

SUBCHAPTER 01I – INDUSTRIAL DEVELOPMENT FUND

SECTION .0100 – PURPOSE AND DEFINITIONS

04 NCAC 01I .0101 BACKGROUND AND OBJECTIVES

(a) BASIC - The purpose of the North Carolina Industrial Development Fund is to assist town, city or county governments with incentive industrial financing in areas of the state that have been designated as eligible tier areas by NC General Statutes. This assistance is intended to help units of government offer to its new and expanding industry, new or improved infrastructure, or funds for building renovation and equipment in exchange for commitments to create new, full-time jobs in industries currently eligible under NC General Statutes. (The fund is not designed to be used for the acquisition of land and buildings or constructing new buildings.) If the assistance is used for infrastructure, it shall be granted to local governments with no repayment; however, if it is used to purchase equipment or to renovate industrial buildings, then the funds must be repaid. But whether a grant or a loan, the amount of funds to be made available for a project shall be determined by the number of new jobs committed, with a maximum job limit and project limit as currently authorized for the program by NC General Statutes.

(b) EMERGENCY ECONOMIC DEVELOPMENT ASSISTANCE - This special assistance from the Industrial Development Fund is available to units of government that have, or shall imminently experience, a loss of 500 or more manufacturing jobs in the county, or a number of manufacturing jobs equal to at least 10% of the manufacturing workforce in the county. Where a unit of government relies on the 500 jobs lost as the threshold for obtaining this special assistance, it must submit evidence that the loss impacts the county's economy, taking into account the county's tier ranking under Rule .0701 of this Subchapter. The funding obtainable under this emergency assistance category shall not necessarily be determined by the number of new jobs to be created, although the project should lead to new jobs or saved jobs or both and help alleviate a jobs dislocation problem. The Secretary shall determine the amount of funds for a project, up to the maximum currently authorized for the program by NC General Statutes. This assistance shall be in the form of a low interest loan to the governmental unit, amortized over five years with repayment beginning at the end of the second year.

(c) UTILITY ACCOUNT - Within the IDF structure, the Utility Account provides financing to units of government for jobs creation and investment in the tier area(s), and for benefiting firms currently authorized by NC General Statutes. Funds may be used for construction or improvements to water, sewer, gas, or electrical utility lines and equipment for existing or proposed industrial buildings. There is no specific amount of funding specified for each new job or project, but the impact of the funding shall lead to the creation of new jobs and new investment. As with basic IDF financing, if Utility Account funds are spent for public property, the assistance shall be a grant; for private property, it shall be a loan.

*History Note: Authority G.S. 143B-437.01;
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Eff. May 1, 1988;
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04 NCAC 01I .0102 DEFINITIONS

(a) These definitions apply to all parts of the Industrial Development Fund including the Basic Emergency Economic Development Assistance, Utility Account and Clean Water Bonds for Economic Development:

- (1) "Department" means the North Carolina Department of Commerce, or its Secretary.
- (2) "Applicant" means a North Carolina unit of government that applies for IDF funds.
- (3) "Industrial Development Fund" as referenced in G.S. 143B-437.01 means the fund within the Department's fiscal structure in which the appropriation of monies for industrial development projects is received and disbursed.
- (4) "IDF" means the Industrial Development Fund.
- (5) "Eligible tier areas" means the aggregation of North Carolina counties into groups in which certain economic benefits apply, as currently authorized by G.S. 105-129.3.
- (6) "Unit of Government" means a town, city or county of the state.
- (7) "Full-time Job" means a job that requires at least 1600 hours of work in a year.

