§ 143B-431.01. Department of Commerce – contracting of functions.

(a) Purpose. – The purpose of this section is to establish a framework whereby the Department of Commerce may contract with a North Carolina nonprofit corporation to assist the Department in fostering and retaining jobs and business development, international investment recruiting, international trade, marketing, and travel and tourism. It is the intent of the General Assembly that the Department develop a plan to work cooperatively with a nonprofit corporation for these purposes while safeguarding programmatic transparency and accountability as well as the fiscal integrity of economic development programs of the State.

(b) Contract. – The Department of Commerce is authorized to contract with a North Carolina nonprofit corporation to perform one or more of the Department's functions, powers, duties, and obligations set forth in G.S. 143B-431, except as provided in this subsection. The contract entered into pursuant to this section between the Department and the Economic Development Partnership of North Carolina is exempt from Articles 3 and 3C of Chapter 143 of the General Statutes and G.S. 143C-6-23. If the Department contracts with a North Carolina nonprofit corporation to promote and grow the travel and tourism industries, then all funds appropriated to the Department for tourism marketing purposes shall be used for a research-based, comprehensive marketing program directed toward consumers in key markets most likely to travel to North Carolina and not for ancillary activities, such as statewide branding and business development marketing. The Department may not contract with a North Carolina nonprofit corporation regarding any of the following:

(1) The obligation or commitment of funds under this Article, such as the One North Carolina Fund, the Job Development Investment Grant Program, the Industrial Development Fund, or the Job Maintenance and Capital Development Fund.
(2) The Division of Employment Security, including the administration of unemployment insurance.
(3) The functions set forth in G.S. 143B-431(a)(2).
(4) The administration of funds or grants received from the federal government or its agencies, except for the following:
    a. The State Trade and Export Promotion Program.
    b. The Manufacturing Extension Program.
(5) The administration of a site certification program. Nothing in this subdivision prohibits the contracting of responsibility for creating or maintaining a website with data on unutilized or underutilized properties in the State with potential commercial or industrial reuses.

(c) Oversight. – There is established the Economic Development Accountability & Standards Committee, which shall be treated as a board for purposes of Chapter 138A of the General Statutes. The Committee shall consist of seven members as follows: the Secretary of Commerce as Chair of the Committee, the Secretary of Transportation, the Secretary of Environmental Quality, the Secretary of Revenue, the Chair of the North Carolina Travel and Tourism Board, one member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate. Members appointed by the General Assembly shall be appointed for four-year terms beginning July 1 and may not be members of the General Assembly.

The Committee shall be administratively housed in the Department of Commerce. The Department of Commerce shall provide for the administrative costs of the Committee and shall provide staff to the Committee. The Committee shall meet at least quarterly upon the call of the Chair. The duties of the Committee shall include all of the following:

(1) Monitoring and oversight of the performance of a contract entered into pursuant to this section by the Department with a North Carolina nonprofit corporation.

(2) Receiving, reviewing, and referring complaints regarding the contract or the performance of the North Carolina nonprofit corporation, as appropriate.

(3) Requesting enforcement of the contract by the Attorney General or the Department.

(4) Auditing, at least biennially, by the Office of State Budget and Management, State Auditor, or internal auditors of the Department, the records of the North Carolina nonprofit corporation with which the Department has contracted pursuant to this section during and after the term of the contract to review financial documents of the corporation, performance of the corporation, and compliance of the corporation with applicable laws. A copy of any audit performed at the request of the Committee shall be forwarded to the North Carolina Travel and Tourism Board.

(5) Coordination of economic development grant programs of the State between the Department of Commerce, the Department of Transportation, and the Department of Environmental Quality.

(6) Any other duties deemed necessary by the Committee.

(d) Limitations. – Prior to contracting with a North Carolina nonprofit corporation pursuant to this section and in order for the North Carolina nonprofit corporation to receive State funds, the following conditions shall be met:

(1) At least 45 days prior to entering into or amending in a nontechnical manner a contract authorized by this section, the Department shall submit the contract or amendment, along with a detailed explanation of the contract or amendment, to the chairs of both the Senate Committee on Appropriations/Base Budget and the House of Representatives Committee on Appropriations, [the] chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division.

