

§ 143B-437.57. Community economic development agreement.

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

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

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

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

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

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