- (8) "Infrastructure" means utilities, typically referred to as "public utilities," or a rail spur where there is public ownership of the rail property.
- (9) "Grant" means money given to a unit of government to pay for an economic development project and does not have to be repaid, if the terms of the grant are fulfilled, i.e. the jobs commitment is met.
- (10) "Loan" means money loaned to a unit of government to pay for an economic development project, to be repaid by the borrower.
- (11) "Project" means an activity proposed for IDF funding. It shall be described narratively in an application and accompanied by a preliminary set of drawings, or sketches, or other data that present the project in factual detail, together with a schedule or itemization of costs from an engineer or contractor. The schedule of costs shall constitute the ability to complete a project with no more than a 10 percent contingency.
- (12) Project expenditures means:
- (A) For basic IDF -
 - (i) the construction of, or improvements to water, sewer, gas or electrical utility systems, distribution lines, or required storage facilities, or a rail spur when either is publicly owned and operated, and or;
 - (ii) the renovation of buildings including structural repairs, repairs, addition of docks, erection of walls, structural supports for heavy equipment, electrical upgrades, or HVAC upgrades;
 - (iii) improvements that are necessary to make a building suitable for occupancy by the operator of the project. Such improvements may include mechanical equipment such as heating and air conditioning equipment, plumbing, pipes or trenching to handle effluents or process water, special electrical additions and lighting. If an improvement is critical to the operation of a or is critical to the decision making process pertinent to the creation of jobs, the actual improvement need not be located on the site of the main project building. If, however, a grant of funds is involved, the improvement must be constructed on public right-of-ways or on property which the unit of government has an easement to treat as it normally would do as if it owned the property. However, when extending infrastructure to a firm, IDF assistance ends at the private property line. In either situation, the application must document the exact relationship between the jobs and the project. An example of a fundable project would be where the unit of government must construct an elevated water tank and service lines to provide water to a building where such service is directly required to operate an industrial-business. An example of an unfundable project would be where a unit of government seeks to expand or to repair its water utility (or other infrastructure) system and where the relationship to the creation of jobs is fairly general or vague. The project shall be described from the perspective of employment to be created and its impact to the project.
 - (iv) the purchase and installation of equipment that is associated with the industrial classification of the project.
 - (B) For Emergency Economic Development Assistance -
Loans to local units of government for economic development projects designed to create jobs, lead to the creation of jobs, or save jobs, and to assist in alleviating the economic dislocation created by the loss of jobs.
 - (C) For the Utility Account -
 - (i) the construction of, or improvements to water, sewer, gas or electrical utility systems, distribution lines, or required storage facilities, or a rail spur or rail line when either is publicly owned and operated, and/or
 - (ii) equipment for existing or proposed industrial buildings for operations in the industrial classifications that are currently eligible to receive Utility Account.
 - (D) For Clean Water Bonds -
 - (i) the construction of or improvements to new or existing water or sewer distribution lines or equipment,

- (ii) the construction or improvements to new or existing wastewater treatment facilities, or
 - (iii) improvements that will expand the capacity of existing wastewater treatment facilities or water supply systems.
- (13) "State" means the State of North Carolina.
- (14) "Application" means the pages of documents in which an applicant for IDF funds identifies itself, describes a project, specifies the funds required, provides a breakdown of project costs, and submits the benefiting firm's commitment to create jobs and evidence of its credit worthiness.
- (15) "Local Matching Funds" means funds of a unit of government contributed to an economic development project for the purpose of assisting in a total financing package and earning (or winning) other funds by doing so. Matching is usually expressed as a ratio, i.e. one local dollar for three state dollars, or one for three.
- (16) "Participation Loan" means a loan among at least three parties, including: A bank or financial institution, the private firm, and the unit of government. The essence of a participation loan is that the bank, or financial institution, and the unit of government shall share at least equally in the lending arrangements, meaning the money loaned and the risk involved and collateral shared.
- (17) "Borrower" means the private firm identified in a participation loan for building improvement or equipment in the basic IDF, or the unit of government when the money is spent for emergency economic dislocation assistance or when the money is reloaned in a utility account project. Additionally, the unit of government shall be the borrower when IDF is used to assist local matching, or in other cases when the Department believes the project can be more prudently structured as a loan rather than a grant.
- (18) "Preapplication Conference" means a meeting held at the Department to discuss a proposed IDF application and includes: a representative of Commerce Finance Center; the applicant; an official of the benefiting firm; and a banker, if a participation loan is involved. A preapplication conference may be waived when the total IDF expenditures are expected to be fifty thousand dollars (\$50,000) or less.
- (19) "Clean Water Objectives of the State" include:
- (A) Reducing the reliance on wells, septic tanks and similar facilities;
 - (B) Allowing residences, businesses, or local governments not otherwise served by water or sewer or wastewater infrastructure to connect into a distribution line or system (for water supply, sewer, or wastewater) being furnished in an economic development project for new or expanding industry.

