

September 9, 2013

**VIA ELECTRONIC MAIL AND U.S. MAIL**

**Joint Legislative Program Evaluation Oversight Committee**

Honorable Fletcher Hartsell,  
State Senator  
NC General Assembly  
300 North Salisbury Street  
Room 300 – C  
Raleigh, North Carolina 27603-5925

Honorable Julia Howard,  
State Representative  
NC General Assembly  
300 North Salisbury Street  
Room 302  
Raleigh, North Carolina 27603-5925

Dear Senator Hartsell and Representative Howard:

Charleston  
Charlotte  
Columbia  
Greensboro  
Greenville  
Hilton Head  
Myrtle Beach  
**Raleigh**

I attended your Committee's meeting at 1:00 on August 19, 2013. Although I was there to hear the discussion on another matter that was on the Committee's agenda, I listened with interest to the State Auditor's report on her Department's evaluation of the Department of Commerce's (the "Department") administration of the Job Development Investment Grant ("JDIG") program.

By way of this letter and the attached materials I wanted to share with the two of you and your Committee a very different viewpoint which was reflected in the State Auditor's report.

My comments reflect my background and experience in dealing with the Department's Finance Center, which administers the JDIG program, and with the JDIG program as a practitioner. As you may recall I served in the Department as Assistant Secretary for Economic Development during Governor Jim Martin's administration, and had direct management oversight of the Finance Center. Since leaving that position in 1993 my law practice has focused on economic development matters. In that role I have dealt regularly with the JDIG program as a representative of companies benefitting from those grants and having to make reimbursements because of shortfalls in job creation. I have also worked in numerous economic development projects in which I represented the local governments' interest in the

recruitment effort which involved grants from the JDIG program. So I am very experienced with the JDIG program and its administration.

In short a number of the findings of the State Auditor's office that I heard reported in your Committee's meeting are just incorrect. In saying this I do not in any way imply that the Auditor's office intentionally reported incorrect conclusions. But instead I think the conclusions reported reflected a lack of understanding as to how the JDIG program works, how accountability under the program is monitored, and the economic development environment within which the JDIG program functions.

Also I would point out that my statements in this letter are based solely upon the conclusions I heard reported verbally to your Committee. Given the demands of my practice and other commitments I have not obtained or reviewed the written audit report.

The above being said, I noted several major conclusions which were presented in the report which are incorrect:

1. Clawback for Nonperformance. The statement was made that there are no clawbacks when a company fails to meet its minimum performance requirements. That is absolutely incorrect. In fact I have represented companies which have made reimbursement payments to the Department.
2. Inadequate Verification of Job Creation Requirements. Every company which is subject to the verification requirements of the JDIG program, and every practitioner who deals with it will tell you that this is incorrect. The regimen required in annual reporting for JDIG compliance is rigorous (if not onerous) and is backed by tax filings of the company with state tax agencies. The potential for the above concern is almost nonexistent.
3. Transfer of Employees from One Company Facility to Another is not Controlled. If I understood the Auditor's comments, the mistake the Auditor's office seem to be making is an assumption that the Department should monitor whether one or more specific employees are transferred from an affiliated company facility in the State to the facility which is the subject of a JDIG grant. From a public policy point of view, the state's concern is whether an affiliated facility maintains the number of employees it had before the JDIG grant was made to the other facility in question. That is monitored rigorously by the Department. Whether a specific person is transferred is inconsequential from a policy point of view.
4. Information about Potential Project's Not Reported to Economic Investment Committee ("EIC"). The practice of the Department is to take to the EIC any

projects which are being recommended for JDIG grants. It would be a waste of the EIC's member's time to take every project which requests JDIG grants to the Committee. Many projects ask for JDIG grants which are not qualified for them under the Department's guidelines, and which companies ultimately accept this determination. Also until a detailed application is completed and a significant application fee is paid, there is nothing to take to the EIC. No company with which I have ever dealt is going to go through the process of completing the application or paying the application fee (formerly \$5000, now \$10,000), if it understands that approval will not be recommended by the staff.

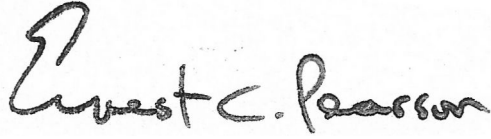
5. Measurable Criteria Needed for Determining Grant Awards. Measurable criteria (in terms of number of jobs) are used to determine initial qualification for the JDIG grants. But it is highly preferable from the State's point of view that the award of JDIG grants and the determination of the amounts of the grants should be a matter of negotiation. In the end, the State will have to make fewer grants and the grants will be in smaller amounts.

It is important to note that my statements above would likely be repeated by any person who regularly deals with the JDIG program. But of greater importance, two national studies have rated the NC JDIG program as one of the best in the country in terms of accountability for results. Copies of these studies are attached. I commend the reading of these reports to your Committee members and staff.

Thank you for considering the above. If I can share further information with or answer questions from your Committee and its staff, please let me know. I would be glad to be of assistance.

Honorable Fletcher Hartsell  
September 9, 2013  
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Sincerely,

A handwritten signature in dark ink, reading "Ernest C. Pearson". The signature is written in a cursive style with a large initial "E".

Ernest C. Pearson

Member

cc:     Committee Members  
          John Turcotte, Director  
          Doris Gilbert, Committee Clerk  
          Secretary Sharon Decker  
          Tony Almeida  
          Stewart Dickinson  
          Ashley Jones