

CRITERIA FOR OPERATION AND IMPLEMENTATION OF JOB MAINTENANCE AND CAPITAL DEVELOPMENT FUND PROGRAM

1.0 GENERAL PROVISIONS

1.1 Policy

The policies underlying the Job Maintenance and Capital Development Fund are those set out by the North Carolina General Assembly in G.S. §143B-437.11(a). Definitions are provided in Section 1.3 of these Criteria.

1.2 Authorization

The North Carolina Department of Commerce is authorized by G.S. §§143B-437.11(b) and 143B-437.11(i), to implement and administer the Program, and the selection of Grantees, and to develop such criteria as may be necessary to carry out that purpose, as set forth in these Criteria. These Criteria have been developed by the Department of Commerce and the Economic Investment Committee, in consultation with the Attorney General, to set forth the conditions for the award and administration of Grants.

1.3 Definitions

- (a) “Agreement.” The agreement governing the terms of a Grant, as further outlined in G.S. §143B-437.11(j).
- (b) “Applicant.” A Business applying for a Grant that is a specifically identified entity with an obligation to pay Eligible Remittances, that is currently paying such Eligible Remittances, or that will, in connection with the Project, become a payer of such Eligible Remittances, and that would enter into an Agreement.
- (c) “Application.” A Business’s application to the Department for a Grant on the form prescribed by the Department, as described in G.S. §143B-437.11(i)(3), and all materials delivered in support of a Business’s request for a Grant.
- (d) “Business.” A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, with operations in the State.

- (e) “Committee.” The Economic Investment Committee established pursuant to G.S. §143B-437.54.
- (f) “Contract Worker” means a person employed in a Full-Time Position, whose work responsibilities consist of the core activity of the Facility, or associated administrative positions, and who receives monetary compensation and benefits equivalent in value to that of Direct Employees holding similar positions. The term does not include contractors whose work consists of activity tangential to the core business of the Facility, such as landscapers, construction and maintenance personnel.
- (g) “Criteria.” These Criteria for Operation and Implementation of Job Maintenance and Capital Development Fund.
- (h) “Department.” The North Carolina Department of Commerce.
- (i) “Development Tier.” County tier rankings established pursuant to G.S. §143B-437-08.
- (j) “Direct Employee” means a person employed in a Full-Time Position, whose wages are subject to State withholding by the Grantee, under Article 4A of Chapter 105 of the General Statutes, and who is employed in a permanent position. The term does not include consultants, contractors, persons whose positions are temporary or time-limited as a condition of employment, employees of a temporary service, or employees of an entity that pays withholding taxes other than the Grantee (or an entity whose employees may be included as employees in Full-Time Positions by operation of State law).
- (k) “Economic Development Representative” means an economic developer in the Department’s Business and Industry Division.
- (l) “Eligible Fees.” State permitting fees and other fees paid to the State that are specified in the Agreement, associated with the capital expansion at the Project, financed by the Required Investment.
- (m) “Eligible Position.” A Full-Time Position at the Facility, which is filled by a Direct Employee or Contract Worker, who has worked for at least sixteen hundred (1,600) hours during the calendar year.
- (n) “Eligible Remittances.” Eligible Taxes, Worker Training Expenses, and Eligible Fees.
- (o) “Eligible Taxes.” The following State taxes paid by a Business:
 - (i) privilege and sales and use taxes on machinery and equipment installed at the Facility, (ii) building materials used to construct, renovate, or repair,

the Facility, (iii) incremental income and franchise taxes attributable to Required Investment, that are not offset by tax credits, and (iv) sales and use taxes paid on electricity, the excise tax paid on piped natural gas, and the privilege tax paid on other fuel for electricity, piped natural gas, and other fuel consumed at the Facility.

- (p) “Facility.” The facility at which the Required Investment will be made.
- (q) “Full-Time Position.” A position filled by a worker at the Project, who is paid consideration for at least thirty-five (35) hours a week, and who is eligible for benefits provided to all employees of the Business.
- (r) “Grant.” An award under the Program.
- (s) “Grantee.” An Applicant that has been awarded a Grant.
- (t) “JMAC.” The Job Maintenance and Capital Development Fund.
- (u) “Minimum Direct Employees.” The number of Direct Employees a Grantee is required to maintain in order to qualify for the full annual Grant payment (subject to all other conditions of the Grant) which shall be equal to the lesser of the number of Direct Employees the Grantee had at the time it submitted its Application or the number of Direct Employees that it had at the time it commenced its Required Investment.
- (v) “Minimum Eligible Positions” The number of Eligible Positions a Grantee is required to maintain in order to qualify for the full annual Grant payment (subject to all other conditions of the Grant), which shall be equal to the lesser of the number of Full-Time Positions the Grantee had at the time it submitted its Application or the number of Full-Time Positions that it had at the time it commenced its Required Investment, but shall in no event be less than two thousand (2,000) Full-Time Positions.
- (w) “Overdue Tax Debt.” Any part of a tax debt that remains unpaid ninety (90) days or more after the notice of final assessment was mailed to the taxpayer, where “tax debt” consists of the total amount of tax, penalty, and interest due for which a notice of final assessment has been mailed to a taxpayer after the taxpayer no longer has the right to contest the debt. The term does not include a tax debt if the taxpayer entered into an installment agreement for the tax debt under G.S. §105-237 within ninety (90) days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.
- (x) “Program.” The Job Maintenance and Capital Development Fund program established by Session Law 2007-552, and set out in G.S. §143B, Article 10, Part 2.