(b) "Local Matching Requirement." The Department requires local matching in grant projects except for Emergency Economic Development Assistance projects and those located in a tier area that has been exempted from matching by NC General Statutes. The required rate shall be one for three, or one local dollar for each three state dollars.

*History Note: Authority G.S. 143B-437.01; 105-129.3;
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SECTION .0200 – GENERAL REQUIREMENTS

04 NCAC 01I .0201 DATE OF RECEIPT OF APPLICATIONS

The Department shall receive applications after November 15, 1987 on a first-come, first-serve basis. An application shall be assigned a processing number when it is received and is judged sufficiently complete for consideration. When possible, applications shall be processed in the order of the processing numbers assigned.

*History Note: Authority G.S. 143B-437.01;
Temporary Rule Eff. November 16, 1987 for a Period of 180 Days to Expire on May 15, 1988;
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04 NCAC 01I .0202 APPLICATION CATEGORIES AND REQUIREMENTS

(a) Applicants may apply for funding under the following categories:

- (1) Basic IDF;
- (2) Emergency Economic Development Assistance;
- (3) The Utility Account; and
- (4) Clean Water Bonds Proceeds.

(b) There is no set minimum amount of funding which applicants may request to be awarded. If there are practical difficulties about a small amount or cost disadvantages, these shall be discussed with the applicant in a preapplication conference. IDF awards shall not exceed the total amount appropriated by the General Assembly in its appropriation process. For basic IDF, Emergency Economic Development Assistance, and Clean Water Bonds Proceeds, per job or per project maximum funding limitation will be the amounts established under current law. There is no maximum set for Utility Account funding; but the amount of awards shall be determined by the Secretary. For basic IDF, the per job limitation shall be applied on the basis of requiring a commitment from the operator of the business as to the number of jobs that shall be created over a reasonable period of time, not to exceed three years. Those shall be permanent, full-time jobs; no temporary or contract jobs.

(c) Under basic IDF, improvements to building properties and equipment purchases (either of which becomes private property) shall be loan projects and shall be accomplished with participation loans. The three parties to a participation loan shall be: the borrower's North Carolina bank, the borrower, and the unit of government. The bank shall commit at least as much funding as the unit of government, with the risk and collateral shared on a pro rata basis. Also, in the matter of sharing equally, this means that if the bank takes a certain collateral position, the unit of government shall share in that position. The participation by a financial institution based outside North Carolina may be done at the Secretary's (or his designate) discretion, based on findings made by Department staff concerning that institution's capacity for the proposed loan project. Such findings may include documentation of the bank's charter or institution type, credit reports, and documentation of the institution's financial history with the project company or companies.

(d) IDF funds may be loaned to a unit of government to meet matching funds requirements. In this case the Department shall furnish a loan repayment schedule to the mayor, city manager or county manager, which, in addition to the award letter and application, shall establish the responsibility for repayment, and times and amounts of repayment.

(e) Loans for Emergency Economic Development projects shall be accomplished as in Paragraph (d) of this Rule.

(f) Loans for Utility Account projects shall be accomplished as in Paragraph (d) of this Rule.

(g) With either grants or loans, the Department shall require financial information from the project owner or operator to establish financial capability. The usual requirement shall be the preceding three years' financial and operating statements; for new businesses, at least three years pro forma statements and a business plan. In any case, the Department may use credit reports, bank information, or other data that it deems appropriate to establish the credit worthiness of the borrower.

(h) A project shall be subject to review by the Department at any time during the first three years after the project begins.

(i) The Department may require a unit of government to partially or fully accelerate loan repayments if the operator's business has closed, moved, or if the company has not reached 90% of its job creation commitment within twenty-four months of the grant approval date. The Department may require repayment of a grant, partially or fully, if the operating company has moved, closed, or has not created 90% of its job creation commitment; and, in the case of Emergency Economic Development Assistance or the Utility Account, if funds are not spent for the specific activities which were approved in the project application.

History Note: Authority G.S. 143B-437.01;

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SECTION .0300 – SELECTION PROCESS

04 NCAC 01I .0301 REVIEW OF APPLICATIONS AND FUNDING

- (a) When an application is deemed complete, it shall be assigned a processing number.
- (b) Applications may be submitted directly to the Secretary of the Department. They may also be submitted to the Department's Commerce Finance Center, 301 North Wilmington Street, 4318 Mail Service Center, Raleigh, North Carolina 27699-4318. Applications shall be approved or denied by the last day of the calendar month following assignment of a processing number. When possible, applications shall be processed in the order that processing numbers are assigned.

