

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2018

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 commerce; to provide an appropriation to the office of management and budget; to provide
3 exemptions; to create and enact a new section to chapter 54-34.3, a new section to chapter
4 54-44.4, three new sections to chapter 54-60, and a new section to chapter 57-38.5 of the
5 North Dakota Century Code, relating to a division of economic development and finance local
6 economic developer certification program, an office of management and budget procurement
7 information program, department of commerce target industry requirements, a department of
8 commerce state employee image training program, a department of commerce business hotline
9 program, and seed capital investment tax credit treatment of investments in excess of caps on
10 credits; to amend and reenact sections 15-10-41, 57-38.5-01, 57-38.5-02, 57-38.5-03,
11 57-38.5-04, and 57-38.5-05 of the North Dakota Century Code, relating to the centers of
12 excellence program and the seed capital investment tax credit; to repeal section 15-10-41 of
13 the North Dakota Century Code, relating to the centers of excellence program; to provide for
14 state agency studies, reports to the legislative council, and legislative council studies; to
15 provide an appropriation; to provide an effective date; and to provide an expiration date.

16 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

17 **SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this
18 section represent the base level funding component appropriated to the department of
19 commerce in section 3 of this Act as follows:

20 Salaries and wages	\$6,713,340
21 Operating expenses	8,237,247
22 Grants	46,585,026
23 North Dakota development fund	1,550,000
24 Agricultural products utilization	2,983,179

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1	Discretionary grants	1,447,127
2	Lewis and Clark bicentennial	<u>3,851,911</u>
3	Total all funds - Base level	\$71,367,830
4	Less estimated income - Base level	<u>52,353,107</u>
5	Total general fund - Base level	\$19,014,723

6 **SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The
7 amounts identified in this section represent the funding adjustments or enhancements to the
8 base funding level for the department of commerce which are included in the appropriation in
9 section 3 of this Act as follows:

10	Salaries and wages	\$426,658
11	Operating expenses	484,881
12	Capital assets	25,000
13	Grants	2,894,722
14	Centers of excellence	2,500,000
15	North Dakota development fund	(1,550,000)
16	Agricultural products utilization	(191,929)
17	Discretionary funds	453,000
18	Lewis and Clark bicentennial	<u>80,858</u>
19	Total all funds - Adjustments/enhancements	\$5,123,190
20	Less estimated income - Adjustments/enhancements	<u>3,069,937</u>
21	Total general fund - Adjustments/enhancements	\$2,053,253

22 **SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the
23 funds as may be necessary, are appropriated out of any moneys in the general fund in the state
24 treasury, not otherwise appropriated, and from special funds derived from federal funds and
25 other income, to the department of commerce for the purpose of defraying the expenses of its
26 various divisions for the biennium beginning July 1, 2005, and ending June 30, 2007, as
27 follows:

28	Salaries and wages	\$7,139,998
29	Operating expenses	8,722,128
30	Capital assets	25,000
31	Grants	49,479,748

1	Centers of excellence	2,500,000
2	Agricultural products utilization	2,791,250
3	Discretionary funds	1,900,127
4	Lewis and Clark bicentennial	<u>3,932,769</u>
5	Total all funds	\$76,491,020
6	Less estimated income	<u>55,423,044</u>
7	Total general fund appropriation	\$21,067,976

8 **SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the
9 general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much
10 of the sum as may be necessary, to the office of management and budget for the purpose of
11 establishing and maintaining procurement information on the internet and for performing the
12 procurement assistance study, for the biennium beginning July 1, 2005, and ending June 30,
13 2007.

14 **SECTION 5. AGRICULTURE FUEL TAX REFUNDS.** The less estimated income line
15 item in section 3 of this Act includes \$575,000 from refunds of tax for fuel used for agricultural
16 purposes, to be used by the agricultural products utilization commission, for the biennium
17 beginning July 1, 2005, and ending June 30, 2007.

18 **SECTION 6. EXEMPTION.** The funds appropriated in the agricultural products
19 utilization line item in section 3 of this Act are not subject to section 54-44.1-11 and any
20 unexpended funds from this line item for grants are available for grants during the biennium
21 beginning July 1, 2007, and ending June 30, 2009.

22 **SECTION 7. CENTERS OF EXCELLENCE - BUDGET SECTION APPROVAL.** The
23 centers of excellence line item of \$2,500,000 from the general fund appropriated in section 3 of
24 this Act is made available for centers of excellence approved in accordance with guidelines in
25 this Act. Funds may be provided only after a program has been approved by the centers of
26 excellence commission, state board of higher education, economic development foundation,
27 and the budget section.

28 **SECTION 8. EXEMPTION.** The funds appropriated in the discretionary funds line item
29 in section 3 of this Act are not subject to section 54-44.1-11 and any unexpended funds from
30 this line item may be spent during the biennium beginning July 1, 2007, and ending June 30,
31 2009.

1 **SECTION 9. EXEMPTION.** The funds appropriated in the centers of excellence line
2 item in section 3 of this Act are not subject to section 54-44.1-11 and any unexpended funds
3 from this line item are available for expenditure during the biennium beginning July 1, 2007,
4 and ending June 30, 2009.