(2) The nonprofit corporation adheres to the following governance provisions related to its governing board:

a. The board shall be composed of 18 voting members as follows: the Secretary of Commerce, as an ex officio member, eight members and the chair appointed by the Governor, four members appointed by the Speaker of the House of Representatives, and four members appointed by the President Pro Tempore of the Senate. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each use best efforts to select members so as to reflect the diversity of the State's geography. The Speaker of the House and the President Pro Tempore shall each select their appointed members so that one-fourth come from a development tier one area, one-fourth come from a development tier two area, and no two members come from the same Collaboration for Prosperity Zone. The Governor shall select appointed members so that two-ninths come from a development tier one area, two-ninths come from a development tier two area, and no more than two members come from the same Collaboration for Prosperity Zone. The Governor shall use

best efforts to ensure that each member appointed by the Governor has expertise in one or more of the following areas:

1. Agribusiness, as recommended by the Commissioner of Agriculture.
2. Financial services.
3. Information technology.
4. Biotechnology or life sciences.
5. Energy.
6. Manufacturing.
7. Military or defense.
8. Tourism, as recommended by the North Carolina Travel and Tourism Coalition.
9. Tourism, as recommended by the North Carolina Travel Industry Association.

b. The nonprofit corporation shall comply with the limitations on lobbying set forth in section 501(c)(3) of the Internal Revenue Code.

c. No State employee, other than the Secretary of Commerce, may serve on the board.

d. The board shall meet at least quarterly at the call of its chair.

e. The board is required to perform the following duties if the Department contracts pursuant to this section for the performance of the Secretary's responsibilities under G.S. 143B-434.01:

1. To provide advice concerning economic and community development planning for the State, including a strategic business facilities development analysis of existing, available buildings or shell or special-use buildings and sites.
2. To recommend economic development policy to the General Assembly and the Governor.
3. To recommend annually to the Governor biennial and annual appropriations for economic development programs.
4. To recommend how best to coordinate economic development efforts among the various agencies and entities, including those created by executive order of the Governor, that receive economic development appropriations, including the assignment of key responsibilities for different aspects of economic development and resource allocation and planning designed to encourage each agency to focus on its area of primary responsibility and not diffuse its resources by conducting activities assigned to other agencies.

(3) The amount of State funds that may be used for the annual salary of any one officer or employee of the nonprofit corporation with which the Department contracts pursuant to this section shall not exceed the greater of (i) one hundred twenty thousand dollars ($120,000) or (ii) the amount most recently set by the General Assembly in a Current Operations Appropriations Act. Members of the governing board may receive only per diem and allowances pursuant to G.S. 138-5.

(4) The nonprofit corporation shall have received from fundraising efforts and sources, other than State funds, an amount totaling at least two hundred fifty thousand dollars ($250,000) to support operations and functions of the corporation.

(e) Mandatory Contract Terms. – Any contract entered into under this section shall include all of the following:

(1) A provision requiring the North Carolina nonprofit corporation provide to the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Department of Commerce, and the Fiscal Research Division a copy of the corporation's annual audited financial statement within seven days of issuance of the statement.

(2) A provision requiring the nonprofit corporation to provide by January 31 of each year, and more frequently as requested, a report to the Department on prior calendar year program activities, objectives, and accomplishments and prior calendar year itemized expenditures and fund sources. The report shall also include all of the following:

a. Jobs anticipated to result from efforts of the nonprofit corporation. This includes project leads that were not submitted to the Department for possible discretionary incentives pursuant to Chapter 143B of the General Statutes.

b. Developed performance metrics of economic development functions itemized by county, by development tier area designation, as defined by G.S. 143B-437.08, and by Collaboration for Prosperity Zones created pursuant to G.S. 143B-28.1.

c. Any proposed amendments to the areas of expertise required to be represented on the governing board of the nonprofit corporation.

d. A detailed explanation of how annual salaries are determined, including base pay schedules and any additional salary amounts or bonuses that may be earned as a result of job performance. The explanation shall include the proportion of State and private funds for each position and shall include the means used by the nonprofit corporation to foster employee efforts for economic development in rural and low-income areas in the State. Any bonuses paid to employees shall be based upon overall job performance and not be based on a specific project lead.

e. Any other information requested by the Department.

(3) A provision providing that, upon termination of the contract, or upon dissolution of, or repeal by the General Assembly of, the charter of the nonprofit corporation with which the Department has contracted under this section, all assets and funds of the nonprofit corporation, including interest on funds, financial and operational records, and the right to receive future funds pursuant to the contract, will be surrendered to the Department within 30 days of the termination, dissolution, or repeal. During the 30-day period, the corporation may not further encumber any assets or funds. For purposes of this subdivision, assets and funds of the nonprofit corporation include assets and funds of any subsidiary or affiliate of the nonprofit corporation. An affiliate of the nonprofit corporation exists when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(4) A provision providing that the nonprofit corporation shall adopt and publish a resolution or policy containing a conflict of interest policy and gift policy to

guide actions by the governing board members, officers, and employees of the nonprofit corporation in the performance of their duties.