- (y) “Project.” A business, commercial or industrial development project involving job maintenance and new investment in North Carolina for which an Applicant is seeking a Grant or for which a Grant has been made.
- (z) “Receiving Entities.” The North Carolina Department of Revenue, the North Carolina Department of Environment and Natural Resources, the North Carolina Community Colleges, and any other State entity that receives Eligible Remittances.
- (aa) “Required Investment.” The minimum amount of private investment in improvements to real property and additions to tangible personal property in the Project the Grantee must make within six (6) years of the initial expenditure, which amount shall be not less than two hundred million dollars (\$200,000,000).
- (bb) “Secretary.” The Secretary of Commerce.
- (cc) “State.” The State of North Carolina.
- (dd) “Wage Standard.” An average weekly wage paid to workers in Eligible Positions that is at least equal to one hundred forty percent (140%) of the average wage paid by all insured private employers in the county in which the Project is located (using the Department’s annual published wage for each county).
- (ee) “Worker Training Expenses.” Expenses incurred by the Grantee to train workers for the Project, net of any other reimbursements provided for such training from public sources, including wages paid for on-the-job training associated with the Project.

1.4 **Purpose**

The purposes of the Program are those set out by the North Carolina General Assembly in G.S. §§143B-437.11(a), and include stimulating economic activity, maintaining high-paying jobs within the State and increasing the property tax base for local governments.

1.5 **Limitations on Number of Grants and Liability for Grants**

- (a) The total number of Grants that may be approved under the Program shall not exceed five (5). G.S. §143B-437.11(n).
- (b) The maximum annual total liability of the State under any single Agreement may not exceed four million dollars (\$4,000,000). G.S. §143B-437.11(n).

- (c) The maximum liability under all Grants awarded shall not exceed the sum of the amounts appropriated for the Program by the North Carolina General Assembly, from time to time. The amount appropriated for the 2008-2009 fiscal year is five million dollars (\$5,000,000). S.L 2007-552, Section 2.
- (d) The total aggregate cost of all Grants awarded under the Program may not exceed sixty million dollars (\$60,000,000). G.S. §143B-437.11(n).

The Department will monitor the caps for each Grant awarded to ensure that no new Grant award would cause the State to exceed the maximum liability limits.

1.6 **Adoption of Criteria**

Pursuant to the procedures set out herein, the Department and the Committee shall adopt Criteria, and may change the Criteria, from time to time, as the needs of the State and circumstances change. Agreements entered prior to any such Criteria changes will be subject to the Criteria in effect on the date of the Grant award, unless the parties agree to incorporate revised Criteria in the Agreement.

1.7 **Procedure for Notice of and Comment on Proposed Criteria**

Persons requesting notice of proposed Criteria (including proposed changes to Criteria) should submit requests in writing to the Department of Commerce Finance Center, with a copy to the Department's Director of Public Affairs. Requests should include the name and address of the person or organization requesting a copy of proposed Criteria.

Notice will be given of proposed Criteria, and will include instructions for submission of oral or written comments.

Following the date of notice, fifteen (15) business days will be allowed for receipt of written comments on the proposed Criteria. A specific opportunity for submission of oral comments will be provided after completion of the fifteen day comment period. Details on the time, place and manner for submitting oral comments will be included in the notice.

Oral and written comments on proposed Criteria will be provided to all members of the Committee.

1.8 **Oral Comment Session**

An oral comment session is intended to provide an opportunity for persons who wish to communicate their comments orally, as opposed to submitting them in written form. The oral comment session will typically be convened by the staff of the Department of Commerce Finance Center, who will use a tape recorder to

record oral comments. These comments will be transcribed or summarized in written form and circulated to Committee members, along with the written comments.

At least two members of the Committee will be present for each oral comment session. Members of the public who submit comments at an oral comment session, who wish to address the full Committee may request that the Chair provide an opportunity for them to do so. Such requests will typically be granted and a reasonable opportunity to address the Committee will typically be provided.

1.9 Effective Date of Criteria

Criteria or changes to the Criteria become effective upon approval by the Committee at a meeting after the period of public notice and comment. Following the conclusion of the comment period, the Committee may revise Criteria based on comments received. If revisions based on comments substantively change the previously published proposed Criteria, an additional opportunity for notice and comment will be provided.

1.10 Quarterly Reports

Within two months of the end of each calendar quarter, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Program, in the manner and form required by G.S. §143B-437.11(m). The quarterly report shall include a list of each Grant awarded, each Agreement entered into during the preceding quarter, the name of the Grantee, the cost/benefit analysis conducted during the Application process, a description of the Project, and the amount of the Grant expected to be paid under each Agreement during the current fiscal year. The report shall also provide details on Program defaults and repayments made during the quarter, if any. The Department shall publish the quarterly reports on the Department's website and shall make copies available upon request. The first quarterly report shall be published two months after the first quarter during which a Grant has been awarded.

2.0 RESPONSIBILITY FOR PROGRAM ADMINISTRATION

2.1 Department of Commerce

The Department shall administer the Program and the selection of Projects to receive Grants. The Department shall receive and evaluate Applications to determine if a Project is eligible under the Program and whether a Grant is appropriate; coordinate presentation of Projects to the Committee; communicate with Applicants and Grantees concerning Applications and awards, prepare Agreements for execution; review, assess and audit compliance with Agreements;

and conduct such other activity as is necessary or desirable to effectively administer the Program.

No Grant can be provided without the recommendation of the Committee.

The Department is also responsible for monitoring compliance with Agreements and for administering repayments and recapture of Grant payments in case of default.

2.2 Economic Investment Committee

The Committee shall evaluate Applications to determine whether or not to recommend a Grant. In making such recommendations, the Committee shall consider the factors set forth in Section 7.2 of these Criteria. The Committee must also make all of the findings set forth in Section 8.4 of these Criteria in order to recommend a Grant for a Project. The Committee's recommendation shall include recommendations for the amount of State funds to be committed to the Project, the preferred form and details of State participation, and the performance criteria and safeguards that should be required in order to protect the State's investment.

