energy products and businesses, including grants to enhance workforce development in such businesses.

(c) Cap and Matching Funds. – The Department of Commerce may set a cap on a grant from the NC Green Business Fund and may require a private business to provide matching funds for a grant from the Fund. A grant to a project located in an Eco-Industrial Park certified under G.S.

143B-437.08 is not subject to a cap or a requirement to provide matching funds. (2007-323, s. 13.2(a); 2010-147, s. 5.2.)

**§ 143B-437.5. Green Business Fund Advisory Committee.**

The Department of Commerce may establish an advisory committee to assist in the development of the specific selection criteria and the grant-making process of the NC Green Business Fund. (2007-323, s. 13.2(a).)

**§ 143B-437.6. Agreements required.**

Funds may be disbursed from the NC Green Business Fund only in accordance with agreements entered into between the Department of Commerce and an eligible grantee. Each agreement must contain the following provisions:

- (1) A description of the acceptable uses of grant proceeds. The agreement may limit the use of funds to specific purposes or may allow the funds to be used for any lawful purposes.
- (2) A provision allowing the Department of Commerce to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this Part.
- (3) A provision establishing the method for determining compliance with the agreement.
- (4) A provision establishing a schedule for disbursement of funds under the agreement.
- (5) A provision requiring recapture of grant funds if a grantee subsequently fails to comply with the terms of the agreement.
- (6) Any other provision the State finds necessary to ensure the proper use of State funds. (2007-323, s. 13.2(a).)

**§ 143B-437.7. Program guidelines.**

The Department of Commerce shall develop guidelines related to the administration of the NC Green Business Fund and to the selection of projects to receive allocations from the Fund, including project evaluation measures. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2007-323, s. 13.2(a).)

**§ 143B-437.8. Reports.**

Grants made to non-State entities through the NC Green Business Fund shall be subject to the oversight and reporting requirements of G.S. 143C-6-23. The Department of Commerce shall publish a report on the commitment, disbursement, and use of funds allocated from the NC Green

Business Fund at the end of each fiscal year. The report is due no later than September 1 and must be submitted to the following:

- (1) Repealed by Session Laws 2017-57, s. 14.1(z), effective July 1, 2017.
- (2) The chairs of the House of Representatives and Senate Finance Committees.
- (3) The chairs of the House of Representatives and Senate Appropriations Committees.
- (4) The Fiscal Research Division of the General Assembly. (2007-323, s. 13.2(a); 2017-57, s. 14.1(z).)

**§ 143B-437.9. Reserved for future codification purposes.**

**§ 143B-437.10: Recodified as G.S. 143B-437.010 by Session Laws 2007-484, s.33(a), effective July 1, 2007.**

**§ 143B-437.11: Recodified as G.S. 143B-437.012 by Session Laws 2008-187, s. 26(a), effective August 7, 2008.**

**§ 143B-437.13. Reserved for future codification purposes.**

Part 2C. Energy Loan Fund.

**§§ 143B-437.14 through 143B-437.16: Recodified as Part 32 of Article 7 of Chapter 143B, G.S. 143B-344.42 through G.S. 143B-344.44, by Session Laws 2013-360, s. 15.22(b), effective July 1, 2013.**

**§ 143B-437.17. Reserved for future codification purposes.**

**§ 143B-437.18. Reserved for future codification purposes.**

**§ 143B-437.19. Reserved for future codification purposes.**

Part 2D. North Carolina Rural Redevelopment Authority.

**§ 143B-437.20: Repealed by Session Laws 2008-134, s. 73(a).**

**§ 143B-437.21: Repealed by Session Laws 2008-134, s. 73(a).**

**§ 143B-437.22: Repealed by Session Laws 2008-134, s. 73(a).**

**§ 143B-437.23: Repealed by Session Laws 2008-134, s. 73(a).**

**§ 143B-437.24. Reserved for future codification purposes.**

**§ 143B-437.25. Reserved for future codification purposes.**

**§ 143B-437.26: Repealed by Session Laws 2008-134, s. 73(a).**

**§ 143B-437.27: Repealed by Session Laws 2008-134, s. 73(a).**

§ 143B-437.28: Repealed by Session Laws 2008-134, s. 73(a).

§ 143B-437.29: Repealed by Session Laws 2008-134, s. 73(a).

§ 143B-437.30: Repealed by Session Laws 2008-134, s. 73(a).

§ 143B-437.31: Repealed by Session Laws 2008-134, s. 73(a).

§ 143B-437.32: Repealed by Session Laws 2008-134, s. 73(a).

§ 143B-437.33: Repealed by Session Laws 2008-134, s. 73(a).

§§ 143B-437.34 through 143B-437.39. Reserved for future codification purposes.

Part 2E. North Carolina Rural Internet Access Authority

(Repealed effective December 31, 2003).

§§ 143B-437.40 through 143B-437.43: Repealed by Session Laws 2000-149, s. 5, as amended by Session Laws 2003-425, s. 3, effective December 31, 2003.

Part 2F.

E-NC Initiative.

§§ 143B-437.44 through 143B-437.47: Repealed by Session Laws 2003-425, s. 4, as amended by Session Laws 2006-66, s. 12.3(a), effective December 31, 2011.

§ 143B-437.48: Reserved for future codification purposes.

§ 143B-437.49: Reserved for future codification purposes.

Part 2G. Job Development Investment Grant Program.

§ 143B-437.50. **Legislative findings and purpose.**

The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to

- the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.
- (3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Part that are designed to stimulate new economic activity and to create new jobs within the State.
  - (4) The enactment of this Part is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina; and this Part will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.
  - (5) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.
  - (6) It is not the intent of the General Assembly that grants provided through this Part be used as venture capital funds, business incubator funds, or business start-up funds or to otherwise fund the initial capitalization needs of new businesses.
  - (7) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged. (2002-172, s. 2.1(a); 2003-416, s. 2.)

**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

- (1) Agreement. – A community economic development agreement under G.S. 143B-437.57.
- (2) Base period. – The period of time set by the Committee during which new employees are to be hired for the positions on which the grant is based.
- (3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.
- (4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.
- (4a) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.
- (5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base period. For purposes of high-yield projects, transitional projects, and transformative projects, (i) positions created in the year the business achieves the minimum requirements set forth in this section may be considered eligible positions even if created outside the base period and (ii) in a year other than during the base period, an eligible position must be filled for at least 30 weeks of the applicable grant year.



- (5a) Expansion position. – A position created by a business and filled by a new full-time employee in this State in Phase II of a transitional project or for a transformative project in any year in which the business receives the enhanced percentage of the withholdings of eligible positions pursuant to G.S. 143B-437.56(a).
- (6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, who is not a worker with an H-1B visa or with H-1B status, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. Except as allowed by this Part for system contractors, the term does not include any person who works as an independent contractor or on a consulting basis for the business.
- (6a) High-yield project. – A project for which the agreement requires that a business invest at least five hundred million dollars (\$500,000,000) in private funds and create at least 1,750 eligible positions.
- (7) New employee. – A full-time employee who represents a net increase in the number of the business’s employees statewide.
- (8) Overdue tax debt. – Defined in G.S. 105-243.1.
- (9) Related member. – Defined in G.S. 105-130.7A.
- (9a) System contractor. – A person employed by an entity that contracts with a business with which an agreement for a high-yield, transitional, or transformative project was entered into for the purpose of providing full-time employees exclusively located at and directly engaged in the primary operations of the project if all of the following criteria are met:
  - a. The number of system contractors used does not exceed fifteen percent (15%) of the eligible positions and is not used to fill expansion positions.
  - b. System contractors, other than in designation, meet all other requirements applicable to full-time employees of the business filling eligible positions.
  - c. The entity providing system contractors certifies to the business that it meets the same requirements imposed by this Part on the business with respect to system contractors provided at the project site, and the business agrees to procure from the entity and provide to either the Department of Revenue or the Department, upon request, any documentation needed to verify the requirements.
  - d. The entity providing the system contractors and the business are not related members and are not, directly or indirectly, affiliated in any way.
- (9b) Transformative project. – A project for which the agreement requires that a business invest at least one billion dollars (\$1,000,000,000) in private funds and create at least 3,000 eligible positions.
- (9c) Transitional project. – A project for which the agreement requires the following:

- a. Phase I. – That a business invest at least one billion dollars (\$1,000,000,000) in private funds and create at least 1,750 eligible positions.
  - b. Phase II. – That a business, upon exercising an option in the agreement during the first 36 months of the agreement term to expand the project, increase the investment of private funds to at least three billion dollars (\$3,000,000,000) and increase job creation to at least 3,875 eligible positions. Exercise of an option under this sub-subdivision is contingent upon the business meeting and maintaining Phase I requirements at and beyond the end of the applicable base period for Phase I set forth in the agreement. Notice of exercising the option must be in writing to the Department.
- (10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions and, if applicable, expansion positions under Article 4A of Chapter 105 of the General Statutes. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.1; 2006-168, s. 1.1; 2006-252, s. 2.6; 2006-264, s. 69(a); 2015-259, s. 1(a); 2015-264, s. 91(a); 2017-57, s. 15.15A(a); 2018-5, s. 15.1(a); 2021-180, s. 11.19(e).)

**§ 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 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.
- (6) For a project located in a development tier three area, the affected local governments have participated in recruitment and offered incentives in a manner appropriate to the project.

(b) Priority. – In selecting between applicants, a project that is located in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project that is not located in a certified Eco-Industrial Park.

(c) Award Limitations. – The following limitations apply to grants awarded under this Part:

- (1) Maximum liability. – The maximum amount of total annual liability for grants awarded in any single calendar year under this Part, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, is thirty-five million dollars (\$35,000,000) for a year in which no grants are awarded for a high-yield project and is forty-five million dollars (\$45,000,000) for a year in which a grant is awarded for a high-yield project. No agreement may be entered into that, when considered together with other existing agreements governing grants awarded during a single calendar year, could cause the State’s potential total annual liability for grants awarded in a single calendar year to exceed the applicable amount. The Department shall make every effort to ensure that the average percentage of withholdings of eligible positions for grants awarded under this Part does not exceed the average of the range provided in G.S. 143B-437.56(a). The limitation in this subdivision does not apply to (i) the difference in the award of a transitional project elevating the project from Phase I to Phase II or (ii) transformative projects.
- (2) Semiannual commitment limitations. – Of the amount authorized in subdivision (1) of this subsection, no more than fifty percent (50%), excluding roll-over amounts, may be awarded in any single calendar semiannual period. A roll-over amount is any amount from a previous semiannual period in the same calendar year that was not awarded as a grant. The limitation of this subdivision does not apply to a grant awarded to a high-yield, transitional, or transformative project.
- (3) Geographic limitations. – Of the amount authorized in subdivision (1) of this subsection, no more than twenty million dollars (\$20,000,000) may be used for projects located in counties with total employment of 500,000 or more and five million dollars (\$5,000,000) is reserved for projects located in counties with an annual ranking pursuant to G.S. 143B-437.08 in the highest fifty percent (50%) of the remaining counties. In measuring total employment, the Secretary shall use the latest available data published by the Quarterly Census of Employment and Wages program. The limitations of this subdivision do not apply to a grant awarded to a high-yield, transitional, or transformative project.

(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. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.2; 2004-124, ss. 32G.1(b), 32G.1(c), 32G.1(e); 2006-168, s. 1.2; 2006-264, s. 69(b);

2009-394, s. 1; 2010-147, s. 5.3; 2012-142, s. 13.6(g); 2013-360, s. 15.19(a); 2015-259, s. 1(b); 2015-264, s. 91(a); 2017-57, s. 15.15A(b); 2018-5, s. 15.1(b); 2021-180, s. 11.19(e).)

**§ 143B-437.53. Eligible projects.**

(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as follows:

Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	20
Tier Three	50

(b) Ineligible Businesses. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or club, other than a professional motorsports racing team, is not eligible for a grant under this Part.

(c) Health Insurance. – A business is eligible for a grant under this Part only if the business provides health insurance for all of the applicable full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, an applicable full-time employee is one who earns from the business less than one hundred fifty thousand dollars (\$150,000) in taxable compensation on an annualized basis or three and one-half times the annualized average State wage for all insured private employers in the State employing between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum requirements for small group health benefit plans under State or federal law.

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.58 a certification that the business continues to provide health insurance, as required by this subsection, for all applicable full-time employees of the project with respect to which the grant is made. If the business ceases to provide the required health insurance, the Committee shall amend or terminate the agreement as provided in G.S. 143B-437.59.

(d) Repealed by Session Laws 2003-435, 2nd Ex. Sess., s. 2.3, effective December 16, 2003.