5 **SECTION 10. ECONOMIC DEVELOPMENT INITIATIVES - DISCRETIONARY**
6 **FUNDS.** The discretionary funds line item in section 3 of this Act includes \$385,000 from the
7 general fund for the following economic development initiatives for the biennium beginning
8 July 1, 2005, and ending June 30, 2007:

9 Target industry identification and report	\$25,000
10 Image information program	50,000
11 Business hotline program	30,000
12 Local economic developer certification and training program	50,000
13 Dakota manufacturing initiative	100,000
14 Intellectual property rights study and report	50,000
15 Economic development incentives study and report	30,000
16 Business climate initiative study	<u>50,000</u>
17 Total	\$385,000

18 **SECTION 11. LIFE SCIENCES SECTOR DEVELOPMENT GRANT -**
19 **DISCRETIONARY FUNDS.** The department of commerce shall provide a \$100,000 grant from
20 funds appropriated in the discretionary funds line item in section 3 of this Act to an economic
21 development corporation in the Red River Valley research corridor by June 30, 2006, to
22 increase opportunities in the state for expanded research and business development in the life
23 sciences sector for the biennium beginning July 1, 2005, and ending June 30, 2007.

24 **SECTION 12. WIND TO HYDROGEN DEMONSTRATION PROJECT GRANT -**
25 **DISCRETIONARY FUNDS.** The department of commerce shall provide a \$25,000 grant from
26 funds appropriated in the discretionary funds line item in section 3 of this Act to a North Dakota
27 city with a population exceeding 75,000 for a wind to hydrogen demonstration project for the
28 biennium beginning July 1, 2005, and ending June 30, 2007.

29 **SECTION 13. WHEAT SCAB RESEARCH GRANT - AGRICULTURAL PRODUCTS**
30 **UTILIZATION COMMISSION.** The agricultural products utilization commission shall provide a
31 grant of \$100,000 from its funding available for the 2005-07 biennium to a private company

1 within the state doing research on sensor technology for the purpose of obtaining more detailed
2 environmental data relating to wheat scab disease and to improve the management of the
3 disease for the biennium beginning July 1, 2005, and ending June 30, 2007.

4 **SECTION 14. LEWIS AND CLARK BICENTENNIAL - ADDITIONAL SALES TAX ON**
5 **LODGING.** The Lewis and Clark bicentennial line item in section 3 of this Act includes
6 \$3,041,511, or such lesser amount as is generated from the separate and additional tax
7 imposed under section 57-39.2-03.8 of the North Dakota Century Code.

8 **SECTION 15. STATE TAX COMMISSIONER - AUDIT OF ETHANOL PRODUCTION**
9 **INCENTIVE PROGRAM.** The state tax commissioner shall conduct an audit of the ethanol
10 production incentive program during the biennium beginning July 1, 2005, and ending June 30,
11 2007.

12 **SECTION 16. RED RIVER VALLEY RESEARCH CORRIDOR MARKETING.** An
13 amount up to \$400,000 from the general fund in section 3 of this Act must be made available
14 through a grant to the Red River valley research corridor for the purpose of matching federal
15 funds. The funds are available for the period beginning July 1, 2005, and ending June 30,
16 2007.

17 **SECTION 17. CENTER FOR TECHNOLOGY.** An amount up to \$50,000 from the
18 general fund in section 3 of this Act must be made available through a grant to the North
19 Dakota center for technology program.

20 **SECTION 18. PARTNERS IN MARKETING.** An amount up to \$250,000 from the
21 general fund in section 3 of this Act must be made available for grants in the partners in
22 marketing grant program.

23 **SECTION 19. DEVELOPMENT FUND - TRADE PROMOTION AUTHORITY.**
24 Notwithstanding chapter 10-30.5, if the trade promotion authority has met matching and
25 program requirements as established by the department of commerce, the development fund
26 shall provide a grant of up to \$500,000 to the trade promotion authority.

27 **SECTION 20. DEVELOPMENT FUND STAFF.** An additional 1.00 full-time equivalent
28 position, funded by the development fund, is authorized to assist with the administration of the
29 fund.

30 **SECTION 21. AMENDMENT.** Section 15-10-41 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **15-10-41. Centers of excellence - Centers of excellence commission - Report to**
2 **budget section.**

3 1. The state board of higher education shall establish a centers of excellence
4 program relating to economic development ~~consistent with the purpose under~~
5 ~~subsection 2~~ through which the commission makes center funding award
6 recommendations for institutions of higher education under control of the board,
7 tribal colleges located in the state, private baccalaureate-granting institutions of
8 higher education located in the state, and university-related or college-related
9 foundations of public or private institutions of higher education located in the state.

10 2. In this section, unless the context otherwise requires:

11 a. "Board" means the state board of higher education.

12 b. "Center" means a center of excellence relating to economic development.

13 c. "Commission" means the centers of excellence commission.

14 d. "Foundation" means the North Dakota economic development foundation.

