

(ii) "Performance requirement" includes claw-back, penalty, rescission, and recalibration clauses that utilize job creation, capital investment, and other measures of economic development.

(4) "Private sector enterprise" means any commercial, industrial, educational, or research organization which is not a part of or controlled by a federal, State, or local government agency.

(5) "Executive agency" means an executive department or agency in the Executive Branch of State government, including all offices of the Executive Department or agency directly responsible to the Governor.

(6) "Extraordinary economic development opportunity" means the:

(i) attraction of a new private sector enterprise to the State or retention or expansion of an existing private sector enterprise in the State that:

1. maintains a strong financial condition and minimal credit risk profile;
2. is capable of accessing alternative sources of financing through financial institutions or capital markets;
3. is consistent with the strategic plan of the State for economic development;
4. creates or retains substantial employment, particularly in areas of high unemployment; and
5. invests in capital at a level equal to five times the value of the incentive offered;

(ii) retention or expansion of an existing public institution, private institution, or federal research and development institute that:

1. is consistent with the strategic plan of the State for economic development; and
2. creates or retains substantial employment, particularly in areas of high unemployment; or

(iii) establishment or attraction of a public institution, a private institution, or a federal research and development institute new to the State that:

1. is consistent with the strategic plan of the State for economic development; and
2. creates or retains substantial employment, particularly in areas of high unemployment.

(b) Subject to the provisions of this section, the Economic Development Opportunities Program Fund is established to maximize extraordinary economic development opportunities.