(e) Safety and Health Programs. – In order for a business to be eligible for a grant under this Part, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, “serious violation” has the same meaning as in G.S. 95-127. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, Ex. Sess., s. 2.3; 2005-241, s. 5; 2006-168, s. 1.3; 2006-252, s. 2.7; 2015-259, s. 1(c); 2015-264, s. 91(a); 2016-94, s. 15.7(a); 2021-180, s. 11.19(e).)

**§ 143B-437.54. Economic Investment Committee established.**

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

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

The members of the Committee appointed by the General Assembly serve two-year terms that begin upon appointment. The other members, who are ex officio members or designees of those members, shall serve until they are no longer in office or are replaced with another designee.

(b) Decision Required. – The Committee may act only upon a decision of a majority of its members.

(c) Conflict of Interest. – It is unlawful for a current or former member of the Committee to, while serving on the Committee or within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that is awarded a grant under this Part or under G.S. 143B-437.02 while the member is serving on the Committee. Violation of this subsection is a Class 1 misdemeanor. In addition to the penalties imposed under G.S. 15A-1340.23, the court shall also make a finding as to what compensation was received by the defendant for services in violation of this section and shall order the defendant to forfeit that compensation.

If a person is convicted under this section, the person shall not provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that was awarded a grant under this Part or under G.S. 143B-437.02 while the member was serving on the Committee until two years after the person's conviction under this section.

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

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

(e) Sunshine. – Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information. (2002-172, s. 2.1(a); 2003-416, ss. 2, 25; 2003-435, 2nd Ex. Sess., ss. 1.4, 2.4; 2023-136, s. 1.1(a).)

**§ 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 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 a grant that includes performance of its related members only if the related members for whom the application is submitted 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 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 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 grant awarded shall be paid to the 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.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of (i) ten thousand dollars (\$10,000) if the project is a high-yield, transitional, or transformative project, regardless of location in the State, or is located in a development tier

three area, (ii) five thousand dollars (\$5,000) if the project is located in a development tier two area, or (iii) one thousand dollars (\$1,000) if the project is located in a development tier one area. The fee is due at the time the application is filed. 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. Within 30 days of receipt of an application under this section but prior to any award being made, the Department of Commerce shall notify each governing body of an area where a submitted application proposes locating a project of the information listed in this subsection, provided that the governing body agrees, in writing, to any confidentiality requirements imposed by the Department under G.S. 132-6(d). The information required by this subsection includes all of the following:

- (1) The estimated amount of the grant anticipated to be awarded to the applicant for the project.
- (2) Any economic impact data submitted with the application or prepared by the Department.
- (3) Any economic impact estimated by the Department to result from the project.

(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 Committee shall submit the report electronically to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division. The report shall include the following:

- (1) A listing of each 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 grant, the percentage of withholdings used to determine the amount of the grant, the annual maximum State liability under the grant, and the maximum total lifetime State liability under the grant.
- (2) An update on the status of projects under 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 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 have been awarded, aggregated and listed in increments of 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 have been awarded.
- (6) For the first annual report after adoption of the criteria developed by the Committee, in consultation with the Attorney General, to implement this Part, a copy of such criteria, and, for subsequent reports, identification of any changes in those criteria from the previous calendar year.
- (7) The 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) Repealed by Session Laws 2009-394, s. 2, effective July 31, 2009.
- (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.
- (11a) A listing, itemized by development tier, of the number of offers that have been calculated, estimated, or extended but were not accepted and the total award value of the offers.
- (12) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.
- (13) The total amount transferred to the Utility Account under this Part during the preceding year.
- (d) Repealed by Session Laws 2012-142, s. 13.4(f), effective July 1, 2012.
- (e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than April 1 of each year. (2002-172, s. 2.1(a); 2003-416, s. 2; 2005-429, s. 2.1; 2006-168, s. 1.4; 2006-252, s. 2.8; 2006-264, s. 69(c); 2009-394, s. 2; 2010-31, s. 14.8; 2012-142, s. 13.4(f); 2013-360, ss. 15.18(f), 15.19(b), 15.20(a); 2015-259, s. 1(d); 2015-264, s. 91(a); 2018-5, s. 15.1(c); 2021-180, s. 11.19(e).)

**§ 143B-437.56. Calculation of maximum grants; factors considered.**

- (a) Maximum Percentage. – Subject to the provisions of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of positions governed by the agreement for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering, at a minimum, (i) the number of positions governed by the agreement to be created, (ii) the expected duration of those positions, (iii) the type of contribution the business can make to the long-term growth of the State's economy, (iv) the amount of other financial assistance the project will receive from the State or local governments, (v) the total dollar investment the business is making in the project, (vi) whether the project utilizes existing infrastructure and resources in the community, (vii) whether the project is located in a development zone, (viii) the number of positions governed by the agreement that would be filled by residents of a development zone, and (ix) the extent to which the project will mitigate unemployment in the State and locality. The percentage shall be no more than the following:
  - (1) General rule. – Eighty percent (80%) of the withholdings of eligible positions for a development tier one area and seventy-five percent (75%) of the withholdings of eligible positions for any other area.
  - (2) High-yield project. – Notwithstanding the percentage in subdivision (1) of this subsection, if the project is a high-yield project, the business has met the



investment and job creation requirements, and, for three consecutive years, the business has met all terms of the agreement, the amount of the grant awarded shall be no more than one hundred percent (100%) of the withholdings of eligible positions for each year the business maintains the minimum job creation requirement and meets all terms of the agreement. A business that fails to maintain the minimum job creation requirement or meet all terms of the agreement required to qualify as a high-yield project will be disqualified from receiving the enhanced percentage of withholdings under this subdivision and will have the applicable percentage set forth in subdivision (1) of this subsection applied in the year in which the failure occurs and all remaining years of the grant term.

(3) Transitional project. – Notwithstanding the percentage in subdivision (1) of this subsection, a transitional project shall be treated as a high-yield project pursuant to subdivision (2) of this subsection until the business meets the requirements for Phase II, at which time the amount of the grant awarded shall be no more than one hundred percent (100%) of the withholdings of eligible and expansion positions for each year the business maintains the minimum job creation requirement for Phase II and meets all terms of the agreement. A business that fails to maintain the minimum job creation requirement or meet all terms of the agreement required for Phase II but remains in compliance with the requirements for Phase I will be disqualified from receiving the enhanced percentage of withholdings under this subdivision and will have the applicable percentage set forth in subdivision (2) of this subsection applied in the year in which the failure occurs and all remaining years of the grant term; provided that, if the business fails to meet the requirements for Phase I, the business is disqualified from receiving an enhanced percentage of withholdings, and the percentage set forth in subdivision (1) of this subsection shall be applied in the year in which the failure occurs and all remaining years of the grant term.

(4) Transformative project. – If the project is a transformative project and the business has met the investment and job creation requirements and all terms of the agreement, the amount of the grant awarded shall be no more than one hundred percent (100%) of the withholdings of eligible and expansion positions for each year the business maintains the minimum job creation requirement and meets all terms of the agreement. A business that fails to maintain the minimum job creation requirement or meet all terms of the agreement required to qualify as a transformative project will be disqualified from receiving the enhanced percentage of withholdings under this subsection and will have the applicable percentage set forth in subdivision (1) of this subsection applied in the year in which the failure occurs and all remaining years of the grant term.

(a1) Repealed by Session Laws 2021-180, s. 11.9(e), effective November 18, 2021.

(b) Base Period. – The maximum number of years in the base period for which grant payments may be made shall not exceed the following:

(1) For transformative projects, 10 years.

(2) For transitional projects, five years for purposes of eligible positions required for Phase I of the project and 10 years for purposes of the additional positions required for Phase II of the project under the agreement.

- (3) For all other projects, five years.
- (b1) Grant Term. – The term of the grant shall not exceed the duration listed in this subsection. The first grant payment must be made within six years after the date on which the grant was awarded. Maximum durations are as follows:
- (1) For high-yield projects in which the business receives the enhanced percentage pursuant to subsection (a) of this section, 20 years starting with the first year a grant payment is made. If a business is disqualified from the enhanced percentage in one of the first 12 years, the term of the grant shall not exceed 12 years starting with the first year a grant payment is made. If a business is disqualified from receiving the enhanced percentage after the first 12 years, the term of the grant ends in the year the disqualification occurs.
  - (1a) For transitional projects in which the business receives the enhanced percentage for Phase II pursuant to subsection (a) of this section, the base period plus 30 years starting with the first year a grant payment is made. If a business is disqualified from the enhanced percentage allowed for Phase II but meets the requirements for Phase I, the term of the grant shall not exceed 20 years starting with the first year a grant payment is made. If a business is disqualified from the enhanced percentage allowed for Phase I, the term of the grant shall not exceed 12 years starting with the first year a grant payment is made. If a disqualification occurs after the maximum term provided in this subdivision, the term of the grant ends in the year the disqualification occurs.
  - (1b) For transformative projects in which the business receives the enhanced percentage pursuant to subsection (a) of this section, the base period plus 30 years starting with the first year a grant payment is made. If a business is disqualified from the enhanced percentage in one of the first 12 years, the term of the grant shall not exceed 12 years starting with the first year a grant payment is made. If a business is disqualified from receiving the enhanced percentage after the first 12 years, the term of the grant ends in the year the disqualification occurs.
  - (2) For all other projects, 12 years starting with the first year a grant payment is made.
- (c) Repealed by Session Laws 2021-180, s. 11.9(e), effective November 18, 2021.
- (d) Utility Account. – For any eligible position that is located in a development tier three area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For (i) any business that receives an enhanced percentage pursuant to subsection (a) of this section and (ii) any eligible position that is located in a development tier two area, ninety percent (90%) of the annual grant approved for disbursement shall be payable to the business, and ten percent (10%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the development tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee.
- (e) Grant Coordination. – A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds the applicable maximum percentage of the withholdings of the business, as provided in subsection (a) of this section, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) Per Job Maximum. – For projects other than transformative projects, the amount of a grant associated with any specific eligible position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed sixteen thousand dollars (\$16,000) in any year. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.5; 2006-168, s. 1.5; 2006-252, s. 2.9(a), (b); 2006-264, s. 69(d); 2015-259, s. 1(e); 2015-264, s. 91(a); 2017-57, s. 15.15A(c); 2017-102, s. 24.1; 2018-5, s. 15.1(d); 2018-137, s. 1; 2019-177, s. 9(d); 2021-180, s. 11.19(e); 2022-72, s. 5.1(b).)

#### **§ 143B-437.56A. Multilocation projects.**

(a) General Rule. – Except as provided in subsection (b) of this section, if a project will be located in more than one development tier area, the location with the highest area designation determines the standards applicable under this Part to the project.

(b) Incipient Enhancement. – For purposes of G.S. 143B-437.56(d), if a project will be located in more than one development tier area, the location with the lowest area designation determines the percentage of the annual grant approved for disbursement payable to the Utility Account pursuant to G.S. 143B-437.61 if (i) the project will have at least one location in a development tier three area, (ii) the project will have at least one location in a development tier one or two area, and (iii) at least sixty-six percent (66%) of the number of eligible positions created or the total benefits of the project to the State, as calculated pursuant to G.S. 143B-437.52, or both are located in the lowest area designation.

(c) Coincident Bonus. – The annual grant approved for disbursement payable to a business meeting all of the requirements of this subsection shall be increased by twenty percent (20%). The amount of increase allowed pursuant to this subsection shall not be included for purposes of calculating the award limitations provided in G.S. 143B-437.52 and G.S. 143B-437.56(e). The requirements for the increase allowed in this section are the following:

- (1) The business was awarded the grant for locating a company headquarters, as defined in G.S. 143B-437.01.
- (2) The business announces during the base period the relocation from another state to a development tier one or two area a manufacturing operation of (i) the business or (ii) a business that controls, is controlled by, or is under common control with the business.
- (3) The relocation will result in the business creating a number of positions to be filled by new full-time employees in this State (i) equal to or greater than the applicable minimum number of jobs set forth for the location in G.S. 143B-437.53(a) and (ii) with withholdings equal to or greater than the amount of the bonus allowed under this subsection. The positions required by this subdivision must qualify as eligible positions under the agreement but for the requirement of being filled during the base period.
- (4) The number of positions required in subdivision (3) of this subsection are filled for the year in which the annual grant is increased. (2016-94, s. 15.7(b); 2022-72, s. 5.1(a).)