In reviewing and making recommendations on Applications, the Committee shall incorporate the procedures it follows with respect to the treatment of Job Development Investment Grant applications, as set forth in Articles 2 and 3 of the Criteria For Operation And Implementation Of Job Development Investment Grant Program with respect to the conduct of meetings and the handling of conflicts of interest and confidential information.

2.3 Attorney General's Office

The Attorney General's Office shall review the terms of proposed Grants and the Department shall cooperate with the Attorney General's Office in preparing Agreements. G.S. §143B-437.11(j). The Department and/or the Committee may request such other assistance as may be required from the Attorney General's Office in the administration of the Program.

2.4 Department of Revenue

The Department of Revenue is requested to assist in administering those aspects of the Program relating to providing verification to the Department that a Business has no Overdue Tax Debts, and the amount of Eligible Taxes received, from time to time, to help determine eligibility and compliance with Agreements, and such other responsibilities as the Committee or the Department may request and the Secretary of the Department of Revenue may direct. §143B-437.11(j), (l).

2.5 **Office of State Budget and Management**

The Office of State Budget and Management is requested to aid in the administration of those aspects of the Program relating to compliance with the limitations on number of Grants and amount of Grants set out in G.S. §143B-437.11(n), and such other responsibilities as the Committee or the Department may request and the Director of the Office of State Budget and Management may direct.

2.6 **Department of Environment and Natural Resources**

The Department of Environment and Natural Resources is requested to provide verification, upon request by the Department, of amounts paid by Grantees for State permitting associated with Required Investment, and of violations of programs administered by the Department of Environment and Natural Resources. G.S. §143B-437.11(1)(6), §143B-437.11(h).

2.7 **Other Entities**

Any other entity that receives monies from Eligible Remittances that will establish a Grantee's eligibility for Grant payments, or that has information otherwise pertaining to the Department's administration of the Program, is requested to provide verification and other assistance with respect to those Eligible Remittances.

3.0 **BASIC ELIGIBILITY FOR RECEIVING GRANTS**

3.1 **Basic Criteria**

To be eligible to receive a Grant, a Business must satisfy all of the following basic criteria:

- (a) The Applicant must be a Business. G.S. §143B-437.11(d).
- (b) The Applicant must have no citations in North Carolina 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 Facility. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. G.S. §143B-437.11(g). The Committee will solicit this information from the Applicant and seek to cross check it with data prepared by the North Carolina Department of Labor.
- (c) The Applicant must have no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural

Resources and have had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last three years with respect to the Facility. For the purposes of this subsection, a significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. §143-215.6B(d).

- (d) The Applicant must certify that it has made or will make, Required Investment in the amount of two hundred million dollars (\$200,000,000), and the Department must certify this intention. For any Required Investment already made, the Applicant must provide evidence demonstrating the type and expenditures made for such investment, with its request for the Department's certification. For any Required Investment to be made in the future, the Applicant must submit a plan for such investment, with a schedule showing the intended dates and type of investment to be made. The Applicant shall demonstrate the relationship of all Required Investment to the Project.
- (e) The Applicant must have at least 2,000 workers in Full-time Positions at the time the Application is submitted, and must agree to maintain at least 2,000 workers in Full-time Positions for the full term of the Agreement.
- (f) The Applicant must agree to maintain the Minimum Direct Employees for the full term of the Agreement.
- (g) All workers in Eligible Positions must be provided health insurance as specified in G.S. §143B-437-11(f). 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.
- (h) The Project must be located in an area classified as Development Tier "one," at the time the Application is submitted.
- (i) Local government entities must have participated in retention efforts and provided incentives equivalent to a tax credit of fifty percent (50%) of the incremental additional ad valorem taxes payable by the Grantee on Required Investment, and such incentives must be provided over a period that is not less than five (5) years, or greater than ten (10) years.
- (j) The Project must be an active project of the Business and Industry Division of the Department, must be assigned to an economic development representative in that division, and must be a project on which the Applicant and the Department are actively collaborating.

- (k) Any other criteria of a threshold nature set out in G.S. 143B, Article 10, Part 2.

4.0 GRANT APPLICATION PROCEDURES

4.1 Referral to Economic Development Representative

Inquiries from Businesses interested in submitting Applications will first be referred to the director of the Department's Business and Industry Division or his or her designee, who will assign each potential Applicant to an Economic Development Representative.

4.2 Assistance to Potential Applicants

- (a) The Economic Development Representative will work with the potential Applicant to evaluate the nature of the Project in advance of any Application, including an evaluation of whether the Project is likely to satisfy the Program requirements. If aspects of the Project appear likely to render it ineligible, the Economic Development Representative will inform the Applicant of that fact prior to its submission of an Application.
- (b) The Economic Development Representative will ensure that the Applicant receives a printed copy, or is made aware of how it may obtain an electronic copy, of the Criteria, the statute governing the Program (G.S. 143B, Article 10, Part 2), and any other information pertinent to the Program that may be available to the public.
- (c) Once the Economic Development Representative has gained sufficient information regarding the Project, he or she will also discuss the nature and status of the Project with the Commerce Finance Center and/or the Secretary to assess the status of available Grants and funds under the Program. Based on these discussions, the Economic Development Representative will advise the potential Applicant on the prospects for a Grant and funds being available for the particular Project.
- (d) Whenever working with a potential Applicant to evaluate a Project and its possible eligibility or ineligibility for a Grant, the Economic Development Representative will inform the potential Applicant that only the Secretary can make decisions with respect to the award of Grants, and only after a positive recommendation by the Committee, and that no other person, including the Economic Development Representative, has the authority to make binding commitments or approve a Grant.

