

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1516  
PROPOSED COMMITTEE SUBSTITUTE H1516-PCS50613-RQ-23

Short Title: JDIG Technical Modifications.

(Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

(c) Ceiling. – ~~Except as provided in this section, the~~ The maximum amount of total annual liability for grants ~~for agreements entered into~~ awarded in any single calendar year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars (\$15,000,000). ~~The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility~~



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1 ~~Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars (\$30,000,000).~~  
2 No agreement may be entered into that, when considered together with other existing  
3 agreements ~~entered into governing grants awarded during that a single~~ calendar year, could  
4 cause the State's potential total annual liability for grants ~~entered into awarded in that a single~~  
5 calendar year to exceed this amount.

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

- 11 (1) The Committee makes an explicit finding that the designation is necessary to  
12 secure the project in this State.
- 13 (2) The agreement contains terms to ensure that the business does not create  
14 eligible positions by transferring or shifting to the project existing positions  
15 from another project of the business or a related member of the business."

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

17 **"§ 143B-437.55. Applications; fees; reports; study.**

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

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

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

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

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

12 ...

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

- 16 (1) A listing of each ~~community economic development agreement negotiated~~  
17 ~~and entered into~~grant awarded during the preceding calendar year, including  
18 the name of the business, the cost/benefit analysis conducted by the  
19 Committee during the application process, a description of the project, the  
20 term of the ~~agreement, grant,~~ the percentage of withholdings used to  
21 determine the amount of the grant, the annual maximum State liability under  
22 the grant, and the ~~amount of the grant made~~maximum total lifetime State  
23 liability under the agreement during that year grant.
- 24 (2) An update on the status of projects under ~~agreements entered into~~grants  
25 awarded before the preceding calendar year.
- 26 (3) The number and development tier area of eligible positions to be created by  
27 projects with respect to which grants ~~were~~have been awarded.
- 28 (3a) A listing of the employment level for all businesses receiving a grant and  
29 any changes in those levels from the level of the next preceding year.
- 30 (4) The wage levels of all eligible positions to be created by projects with  
31 respect to which grants ~~are~~have been awarded, aggregated and listed in  
32 increments of ~~five thousand dollars (\$5,000)~~ten thousand dollars (\$10,000)  
33 or other appropriate increments.
- 34 (5) The amount of new income tax revenue received from withholdings related  
35 to the projects for which grants ~~were~~have been awarded.
- 36 (6) ~~The~~For the first annual report after adoption of the criteria developed by the  
37 Committee, in consultation with the Attorney General, to implement this  
38 Part and Part, a copy of such criteria, and, for subsequent reports,  
39 identification of any changes in those criteria from the previous calendar  
40 year.
- 41 (7) ~~The effectiveness of the program in recruiting~~number of awards made to  
42 new businesses and the number of awards made to existing, expanding  
43 businesses businesses in the preceding calendar year.
- 44 (8) The environmental impact of businesses that have received grants under the  
45 program.
- 46 (9) The geographic distribution of grants, by number and amount, awarded  
47 under the program.
- 48 (10) ~~An explanation of whether the projects with respect to which agreements are~~  
49 ~~entered into involve new businesses in the State or expanding existing~~  
50 ~~businesses in the State.~~

1 (11) A listing of all businesses making an application under this Part and an  
 2 explanation of whether each business ultimately located the project in this  
 3 State regardless of whether the business was awarded a grant for the project  
 4 under this Part.

5 (12) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.

6 (13) The total amount transferred to the Utility Account of the Industrial  
 7 Development Fund under this Part during the preceding year.

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

15 ...."

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

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

19 ...

20 (9) A provision that requires the Committee to ~~amend an agreement~~ reduce the  
 21 amount or term of a grant pursuant to G.S. 143B-437.59.

22 ...

23 (13) A provision stating that unless the agreement is ~~amended or terminated~~  
 24 pursuant to G.S. 143B-437.59, the ~~agreement~~ agreement, including any  
 25 amendments pursuant to G.S. 143B-437.59, is binding and constitutes a  
 26 continuing contractual obligation of the State and the business.

27 (14) A provision setting out any allowed variation in the terms of the agreement  
 28 that will not subject the business to ~~amendment grant reduction, amendment,~~  
 29 or termination of the agreement under G.S. 143B-437.59.

30 ...

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

36 ...."

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

38 "(a) No later than March 1 of each year, for the preceding grant year, every business that  
 39 is awarded a grant under this Part shall submit to the Committee ~~a~~ an annual payroll report  
 40 showing withholdings as a condition of its continuation in the grant ~~program. In addition,~~  
 41 ~~during the base period, the business shall submit to the Committee an annual payroll report~~  
 42 ~~showing the program and identifying~~ eligible positions that have been created during the  
 43 ~~preceding calendar year, and, subsequent to the base period, the business shall submit to the~~  
 44 ~~Committee an annual report showing the eligible positions~~ base period that remain filled at the  
 45 end of each year of the grant. Annual reports submitted to the Committee shall include social  
 46 security numbers of individual employees identified in the reports. Upon request of the  
 47 Committee, the business shall also submit a copy of its State and federal tax returns. Payroll  
 48 and tax information, including social security numbers of individual employees and State and  
 49 federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259.  
 50 Aggregated payroll or withholding tax information submitted or derived under this subsection  
 51 is not tax information subject to G.S. 105-259. When making a submission under this section,

1 the business must pay the Committee a fee of one thousand five hundred dollars (\$1,500). The  
2 fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of  
3 Revenue, and the Director of the Office of State Budget and Management shall determine the  
4 allocation of the fee imposed by this section among their agencies. The proceeds of the fee are  
5 receipts of the agency to which they are credited."

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

7 "**§ 143B-437.59. Failure to comply with agreement.**

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

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

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

36 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the  
37 Committee finds that the business has manipulated or attempted to manipulate employee  
38 withholdings with the purpose of increasing the amount of a grant, the Committee shall  
39 immediately terminate the agreement and take action to recapture any grant funds disbursed in  
40 any year in which the Committee finds the business manipulated or attempted to manipulate  
41 employee withholdings with the purpose of increasing the amount of the grant."

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

43 "**§ 143B-437.62. Expiration.**

44 The authority of the Committee to ~~enter into~~award new ~~agreements~~grants expires January  
45 1, ~~2010~~2016."

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