#### **§ 143B-437.57. Community economic development agreement.**

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

- (1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired during the base period.
- (2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
- (3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
- (4) The amount of the grant based on a percentage of withholdings.
- (5) A method for determining the number of new employees hired during a grant year.
- (6) A method for the business to report annually to the Committee the number of eligible positions and, if applicable, expansion positions for which the grant is to be made.
- (7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
- (8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
- (9) A provision that requires the Committee to reduce the amount or term of a grant pursuant to G.S. 143B-437.59.
- (10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to require the Committee to recapture an appropriate portion of the grant if the business does not remain at the site for the required term.
- (11) A provision that requires the business to maintain employment levels in this State at the greater of the level of employment on the date of the application or the level of employment on the date of the award.
- (12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.
- (13) A provision stating that unless the agreement is terminated pursuant to G.S. 143B-437.59, the 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 grant reduction, amendment, or termination of the agreement under G.S. 143B-437.59.
- (14a) If applicable, a provision for transformative projects setting out any allowed variation in the terms of the agreement that will result in a grant increase to the business for expansion positions. Grant increases for expansion positions may not include workers employed in North Carolina who fill expansion positions with the business as a result of a merger or acquisition occurring during the term of the agreement.
- (15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has

manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.

- (16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.
- (17) A provision encouraging the business to hire North Carolina residents.
- (18) A provision encouraging the business to use the North Carolina State Ports.
- (19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.
- (20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).
- (21) A provision stating that any recapture of a grant and any 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.
- (22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.
- (23) For projects other than transformative projects, a provision stating that the amount of a grant associated with any specific eligible position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed the limitation contained in subdivision (f) of G.S. 143B-437.56 in any year.
- (24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.
- (25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services.

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

(c) Agreement Binding. – A community economic development agreement is a binding obligation of the State and is not subject to State funds being appropriated by the General Assembly. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, ss. 32G.1(f), 32G.1(g); 2006-168, s. 1.6; 2006-264, s. 69(e); 2009-394, s. 3; 2015-259, s. 1(f); 2015-264, s. 91(a); 2018-5, s. 15.1(e); 2018-137, s. 2.)

#### **§ 143B-437.58. Grant recipient to submit records.**

(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 Department of Revenue an annual payroll report showing withholdings as a condition of its continuation in the grant program and identifying eligible positions that have been created during the base period that remain filled at the end of each year of the grant. Annual reports submitted to the Department of Revenue 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 to the Department of Revenue. The Committee may inspect the information submitted to the Department of Revenue pursuant to this section at the Department of Revenue for purposes of award verification and calculation. 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 Department of Revenue a fee of the greater of two thousand five hundred dollars (\$2,500) or three one-hundredths of one percent (.03%) of an amount equal to the grant less the maximum amount to be transferred pursuant to G.S. 143B-437.61. 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.

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

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

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, s. 32G.1(d); 2006-168, s. 1.7; 2006-264, s. 69(f); 2009-394, s. 4; 2013-360, s. 15.21(a); 2018-5, s. 15.1(f).)

#### **§ 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 reduce the amount of the grant or the term of the agreement, may terminate the 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. (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.8; 2009-394, s. 5; 2010-91, s. 8.)

#### **§ 143B-437.60. Disbursement of grant.**

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify that the terms of the agreement have been met. The Committee shall certify the grant amount for which the business is eligible under the agreement and the grant amount for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee. (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.9.)

#### **§ 143B-437.61. Transfer to Industrial Development Fund Utility Account.**

At the time the Department of Commerce remits a check to a business under G.S. 143B-437.60, the Department of Commerce shall transfer to the Utility Account an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d). (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.10; 2013-360, s. 15.18(g).)

#### **§ 143B-437.62. Expiration.**

The authority of the Committee to award new grants expires January 1, 2030. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, s. 32G.1(a); 2005-241, s. 3; 2006-168, s. 1.11; 2009-394, s. 6; 2015-259, s. 1(g); 2015-264, s. 91(a); 2017-57, s. 15.15(a); 2020-58, s. 7.4.)

#### **§ 143B-437.63. JDIG Program cash flow requirements.**

Notwithstanding any other provision of law, grants made through the Job Development Investment Grant Program, including amounts transferred pursuant to G.S. 143B-437.61, shall be budgeted and funded on a cash flow basis. The Department of Commerce shall disburse funds in an amount sufficient to satisfy grant obligations and amounts to be transferred pursuant to G.S. 143B-437.61 to be paid during the fiscal year. It is the intent of the General Assembly to

appropriate funds annually to the JDIG Program established in this Part in amounts sufficient to meet the anticipated cash requirements for each fiscal year. (2004-124, s. 6.12(b); 2009-445, s. 40; 2009-570, s. 22; 2016-94, s. 15.2(a).)

**§ 143B-437.64: Reserved for future codification purposes.**

**§ 143B-437.65: Reserved for future codification purposes.**

**§ 143B-437.66: Reserved for future codification purposes.**

**§ 143B-437.67: Reserved for future codification purposes.**

**§ 143B-437.68: Reserved for future codification purposes.**

**§ 143B-437.69: Reserved for future codification purposes.**

Part 2H. One North Carolina Fund.

**§ 143B-437.70. Legislative findings and purpose.**

The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the retention and expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.
- (3) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.
- (4) The enactment of this Part will maintain consistency and accountability in a key economic development program and will ensure that the program benefits the State and its citizens.
- (5) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged. (2004-88, s. 1(d).)

**§ 143B-437.71. One North Carolina Fund established as a special revenue fund.**

(a) Establishment. – The One North Carolina Fund is established as a special revenue fund in the Department of Commerce.

(b) Purposes. – Moneys in the One North Carolina Fund may only be allocated pursuant to this subsection. Moneys may be allocated to local governments for use in connection with securing commitments for the recruitment, expansion, or retention of new and existing businesses and to the



One North Carolina Small Business Account created pursuant to subsection (c) of this section in an amount not to exceed three million dollars (\$3,000,000). Moneys in the One North Carolina Fund allocated to local governments shall be used for the following purposes only:

- (1) Installation or purchase of equipment.
- (2) Structural repairs, improvements, or renovations to existing buildings to be used for expansion.
- (3) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for existing buildings.
- (4) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations.
- (5) Any other purposes specifically provided by an act of the General Assembly.

(b1) Awards. – The amounts committed in Governor's Letters issued in a single fiscal year may not exceed seventeen million dollars (\$17,000,000). Of the amount authorized in this subsection, three million dollars (\$3,000,000) is reserved for agreements with local governments located in development tier three areas, as defined in G.S. 143B-437.08, with total employment of 115,000 or less, using the data specified in G.S. 143B-437.52(c)(3).

(c) [Special Account. –] There is created in the One North Carolina Fund a special account, the One North Carolina Small Business Account, to be used for the North Carolina SBIR/STTR Incentive Program and the North Carolina SBIR/STTR Matching Funds Program, as specified in Part 2I of Article 10 of Chapter 143B of the General Statutes. (2004-88, s. 1(d); 2005-276, s. 13.14(a); 2006-162, s. 19; 2012-142, s. 13.6(b); 2013-360, s. 15.16A; 2021-180, s. 11.8.)

#### **§ 143B-437.72. Agreements required; disbursement of funds.**

(a) Agreements Required. – Funds may be disbursed from the One North Carolina Fund only in accordance with agreements entered into between the State and one or more local governments and between the local government and a grantee business.

(b) Company Performance Agreements. – An agreement between a local government and a grantee business must contain the following provisions:

- (1) A commitment to create or retain a specified number of jobs within a specified salary range at a specific location and commitments regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained.
- (2) A commitment to provide proof satisfactory to the local government and the State of new jobs created or existing jobs retained and the salary level of those jobs.
- (3) A provision that funds received under the agreement may be used only for a purpose specified in G.S. 143B-437.71(b).
- (4) A provision allowing the State or the local government to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this Part.
- (5) A provision establishing the method for determining compliance with the agreement.
- (6) A provision establishing a schedule for disbursement of funds under the agreement that allows disbursement of funds only in proportion to the amount of performance completed under the agreement.

- (6a) A provision establishing that a business that has completed performance and become entitled to a final disbursement of funds under the agreement must timely request, in writing to the Secretary of Commerce, a disbursement of funds within not more than one year from the date of completed performance or forfeit the disbursement.
  - (6b) A provision establishing that a business that anticipates becoming entitled to a disbursement of funds under the agreement shall notify the Secretary of Commerce of the potential payment no later than March 1 of the fiscal year preceding the fiscal year in which the performance is anticipated to be completed.
  - (7) A provision requiring recapture of grant funds if a business subsequently fails to comply with the terms of the agreement.
  - (8) Any other provision the State or the local government finds necessary to ensure the proper use of State or local funds.
- (c) Local Government Grant Agreement. – An agreement between the State and one or more local governments shall contain the following provisions:
- (1) A commitment on the part of the local government to match the funds allocated by the State, as provided in this subdivision. A local match may include cash, fee waivers, in-kind services, the donation of assets, the provision of infrastructure, or a combination of these.
    - a. For a local government in a development tier one area, as defined in G.S. 143B-437.08, the State shall provide no more than three dollars (\$3.00) for every one dollar (\$1.00) provided by the local government.
    - b. For a local government in a development tier two area, as defined in G.S. 143B-437.08, the State shall provide no more than two dollars (\$2.00) for every one dollar (\$1.00) provided by the local government.
    - c. For a local government in a development tier three area, as defined in G.S. 143B-437.08, the State shall provide no more than one dollar (\$1.00) for every one dollar (\$1.00) provided by the local government.
  - (2) A provision requiring the local government to recapture any funds to which the local government is entitled under the company performance agreement.
  - (3) A provision requiring the local government to reimburse the State for any funds improperly disbursed or funds recaptured by the local government.
  - (4) A provision allowing the State access to all records possessed by the local government necessary to ensure compliance with the company performance agreement and with the requirements of this Part.
  - (5) A provision establishing a schedule for the disbursement of funds from the One North Carolina Fund to the local government that reflects the disbursement schedule established in the company performance agreement.
  - (6) Any other provision the State finds necessary to ensure the proper use of State funds.
- (d) Disbursement of Funds. – Funds may be disbursed from the One North Carolina Fund to the local government only after the local government has demonstrated that the business has complied with the terms of the company performance agreement. The State shall disburse funds allocated under the One North Carolina Fund to a local government in accordance with the

disbursement schedule established in the local government grant agreement. (2004-88, s. 1(d); 2012-142, s. 13.6(c); 2015-259, s. 2(a).)

**§ 143B-437.73. Program guidelines.**

The Department of Commerce, in conjunction with the Governor's Office, shall develop guidelines related to the administration of the One North Carolina Fund and to the selection of projects to receive allocations from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2004-88, s. 1(d).)

**§ 143B-437.74. Reports; study.**

(a) Reports. – The Department of Commerce shall publish a report on the use of funds in the One North Carolina Fund at the end of each fiscal quarter. The report shall contain information on the commitment, disbursement, and use of funds allocated under the One North Carolina Fund. The report is due no later than one month after the end of the fiscal quarter and shall be submitted to the following:

- (1) The chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources.
- (1a) The House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources.
- (2) The chairs of the House of Representatives and Senate Finance Committees.
- (3) The chairs of the House of Representatives and Senate Appropriations Committees.
- (4) The Fiscal Research Division of the General Assembly.
- (5) The Joint Legislative Economic Development and Global Engagement Oversight Committee.

(b) Study. – The Department of Commerce shall conduct a study to determine the minimum funding level required to implement the One North Carolina Fund successfully. The Department shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than April 1 of each year. (2004-88, s. 1(d); 2012-142, s. 13.6(d); 2017-57, s. 14.1(aa).)

**§ 143B-437.75. Cash flow requirements.**

Notwithstanding any other provision of law, moneys allocated from the One North Carolina Fund shall be budgeted and funded on a cash flow basis. The Department of Commerce shall disburse funds in an amount sufficient to satisfy Fund allocations to be transferred pursuant to

G.S. 143B-437.72 to be paid during the fiscal year. It is the intent of the General Assembly to appropriate funds annually to the One North Carolina Fund established in this Part in amounts sufficient to meet the anticipated cash requirements for each fiscal year. (2012-142, s. 13.6(e); 2016-94, s. 15.2(b).)

**§ 143B-437.76. Reserved for future codification purposes.**

**§ 143B-437.77. Reserved for future codification purposes.**

**§ 143B-437.78. Reserved for future codification purposes.**

**§ 143B-437.79. Reserved for future codification purposes.**

Part 2I. One North Carolina Small Business Program.

**§ 143B-437.80. North Carolina SBIR/STTR Incentive Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Incentive Program to be administered by the North Carolina Board of Science, Technology, and Innovation. In order to foster job creation and economic development throughout the State, the Board may provide grants to eligible businesses to offset costs associated with applying for federal Small Business Innovative Research (SBIR) grants or Small Business Technology Transfer Research (STTR) grants. The grants shall be paid from the One North Carolina Small Business Account established in G.S. 143B-437.71.

(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

- (1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.
- (2) The business must have submitted a qualified SBIR/STTR Phase I proposal to a participating federal agency in response to a specific federal solicitation.
- (3) The business must satisfy all federal SBIR/STTR requirements.
- (4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.
- (5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase I proposal will be conducted in this State and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase I project.
- (6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase I proposal.

