

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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HOUSE DRH10938-MC-126 (3/4)

Short Title: Communities of Opportunity Fund.

(Public)

Sponsors: Representative Adams.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH COORDINATION OF CERTAIN FEDERAL FUNDS
3 ALLOCATED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT
4 OF 2009 TO STIMULATE JOB CREATION AND ECONOMIC RECOVERY, TO
5 ACHIEVE WIDELY SHARED PROSPERITY IN THE STATE, TO PROVIDE FOR
6 GOALS IN THE ALLOCATION OF THOSE FUNDS TO LOCAL GOVERNMENTS,
7 AND TO ALLOW OTHER LOCAL GOVERNMENT OPTIONS.

8 Whereas, the federal government passed the American Recovery and Reinvestment
9 Act of 2009 to save and create jobs, get the nation's economy moving again, and transform it
10 for long-term growth and stability; and

11 Whereas, the federal legislation invests large sums for projects involving the energy
12 technology industry including renewable energy, mass transit, flood control, clean water
13 projects, energy efficiency and modernization of the nation's electric grid, and other
14 infrastructure projects; and

15 Whereas, the legislation is intended to create and save 3.5 million jobs, rebuild
16 America, making the nation more globally competitive and energy independent and
17 transforming the nation's economy; and

18 Whereas, the anticipated shift to a more competitive new economy creates an
19 unparalleled opportunity to address not only unemployment and the climate crisis but also
20 deeply rooted social problems such as poverty and the economic uplift of distressed
21 communities impacting inequality among residents of North Carolina; and

22 Whereas, some jobs in the evolving new economy may show a wide variation in
23 labor conditions, including some paying rates falling short of livable wage levels adequate to
24 sustain North Carolina families; and

25 Whereas, analysis of overall construction employment data for nonunion
26 construction worker wage rates for laborers, carpenters, painters, and roofers shows a majority
27 make less than twelve dollars and fifty cents (\$12.50) per hour, and a third make less than the
28 federal poverty wage for a family of four; and

29 Whereas, there are other examples of solid, middle-class jobs crated in various new
30 economy industries where significant job growth is anticipated that offer wages, benefits, and
31 working conditions needed to sustain families and communities; and

32 Whereas, new energy technology career categories are emerging at an
33 unprecedented pace, and skill sets traditionally associated with energy technology are cutting
34 across both traditional and emerging industries. Energy technologies and services apply



1 principles of science, engineering, communication, economics, management, and law to
2 optimize the sustainable production, delivery, and use of energy resources; and

3 Whereas, analysis of locations where State and local governments attach strong
4 labor standards to economic development subsidies and enforce those standards indicates these
5 locations have produced some of the highest average wages; and

6 Whereas, a large number of State and local governments already apply job quality
7 standards to ensure new jobs created are also good jobs; and

8 Whereas, companies expected to benefit directly or indirectly from the investment
9 of taxpayer dollars in the form of funding to be allocated in North Carolina under the American
10 Recovery and Reinvestment Act should be held accountable for creating good jobs; and

11 Whereas, the State should aggressively promote use of tools including labor
12 standards for subsidy recipients, living wage rules for government contractors, prevailing wage
13 requirements, best value contracting and community benefits agreements to ensure government
14 funds are not used to undercut local market wage rates; and

15 Whereas, the State should also provide enhanced funding, planning, and
16 environmental review incentives to encourage such sustainable development; Now, therefore,
17 The General Assembly of North Carolina enacts:

18 **SECTION 1.** Article 10 of Chapter 105 of the General Statutes is amended by
19 adding a new section to read:

20 **"§ 143B-437.013. Communities of Opportunity Fund.**

21 (a) Fund. – The Communities of Opportunity Fund is created as a restricted reserve in
22 the Department of Commerce. Monies in the Fund do not revert but remain available to the
23 Department for the purpose of stimulating job creation and economic recovery by allocating the
24 funds to local government and nongovernmental entities in accordance with this section.

25 (b) Definitions. – The following definitions apply in this section:

26 (1) ARRA. – The American Recovery and Reinvestment Act.

