

**JDIG Program**

**N.C. General Statutes**

**Chapter 143B – Executive Organization Act of 1973**

**Article 10 – Department of Commerce**

**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.
- (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, 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. The term does not include any person who works as an independent contractor or on a consulting basis for the business.
- (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.
- (10) Withholdings. – The amount withheld by a business from the wages of employees in eligible 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).)

**§ 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.

(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) **Awards.** – 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 fifteen million dollars (\$15,000,000). 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 this 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).

(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).)

**§ 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 set out in the table below. If the project will be located in more than one development tier area, the location with the highest development tier area designation determines the minimum number of eligible positions that must be created.

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

(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 provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

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.)

#### **§ 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.

The members of the Committee appointed by the General Assembly may not be members of the General Assembly. The members of the Committee appointed by the General Assembly serve two-year terms that begin upon appointment.

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

**§ 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 ten thousand dollars (\$10,000). 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.
- (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).)

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

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions 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 least the following:

- (1) The number of eligible positions to be created.
  - (2) The expected duration of those positions.
  - (3) The type of contribution the business can make to the long-term growth of the State's economy.
  - (4) The amount of other financial assistance the project will receive from the State or local governments.
  - (5) The total dollar investment the business is making in the project.
  - (6) Whether the project utilizes existing infrastructure and resources in the community.
  - (7) Whether the project is located in a development zone.
  - (8) The number of eligible positions that would be filled by residents of a development zone.
  - (9) The extent to which the project will mitigate unemployment in the State and locality.
- (b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded. The number of years in the base period for which grant payments may be made shall not exceed five years.
- (c) The grant may be based only on eligible positions created during the base period.
- (d) 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 any eligible position that is located in a development tier two area, eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the business, and fifteen percent (15%) 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) 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 seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) 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 six thousand five hundred dollars (\$6,500) 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).)

**§ 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 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 permit the Committee to recapture all or part of the grant at its discretion 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 level of the year immediately preceding the base period.
- (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.

- (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) 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 six thousand five hundred dollars (\$6,500) 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.)

**§ 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 Committee 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 Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of 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.)

**§ 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.)

**§ 143B-437.62. Expiration.**

The authority of the Committee to award new grants expires January 1, 2016. (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.)

**§ 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 Office of State Budget and Management shall periodically transfer funds from the JDIG Reserve established pursuant to G.S. 143C-9-6 to the Department of Commerce 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. (2004-124, s. 6.12(b); 2009-445, s. 40; 2009-570, s. 22.)