(c) Grant. – The North Carolina Board of Science, Technology, and Innovation may award grants to reimburse an eligible business for a percentage of the costs of preparing and submitting a SBIR/STTR Phase I proposal, up to a maximum of twelve thousand dollars (\$12,000). The maximum percentage for reimbursement is seventy-five percent (75%) for an eligible business located in a development tier one or two area, as defined in G.S. 143B-437.08, and is fifty percent (50%) for any other eligible business. A business may receive only two grants under this section per year. Costs that may be reimbursed include costs incurred directly related to preparation and submission of the grant such as word processing services, proposal consulting fees, project-related

supplies, literature searches, rental of space or equipment related to the proposal preparation, educational programs, and salaries of individuals involved with the preparation of the proposals. Costs that shall not be reimbursed include travel expenses, large equipment purchases, facility or leasehold improvements, and legal fees. A grant to a business partnered with a public institution of higher education in this State does not count toward the maximum grant limitation provided in this section.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of Science, Technology, and Innovation for a grant under this section on a form prescribed by the Board that includes at least all of the following:

- (1) The name of the business, the form of business organization under which it is operated, and the names and addresses of the principals or management of the business.
- (2) An acknowledgement of receipt of the Phase I proposal by the relevant federal agency.
- (3) An itemized statement of the costs that may be reimbursed.
- (4) Any other information necessary for the Board to evaluate the application.

(e) Education and Outreach. – The North Carolina Board of Science, Technology, and Innovation may use up to ten percent (10%) of funds appropriated for grants under this section to provide education and outreach, including training, materials, and location and other associated costs, to aid in the awareness and successful completion of SBIR/STTR Phase I proposals. (2005-276, s. 13.14(b); 2014-18, s. 2.2; 2021-180, s. 11.7(a).)

#### **§ 143B-437.81. North Carolina SBIR/STTR Matching Funds Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Matching Funds Program to be administered by the North Carolina Board of Science, Technology, and Innovation. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to match funds received by a business as a SBIR or STTR Phase I award and to encourage businesses to apply for Phase II awards.

(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

- (1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.
- (2) The business must have received a SBIR/STTR Phase I award from a participating federal agency in response to a specific federal solicitation. To receive the full match, the business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has interest in the Phase II proposal, and submitted a Phase II proposal to the agency.
- (3) The business must satisfy all federal SBIR/STTR requirements.
- (4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.
- (5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase II proposal will be conducted in this State and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase II project.

(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal.

(c) Grant. – The North Carolina Board of Science, Technology, and Innovation may award grants to match the funds received by a business through a SBIR/STTR Phase I proposal up to a maximum of two hundred thousand dollars (\$200,000). Seventy-five percent (75%) of the total grant shall be remitted to the business upon receipt of the SBIR/STTR Phase I award and application for funds under this section. Twenty-five percent (25%) of the total grant shall be remitted to the business upon submission by the business of the Phase II application to the funding agency and acceptance of the Phase I report by the funding agency. A business may receive only one grant under this section with respect to each federal proposal award. Over its lifetime, a business may receive a maximum of 10 awards under this section. An award to a business partnered with a public institution of higher education in this State does not count toward the maximum award limitation provided in this section.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of Science, Technology, and Innovation for a grant under this section on a form prescribed by the Board that includes at least all of the following:

- (1) The name of the business, the form of business organization under which it is operated, and the names and addresses of the principals or management of the business.
- (2) An acknowledgement of receipt of the Phase I report and Phase II proposal by the relevant federal agency.
- (3) Any other information necessary for the Board to evaluate the application. (2005-276, s. 13.14(b); 2014-18, s. 2.3; 2021-180, s. 11.7(b).)

#### **§ 143B-437.82. Program guidelines.**

The Department of Commerce shall develop guidelines related to the administration of the One North Carolina Small Business Program. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2005-276, s. 13.14(b).)

#### **§ 143B-437.83. Reports.**

The Department of Commerce shall publish a report on the use of funds in the One North Carolina Small Business Account on September 1 of each year until all funds have been expended. The report shall contain information on the disbursement and use of funds allocated under the One North Carolina Small Business Program. The report must be submitted to the following:

- (1) Repealed by Session Laws 2017-57, s. 14.1(z), effective July 1, 2017.
- (2) The chairs of the House of Representatives and Senate Finance Committees.

- (3) The chairs of the House of Representatives and Senate Appropriations Committees.
- (4) The Fiscal Research Division of the General Assembly. (2005-276, s. 13.14(b); 2009-451, s. 14.5(c); 2017-57, s. 14.1(z).)

§ 143B-437.84. Reserved for future codification purposes.

§ 143B-437.85. Reserved for future codification purposes.

§ 143B-437.86. Reserved for future codification purposes.

§ 143B-437.87. Reserved for future codification purposes.

§ 143B-437.88. Reserved for future codification purposes.

§ 143B-437.89. Reserved for future codification purposes.

Part 2J. Wine and Grape Growers Council.

§ 143B-437.90: Recodified as Article 62A of Chapter 106, G.S. 106-755.1 and G.S. 106-755.2, by Session Laws 2012-142, s. 13.9A(b), effective July 1, 2012.

§ 143B-437.91: Recodified as Article 62A of Chapter 106, G.S. 106-755.1 and G.S. 106-755.2, by Session Laws 2012-142, s. 13.9A(b), effective July 1, 2012.

§ 143B-437.92. Reserved for future codification purposes.

§ 143B-437.93. Reserved for future codification purposes.

§ 143B-437.94. Reserved for future codification purposes.

§ 143B-437.95. Reserved for future codification purposes.

§ 143B-437.96. Reserved for future codification purposes.

§ 143B-437.97. Reserved for future codification purposes.

§ 143B-437.98. Reserved for future codification purposes.

§ 143B-437.99. Reserved for future codification purposes.

Part 2K. North Carolina Certified Retirement Community Program.

§ 143B-437.100. **North Carolina Certified Retirement Community Program – creation; powers and duties.**

(a) Program. – There is established the North Carolina Certified Retirement Community Program as part of the North Carolina Department of Commerce. The Department shall coordinate the development and planning of the North Carolina Certified Retirement Community Program

with other State and local groups interested in participating in and promoting the North Carolina Certified Retirement Community Program. The Department shall adopt administrative rules to implement the provisions of this Part. For purposes of this Part, "Department" means the North Carolina Department of Commerce, and "Program" means the North Carolina Certified Retirement Community Program.

(b) Purpose. – The purpose of the Program is to encourage retirees and those planning to retire to make their homes in North Carolina. In order to further this purpose, the Department shall engage in the following activities:

- (1) Promote the State as a retirement destination to retirees and those persons and families who are planning retirement both in and outside of North Carolina.
- (2) Assist North Carolina communities in their efforts to market themselves as retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle.
- (3) Assist in the development of retirement communities and continuing care facilities under Article 64 of Chapter 58 of the General Statutes in order to promote economic development and a potential workforce to enrich North Carolina communities.
- (4) Encourage mature market travel and tourism to North Carolina to evaluate future retirement desirability and to visit those who have chosen to retire in North Carolina.

(c) Factors. – The Department shall identify factors that are of interest to retirees or potential retirees in order to inform them of the benefits of living in North Carolina. These factors shall be used to develop a scoring system to determine whether an applicant will qualify as a North Carolina certified retirement community and may include the following:

- (1) North Carolina's State and local tax structure.
- (2) Housing opportunities and cost.
- (3) Climate.
- (4) Personal safety.
- (5) Working opportunities.
- (6) Health care and continuing care services.
- (7) Transportation.
- (8) Continuing education.
- (9) Leisure living.
- (10) Recreation.
- (11) The performing arts.
- (12) Festivals and events.
- (13) Sports.
- (14) Other services and facilities necessary to enable persons to age in the community with a minimum of restrictions.

(d) Certification. – The Department shall establish criteria for qualifying as a North Carolina certified retirement community. To be eligible to obtain certification as a North Carolina certified retirement community, the community shall meet each of the following requirements:

- (1) Be located within 50 miles of a hospital and of emergency medical services.
- (2) Take steps to gain the support of churches, clubs, businesses, media, and other entities whose participation will increase the Program's success in attracting retirees or potential retirees.



- (3) Establish a retiree attraction committee. The retiree attraction committee shall fulfill or create subcommittees to fulfill each of the following:
  - a. Conduct a retiree desirability assessment analyzing the community with respect to each of the factors identified by the Department and submit a report of the analysis to the Department.
  - b. Send a representative of the retirement attraction committee to attend State training meetings conducted by the Department during the certification process.
  - c. Raise funds necessary to run the Program, organize special events, and promote and coordinate the Program with local entities.
  - d. Establish a community image, evaluate target markets, and develop a marketing and public relations plan designed to accomplish the purpose of the Program.
  - e. Develop a system that identifies and makes contact with existing and prospective retirees, that provides tour guides when prospects visit the community, and that responds to inquiries, logs contacts made, invites prospects to special community events, and maintains continual contact with prospects until the prospect makes a retirement location decision.
- (4) Remit an annual fee to the Department, or the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431.01, equal to the lesser of three thousand dollars (\$3,000) or the product of fifty cents (50¢) multiplied by the population of the community, as determined by the most recent census.
- (5) Submit the completed marketing and public relations plan designed to accomplish the purpose of the Program to the Department.
- (6) Submit a long-term plan outlining the steps the community will undertake to maintain or improve its desirability as a destination for retirees, including corrections to any services or facilities identified in the retiree desirability assessment. (2008-188, s. 1; 2011-145, s. 14.3C; 2018-5, s. 15.7(a).)

**§ 143B-437.101. North Carolina Certified Retirement Community Program – administration.**

(a) Administration and Support. – Upon being certified as a North Carolina certified retirement community, the Department shall provide the following assistance to the community:

- (1) Assistance in the training of local Program staff and volunteers.
- (2) Ongoing oversight and guidance in marketing and updating on national retirement trends.
- (3) Inclusion in the State's national advertising and public relations campaigns and travel show promotions, including a prominent feature on the Department's Web site.
- (4) Eligibility for State financial assistance for brochures, support material, and advertising.
- (5) An annual evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.

(b) Expiration. – A community's certification under this section expires on the fifth anniversary of the date the initial certification is issued. To be considered for recertification by the Department, an applicant community shall submit the following:

- (1) A completed new application in accordance with the requirements of this Part.
- (2) Data demonstrating the success or failure of the community's efforts to market and promote itself as a desirable location for retirees and potential retirees.
- (3) The annual fee required by G.S. 143B-437.100(d)(4). (2008-188, s. 1; 2011-145, s. 14.3C; 2018-5, s. 15.7(b).)

Part 2L. North Carolina Major Events, Games, and Attractions Fund.

**§ 143B-437.110. Legislative findings and purpose.**

The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the attraction of major events to the State that spur economic activity by attracting out-of-state visitors to the State and thereby promoting the travel and tourism industries within the State.
- (2) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.
- (3) The enactment of this Part will maintain consistency and accountability in a key economic development program and will ensure that the program benefits the State and its citizens.
- (4) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged. (2023-42, s. 2.)

**§ 143B-437.111. Definitions.**

The following definitions apply in this Part:

- (1) Fund. – The North Carolina Major Events, Games, and Attractions Fund established under G.S. 143B-437.112.
- (2) Local entity. – A city, county, or local organizing committee.
- (3) Local organizing committee. – A nonprofit corporation or its successor in interest that satisfies one of the following conditions:
  - a. It has been authorized by a city, county, or more than one city or county acting collectively to pursue an application and bid on the applicant's behalf to a site selection organization for selection as the site of a major event.
  - b. With the authorization of a city, county, or more than one city or county acting collectively, it has executed an agreement with a site selection organization regarding a bid to host a major event.
- (4) Major event. – An entertainment, musical, political, sporting, or theatrical event that satisfies the following conditions:
  - a. The event is either of the following:
    1. Held at (i) a sports facility or (ii) an indoor venue that is not a sports facility but that hosts sporting events and is designed to host 22,000 or more live spectators.
    2. Sponsored by the National Association for Stock Car Racing, the Ladies Professional Golf Association, the Professional

Golfers' Association of America, the PGA Tour, or the United States Golf Association.

- b. The event is not held more often than annually.
  - c. The location of the event is determined by a site selection organization through a competitive process.
  - d. The site selection organization considered multiple sites located outside of the State for the event.
  - e. The site selection organization selected a site within this State as the sole location for the event.
- (5) Site selection organization. – The organization responsible for determining the site of a major event.
- (6) Sports facility. – As defined in G.S. 18C-901. (2023-42, s. 2; 2023-134, s. 11.18(a).)