27 (2) Recipient. – An entity eligible to receive funds under the provisions of
28 ARRA.

29 (3) Department. – The Department of Commerce.

30 (4) Fund. – The Communities of Opportunity Fund.

31 (5) Best Value procurement. – The selection of a contractor based on a
32 determination of which proposal offers the best trade-off between price and
33 performance, where quality is considered an integral performance factor.
34 The award decision is made based on multiple factors, including: total cost
35 of ownership, meaning the cost of acquiring, operating, maintaining, and
36 supporting a product or service over its projected lifetime; the evaluated
37 technical merit of the vendor's proposal; the vendor's past performance; and
38 the evaluated probability of performing the requirements stated in the
39 solicitation on time, with high quality, and in a manner that accomplishes the
40 stated business objectives and maintains industry standards compliance.

41 (c) Eligibility. – No grant from the Fund may be approved unless each of the following
42 requirements is satisfied:

43 (1) The recipient is either a county or a nongovernmental entity operating in a
44 county with one of the 25 highest average rates of unemployment in the
45 State.

46 (2) The recipient submits a Sustainable Communities Agreement to the
47 Department detailing an investment of at least eighty percent (80%) of any
48 grant from the Fund to acquiring tangible personal property for the purpose
49 of engaging in business in or hiring employees skilled in one of the
50 following energy technology areas:

51 a. Buying and selling renewable energy.

- b. Energy efficiency assessment.
- c. Energy efficient building construction.
- d. Project engineering and implementation.
- e. Exploration.
- f. Alternative or clean energy generation and utility-scale construction.
- g. Operations and maintenance.
- h. Regulatory affairs.
- i. Transmission and distribution.
- j. Clean energy transportation.

(3) The Department certifies that the recipient has invested or will make the investment required by subdivision (2) of this subsection.

(d) Best Value Procurement Authorized. – In submitting a Sustainable Communities Agreement, the recipient may utilize Best Value procurement. The intent of Best Value procurement is to enable contractors to offer and the agency to select the most appropriate solution to meet the objectives defined in the agreement and to keep all parties focused on the desired outcome of a procurement.

(e) Wage Standard. – A recipient is eligible for consideration for a grant under this section only if the recipient satisfies a wage standard at the project that is the subject of the agreement. A recipient satisfies the wage standard if it pays an average weekly wage that is at least equal to the average wage in the State of employees of all insured private employers in the county who have comparable education and job duties. The Department shall annually publish the wage standard for each county. In making the wage calculation, the recipient shall include any jobs that were filled for at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time positions or equivalent full-time contract positions. Each year that a grant agreement is in effect, the recipient shall provide the Department a certification that the recipient continues to satisfy the wage standard. If a recipient fails to satisfy the wage standard for a year, the recipient is not eligible for a grant payment for that year.

(f) Health Insurance. – A recipient is eligible for consideration for a grant under this section only if the recipient makes available health insurance for all of the full-time employees and equivalent full-time contract employees of the project with respect to which the application is made. For the purposes of this subsection, a recipient 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.

Each year that a grant agreement under this section is in effect, the recipient shall provide the Department a certification that the recipient continues to make available health insurance for all full-time employees of the project governed by the agreement. If a recipient fails to satisfy the requirements of this subsection, the recipient is not eligible for a grant payment for that year.

(g) Safety and Health Programs. – A business is eligible for consideration for a grant under this section only if the business has no citations under the Occupational Safety and Health Act that have become a final order within the last three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

(h) Environmental Impact. – A recipient is eligible for consideration for a grant under this section only if the recipient has 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 has 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

1 the last three years with respect to the location for which the grant is made. For the purposes of
2 this subsection, a significant violation is a violation or alleged violation that does not satisfy
3 any of the conditions of G.S. 143-215.6B(d).

4 (i) Selection. – The Department shall administer the selection of projects to receive
5 grants under this section. The selection process shall include the following components:

6 (1) Criteria. – The Department shall develop criteria to be used to identify and
7 evaluate eligible projects for possible grants under this section.