4.3 **Submission of Applications; Incomplete or Ineligible Applications**

- (a) Applications for Grants will be submitted to the Department of Commerce Finance Center, which will screen them for completeness and confirm that, on the face of the Application, the Project does not appear ineligible for a Grant. The Commerce Finance Center will request additional information from Applicants, as needed, to ensure that Applications are complete and contain all information necessary for the Committee's review.
- (b) Where an Application is not sufficiently complete to enable the Commerce Finance Center to process it, or where it appears on the face of the Application that the Project would not be eligible, the Application will be returned.
- (c) Applications that have been returned for lack of completeness or apparent ineligibility may be resubmitted in completed form or with additional information to clarify or establish eligibility. If an Applicant disputes the reason for return of an Application, it may resubmit the Application and request that the Application be processed and that a determination of completeness or eligibility be made by the Committee.
- (d) Applications shall be typed or printed and original signed copies submitted to the Commerce Finance Center by mail addressed to:

Commerce Finance Center
N.C. Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301

or by hand delivery addressed to:

Commerce Finance Center
N.C. Department of Commerce
Education Building
301 North Wilmington Street
Raleigh, North Carolina

Applicants must also provide an electronic copy of the Application as a Microsoft Word or Excel email attachment.

- (e) Copies of completed and accepted Applications will be distributed to the Committee after the Department has completed its analysis of the Application, including its assessment of the benefits of the Project to the State.

4.4 **Maintaining Confidentiality of Qualifying Application Materials**

All documents of the Department and the Committee, including Applications, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information.

When specific information in an Application or other document is regarded by the delivering party and by law as confidential, the party seeking confidential treatment should specifically and clearly designate it as such in writing on that portion of the document in which the information appears, at the time of disclosure of such information to the Committee or the Department. An Applicant, or other party delivering information on its behalf, should provide an explanation for why particular information is regarded as confidential. Applications should not be indiscriminately marked as confidential. Broad and non-specific designations of materials as confidential will be disregarded.

Where information qualifies as confidential and/or not subject to disclosure under the North Carolina Public Records Act, the information will be prominently marked and the Application and other applicable documents distributed in a fashion designed to preserve confidentiality.

5.0 **CONTENT OF APPLICATIONS**

5.1 **Information Contained in Application**

To be eligible for consideration for a Grant, the Applicant must deliver a completed Application which shall contain at a minimum, the following information, and any additional information specified by the Committee or the Department:

- (a) The Applicant's taxpayer identification number.
- (b) Information as to whether the Applicant has ever:
 - (1) defaulted on an economic development grant or incentive,
 - (2) been sued by a grantor with respect to an economic development grant or incentive, or
 - (3) been subjected to the terms of a clawback or comparable recapture provision in an economic development grant or incentive.
- (c) Information as to whether the Applicant has any Overdue Tax Debts.
- (d) Information concerning all grants that the Applicant has applied for, has received, or will receive, for the proposed Project, in addition to the Grant.
- (e) Information concerning the bankruptcy history of the Applicant.

- (f) Information concerning the existence and composition of an audit committee for the Applicant, the existence of and compliance with conflict of interest policies for the audit committee, and the existence of and compliance with any ethics policy or anti-retaliation policy.
- (g) Information required by the Department in order to conduct a cost/benefit analysis demonstrating that the benefits of the Project to the State exceed its costs. Types of information that should be provided include prior year employee withholdings paid by the Applicant; historic breakdown of Direct Employees and Contract Workers; full and part-time positions; historic sales and use taxes, real property taxes, tangible personal property taxes, corporate income and franchise taxes; historic and planned training costs; and expected outcomes with respect to the foregoing, that would be likely to occur in the absence of a Grant award, including a schedule of probable layoffs by occupation and wages. Applicants may submit such other information as they determine would be helpful to the cost/benefit analysis.
- (h) Financial performance information, including three years of income statements and balance sheets.
- (i) A description of the procedures the Grantee follows to ensure that all newly hired employees of the Grantee are citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.
- (j) Releases permitting Receiving Entities to verify and release information related to Eligible Remittances, to the Department, and to permit the North Carolina Employment Security Commission to release information that will verify employment.
- (j) A copy of the standard form of agreement used by the Grantee with its Contract Workers.
- (k) A thorough description, including documentation, evidencing how a Grant for the Project is necessary to carry out the public purposes of the Program, and how a Grant is necessary for the sustainability and maintenance of the Project in this State, as required by G.S. §143B-437-11(i)(5)(b) and (e).
- (l) Information on local government incentives for the Project, as required by G.S. §143B-437-11(i)(5)(d), including letters of commitment from local governments demonstrating that the extent of their commitment satisfies the requirements of Criteria Section 3.1(i).

The Application shall be submitted under oath and sworn to by an authorized officer of the Applicant.

5.2 Applications with other Parties

In the event the financial history and current status of the Applicant are not satisfactory to the Secretary or the Committee, or are unavailable due to consolidation of financial information with a parent company, a guarantor may be required to execute the Agreement, guarantying the obligations of the Grantee. In such case, the Application will include the guarantor, who will be required to provide information as specified in Section 5.1 of these Criteria, and certifications with respect to itself and the Applicant. The guarantor will be required to execute a guaranty of the Grantee's obligations under the Agreement. Likewise, in certain circumstances, other parties may be required by the Committee or the Department to be included in Applications. In such case, such parties shall also be required to provide certain Application information and certifications, and execute the Agreement.