**§ 143B-437.112. North Carolina Major Events, Games, and Attractions Fund.**

(a) There is established the North Carolina Major Events, Games, and Attractions Fund to be administered by the Department. In order to foster job creation and investment in the economy of this State, the Department may enter into multiparty agreements with site selection organizations and local entities to provide grants in accordance with the provisions of this Part. Before entering into an agreement, the Department must find that all of the following conditions are met:

- (1) The economic activity directly or indirectly attributable to the major event is sufficient to justify the use of State funds to attract or retain the event in this State.
- (2) It is anticipated that the major event will provide positive media exposure for the State, thereby supplementing the State's efforts to promote travel and tourism within the State.
- (3) The site selection organization must have considered multiple sites located outside of the State for the event.
- (4) The site selection organization has selected a site within this State as the sole location for the event.
- (5) The event is not held more often than annually.
- (6) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy.
- (7) The project is consistent with economic development goals for the State and for the area where it will be located.
- (8) A grant under this Part is necessary to attract or retain the major event within this State.
- (9) The total benefits of the major event to the State outweigh its costs and render the grant appropriate for the major event.

(b) Effective July 1 of each calendar year, the funds remitted to the Fund by the Secretary of Revenue from the tax on sports wagering pursuant to G.S. 105-113.128 are appropriated for this purpose. In addition to the amounts remitted to the Fund pursuant to G.S. 105-113.128, the General Assembly shall determine any additional amount appropriated to the Fund. Agreements entered under this section are subject to appropriations. (2023-42, s. 2.)

**§ 143B-437.113. Applications; reports; study.**

(a) Application. – A local entity shall apply to the Department for a grant on a form prescribed by the Department that includes at least all of the following:

- (1) The name or nature of the major event.
- (2) A complete listing of all local entities associated with the application.
- (3) To the extent known by the local entity, information concerning other locations, including locations in other states and countries, being considered for the major event and the nature of any governmental assistance available to support the major event were it to be located in one of those locations.
- (4) Information concerning any other State or local government assistance for which the local entity is applying or that it has an expectation of receiving.
- (5) Any other information necessary for the Department to evaluate the application.

(b) Annual Reports. – The Department shall publish a report on the Fund on or before April 30 of each year. The Department shall submit the report electronically to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division. The report shall include all of the following:

- (1) A listing of each grant awarded under this Part during the preceding calendar year.
- (2) An update on the status of major events for which grants have been awarded but that have not yet occurred.
- (3) For the first annual report after adoption of the guidelines developed by the Department to implement this Part, a copy of the guidelines, and for subsequent reports, identification of any changes to those guidelines from the previous annual report.
- (4) The geographic distribution of grants, by number and amount, awarded under the program.
- (5) A listing of all local entities making an application under this Part and an explanation of whether a site selection organization located the major event in this State regardless of whether a grant for the event was awarded under this Part.

(c) Study. – The Department shall conduct a study to determine the minimum funding level required to implement the Fund successfully. The Department shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than April 1 of each year. (2023-42, s. 2.)

**§ 143B-437.114. Program guidelines.**

The Department, in conjunction with the Governor's Office, shall develop guidelines related to the administration of the Fund, the selection of projects to receive allocations from the Fund, and the disbursement of a grant under the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department must publish the proposed guidelines on the Department's website and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the

proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2023-42, s. 2.)

Part 3. Labor Force Development.

**§ 143B-438: Repealed by Session Laws 1981, c. 380, s. 1.**

Part 3A. Employment and Training Act of 1985.

**§§ 143B-438.1 through 143B-438.6. Repealed by Session Laws 1999-237. s. 16.15(a).**

**§ 143B-438.7. Reserved for future codification purposes.**

**§ 143B-438.8. Reserved for future codification purposes.**

**§ 143B-438.9. Reserved for future codification purposes.**

Part 3B. Workforce Development.

**§ 143B-438.10. NCWorks Commission.**

(a) Creation and Duties. – There is created within the Department of Commerce the NCWorks Commission (hereinafter "Commission"). The Commission shall have the following powers and duties:

- (1) To develop strategies to produce a skilled, competitive workforce that meets the needs of the State's changing economy.
- (2) To advise the Governor, the General Assembly, State and local agencies, and the business sector regarding policies and programs to enhance the State's workforce by submitting annually a comprehensive report on workforce development initiatives in the State.
- (3) To coordinate and develop strategies for cooperation between the academic, governmental, and business sectors.
- (4) To establish, develop, and provide ongoing oversight of the "One-Stop Delivery System" for employment and training services in the State.
- (5) To develop a unified State plan for workforce training and development.
- (6) To review and evaluate the plans and programs of agencies, boards, and organizations operating federally funded or State-funded workforce development programs for effectiveness, duplication, fiscal accountability, and coordination.
- (7) To develop and continuously improve performance measures to assess the effectiveness of workforce training and employment in the State. The Commission shall assess and report on the performance of workforce development programs administered by the Department of Commerce, the Department of Health and Human Services, the Community Colleges System

Office, the Department of Administration, and the Department of Public Instruction in a manner that addresses at least all of the following:

- a. Actual performance and costs of State and local workforce development programs.
  - b. Expected performance levels for State and local workforce development programs based on attainment of program goals and objectives.
  - c. Program outcomes, levels of employer participation, and satisfaction with employment and training services.
  - d. Information already tracked through the common follow-up information management system created pursuant to G.S. 96-32, such as demographics, program enrollment, and program completion.
- (7a) To issue annual reports that, at a minimum, include the information listed in sub-subdivisions a. through d. of subdivision (7) of this section on the performance of workforce development programs administered by the entities listed in that subdivision. The first annual report shall be delivered to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee by January 15, 2014.
- (8) To submit to the Governor and to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee by April 1, 2000, and biennially thereafter, a comprehensive Workforce Development Plan that shall include at least the following:
- a. Goals and objectives for the biennium.
  - b. An assessment of current workforce programs and policies.
  - c. An assessment of the delivery of employment and training services to special populations, such as youth and dislocated workers.
  - d. Recommendations for policy, program, or funding changes.
- (9) To serve as the State's Workforce Investment Board for purposes of the federal Workforce Innovation and Opportunity Act.
- (10) To take the lead role in developing the memorandum of understanding for workforce development programs with the Department of Commerce, the Department of Health and Human Services, the Community Colleges System Office, and the Department of Administration. The memorandum of understanding must be reviewed at least every five years.
- (11) To coordinate the activities of workforce development work groups formed under this Part.
- (12) To collaborate with the Department of Commerce on the common follow-up information management system.
- (13) To develop performance accountability measures for local workforce development boards consistent with the requirements of section 116 of the Workforce Innovation and Opportunity Act and to recommend to the Governor

sanctions against local workforce development boards that fail to meet the performance accountability measures.

- (14) To develop fiscal control and fund accounting procedures for local workforce development boards consistent with the requirements of section 184 of the Workforce Innovation and Opportunity Act and to recommend to the Governor sanctions against local workforce development boards that fail to meet the fiscal control and fund accounting procedures.
- (b) Membership. – The Commission shall consist of 37 members appointed as follows:
- (1) By virtue of their offices, the following persons, or their designees, shall serve on the Commission:
    - a. The Governor.
    - b. The Secretary of the Department of Administration.
    - c. The Secretary of the Department of Commerce.
    - d. The Secretary of the Department of Health and Human Services.
    - e. The Superintendent of Public Instruction.
    - f. The President of the Community Colleges System Office.
    - g. The President of The University of North Carolina system.
    - h. The State official with primary responsibility for Adult Education and Family Literacy (Title II of the Workforce Innovation and Opportunity Act, P.L. 113-128, as amended).
    - i. The State official with primary responsibility for Vocational Rehabilitation or Services for the Blind (Title IV of the Workforce Innovation and Opportunity Act, P.L. 113-128, as amended).
  - (2) Pursuant to the provisions of section 101 of the Workforce Innovation and Opportunity Act, the Governor shall appoint 28 members as follows:
    - a. Nineteen members representing business and industry in the State.
    - b. Seven members representing the workforce in the State.
    - c. One member representing local elected city officials in the State.
    - d. One member representing local elected county officials in the State.
  - (3) Repealed by Session Laws 2015-241, s. 15.11(a), effective July 1, 2015.

(b1) Terms. – The persons listed in subdivision (1) of subsection (b) of this section shall serve on the Commission while they hold their respective offices. The terms of the members appointed by the Governor pursuant to subdivision (2) of subsection (b) of this section shall be for four years, except as provided in this subsection. The terms shall be staggered and shall begin on November 1 and expire on October 31. Upon the expiration of the term of each member in subdivision (2) of subsection (b) of this section, the Governor shall fill the vacancy by reappointing the member or appointing another person of like qualification to serve a four-year term. If a vacancy occurs for any reason other than the expiration of the member's term, the Governor shall appoint a person of like qualification to serve for the remainder of the unexpired term.

In order to provide for staggered terms, six persons appointed to the positions designated in sub-subdivision a. of subdivision (2) of subsection (b) of this section and three persons appointed to the positions designated in sub-subdivision b. of subdivision (2) of subsection (b) of this section shall be appointed for initial terms ending on October 31, 2019. Five persons appointed to the positions designated in sub-subdivision a. of subdivision (2) of subsection (b) of this section, two persons appointed to the positions designated in sub-subdivision b. of subdivision (2) of subsection (b) of this section, and one person appointed to the position designated in sub-subdivision c. of

subdivision (2) of subsection (b) of this section shall be appointed for initial terms ending on October 31, 2017. Six persons appointed to the positions designated in sub-subdivision a. of subdivision (2) of subsection (b) of this section, two persons appointed to the positions designated in sub-subdivision b. of subdivision (2) of subsection (b) of this section, and one person appointed to the position designated in sub-subdivision d. of subdivision (2) of subsection (b) of this section shall be appointed for initial terms ending on October 31, 2016. Two persons appointed to the positions designated in sub-subdivision a. of subdivision (2) of subsection (b) of this section shall be appointed for an initial term ending on October 31, 2021.

(c) Appointment of Chair; Meetings. – The Governor shall appoint the Chair of the Commission from among the business and industry members, and that person shall serve at the pleasure of the Governor. The Commission shall meet at least quarterly upon the call of the Chair.

(d) Staff; Funding. – The clerical and professional staff to the Commission shall be provided by the Department of Commerce. Funding for the Commission shall derive from State and federal resources as allowable and from the partner agencies to the Commission. Members of the Commission shall receive necessary travel and subsistence in accordance with State law.

(e) Agency Cooperation; Reporting. – Each State agency, department, institution, local political subdivision of the State, and any other State-supported entity identified by or subject to review by the Commission in carrying out its duties under subdivision (6) of subsection (a) of this section must participate fully in the development of performance measures for workforce development programs and shall provide to the Commission all data and information available to or within the agency or entity's possession that is requested by the Commission for its review. Further, each agency or entity required to report information and data to the Commission under this section shall maintain true and accurate records of the information and data requested by the Commission. The records shall be open to the Commission's inspection and copying at reasonable times and as often as necessary.

(f) Confidentiality. – At the request of the Commission, each agency or entity subject to this section shall provide it with sworn or unsworn reports with respect to persons employed or trained by the agency or entity, as deemed necessary by the Commission to carry out its duties pursuant to this section. The information obtained from an agency or entity pursuant to this subsection (i) is not a public record subject to the provisions of Chapter 132 of the General Statutes and (ii) shall be held by the Commission as confidential, unless it is released in a manner that protects the identity and privacy of individual persons and employers referenced in the information.

(g) Advisory Work Group. – The Commission shall appoint an Advisory Work Group composed of representatives from the State and local entities engaged in workforce development activities to assist the Commission with the development of performance measures. (1999-237, s. 16.15(b); 2011-401, s. 1.7; 2012-131, s. 1(a); 2015-241, s. 15.11(a); 2017-57, s. 14.1(q); 2018-142, s. 13(a); 2021-90, s. 24(a).)

#### **§ 143B-438.11. Local Workforce Development Boards.**

(a) Duties. – Local Workforce Development Boards shall have the following powers and duties:

- (1) To develop policy and act as the governing body for local workforce development.
- (2) To provide planning, oversight, and evaluation of local workforce development programs, including the local One-Stop Delivery System.