(5) The conflict of interest policy required by subdivision (4) of this subsection shall contain at a minimum the information in this subdivision. No subject person of the nonprofit corporation may take any official action or use the subject person's official position to profit in any manner the subject person, the subject person's immediate family, a business with which the subject person or the subject person's immediate family has a business association, or a client of the subject person or the subject person's immediate family with whom the subject person, or the subject person's immediate family, has an existing business relationship. No subject person shall attempt to profit from a proposed project lead if the profit is greater than that which would be realized by other persons living in the area where the project lead is located. If the profit under this subdivision would be greater for the subject person than other persons living in the area where the project lead is located, not only shall the subject person abstain from voting on that issue, but once the conflict of interest is apparent, the subject person shall not discuss the project lead with any other subject person or representative of the Department except to state that a conflict of interest exists. Under this subdivision, a subject person is presumed to profit if the profit would be realized by the subject person, the subject person's immediate family, a business with which the subject person or the subject person's immediate family has a business association, or a client of the subject person or the subject person's immediate family with whom the subject person, or the subject person's immediate family, has an existing business relationship with a company that is the subject of a proposed project lead. No subject person, in contemplation of official action by the subject person, or in reliance on information that was made known to the subject person in the subject person's official capacity and that has not been made public, shall (i) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by such information or official action or (ii) intentionally aid another to do any of the above acts. As used in this subdivision, the following terms mean:

a. Board. – The governing board of the nonprofit corporation with which the Department contracts pursuant to this section.
b. Board member. – A member of the board.
c. Business association. – A director, employee, officer, or partner of a business entity, or owner of more than ten percent (10%) interest in any business entity.
d. Department. – The Department of Commerce.
e. Immediate family. – Spouse, children, parents, brothers, and sisters.
f. Official action. – Actions taken in connection with the subject person's duties, including, but not limited to, voting on matters before the board, proposing or objecting to proposals for economic development actions by the Department, discussing economic development matters with other subject persons or Department staff in an effort to further the matter after the conflict of interest has been discovered, or taking actions in the course and scope of the position as a subject person and actions leading to or resulting in profit.
g. Profit. – Receive monetary or economic gain or benefit, including an increase in value whether or not recognized by sale or trade.

h. Subject person. – A board member, officer, or employee of the nonprofit corporation.

(6) The gift policy required by subdivision (4) of this subsection shall at a minimum prohibit an employee, officer, or member of the board of the corporation from knowingly accepting a gift from a person whom the employee, officer, or member of the board knows or has reason to know (i) is seeking to do business of any kind in the State or (ii) has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of official duties of the employee, officer, or member of the board. This prohibition shall not apply to either of the following:

a. Gifts given to the employee, officer, or member of the board where the gift is food or beverages, transportation, lodging, entertainment or related expenses associated with industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the employee, officer, or member of the board is responsible for conducting the business on behalf of the State, provided (i) the employee, officer, or member of the board did not solicit the gift and did not accept the gift in exchange for the performance or nonperformance of corporate duties, and (ii) the employee, officer, or member of the board reports electronically to the corporation within 30 days of receipt of the gift, including a description and value of the gift and a description of how the gift contributed to industry recruitment, promotion of international trade, or the promotion of travel and tourism.

b. Gifts of personal property valued at less than one hundred dollars ($100.00) given to the employee, officer, or member of the board in the commission of corporate duties if the gift is given as a personal gift in another country as part of an overseas trade mission and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(7) A provision providing that the nonprofit corporation maintain a record containing the name of all persons who have contributed to the nonprofit corporation, the date of each contribution, and the aggregate total of all contributions to the nonprofit corporation. The nonprofit corporation shall include the record in the report required to be filed with the Department pursuant to subdivision (2) of subsection (e) of this section.

(8) A provision requiring the nonprofit corporation to maintain separate accounting records for and separate accounts for State and private funds and prohibiting any commingling of State and private funds. Records and accounts must be maintained according to generally accepted accounting principles.

(9) A provision stating that the nonprofit corporation will not engage in the awarding of grants of the public or private funds of the nonprofit corporation.

(10) A provision limiting the term of renewal of the contract to no more than three years. In the event of renewal, the Department shall provide notice of intention to renew the contract for the initial renewal no less than five months prior to the expiration of the remaining term of the contract, and the Department shall provide notice of intention to renew the contract for a subsequent renewal no less than one year prior to the expiration of the remaining term of the contract, including the term of any extension. A contract extension may not extend the

remaining term of the contract, including the term of the extension, to more than four years. A contract entered into under this section shall be on a calendar year basis.

(11) A provision prohibiting the use of State funds for the severance pay of the chief executive officer and other officers of the nonprofit corporation and otherwise limiting the severance pay from funds other than State funds to no more than the lesser of the following:

a. The salary limitation contained in subdivision (3) of subsection (d) of this section.

b. The salary limitation contained in subdivision (3) of subsection (d) of this section multiplied by a fraction, the numerator of which is the number of whole years the chief officer has been chief officer of the corporation and the denominator of which is four.