8 (2) Initial evaluation. – The Department shall evaluate projects to determine if a
9 grant under this section is merited and to determine whether the project is
10 eligible and appropriate for consideration for a grant under this section.

11 (3) Application. – The Department shall require a recipient to submit an
12 application in order for a project to be considered for a grant under this
13 section. The Department shall prescribe the form of the application, the
14 application process, and the information to be provided, including all
15 information necessary to evaluate the project in accordance with the
16 applicable criteria.

17 (4) Committee. – The Department shall submit to the Economic Investment
18 Committee the applications for projects the Department considers eligible
19 and appropriate for a grant under this section. The Committee shall evaluate
20 applications to choose projects to receive a grant under this section. In
21 evaluating each application, the Committee shall consider all criteria adopted
22 by the Department under this section and, to the extent applicable, the
23 factors set out in Section 2.1(b) of S.L. 2002-172.

24 (5) Findings. – The Committee shall make all of the following findings before
25 recommending a project receive a grant under this section:

26 a. The conditions for eligibility have been met.

27 b. A grant under this section for the project is necessary to carry out the
28 public purposes provided in subsection (a) of this section.

29 c. The project is consistent with the economic development goals of the
30 State and of the area where it is located.

31 (6) Recommendations. – If the Committee recommends a project for a grant
32 under this section, it shall recommend the amount of funds to be committed
33 and the performance criteria and safeguards to be required in order to protect
34 the investment of grant funds.

35 (j) Agreement. – Unless the Secretary of Commerce determines that the project is no
36 longer eligible or appropriate for a grant under this section, the Department shall enter into an
37 agreement to provide a grant or grants for a project recommended by the Committee. Each
38 grant agreement is binding and constitutes a continuing contractual obligation. The grant
39 agreement shall include the performance criteria, remedies, and other safeguards recommended
40 by the Committee or required by the Department. Where applicable, each grant agreement shall
41 contain a provision prohibiting a recipient from receiving a payment or other benefit under the
42 agreement at any time when the recipient has received a notice of an overdue tax debt and the
43 overdue tax debt has not been satisfied or otherwise resolved. Nothing in this section
44 constitutes or authorizes a guarantee or assumption by the State of any debt of any business or
45 authorizes the taxing power or the full faith and credit of the State to be pledged.

46 The Department shall cooperate with the Attorney General's office in preparing the
47 documentation for the grant agreement. The Attorney General shall review the terms of all
48 proposed agreements to be entered into under this section. To be effective against the State, an
49 agreement entered into under this section shall be signed personally by the Attorney General.

50 (k) Safeguards. – To ensure that public funds are used only to carry out the public
51 purposes provided in this section, the Department shall require that each recipient that receives

1 a grant under this section shall agree to meet performance criteria to protect the State's
2 investment and ensure that the projected benefits of the project are secured. The performance
3 criteria to be required shall include maintenance of an appropriate level of compensation,
4 maintenance of health insurance for all full-time employees, and any other criteria the
5 Department considers appropriate. The agreement shall require the recipient to repay or
6 reimburse an appropriate portion of the grant based on the extent of any failure by the recipient
7 to meet the performance criteria.

8 (l) Monitoring and Reports. – The Department is responsible for monitoring
9 compliance with the performance criteria under each grant agreement and for administering the
10 repayment in case of default. The Department shall pay for the cost of this monitoring from
11 funds appropriated to it for that purpose or for other economic development purposes.

12 Within two months after the end of each calendar quarter, the Department shall report to the
13 Joint Legislative Commission on Governmental Operations regarding the Communities of
14 Opportunity Fund. This report shall include a listing of each grant awarded and each agreement
15 entered into under this section during the preceding quarter, including the name of the recipient,
16 the cost/benefit analysis conducted by the Committee during the application process, a
17 description of the project, and the amount of the grant expected to be paid under the agreement
18 during the current fiscal year. The report shall also include detailed information about any
19 defaults and repayment during the preceding quarter. The Department shall publish this report
20 on its Web site and shall make printed copies available upon request."

21 **SECTION 3.** This act becomes effective January 1, 2010.