- (3) To provide advice regarding workforce policy and programs to local elected officials, employers, education and employment training agencies, and citizens.
- (4) To develop a local plan in coordination with the appropriate community partners to address the workforce development needs of the service area.
- (5) To develop linkages with economic development efforts and activities in the service area and promote cooperation and coordination among public organizations, education agencies, and private businesses.
- (6) To review local agency plans and grant applications for workforce development programs for coordination and achievement of local goals and needs.
- (7) To serve as the Workforce Investment Board for the designated substate area for the purpose of the federal Workforce Innovation and Opportunity Act.
- (7a) To designate through a competitive selection process, by no later than July 1, 2014, the providers of adult and dislocated worker services authorized in the Workforce Innovation and Opportunity Act.
- (8) To provide the appropriate guidance and information to Workforce Innovation and Opportunity Act consumers to ensure that they are prepared and positioned to make informed choices in selecting a training provider. Each local Workforce Development Board shall ensure that consumer choice is properly maintained in the one-stop centers and that consumers are provided the full array of public and private training provider information.
- (9) To provide coordinated regional workforce development planning and labor market data sharing.
- (10) To comply with the performance accountability measures established by the NCWorks Commission pursuant to section 116 of the Workforce Innovation and Opportunity Act.
- (11) To comply with the fiscal control and fund accounting procedures established by the NCWorks Commission pursuant to section 184 of the Workforce Innovation and Opportunity Act.

(b) **Members.** – Members of local Workforce Development Boards shall be appointed by local elected officials in accordance with criteria established by the Governor and with provisions of the federal Workforce Innovation and Opportunity Act. The local Workforce Development Boards shall have a majority of business members and shall also include representation of workforce and education providers, labor organizations, community-based organizations, and economic development boards as determined by local elected officials. The Chairs of the local Workforce Development Boards shall be selected from among the business members.

(c) **Assistance.** – The NCWorks Commission and the Department of Commerce shall provide programmatic, technical, and other assistance to any local Workforce Development Board that realigns its service area with the boundaries of a local regional council of governments established pursuant to G.S. 160A-470. (1999-237, s. 16.15(b); 2010-31, s. 14.4; 2012-131, s. 3(a); 2013-330, s. 1; 2015-241, s. 15.11(c).)

#### **§ 143B-438.12. Federal Program Administration.**

(a) **Federal Workforce Innovation and Opportunity Act.** – In accordance with the federal Workforce Innovation and Opportunity Act, the NCWorks Commission shall develop a Four-Year Unified State Plan to be submitted to the U.S. Secretary of Labor. The Unified State Plan shall

describe the State's strategic vision and goals for preparing an educated and skilled workforce as required in section 102 of the federal Workforce Innovation and Opportunity Act.

(b) Other Workforce Grant Applications. – The NCWorks Commission may submit grant applications for workforce development initiatives and may manage the initiatives and demonstration projects. (1999-237, s. 16.15(b); 2015-241, s. 15.11(g).)

### **§ 143B-438.13. Employment and Training Grant Program.**

(a) Employment and Training Grant Program. – There is established in the Department of Commerce, Division of Workforce Solutions, an Employment and Training Grant Program. Grant funds shall be allocated to local Workforce Development Boards for the purposes of enabling recipient agencies to implement local employment and training programs in accordance with existing resources, local needs, local goals, and selected training occupations. The State program of workforce performance standards shall be used to measure grant program outcomes.

(b) Use of Grant Funds. – Local agencies may use funds received under this section for the purpose of providing services, such as training, education, placement, and supportive services. Local agencies may use grant funds to provide services only to individuals who are (i) 18 years of age or older and meet the federal Workforce Innovation and Opportunity Act, title I adult eligibility definitions, or meet the federal Workforce Innovation and Opportunity Act, title I dislocated worker eligibility definitions, or (ii) incumbent workers with annual family incomes at or below two hundred percent (200%) of poverty guidelines established by the federal Department of Health and Human Services.

(c) Allocation of Grants. – The Department of Commerce may reserve and allocate up to ten percent (10%) of the funds available to the Employment and Training Grant Program for State and local administrative costs to implement the Program. The Division of Workforce Solutions shall allocate employment and training grant funds to local Workforce Development Boards serving federal Workforce Innovation and Opportunity Act local workforce development areas based on the following formula:

- (1) One-half of the funds shall be allocated on the basis of the relative share of the local workforce development area's share of federal Workforce Innovation and Opportunity Act, title I adult funds as compared to the total of all local areas adult shares under the federal Workforce Innovation and Opportunity Act, title I.
- (2) One-half of the funds shall be allocated on the basis of the relative share of the local workforce development area's share of federal Workforce Innovation and Opportunity Act, title I dislocated worker funds as compared to the total of all local areas dislocated worker shares under the federal Workforce Innovation and Opportunity Act, title I.
- (3) Local workforce development area adult and dislocated shares shall be calculated using the current year's allocations to local areas under the federal Workforce Innovation and Opportunity Act, title I.

(d) Repealed by Session Laws 2009-451, s. 14.5(d), effective July 1, 2009.

(e) Nonreverting Funds. – Funds appropriated to the Department of Commerce for the Employment and Training Grant Program that are not expended at the end of the fiscal year shall not revert to the General Fund, but shall remain available to the Department for the purposes established in this section. (1999-237, s. 16.15(b); 2009-451, s. 14.5(d); 2015-241, s. 15.11(h).)

**§ 143B-438.14. "No Adult Left Behind" Initiative.**

(a) The NCWorks Commission, acting as the lead agency, with the cooperation of other participating agencies, including the Department of Labor, the Department of Commerce, the Employment Security Commission, the North Carolina Community College System, The University of North Carolina, and the North Carolina Independent Colleges and Universities shall initiate the "No Adult Left Behind" Initiative (Initiative) geared toward achievement of major statewide workforce development goals. The Initiative may also include community-based nonprofit organizations that provide services or assistance in the areas of worker training, workforce development, and transitioning North Carolinians between industries in the current global labor market.

(b) The first goal of the Initiative is to increase dramatically to forty percent (40%) the percentage of North Carolinians who earn associate degrees, other two-year educational credentials, and baccalaureate degrees. Specific fields of study may be selected for the most intense efforts. The NCWorks Commission shall, as the lead agency along with the North Carolina Community College System and The University of North Carolina as key cooperating institutions, do all of the following:

- (1) Collaborate to provide model evening-weekend certificate and degree programs designed specifically for working adults and other nontraditional students.
- (2) Work together to promote systemic changes designed to increase access and foster success among adult workers and other nontraditional students.
- (3) Make it a priority to provide model evening-weekend certificate and degree programs in high-demand disciplines, occupations, and fields closely linked to economic development or that are the focus of public initiatives.

(c) The NCWorks Commission and the other lead participating institutions may enter into contracts with other qualified organizations, especially community-based nonprofits, to carry out components of the Initiative set forth in subsection (b) of this section.

(d) The NCWorks Commission shall submit to the Governor and to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee by May 1, 2012, and annually thereafter, details of its implementation of this section that shall include at least the following:

- (1) Goals, objectives, and accomplishments for the year toward implementation of this section.
- (2) An assessment of current adult educational programs to expand economic opportunities for adult workers as outlined by this section.
- (3) Recommendations for policy, program, or funding changes to effectuate the workforce development, adult education, and economic development goals set forth in this section. (2011-327, ss. 2, 3(a)-(c); 2015-241, s. 15.11(i); 2017-57, s. 14.1(q); 2018-142, s. 13(a).)

Part 3C. Trade Jobs for Success.

**§§ 143B-438.15 through 143B-438.17: Repealed by Session Laws 2015-241, s. 15.12, effective July 1, 2015.**

Part 4. Credit Union Commission.

**§ 143B-439. Credit Union Commission.**

(a) There shall be created in the Department of Commerce a Credit Union Commission which shall consist of seven members. The members of the Credit Union Commission shall elect one of its members to serve as chairman of the Commission to serve for a term to be specified by the Commission. On the initial Commission three members shall be appointed by the Governor for terms of two years and three members shall be appointed by the Governor for terms of four years. Thereafter all members of the Commission shall be appointed by the Governor for terms of four years. The Governor shall appoint the seventh member for the same term and in the same manner as the other six members are appointed. In the event of a vacancy on the Commission the Governor shall appoint a successor to serve for the remainder of the term. Three members of the Commission shall be persons who have had three years' or more experience as a credit union director or in management of state-chartered credit unions. At least four members shall be appointed as representatives of the borrowing public and may be members of a credit union but shall not be employees of, or directors of any financial institution or have any interest in any financial institution other than as a result of being a depositor or borrower. No two persons on the Commission shall be residents of the same senatorial district. No person on the Commission shall be on a board of directors or employed by another type of financial institution. The Commission shall meet at least every six months, or more often upon the call of the chairman of the Credit Union Commission or any three members of the Commission. A majority of the members of the Commission shall constitute a quorum. The members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this Chapter as prescribed in G.S. 138-5. In the event that the composition of the Commission on April 30, 1979, does not conform to that prescribed in the preceding sentences, such composition shall be corrected thereafter by appropriate appointments as terms expire and as vacancies occur in the Commission; provided that no person shall serve on the Commission for more than two complete consecutive terms.

(b) The relationship between the Secretary of Commerce and the Credit Union Commission shall be as defined for a Type II transfer under this Chapter.

(c) The Credit Union Commission is hereby vested with full power and authority to review, approve, or modify any action taken by the Administrator of Credit Unions in the exercise of all powers, duties, and functions vested by law in or exercised by the Administrator of Credit Unions under the credit union laws of this State.

An appeal may be taken to the Commission from any finding, ruling, order, decision or the final action of the Administrator by any credit union which feels aggrieved thereby. Notice of such appeal shall be filed with the chairman of the Commission within 30 days after such finding, ruling, order, decision or other action, and a copy served upon the Administrator. Such notice shall contain a brief statement of the pertinent facts upon which such appeal is grounded. The Commission shall fix a date, time and place for hearing said appeal, and shall notify the credit union or its attorney of record thereof at least 30 days prior to the date of said hearing. (1971, c. 864, s. 17; 1973, cc. 97, 1254; 1975, c. 709, ss. 4-6; 1977, c. 198, s. 26; 1979, c. 478, s. 3; 1989, c. 751, ss. 7(36), 8(22); 1991 (Reg. Sess., 1992), c. 959, s. 63.)

Part 5. North Carolina Board of Science and Technology.

**§§ 143B-440 through 143B-441: Recodified as §§ 143B-426.30, 143B-426.31 by Session Laws 1985, c. 757, s. 179(c).**

Part 6. North Carolina Science and Technology Research Center.

**§ 143B-442. Creation of Center.**

There is hereby created the "North Carolina Science and Technology Research Center" at the Research Triangle. (1963, c. 846, s. 1; 1967, c. 69; 1977, c. 198, s. 26.)

**§ 143B-443. Administration by Department of Commerce.**

The activities of the North Carolina Science and Technology Research Center will be administered by the Department of Commerce. (1963, c. 846, s. 2; 1967, c. 69; 1977, c. 198, ss. 3, 4, 26; 1979, c. 668, s. 3; 1989, c. 751, s. 7(37); 1991 (Reg. Sess., 1992), c. 959, s. 64.)

**§ 143B-444. Acceptance of funds.**

The North Carolina Science and Technology Research Center is authorized and empowered to accept funds from private sources and from governmental and institutional agencies to be used for construction, operation and maintenance of the Center. (1963, c. 846, s. 4; 1967, c. 69; 1977, c. 198, s. 26.)

**§ 143B-445. Applicability of Executive Budget Act.**

The North Carolina Science and Technology Research Center is subject to the provisions of Article 1, Chapter 143, of the General Statutes of North Carolina. (1963, c. 846, s. 5; 1967, c. 69; 1977, c. 198, s. 26.)

Part 7. North Carolina National Park, Parkway and Forests Development Council.

**§§ 143B-446 through 143B-447.1: Recodified as §§ 143B-324.1 through 143B-324.3 by Session Laws 1997-443, s. 15.36(b).**

Part 8. Energy Division.

**§§ 143B-448 through 143B-450.1: Repealed by Session Laws 2000-140, s. 76.**

Part 9. Navigation and Pilotage Commissions.

**§ 143B-451. Navigation and pilotage commissions.**

The Board of Commissioners of Navigation and Pilotage for the Cape Fear River as provided for by G.S. 76-1, and the Board of Commissioners of Navigation and Pilotage for Old Topsail Inlet and Beaufort Bar as provided for by G.S. 76-59 are hereby transferred to the Department of Commerce. All powers, duties and authority of the Board of Commissioners of Navigation and Pilotage for the Cape Fear River and Bar and the Board of Commissioners of Navigation and Pilotage for Old Topsail Inlet and Beaufort Bar, as provided for in Chapter 76 of the General Statutes, shall continue to vest in the boards, as now provided by statute, independently of the direction, supervision, and control of the Secretary of Commerce. The commissions shall report their activity to the Governor through the Secretary of Commerce. The appointment to the boards shall continue to be made in the manner as provided by Chapter 76 of the General Statutes. (1975, c. 716, s. 1; 1977, c. 65, s. 4; c. 198, s. 26; 1989, c. 751, s. 8(24); 1991 (Reg. Sess., 1992), c. 959, s. 69.)

Part 10. North Carolina State Ports Authority.