(12) A provision requiring annual certification by the nonprofit corporation that it is in compliance with the following:

a. The requirements of Chapter 55A of the General Statutes.

b. The requirements of each of the provisions listed in subsection (e) of this section. For any provision in this subsection that the nonprofit corporation did not comply with, the corporation shall provide a detailed explanation of the circumstances and time of the noncompliance.

(13) A provision requiring the nonprofit corporation to comply with and perform the duties set out in G.S. 143B-434.2 in the event the Department contracts with the nonprofit corporation to promote and market tourism.

(14) A provision allowing the nonprofit corporation to receive funds from fund-raising efforts and sources other than State funds.

(15) A provision that the limitation of G.S. 143C-6-8 applies.

(16) For any entity reported pursuant to subdivision (6) of subsection (f) of this section for a gift, contribution, or item or service of value for which fair market value exceeds one thousand dollars ($1,000) and was not paid, a provision requiring the nonprofit corporation to publish within seven days of the award: (i) the entity, (ii) the fair market value and description of that which was received from the entity by the nonprofit corporation or the affiliate entity of the corporation, and (iii) the date and amount of the award to the entity. This publication requirement is satisfied if the Department publishes the information required in this subdivision within seven days of the award either separately or as part of a press release concerning the award.

(17) A provision requiring the nonprofit to provide international investment recruiting resources to market and advertise the State as a business destination.

(f) Report. – By March 1 of each year, and more frequently as requested, the Department shall submit a report to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Fiscal Research Division on any performance for which the Department has contracted pursuant to this section. The report shall contain, at a minimum, each of the following presented on a calendar year basis:

(1) A copy of the most recent report required by the Department pursuant to subdivision (2) of subsection (e) of this section.

(2) An executive summary of the report required by subdivision (1) of this subsection.

(3) A listing of each entity referred to the Department by a North Carolina nonprofit corporation with which the Department contracts pursuant to this section and any other information the Secretary determines is necessary or that is specifically requested in writing.

(4) An explanation of the response by the Department to any notifications of noncompliance submitted to the Department by the nonprofit corporation, as required by G.S. 143B-431.01(e), including actions taken by the Department to prevent repeat or similar instances of noncompliance.

(5) For each activity in which the Secretary of Commerce solicits funds for the corporation, as permitted by subsection (i) of this section, a listing of each activity, including the date and the name of each person or entity from whom funds were solicited.

(6) If the nonprofit corporation or any affiliated entity of the corporation has received, directly or indirectly, any gift, contribution, or item or service of value for which fair market value was not paid and if an entity making the gift or contribution receives an award, a list of the entity and the amount of the award.

(g) Public Funds. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section shall comply with the requirements provided in this subsection regarding the use of State funds:

(1) Interest earned on State funds after receipt of the funds by the nonprofit corporation shall be used for the same purposes for which the principal was to be used.

(2) The travel and personnel policies and regulations of the State of North Carolina Budget Manual limiting reimbursement for expenses of State employees apply to reimbursements for expenses of officers, employees, or members of a governing board of the nonprofit corporation. Deviations from the policies and regulations shall be approved by the Secretary.

(3) State funds shall not be used to hire a lobbyist.

(h) Applicable Laws. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section is subject to the requirements of (i) Chapter 132 of the General Statutes and (ii) Article 33C of Chapter 143 of the General Statutes. Officers, employees, and members of the governing board of the corporation are public servants, as defined in 138A-3, and are subject to the requirements of Chapter 138A of the General Statutes. Employees of the corporation whose annual compensation is less than eighty thousand dollars ($80,000) are not subject to G.S. 138A-22.

(i) Prohibition. – A State officer or employee shall not solicit funds for a North Carolina nonprofit corporation with which the Department contracts pursuant to this section.

(j) Benefits. – An officer, employee, or member of a governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to this section is not a State employee, is not covered by Chapter 126 of the General Statutes, and is not entitled to State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees.

(k) Raised Funds. – For funds raised from sources other than State funds by the nonprofit corporation, at least twenty-five percent (25%) of the funds shall be used for the benefit of or for salaried positions located in or working solely on development in development tier one or two areas, as defined in G.S. 143B-437.08. (2014-18, s. 1.1(a); 2014-109, s. 1; 2014-115, s. 57; 2015-7, s. 10; 2015-241, ss. 14.30(u), (v), 15.1; 2015-264, s. 19; 2016-94, s. 15.6(b); 2017-6, s. 3;

2017-57, ss. 14.1(r), 15.3(a); 2018-5, ss. 15.5(b), 15.5(c); 2018-142, s. 13(a); 2018-146, ss. 3.1(a), (b), 6.1; 2019-50, ss. 1-4; 2025-25, s. 29(5).)