

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**H**

**1**

**HOUSE BILL 1650**

Short Title: Communities of Opportunity Fund. (Public)

---

Sponsors: Representative Adams.

---

Referred to: State Government/State Personnel, if favorable, Appropriations.

---

May 7, 2009

A BILL TO BE ENTITLED

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

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



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

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

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

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

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

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

18 **"§ 143B-437.013. Communities of Opportunity Fund.**

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

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

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

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

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

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

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

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

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

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

49           a. Buying and selling renewable energy.

50           b. Energy efficiency assessment.

51           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 the last three years with respect to the location for which the grant is made. For the purposes of

1 this subsection, a significant violation is a violation or alleged violation that does not satisfy  
2 any of the conditions of G.S. 143-215.6B(d).

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

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

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

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

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

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

25 a. The conditions for eligibility have been met.

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

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

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

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

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

49 (k) Safeguards. – To ensure that public funds are used only to carry out the public  
50 purposes provided in this section, the Department shall require that each recipient that receives  
51 a grant under this section shall agree to meet performance criteria to protect the State's

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

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

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

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