6.0 REVIEW OF APPLICATIONS

6.1 Evaluation of Application

- (a) The Department shall evaluate Applications to determine if a Grant is merited and whether the Project is eligible and appropriate for consideration for a Grant.
- (b) The Commerce Finance Center will coordinate obtaining information for the Committee to assist in its evaluation of the Application. In doing so, it may seek such assistance as may be required in the context of a particular Application from the Department's Division of Business and Industry, the Department's Division of Policy, Research and Strategic Planning, the Department's Division of Workforce Development, the Office of State Budget and Management, the Department of Administration, the Department of Revenue, the Department of Environment and Natural Resources, the Department of Labor, and/or local governments and local or regional economic development organizations involved with a Project.
- (c) The Department shall submit to the Committee the Applications the Department considers eligible and appropriate for a Grant, and will provide comments and observations on Applications.
- (d) The Committee will evaluate Applications considering the factors specifically set out in the Criteria, and the policies set out in G.S. §143B-437.11(a).

6.2 **Cost/Benefit Analysis**

Upon receipt and distribution of a completed Application, the Commerce Finance Center will coordinate the performance of an analysis, in a form approved by the Secretary, to determine whether the total benefits of the Project to the State outweigh its costs. A copy of the results of this analysis will be distributed by the Commerce Finance Center to the Committee with the Application materials.

6.3 **Additional Information Requested**

Committee members who wish to request additional information from an Applicant should inform the Commerce Finance Center of the additional information sought. The Commerce Finance Center will coordinate obtaining any additional information sought from the Applicant.

7.0 **CRITERIA FOR DECISION-MAKING**

7.1 **General Principles**

Grant decisions under the Program require a qualitative analysis of a variety of different factors, both in the decision to award and the decision on the amount to be awarded. The relatively small number of Grants that may be awarded, and the limited funding available under the Program, the wide array of factors recommended or required for consideration, and the requirement that Committee recommendations be made upon a majority vote, operate to compel the making of fine distinctions on which reasonable people, including members of the Committee, may differ.

The Department and the Committee will endeavor to weigh all factors when considering Projects and Applications, always being mindful of the need to identify Projects consistent with the purposes of the Program.

The realities of economic development by Businesses dictate that the Committee and the Department must make their decisions one at a time over the course of a year, and not collectively at the end of a set period. Thus, the decision to award a Grant to a particular Applicant will reflect the Committee's best judgment at that point in time concerning use of the limited resources available to it at that time.

7.2 **Criteria to be Weighed in Selecting Projects for Grants**

In addition to the basic criteria required to be eligible to apply, set out in Section 3.1 of these Criteria, the Department and the Committee will consider factors such as the following in determining whether a Project should be awarded a Grant and the terms under which such Grant should be awarded:

(a) Factors related to the economic and fiscal impact of the Project, such as the following:

- i. Impact on gross regional product and gross State product.
- ii. Costs and benefits of the Project to the State, including the expected return on investment made in the Project by the State.
- iii. Number of Full-Time Positions that will be retained by the Project, that are likely to be at risk, the wages of those jobs, and the total payroll for the Project.
- iv. Number of induced short-term, Project-related jobs expected to be generated by the Project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the Project (or the number of such jobs that would be lost over time, if the Grant were not provided).
- v. Dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.
- vi. Economic circumstances of the county and region, including the extent to which the Project will serve to mitigate or prevent unemployment.
- vii. The expected time frame during which the Project is expected to pay back in State tax revenues the amount of any Grant payments to be made.
- viii. The economic demands the Project is expected to place upon the community or communities in which it is located.
- ix. The number of Eligible Positions that are filled by residents of development zones.
- x. The extent to which the Project provides increased revenues to the State's political subdivisions.

(b) Factors related to the strategic importance of the Project to the State, region, or locality, such as the following:

- i. The extent to which the Project builds or enhances an industrial cluster.
- ii. The extent to which the Project falls within a classification of business and industry that the Department regards as a target for growth and expansion in the State.

- iii. The ability of the Project to attract follow-on investment in the State by suppliers and vendors.
 - iv. The extent to which the Project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process.
 - v. The extent to which the Project can be expected to contribute significantly to and support the local community, in particular, the extent to which tax revenues are increased.
 - vi. The extent to which the Project will otherwise stimulate economic activity.
- (c) Factors related to the quality of jobs, such as the following:
- i. The wage level and status of the jobs to be retained, and the extent to which these are high-paying jobs.
 - ii. The quality and value of benefits offered by the company.
 - iii. The potential for employee advancement.
 - iv. The extent of training programs offered by the company, and the development and strengthening of a sustainable highly-skilled workforce.
 - v. The sustainability of the jobs in the future.
 - vi. The workplace safety record of the company.
- (d) Factors related to the quality of the industry and the Project, such as the following:
- i. The nature of the Project and the Project's relationship to the larger business of the company.
 - ii. The nature of the industrial classification of the Project and the nature of the business of the company undertaking it.
 - iii. The long-term prospects for growth at the Project site or sites.
 - iv. The long-term prospects for growth of the company and the industry within the United States.
 - v. The Project's contribution to the diversity in the State's industrial base.
- (e) Factors related to the environmental impact of the Project, such as the following:
- i. The nature of the business to be conducted.
 - ii. The ability of the Project to satisfy State, federal, and local environmental law and regulations.

- (f) Factors related to the Applicant:
 - i. The financial stability of the Applicant.
 - ii. Past performance of the Applicant under other economic development assistance programs.
 - iii. Bankruptcy history of the Applicant and related parties, and their management and principals.
 - iv. The presence or absence of good corporate governance practices and good corporate citizenship.