History Note: Authority Chapter 754, 1989 S.L.;
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Amended Eff. September 1, 1990;
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04 NCAC 01I .0302 ELIGIBILITY REQUIREMENTS

Applications shall show that:

- (1) This funding is a vital part of the proposal to create the jobs set out and that the jobs shall not be created if the project goes unfunded;
- (2) For Emergency Economic Development Assistance Projects, the project is completely funded or financed, except for the particular funds sought in the application;
- (3) The involvement of the local unit of government is authorized by its elected board under specific resolution and by specific State Statute;
- (4) The participating private entity has provided a statement of commitment relating to the project. That commitment shall state that the project is to be carried out as described in the application, with specificity as to time schedules and to the parties involved;
- (5) The expenditure of private money on the project has not begun;
- (6) The project has not yet begun, i.e. money spent on the project, or public announcements made that the benefiting firm plans to do the project before the Department has been requested to participate with IDF;
- (7) For Emergency Economic Development Assistance Projects, there exists an emergency in the economy large enough to be considered an economic dislocation as set out in G.S. 143B-437.01 (a)(1a); and
- (8) The project for which funding is sought might help to alleviate the economic emergency described in Item (7) of this Rule.

History Note: Authority G.S. 143B-437.01;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
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04 NCAC 01I .0303 REVIEW: APP/FUNDING/EMGCY ASST PROJ DEFINED/RULE .0102(H)

History Note: Authority S.L. 1989, c. 754;
Eff. September 1, 1990;
Temporary Repealed Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Repealed Eff. October 6, 1999;
Repealed Eff. August 1, 2000.

04 NCAC 01I .0304 ELIGIBILITY REQ/EMGY ASST PROJ DEFINED/RULE .0102(H)

History Note: Authority S.L. 1989, c. 754;
Eff. September 1, 1990;
Temporary Repeal Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
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Repealed Eff. August 1, 2000.

SECTION .0400 – APPROVAL CRITERIA

04 NCAC 01I .0401 GENERAL

History Note: Filed as a Temporary Amendment Eff. January 11, 1990 for a Period of 180 Days to Expire on July 9, 1990;
Filed as a Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Authority S.L. 1987, c. 830, s. 111 of Part XXII, S.L. 1989, c. 754, s. IX;
Eff. May 1, 1988;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Repeal Eff. October 6, 1999;
Repealed Eff. August 1, 2000.

04 NCAC 01I .0402 REQUIRED FINDINGS

- (a) Before the Department shall approve a project, a finding must be made that the project:
- (1) shall assist a unit of Government in one of eligible tier areas of the State; and
 - (2) the funds shall be used for renovation of buildings or infrastructure or equipment by firms that have industry classifications currently eligible for tax incentives under G.S. 105-129.4.
- (b) The Department shall document a finding based on data provided in the application or by staff research, that the jobs to be created by a project, over no more than a three year period, shall be large enough in number to have a measurable favorable impact on the area immediately surrounding the project and shall be commensurate with the size and cost of the grant to the project. The applicant has the burden of demonstrating that the jobs shall have a measurable impact on the county. The applicant must show by clear and convincing evidence the number and type of such jobs generated.
- (c) The Department shall make a finding that the operator of the proposed project has demonstrated the capabilities to operate such a facility. The applicant shall show that capability exists in the operator to operate and maintain the facility efficiently and effectively. Financial strength and prior related experience by the operator shall be evaluated. Where little or no experience can be demonstrated, the qualifications of management, including production or engineering staff, as applicable, shall be of prime significance.