**§§ 143B-452 through 143B-467: Recodified as Article 20 of Chapter 136, G.S. 136-260 through G.S. 136-275, by Session Laws 2011-145, s. 14.6(b), effective July 1, 2011.**

**§ 143B-468: Reserved for future codification purposes.**

Part 11. North Carolina Ports Railway Commission.

**§§ 143B-469 through 143B-469.3: Repealed.**

**§ 143B-469.1. Repealed by Session Laws 2002-126, s. 6.6(a)-(f).**

**§ 143B-469.2. Repealed by Session Laws 2002-126, s. 6.6(a)-(f).**

**§ 143B-469.3. Repealed by Session Laws 2002-126 s. 6.6(a)-(f).**

Part 11A. North Carolina Hazardous Waste Treatment Commission.

**§§ 143B-470 through 143B-470.6: Repealed by Session Laws 1989, c. 168, s. 2(a).**

Part 12. North Carolina Technological Development Authority.

**§§ 143B-471 through 143B-471.5: Repealed by Session Laws 1991, c. 689, s. 154.1(f).**

Part 13. Mutual Burial Associations.

**§§ 143B-472 through 143B-472.1: Repealed by Session Laws 1997-313, s. 2.**

**§§ 143B-472.2 through 143B-472.29: Recodified as present G.S. 90-210.80 through 90-210.107 in Article 13E of Chapter 90, by Session Laws 2003-420, s. 17(b), effective October 1, 2003.**

Part 14. Business Energy Improvement Program.

**§§ 143B-472.30 through 143B-472.34: Repealed by Session Laws 2000-140, s. 76.**

Part 15. Main Street Solutions.

**§ 143B-472.35. Establishment of fund; use of funds; application for grants; disbursal; repayment; inspections; rules; reports.**

(a) A fund to be known as the Main Street Solutions Fund is established in the Department of Commerce. This Fund shall be administered by the Department of Commerce. The Department of Commerce shall be responsible for receipt and disbursement of all funds as provided in this section. Interest earnings shall be credited to the Main Street Solutions Fund.

(a1) The Main Street Solutions Fund is a reimbursable, matching grant program. The Department of Commerce and the North Carolina Main Street Center are authorized to award grants from the Main Street Solutions Fund totaling not more than two hundred thousand dollars (\$200,000) to each eligible local government. Funds from eligible local governments, main street organizations, downtown organizations, downtown economic development organizations, and sources other than the State or federal government must be committed to match the amount of any grant from the Main Street Solutions Fund on the basis of a minimum of two non-State dollars (\$2.00) for every one dollar (\$1.00) provided by the State from the Main Street Solutions Fund.

(a2) Definitions. – For purposes of this section, the following definitions shall apply:

(1) Active North Carolina main street community. – A community in a Tier 1, 2, or 3 county that has been selected by the Department of Commerce to participate

- in the Main Street Program or the Small Town Main Street Program and that meets the reporting and eligibility requirements of the respective Program.
- (2) Designated downtown area. – A designated area within a community that is considered the primary, traditional downtown business district of the community.
  - (3) Designated micropolitan. – A geographic entity containing an urban core and having a population of between 10,000 and 50,000 people, according to the most recent federal decennial census.
  - (4) Downtown economic development organization. – An agency that is part of a public-private partnership intended to develop and recruit business opportunities or to undertake economic development projects that will create jobs.
  - (5) Downtown organization. – An agency that is part of a public-private partnership on the local level and whose core mission is to revitalize a traditional downtown business district.
  - (6) Eligible local government. – A municipal government that is located in a designated micropolitan or an active North Carolina main street community.
  - (7) Historic properties. – Properties that have been designated as historically significant by the National Register of Historic Places or a local historic properties commission.
  - (8) Interlocal small business economic development project. – A project or group of projects in a cluster of communities or counties or in a region that share a common economic development strategy for small business growth and job creation.
  - (9) Main Street Center. – The agency within the North Carolina Department of Commerce which receives applications and makes decisions with respect to Main Street Solutions Fund grant applications from eligible local governments.
  - (10) Main Street Organization. – An agency working in a public-private partnership on the local level, guided by a professional downtown manager, board of directors, or revitalization committee, and charged with administering the local Main Street Program initiative and facilitating revitalization initiatives in the traditional downtown business district through appropriate design, promotion, and economic restructuring activities.
  - (11) Main Street Program. – The program developed by the National Trust for Historic Preservation to promote downtown revitalization through economic development within the context of historic preservation.
  - (12) Mixed-use centers. – Areas zoned and developed for a mix of uses, including retail, service, professional, governmental, institutional, and residential.
  - (13) Private investment. – A project or group of projects in a designated downtown area that will spur private investment and improve property. A project must be owned and maintained by a private entity and must provide a direct benefit to small businesses.
  - (14) Public improvements and public infrastructure. – The improvement of property or infrastructure that is owned and maintained by a city or county.
  - (15) Revolving loan programs for private investment. – A property redevelopment or small business assistance fund that is administered on the local level and that

may be used to stabilize or appropriately redevelop properties located in the downtown area in connection with private investment or that may be used to provide necessary operating capital for small business creation or expansion in connection with private investment in a designated downtown area.

- (16) Small business. – An independently owned and operated business with less than 100 employees and with annual revenues of less than six million dollars (\$6,000,000).
- (17) Small Town Main Street Program. – A program based upon the Main Street Program developed by the National Trust for Historic Preservation to promote downtown revitalization through economic development within the context of historic preservation. The purpose of the Small Town Main Street Program is to provide guidance to local communities that have a population of less than 7,500 and do not have a downtown manager.
- (18) Tier 1, 2, or 3 counties. – North Carolina counties annually ranked by the Department of Commerce based upon the counties' economic well-being and assigned a Tier designation. The 40 most distressed counties are designated as Tier 1, the next 40 as Tier 2, and the 20 least distressed as Tier 3.

(a3) The purpose of the Main Street Program is to provide economic development planning assistance and coordinated grant support to designated micropolitans located in Tier 2 and 3 counties and to active North Carolina main street communities. To achieve the purposes of the Main Street Program, the Main Street Center shall develop criteria for community participation and shall provide technical assistance and strategic planning support to eligible local governments. Local governments, in collaboration with a main street organization, downtown organization, or downtown economic development organization, and the small businesses that will directly benefit from these funds may apply for grants from the Main Street Solutions Fund as provided in this section.

(a4) The Secretary of Commerce, through the Main Street Center, shall award grants from the Main Street Solutions Fund to eligible designated micropolitans and active North Carolina main street communities. Grant funds awarded from the Main Street Solutions Fund shall be used as provided by the provisions of this section and any rules or regulations adopted by the Secretary of Commerce.

(b) Funds in the Main Street Solutions Fund shall be available only to designated micropolitans in Tier 2 and 3 counties and to active North Carolina main street communities in the State. Funds in the Main Street Solutions Fund shall be used for any of the following eligible activities:

- (1) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (1a) Downtown economic development initiatives that do any of the following:
  - a. Encourage the development or redevelopment of traditional downtown areas by increasing the capacity for mixed-use centers of activity within downtown core areas. Funds may be used to support the rehabilitation of properties, utility infrastructure improvements, new construction, and the development or redevelopment of parking lots or facilities. Projects under this sub-subdivision must foster private investment and provide direct benefit to small business retention, expansion, or recruitment.
  - b. Attract and leverage private-sector investments and entrepreneurial growth in downtown areas through strategic planning efforts, market



- studies, and downtown master plans in association with direct benefit to small business retention, expansion, or recruitment.
- c. Attract and stimulate the growth of business professionals and entrepreneurs within downtown core areas.
- d. Establish revolving loan programs for private investment and small business assistance in downtown historic properties.
- e. Encourage public improvement projects that are necessary to create or stimulate private investment in the designated downtown area and provide a direct benefit to small businesses.
- (2) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (2a) Historic preservation initiatives outside of downtown core areas that enhance:
  - (i) community economic development and small business retention, expansion, or recruitment; and
  - (ii) regional or community job creation.
- (3) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (3a) Public improvements and public infrastructure outside of downtown core areas that are consistent with sound municipal planning and that support community economic development, small business retention, expansion, or recruitment, and regional or community job creation.
- (4) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (4a) Interlocal small business economic development projects designed to enhance regional economic growth and job creation.
- (5)-(7) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (c) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (c1) The application shall include each of the following:
  - (1) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
  - (1a) The proposed activities for which the funds are to be used and the projected cost of the project.
  - (2) The amount of grant funds requested for these activities.
  - (3) Projections of the dollar amount of public and private investment that are expected to occur in the designated micropolitan or designated downtown area as a direct result of the proposed activities.
  - (4) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
  - (5) An explanation of the nature of the private investment in the designated micropolitan or designated downtown area that will result from the proposed activities.
  - (6) Projections of the time needed to complete the proposed activities.
  - (7) Projections of the time needed to realize the private investment that is expected to result from the proposed activities.
  - (8) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
  - (9) Any additional or supplemental information requested by the Division.
- (d) A local government whose application is denied may file a new or amended application.
- (e) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (f) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.
- (g) (1) A local government that has been selected to receive a grant shall use the full amount of the grant for the activities that were approved pursuant to the

provisions of this section. Funds are deemed used if the local government is legally committed to spend the funds on the approved activities.

- (2) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
  - (3) A local government that fails to satisfy the condition set forth in subdivision (1) of this subsection shall lose any funds that have not been used within three years of being selected. These unused funds shall be credited to the Main Street Solutions Fund. A local government that fails to satisfy the conditions set forth in subdivision (1) of this subsection may file a new application.
  - (4) Any funds repaid or credited to the Main Street Solutions Fund pursuant to subdivision (3) of this subsection shall be available to other applicants as long as the Main Street Solutions Fund is in effect.
- (h) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.
  - (i) After a project financed pursuant to this section has been completed, the local government shall report the actual cost of the project to the Department of Commerce.
  - (j) Inspection of a project for which a grant has been awarded may be performed by personnel of the Department of Commerce. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the grant was made or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of any project for which the grant was made.
  - (k) The Department of Commerce may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and regulations interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.
  - (l) The Department of Commerce and local governments that have been selected to receive a grant from the Main Street Solutions Fund shall prepare and file on or before September 1 of each year with the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Joint Legislative Economic Development and Global Engagement Oversight Committee and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of grants authorized by this section.

The portion of the annual report prepared by the Department of Commerce shall set forth for the preceding fiscal year itemized and total allocations from the Main Street Solutions Fund for grants. The Department of Commerce shall also prepare a summary report of all allocations made from the fund for each fiscal year; the total funds received and allocations made and the total unallocated funds in the Fund.

The portion of the report prepared by the local government shall include each of the following:

- (1) The total amount of public and private funds that was committed and the amount that was invested in the designated micropolitan or designated downtown area during the preceding fiscal year.
- (2) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (3) The total amount of grants received from the Main Street Solutions Fund during the preceding fiscal year.
- (4) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.
- (5) A description of how the grant funds and funds from public and private investors were used during the preceding fiscal year.

- (6) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

(m) The Department of Commerce may annually use up to seventy-five thousand dollars (\$75,000) of the funds in the Main Street Solutions Fund for expenses related to the administration of the Fund. (1989, c. 751, s. 9(c); c. 754, ss. 40(b)-(m); 1991, c. 689, s. 140(a); 1991 (Reg. Sess., 1992), c. 959, s. 72; 1993, c. 553, ss. 50, 51; 1997-456, s. 27; 2009-451, s. 14.10; 2010-31, s. 14.6A; 2015-241, s. 15.4(e); 2017-57, s. 14.1(s); 2018-142, s. 13(a).)

**§§ 143B-472.36 through 143B-472.39. Reserved for future codification purposes.**

Part 16. Information Technology Related State Government Functions.

**§ 143B-472.40 through 143B-472.67: Repealed by Session Laws 2000-174, s. 1.**

**§ 143B-472.68. Reserved for future codification purposes.**

**§ 143B-472.69. Reserved for future codification purposes.**

Part 17. Electronic Procurement in Government.

**§ 143B-472.70: Recodified as § 143-48.3 by Session Laws 2000-140, s. 5.95(a).**

**§§ 143B-472.71 through 143B-472.79: Reserved for future codification purposes.**

Part 18. North Carolina Board of Science, Technology, and Innovation.

**§ 143B-472.80. North Carolina Board of Science, Technology, and Innovation; creation; powers and duties.**

The North Carolina Board of Science, Technology, and Innovation of the Department of Commerce is created. The Board has the following powers and duties:

- (1) To identify, and to support and foster the identification of, important research needs of both public and private agencies, institutions and organizations in North Carolina that relate to the State's economic growth and development;
- (2) To make recommendations concerning policies, procedures, organizational structures and financial requirements that will promote effective use of scientific and technological resources in fulfilling the research needs identified and that will promote the economic growth and development of North Carolina;
- (3) To allocate funds available to the Board to support research projects, to purchase research equipment and supplies, to construct or modify research facilities, to employ consultants, and for other purposes necessary or appropriate in discharging the duties of the Board;
- (4) To advise and make recommendations to the Governor, the General Assembly, the Secretary of Commerce, and any North Carolina nonprofit corporation with which the Department of Commerce contracts pursuant to G.S. 143B-431.01 on the role of science, technology, and innovation in the economic growth and development of North Carolina.