- (g) Other factors that the Committee considers relevant that are not inconsistent with this section and that the Committee determines will further the purposes of Part 2 of Article 10 of Chapter 143B of the General Statutes, including a determination as to the extent to which the Grant is necessary for the Project, in order to maintain jobs in the State and create the proposed capital investment, and the extent to which the total benefits of the Project to the State outweigh its costs. As a general rule, the higher the wages, skill levels, benefits and sustainability of the jobs, the more appropriate is a Grant.

8.0 DECISIONS ON APPLICATIONS

8.1 **Communication with Applicant Prior to Decision**

Prior to making a decision with respect to an Application, the Department may communicate with an Applicant regarding possible terms for a Grant in an effort to assess whether a Grant would be appropriate under the circumstances. The Committee will undertake or direct whatever further action may be required to reach consensus over the terms of a public Grant award and/or an Agreement.

8.2 **Manner of Decision**

Decisions and recommendations related to Grants will be made by a vote of at least three (3) members of the Committee.

8.3 **Grant Award Decisions and Terms**

If the Committee votes to recommend a Grant, it will specify the amount and terms of the Grant, the parties to the Agreement, the preferred form and details of State participation, and the performance criteria and safeguards required to protect the State's interests. A Grant award shall specify the Grant term, which shall not exceed ten (10) years (G.S. §143B-437.11(j)), and an annual maximum Grant amount for which a Grantee shall be eligible, which shall not exceed four million dollars (\$4,000,000), or such other amount as the General Assembly may specify from time to time. G.S. §143B-437.11(n). The recommendation may also specify

conditions that must occur or be met before a Grant may become effective, and amounts that must be paid, repaid, or reimbursed in the event of default.

The Committee may recommend tentative, nonbinding proposals of potential Grant terms to an Applicant prior to the award of a Grant.

8.4 **Specific Findings**

A recommendation to award a Grant must be accompanied by the following specific Committee findings:

- (a) The conditions for eligibility have been met.
- (b) A Grant for the Project is necessary to carry out the public purposes provided in G.S. §143B-437.11(a).
- (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, including providing at least fifty percent (50%) of the incremental additional local ad valorem tax payable by the Grantee on Required Investment.
- (e) A grant under this section is necessary for the sustainability and maintenance of the Project in this State.
- (f) The total benefits of the Project to the State outweigh its costs and render the Grant appropriate for the Project.
- (g) The Grant is consistent with the restriction on the number of Grants the Committee may award, specified in G.S. §143B-437.11(n).
- (h) The Grant is consistent with the restriction on the maximum total liability the State may incur for a single Grant, and for Grants in the aggregate.
- (i) Any other findings required by law.

8.5 **Notification to Applicant**

The Department will notify each Applicant in writing of whether or not a Grant has been recommended and approved for its Project and, if so, shall provide a description of the final basic terms of the Grant.

8.6 **Decisions Once Grant Maximums Reached**

If an Application is submitted after the Grant caps have been reached, it may be returned by the Department, without review.

9.0 **JOB MAINTENANCE AND CAPITAL INVESTMENT AGREEMENT**

9.1 **Agreement Required to Receive Funds**

Grants will be conveyed under Agreements with the Department, the standardized form of which shall be approved by the Department and the Attorney General, and executed by all Grantees and required related parties. Unless the Secretary determines that the Project is no longer eligible or appropriate for a Grant, the Department shall enter into an Agreement for each approved Grant.

9.2 **Parties**

The minimum parties to an Agreement will be the Department and the Grantee. The Attorney General is a required signatory. If a guarantor or other parties are required by the terms of the Grant award, all such entities must also be included as parties to the Agreement.

9.3 **Required Agreement Terms**

The Agreement shall include, at a minimum, the following terms:

- (a) All terms, conditions, and timing related to the Grant.
- (b) A detailed description of the Project and of the type and amount of Required Investment.
- (c) The Grant term (not to exceed ten (10) years).
- (d) The annual amount available under the Grant, and a statement that the ability of a Grantee to seek a Grant payment is subject to sufficient General Assembly appropriations for each year, and, to the extent such appropriations are insufficient for all Grantees, the maximum amount available shall be pro rated among all Grantees eligible for a Grant payment for the Grant year in question.
- (e) Provisions requiring minimum required performance, including the Wage Standard, Required Investment, Minimum Eligible Positions, Minimum Direct Employees, and provision of required health insurance.

- (f) Provisions describing performance failures and other conditions which may trigger payment, repayment, reimbursement, forfeiture or termination. Performance failures that result in termination may include, but are not limited to, events of three (3) or more consecutive years of failure to achieve the required Minimum Eligible Positions or Wage Standards. There shall also be a provision requiring forfeiture and repayment of all Grant amounts previously disbursed in the event of a failure to complete Required Investment in the amount of two hundred million dollars (\$200,000,000), as required under G.S. §143B-437.11(k). The Agreement shall require the Grantee to repay or reimburse Grant amounts previously disbursed, in amounts specified by the Department, in the event of a failure to meet minimum performance requirements, including with respect to Eligible Positions, Direct Employees, Wage Standard and provision of health insurance. G.S. §143B-437.11(k).
- (g) A term requiring that the Grantee receive no citations in North Carolina under the Occupational Safety and Health Act that become a final order for willful serious violations or for failing to abate serious violations with respect to the Facility.
- (h) A term requiring that the Grantee have no outstanding Overdue Tax Debts, and that no Grant payment will be payable for any year in which the Grantee has an Overdue Tax Debt.
- (i) The method for determining the basis on which the annual Grant payment will be calculated. Subject to the annual cap specified for Grant payments, and any other applicable limitations set forth in the Agreement, the annual amount for which a Grantee is eligible shall not exceed the sum of:
 - (i) ninety-five percent (95%) of Eligible Taxes, (ii) one hundred percent (100%) of Worker Training Expenses, and (iii) one hundred percent (100%) of Eligible Fees.
- (j) A method for the Grantee to report annually to the Department the number of Eligible Positions, Required Investment, and payment of Eligible Remittances, and other information required by the Department to assess compliance with the Agreement.
- (k) A provision permitting an audit by the Department of the records of the Grantee and any other Agreement parties relating to performance under the Program, as the Department considers necessary.
- (l) A method for securing payments, repayments or reimbursements from the Grantee, including requiring a guarantor.
- (m) Any remedies and/or safeguards recommended by the Committee or required by the Department to protect the State's interests.