- (d) The Department shall make a finding that IDF financing for a project shall not cause or result in the abandonment of an existing similar industrial facility of the proposed operator or an affiliate elsewhere in the State unless the facility is to be abandoned because of obsolescence, lack of available labor, or site limitations. The Department shall consider an abandonment statement as prima facie proof of lack of abandonment.
- (e) For Emergency Economic Development projects, the Department shall make a finding that:
- (1) the economic emergency exists, or is imminent and;
 - (2) the project shall, or shall tend to, alleviate the especially severe economic emergency caused by the described economic dislocation.
- (f) For Utility Account projects, the Department shall make a finding that the proposed funding will create new jobs or reasonably be expected to lead to the creation of new jobs in the industries currently eligible for Utility Account financing assistance as specified in G.S. 143B-437.01(b1).
- (g) For Clean Water Bonds projects, the Department shall make a finding that the proposed project will have a favorable impact on the Clean Water Objectives of the State.
- (h) The Department shall use the definitions of terms found in Rule .0102 of this Subchapter to make these findings.

History Note: Authority G.S. 143B-437.01;
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04 NCAC 01I .0403 FORMAL APPLICATIONS PROCEDURES: DENIAL

- (a) Unless the applicant has met its various burdens of proof, the Department shall not make the required findings.
- (b) Where adverse findings are made, they shall specifically indicate in detail which elements of proof were weak, the required conclusions which could not be made, and any suggestions for amending the application.

History Note: Authority G.S. 143B-437.01;
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 Eff. May 1, 1988;
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04 NCAC 01I .0404 FORMAL APPLICATION PROCEDURES: APPROVAL

- (a) Where the Department makes all the findings necessary, it shall do so in writing to the applicant at the earliest possible date after following the procedures as set forth in this Subchapter.
- (b) The Department shall prepare a letter of approval and cause this letter to be mailed to the applicant.

History Note: Authority G.S. 143B-437.01;
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04 NCAC 01I .0405 FINDINGS REQ/APPROVAL/EMGCY PROJ DEFINED/RULE .0102(H)

History Note: Authority S.L. 1989, c. 754, s. IX;
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SECTION .0500 – RESERVATION OF FUNDS

04 NCAC 01I .0501 GENERAL

Units of government may apply for a "45 day reservation" of funds, relating to a particular IDF project to induce prospective private sector employers to locate or expand and create new jobs. The Department may accept and approve the requests where local units of government can document that:

- (1) they have the potential for a project of strong merit;
- (2) a particular employer is interested in a proposed industrial building;
- (3) strong offers have been made to a client by other states or by communities located in the tier areas not currently eligible for IDF funding. A request shall be prepared along the lines of the application for approval described in Rule .0302 of this Subchapter, except that the data normally obtained from the client or potential employees would not necessarily be prepared by the client and would not be required in such detail.

History Note: Authority G.S. 143B-437.01;
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04 NCAC 01I .0502 LIMITATIONS

A request for a reservation of funds may be approved for a project if the funds required do not exceed one-half of the total of program funds available and not previously committed. The total of programs funds not previously committed shall include appropriated funds, those funds received in repayment from recipients, interest earned, and funds not used and reverted from either approved projects or from "reserved" funds.

History Note: Authority G.S. 143B-437.01;
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04 NCAC 01I .0503 REVERSION OF FUNDS

An approval for "reservation" of funds for projects shall not predicate approval or funding of a project. When a formal and complete application for approval of a project has not been filed by the applicant that requested the reservation of funds, before the expiration date of the "reservation of funds", the Department may revert those funds back to the program without any obligation to the unit of government. The unit of government shall keep track of when the reservation of funds expires.

History Note: Authority G.S. 143B-437.01;

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SECTION .0600 – REPORTING REQUIREMENTS

04 NCAC 01I .0601 REPORTING REQUIREMENTS

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SECTION .0700 – DESIGNATION OF ELIGIBLE TIERS AND QUALIFIED COUNTIES

04 NCAC 01I .0701 ANNUAL DESIGNATION

History Note: Authority G.S. 105-129.3 ,143B-437.01;
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SECTION .0800 – ENVIRONMENTAL COMPLIANCE

04 NCAC 01I .0801 COMPLIANCE WITH NORTH CAROLINA ENVIRONMENTAL RULES

Any local unit of government or grantee receiving Industrial Development Funds (IDF), including Basic IDF, Utility Account funds, Emergency Economic Assistance funds or Clean Water Bonds proceeds shall comply with North Carolina Environmental Policy Rules as cited in the North Carolina Administrative Code unless the project activity is a non-major activity, as cited in 15A NCAC 1C .0504.

History Note: Authority G.S. 143B-437.01;
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