- (5) Repealed by Session Laws 2009-451, s. 14.5(g), effective July 1, 2009. (1973, c. 1262, s. 77; 1977, c. 198, ss. 2, 26; 1979, c. 668, s. 1; 1985, c. 757, s. 179(a), (c); 2001-424, s. 7.6; 2001-486, s. 2.21; 2003-210, s. 1; 2005-276, s. 13.15; 2005-345, s. 25; 2009-451, s. 14.5(g); 2014-18, s. 2.1.)

**§ 143B-472.81. North Carolina Board of Science, Technology, and Innovation; membership; organization; compensation; staff services.**

(a) The North Carolina Board of Science, Technology, and Innovation consists of the Governor, the Secretary of Commerce, and 23 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, one of which shall be from a historically black college or university, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member of the North Carolina Community College System; one member representing K-12 public education; six members from private industry in North Carolina; and seven at-large members. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

(b) Members shall be appointed to the Board for the following terms of office:

- (1) Members appointed to the Board by the General Assembly shall serve for two-year terms beginning 1 July of odd-numbered years.
- (2) The six members from private industry and seven at-large members appointed to the Board by the Governor shall serve for four-year terms, and until their successors are appointed and qualified. Of those 13 members, six shall serve for terms that expire on 30 June of years that follow by one year those years that are evenly divisible by four, and seven shall serve for terms that expire on 30 June of years that follow by three years those years that are evenly divisible by four.
- (3) The members representing the following shall serve four-year terms beginning July 1, 2021, and every four years thereafter:
  - a. North Carolina State University.
  - b. A component of The University of North Carolina.
  - c. A private college or university, other than Duke University.
  - d. The North Carolina Community College System.
- (4) The members representing the following shall serve four-year terms beginning July 1, 2023, and every four years thereafter:
  - a. The University of North Carolina at Chapel Hill.
  - b. A historically black college or university that is a constituent institution of The University of North Carolina.
  - c. Duke University.
  - d. K-12 public education.

(b1) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The Governor or the Governor's designee shall serve as chair of the Board. The vice-chair and the secretary of the Board shall be designated by the Governor or the Governor's designee from among the members of the Board.

(d) The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

(e) Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. Legislative members of the Board shall receive subsistence and travel allowances authorized by G.S. 120-3.1.

(f) A majority of the Board constitutes a quorum for the transaction of business.

(g) The Secretary of Commerce shall provide all clerical and other services required by the Board. (1979, c. 668, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 44-46; 1985, c. 757, s. 179(b), (c); 1989, c. 751, s. 8(17); 1991, c. 573, s. 1; 1995, c. 490, s. 46; 2001-424, s. 7.6; 2001-486, s. 2.21; 2014-18, s. 2.1; 2021-90, s. 22(a).)

**§ 143B-472.82. Reserved for future codification purposes.**

**§ 143B-472.83. Reserved for future codification purposes.**

**§ 143B-472.84. Reserved for future codification purposes.**

Part 19. Small Business Contractor Act. (Expired).

**§§ 143B-472.85 through 143B-472.97: Expired.**

**§ 143B-472.98. Reserved for future codification purposes.**

**§ 143B-472.99. Reserved for future codification purposes.**

Part 20. Small Business Contractor Act.

**§§ 143B-472.100 through 143B-472.112: Repealed by Session Laws 2014-120, s. 1(a), effective September 18, 2014.**

**§ 143B-472.113. Reserved for future codification purposes.**

**§ 143B-472.114. Reserved for future codification purposes.**

**§ 143B-472.115. Reserved for future codification purposes.**

**§ 143B-472.116. Reserved for future codification purposes.**

**§ 143B-472.117. Reserved for future codification purposes.**

**§ 143B-472.118. Reserved for future codification purposes.**

**§ 143B-472.119. Reserved for future codification purposes.**

**§ 143B-472.120. Reserved for future codification purposes.**

Part 21. North Carolina Energy Assistance Act for Low-Income Persons.

**§§ 143B-472.121 through 143B-472.123: Recodified as Part 34 of Article 7 of Chapter 143B, G.S. 143B-344.48 through G.S. 143B-344.50, by Session Laws 2013-360, s. 15.22(j), effective July 1, 2013.**

**§ 143B-472.124: Reserved for future codification purposes.**

**§ 143B-472.125: Reserved for future codification purposes.**

Part 22. Rural Economic Development Division.

**§ 143B-472.126. Rural Economic Development Division created.**

There is hereby created in the Department of Commerce a division to be known as the Rural Economic Development Division. The Secretary shall appoint an Assistant Secretary to administer this Division, who shall be subject to the direction and supervision of the Secretary. The Assistant Secretary, subject to the approval of the Secretary, shall select a professional staff of qualified and competent employees to assist in the administration of the duties and responsibilities prescribed in this Part. (2013-360, s. 15.10(a).)

**§ 143B-472.127. Programs administered.**

(a) The Rural Economic Development Division shall be responsible for administering the program whereby economic development grants or loans are awarded by the Rural Infrastructure Authority as provided in G.S. 143B-472.128 to local government units. The Rural Infrastructure Authority shall, in awarding economic development grants or loans under the provisions of this subsection, give priority to local government units of the counties that have one of the 80 highest rankings under G.S. 143B-437.08. The funds available for grants or loans under this program may be used as follows:

- (1) To construct critical water and wastewater facilities or to provide other infrastructure needs, including, but not limited to, natural gas, broadband, and rail to sites where these facilities will generate private job-creating investment. The grants under this subdivision shall not be subject to the provisions of G.S. 143-355.4.
- (2) To provide matching grants or loans to local government units located in either (i) a development tier one or tier two area or (ii) a rural census tract in a development tier three area that will productively reuse or demolish buildings and properties or construct or expand rural health care facilities, with priority given to towns or communities with populations of less than 5,000. The development tier designation of a county shall be determined as provided in G.S. 143B-437.08. For purposes of this section, the term "rural census tract" means a census tract having a population density of less than 500 people per square mile according to the most recent decennial federal census.
- (3) Recipients of grant funds under this Part shall contribute a cash match for the grant that is equivalent to at least five percent (5%) of the grant amount. The

cash match shall come from local resources and may not be derived from other State or federal grant funds.

- (4) In awarding grants under this Part, preference shall be given to a project involving a resident company. For purposes of this Part, the term "resident company" means a company that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State. An application for a project that serves an economically distressed area shall have priority over a project that does not. A grant to assist with water infrastructure needs is not subject to the provisions of G.S. 143-355.4.
- (5) Under no circumstances shall a grant for a project be awarded in excess of twelve thousand five hundred dollars (\$12,500) per projected job created or saved.

(b) In addition to the duties under subsection (a) of this section, the Rural Economic Development Division shall also be responsible for (i) administering the program whereby local government units are awarded funds by the Rural Infrastructure Authority from the Utility Account under G.S. 143B-437.01 and (ii) administering the program whereby local government units are awarded funds by the Rural Infrastructure Authority for economic development projects from community development block grant funds.

(c) The Rural Economic Development Division may make recommendations to the Rural Infrastructure Authority as to any matters related to the administration of the programs under subsections (a) and (b) of this section. (2013-360, s. 15.10(a); 2013-363, s. 5.13(a); 2014-90, s. 6; 2014-100, s. 15.10; 2018-5, s. 15.2(c).)

#### **§ 143B-472.128. Rural Infrastructure Authority created; powers.**

(a) Creation. – The Rural Infrastructure Authority is created within the Department of Commerce.

(b) Membership. – The Authority shall consist of 17 members who shall be appointed as follows:

- (1) The Secretary of Commerce, ex officio, or the Secretary's designee.
- (2) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and they shall each represent a Tier 1 or Tier 2 county.
- (3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and they shall each represent a Tier 1 or Tier 2 county.
- (4) Eight members appointed by the Governor, and they shall each represent a Tier 1 or Tier 2 county.

(c) Terms. – Members shall serve for a term of three years, except for initial terms as provided in this section. No member of the Authority shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Authority for a period of at least three years. An initial term that is two years or less shall not be counted in determining the limitation on consecutive terms.

In order to provide for staggered terms, two persons appointed to the positions designated in subdivision (b)(2) of this section and two persons appointed to the positions designated in subdivision (b)(3) of this section shall be appointed for initial terms ending on June 30, 2020. Two persons appointed to the positions designated in subdivision (b)(2) of this section, two persons

appointed to the positions designated in subdivision (b)(3) of this section, and four persons appointed to the positions designated in subdivision (b)(4) of this section shall be appointed for initial terms ending on June 30, 2021. Four persons appointed to the positions designated in subdivision (b)(4) of this section shall be appointed for initial terms ending on June 30, 2022.

(d) Officers. – The Authority members shall select from among the membership of the Authority a person to serve as chair and vice-chair. The chair and vice-chair shall each serve for a term of one year, but may be re-elected to serve successive terms.

(e) Compensation. – Authority members shall receive no salary as a result of serving on the Authority, but are entitled to per diem and allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) Meetings. – The Secretary shall convene the first meeting of the Authority within 30 days after the appointment of Authority members under subsection (b) of this section. Meetings shall be held as necessary as determined by the Authority.

(g) Quorum. – A majority of the members of the Authority constitutes a quorum for the transaction of business. A vacancy in the membership of the Authority does not impair the right of the quorum to exercise all rights and to perform all duties of the Authority.

(h) Vacancies. – A vacancy on the Authority shall be filled in the same manner in which the original appointment was made, and the term of the member filling the vacancy shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(i) Removal. – Members may be removed in accordance with G.S. 143B-13. A member who misses three consecutive meetings of the Authority may be removed for nonfeasance.

(j) Powers and Duties. – The Authority has the following powers and duties:

- (1) To receive and review applications from local government units for grants or loans authorized under G.S. 143B-472.127.
- (2) To award grants or loans as provided in G.S. 143B-472.127. In awarding grants or loans under G.S. 143B-472.127(a), priority shall be given to local government units of the counties that have one of the 80 highest rankings under G.S. 143B-437.08.
- (3) To formulate policies and priorities for grant and loan making under G.S. 143B-472.127, which shall include, among other things, providing for (i) at least four grant application cycles during each fiscal year, (ii) the timely distribution of grants and loans so as to allow local government units to undertake infrastructure and other projects authorized under this Part without undue delay, and (iii) the use of federal funds first instead of General Fund appropriations where the project meets federal requirements or guidelines.
- (4) To establish a threshold amount for emergency grants and loans that may be awarded by the Assistant Secretary without the prior approval of the Authority. Any emergency grants or loans awarded by the Assistant Secretary pursuant to this subdivision shall meet the requirements of G.S. 143B-472.127(a) or (b), and shall comply with policies and procedures adopted by the Authority. The Assistant Secretary shall, as soon as practicable, inform the Authority of any emergency grants or loans made under this subdivision, including the name of the local government unit to which the grant or loan was made, the amount of the grant or loan, and the project for which the grant or loan was requested.



- (5) To determine ways in which the Rural Economic Development Division can aid local government units in meeting the costs for preliminary project planning needed for making an application for a grant or loan under G.S. 143B-472.127.
- (6) To determine ways in which the Rural Economic Development Division can effectively disseminate information to local government units about the availability of grants or loans under G.S. 143B-472.127, the application and review process, and any other information that may be deemed useful to local government units in obtaining grants or loans.
- (7) To review from time to time the effectiveness of the grant or loan programs under G.S. 143B-472.127 and to determine ways in which the programs may be improved to better serve local government units.
- (8) No later than September 1 of each year, to submit a report to the Senate Appropriations Committee on Natural and Economic Resources, the House Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division that details all of the following:
  - a. Total number of awards made in the previous fiscal year.
  - b. Geographic display of awards made.
  - c. Total number of jobs created in the previous fiscal year.
  - d. Recommended policy changes that would benefit economic development in rural areas of the State. (2013-360, s. 15.10(a); 2013-363, s. 5.13(b); 2018-5, s. 15.2(d); 2019-32, s. 5.)

**§ 143B-472.129: Reserved for future codification purposes.**

**§ 143B-472.130: Reserved for future codification purposes.**

**§ 143B-472.131: Reserved for future codification purposes.**

**§ 143B-472.132: Reserved for future codification purposes.**

**§ 143B-472.133: Reserved for future codification purposes.**

**§ 143B-472.134: Reserved for future codification purposes.**