- (n) A provision stating that the Agreement is binding and constitutes a continuing contractual obligation of the State and other parties.
- (o) A term requiring that the Grantee provide health insurance for workers in all of Full-Time Positions, with the Grantee paying 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. § 58-5-125.
- (p) A provision requiring the Grantee to maintain the Minimum Eligible Positions and Minimum Direct Workers.
- (q) A provision that requires the Grant to be reduced to the percentage of Minimum Eligible Positions actually maintained, when at least eighty percent (80%) of the Minimum Eligible Positions are maintained.
- (r) A provision that makes the Grantee ineligible for a Grant payment in any year in which it fails to (i) maintain at least 2,000 Eligible Positions, (ii) maintain at least eighty percent (80%) of the Minimum Eligible Positions or Minimum Direct Employees, (iii) satisfy the Wage Standard, or (iv) make health insurance available to workers in all Full-Time Positions.
- (s) A provision that requires the Grantee to ensure that all newly hired employees of the Business are citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.
- (t) A provision describing any restrictions on other operations of the Grantee in the State, and any restrictions with regard to the Grantee creating Eligible Positions by transferring or shifting to the Project existing positions or employees from another project of the Grantee or its affiliates in the State, such as requiring no net loss of positions at the transferring entity.
- (u) A provision that prohibits the Grantee from counting as Required Investment, any equipment transferred from another location of the Grantee or its affiliates in the State.

9.4 **Exhibits to Agreement**

Agreements shall include as exhibits a copy of these Criteria and the general statute establishing and governing the Program (G.S. 143B, Article 10, Part 2), in effect on the date the Grant is awarded, which shall be the effective date of the Agreement. The exhibits may be amended by replacing the foregoing with amended Criteria and/or statutes, if the parties agree.

9.5 Signatures

To be effective against the State of North Carolina, an Agreement must be signed personally by the Secretary and by the Attorney General.

An Agreement must be signed by an officer of the Grantee and any required other party to the Agreement, with authority to bind the entity on whose behalf such officer signs.

10.0 GRANTEE REPORTING REQUIREMENTS TO QUALIFY FOR ANNUAL GRANT PAYMENT

10.1 Annual Reports and Certifications Required of Grantees

- (a) Every Grantee shall submit a certified annual report on or before one hundred twenty (120) days following the last day of its fiscal year. Any additional required parties will also be required to provide certified reports.
- (b) Annual reports shall include, at a minimum:
 - (i) Direct Employees (names and salaries) on the Grantee's payroll on the last day of the Grantee's fiscal year, and dates of hire for such employees, copies of the North Carolina Employment Security Commission Form NCUI 101 and any other documentation requested by the Department to verify job retention and salary levels.
 - (ii) Names and salaries of Contract Workers working for the Grantee on the last day of the Grantee's fiscal year, who have been working for at least 1,600 hours of that fiscal year, or who, together with a replaced Contract Worker, has worked for the Grantee for at least 1,600 hours, including the dates when such Contract Workers commenced and terminated work at the Facility.
 - (iii) A copy of the Grantee's State and Federal tax returns, including sales and use tax forms. Payroll and tax information submitted under this subsection is tax information subject to G.S. §105-259.
 - (iv) Calculations and supporting documents demonstrating Eligible Remittances paid in the year just ended. Calculations shall separately designate amounts paid with respect to Required Investment. The Grantee must demonstrate that Eligible Taxes relate only to Required Investment, and do not include payments attributable to other facilities or equipment.

- (v) For franchise tax, the figure that represents the Required Investment for that reported period, multiplied by .0015, less any tax credits received (subject to any change in rate that may become effective).

A schedule of monthly privilege tax remitted on Required Investment, and sales tax provided to energy providers attributable only to the Facility.

To qualify for Grant payments based on sales tax paid by contractors and subcontractors on building material purchases, information obtained from contractors and subcontractors set forth in Sales and Use Tax Technical Bulletin Section 17-2 E, together with a schedule of payments by such contractors and subcontractors showing when tax was paid on expenditures related to Required Investment.

Copies of releases provided by contractors and subcontractors permitting the Department to verify tax information with the Department of Revenue.

Amounts and dates of any refunds received for any Eligible Taxes paid, and any claims for overpayments made on Eligible Taxes.

With the first annual report, tax returns and spreadsheets showing Eligible Remittances paid for the three (3) years prior to making any Required Investment.

Certified copies of detailed paid invoices from providers of training for which the Grantee has incurred Worker Training Expenses (along with all details of any reimbursement received from any source for amounts included on such invoices).

Certified copies of detailed receipts for Eligible Fees paid.

- (v) A certification that the Grantee has met the terms of the Agreement.
- (vi) A certification of the average wage of workers in Eligible Positions.
- (vii) A fixed asset report showing the amount of Required Investment made.
- (viii) A certification that the Grantee has received no citations in North Carolina under the Occupational Safety and Health Act that have

become a final order for willful serious violations or for failing to abate serious violations with respect to the Facility.

- (ix) A certification that the Grantee has no outstanding Overdue Tax Debts;
 - (x) A certification that neither the Grantee (nor anyone on the Grantee's behalf) has manipulated or attempted to manipulate any reported figures or other reported information, with the purpose of increasing the amount of a Grant.
 - (xi) A certification that the Grantee continues to provide health insurance for employees in all Eligible Positions. G.S. § 143B-437.11(f).
 - (xii) Any other information required to be reported annually under the Agreement.
 - (xiii) Any additional information that the Grantee reasonably deems to be material, or that the Committee or Department deem necessary or desirable to verify compliance with the Agreement or statutes governing the Program.
- (c) If necessary to achieve the purposes of the Program, the Committee and Department may adapt the structure of the Grant reporting requirements and timing of payments to accommodate the Grantees' fiscal and tax cycles and/or the Department's Grants cycle. The Department will communicate to the Grantee any changes in required information or forms specified in this Section, as a result of changes that impact information required to assess compliance with the Grant terms and eligibility for Grant payments.

10.2 **Confidential Information Included in Annual Report**

All documents of the Department, including annual reports, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information.

When specific information in an annual report is regarded by the submitter and by law as confidential, that entity should specifically and clearly designate it as such in writing, at the time of delivery, in the manner specified in Section 4.4 of these Criteria, and should provide an explanation for why such information should be regarded as confidential. Reports should not be indiscriminately marked as confidential.

10.3 Procedure for Handling Reports

- (a) Annual reports shall be typed or printed, certified, and submitted to the Commerce Finance Center by mail addressed to:

Commerce Finance Center
N.C. Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301

or by hand delivery addressed to:

Commerce Finance Center
N.C. Department of Commerce
Education Building
4301 North Wilmington Street
Raleigh, North Carolina

Grantees shall also provide an electronic copy of reports as a Microsoft Word or Excel email attachment.

- (b) The Commerce Finance Center will review the annual report for completeness. The Commerce Finance Center will distribute relevant portions of the annual report to the Department of Revenue, which will also review the annual report for completeness with respect to tax information. If a report is incomplete, the Grantee will be notified of the deficiency, and, in order to remain eligible for a Grant payment that year, the Grantee must provide a corrected report within thirty (30) business days. The Commerce Finance Center will obtain verification from the Department of Revenue regarding the payment of Eligible Taxes and the existence of Overdue Tax Debts.
- (c) The Commerce Finance Center will review the annual report and assess the Grantee's compliance with the terms of its Agreement. The Commerce Finance Center will report the results of this review and assessment to the Secretary along with any recommendations for further inquiry or action, including whether payment, repayment or reimbursement, the forfeiture of future payments and/or termination is required.
- (d) Failure to file a complete report as required in Section 10.1(a) of the Criteria, or failure to file an amended report within the time period specified by the Committee, shall subject the Grantee to loss of eligibility for a Grant payment for that Grant year, but shall not relieve the Grantee of the obligation to file a report for that Grant year prior to the close of its fiscal year ending one year later.

11.0 EVALUATION OF REPORTS

11.1 **Committee Review of Reports and Assessments of Compliance**

After the Commerce Finance Center and the Department of Revenue have completed their review and assessment of an annual report and of a Grantee's compliance under an Agreement, they will present the results of their review and assessment to the Committee, recommending, if applicable, payment of a particular Grant amount based on calculations described in the Agreement.

Following a presentation, the Committee may direct such other action by staff as it deems appropriate. In an appropriate case, it may direct a Grantee to appear before it or staff to address particular issues raised in the review and assessment process.

If the Committee is satisfied with a Grantee's annual report and compliance under the Agreement and the Program, it will vote on confirming the Grant amount recommended by the Secretary.

11.2 **Amendment and/or Termination and/or Repayment**

In the event that a Grantee's performance raises an issue of amendment, termination, forfeiture of one or more Grant payments, or repayment, the Secretary shall take such action as he or she determines may be required or appropriate under the terms of the Agreement, the Program, and G.S. §143B-437.11, in order to protect the State's interests, given all of the circumstances, after consultation with the Committee and the Attorney.

12.0 AUDITS AND RECORD-KEEPING

12.1 **Audit Authority**

The Department may require any Grantee or other Agreement party to submit to an audit to confirm compliance under the Program at any time under such terms and conditions as it may specify.

12.2 **Audit Teams**

Audits under the Program will be conducted by a team that includes representatives of both the Department of Revenue and the Department of Commerce.

12.3 **Audit Results**

The results of an audit will be reported to the Secretary and the Committee by the audit team in such form as may be specified by the Secretary. At the direction of the Secretary, an audit opinion will be prepared by the audit team. The Secretary may then take such action as he or she deems appropriate.

12.4 **Confidentiality**

Information obtained in audits will be kept confidential to the extent allowed or required by law.

12.5 **Grantee Record-Keeping**

Grantees and other Businesses that are parties to Agreements are required to keep financial and other records that establish compliance with the Program for the duration of the Agreement and for a period of three years following termination of the Agreement.

12.6 **Manipulation of Investment, Tax and Eligible Position Information**

In the event the Department receives information that a Business has manipulated information provided to establish compliance with the performance requirements of the Agreement, including without limitation, Required Investment, Eligible Remittance, or Eligible Position information, the Department shall make such inquiry as may be necessary to evaluate the credibility of such information, considering all of the relevant circumstances.

Following an evaluation of the credibility of the report, the Secretary may take whatever action he or she deems appropriate under the circumstances, including directing an audit of the Grantee or other party to the Agreement.

In the event the Secretary finds that any such manipulation has occurred, he or she may terminate the Agreement, and obtain recovery of all Grant amounts previously disbursed to the Grantee, and take such other action as is available under the law.