15 e. "Industry cluster" means one of the following industries:

16 (1) Advanced manufacturing;

17 (2) Energy;

18 (3) Information and technology;

19 (4) Tourism;

20 (5) Value-added agriculture; or

21 (6) An industry, including the aerospace industry, specifically identified by
22 the department of commerce as an industry that will contribute to the
23 gross state product.

24 3. The centers of excellence commission consists of six members. The foundation
25 shall appoint three members of the commission and the board shall appoint three
26 members of the commission. The commission members shall designate a
27 chairman and a vice chairman of the commission. Each member of the
28 commission shall serve for a term of three years, beginning July first of each
29 odd-numbered year; may be reappointed for additional terms; and serves at the
30 pleasure of the appointing entity. Terms of initial commission board members
31 must be staggered. A commission member may receive compensation and travel

1 and expense reimbursement from the appointing entity. The commission shall
2 meet as necessary to review all complete applications; approve, disapprove, or
3 approve conditionally the applications; and make center funding award
4 recommendations. The board shall provide the commission with appropriate staff
5 services as may be requested by the commission.

- 6 4. The board shall provide application forms, accept applications, review applications
7 for completeness and compliance with board policy, and forward complete
8 applications to the commission according to guidelines established by the
9 commission. The board shall designate centers of excellence. A designation by
10 the board of a center of excellence within the economic development category
11 does not preclude the board or a higher education institution from designating a
12 center of excellence in an academic or service area. Centers of excellence
13 relating to economic development include the North Dakota state university center
14 for technology enterprise and the university of North Dakota center for innovation.

15 ~~Before January 1, 2004, the board, in consultation with the North Dakota~~
16 ~~economic development foundation and with private sector input, shall establish~~
17 ~~definitions and eligibility criteria for centers of excellence relating to economic~~
18 ~~development. The board shall present the definitions and eligibility criteria for the~~
19 ~~centers of excellence relating to economic development to an interim committee~~
20 ~~designated by the legislative council. The North Dakota economic development~~
21 ~~foundation may identify and recommend high priority centers of excellence relating~~
22 ~~to economic development for consideration by the state board of higher education~~
23 ~~for future budget requests. The legislative assembly may designate a center.~~

- 24 2. ~~The purpose of the program is to develop~~

- 25 5. Before the commission may consider an application for center funding, the
26 applicant shall establish in the application how the center will:

- 27 a. Develop and engage strategies for science and technology research and
28 development, commercialization, entrepreneurship, infrastructure, growth and
29 expansion utilization to assist the growth and expansion of knowledge-based
30 industries, and other activities in the state to develop innovative approaches
31 that expand the gross state product; to assist.

- 1 b. Create private sector employment opportunities for residents of this state.
- 2 c. Assist efforts to attract private and federal assistance for science and
- 3 technology research and development and for commercialization in growth.
- 4 d. Assist efforts to commercialize and expand industry clusters most likely to
- 5 increase the gross state product; to increase.
- 6 e. Increase collaboration among state, federal, and private science and
- 7 technology research and development and technology commercialization
- 8 organizations in the state; to strengthen the leadership and support of the
- 9 national science foundation experimental program to stimulate competitive
- 10 research programs and to encourage partnerships with other state institutions
- 11 for expanded efforts to stimulate economic growth in identified industry
- 12 clusters; to provide leadership in science and technology policy at a regional,
- 13 a national, and an international level; and to create employment opportunities
- 14 for North Dakota university system graduates. Identified industry clusters
- 15 include advanced manufacturing, aerospace, energy, information and
- 16 technology, tourism, and value added agriculture.
- 17 6. In considering an application, the commission shall:
- 18 a. Make a determination that the requirements of subsection 5 have been
- 19 established by the applicant.
- 20 b. Consider whether the center will:
- 21 (1) Promote private sector job growth and expansion of knowledge-based
- 22 industries or the development of new products, high-tech companies, or
- 23 skilled jobs in this state;
- 24 (2) Create high-value private sector employment opportunities in this state;
- 25 (3) Provide for public-private sector involvement and partnerships;
- 26 (4) Leverage other funding;
- 27 (5) Increase research and development activities that may involve federal
- 28 funding from the national science foundation experimental program to
- 29 stimulate competitive research;
- 30 (6) Foster and practice entrepreneurship;
- 31 (7) Link to targeted industry clusters; and

- 1 (8) Include provisions for becoming self-sustaining.
- 2 7. Following approval by the board, foundation, and commission, the board and
3 commission shall report the details of a proposed designated center to the budget
4 section. An approved award determination reported to the budget section must
5 include details regarding the terms under which the board will distribute allocated
6 funds.
- 7 ~~3. The state board of higher education shall allocate funds from appropriations for~~
8 ~~undesigned centers of excellence relating to economic development based on~~
9 ~~the criteria established and~~ The board, in partnership with the commission and
10 foundation, shall report to the budget section annually on such the status of
11 ~~allocations, in partnership with the North Dakota economic development~~
12 ~~foundation, to the budget section and actual fund distributions.~~
- 13 8. A recipient of funds awarded under this section shall use the funds to enhance
14 capacity; enhance infrastructure; and leverage state, federal, and private sources
15 of funding. ~~Funds~~ A recipient of funds awarded under this section may not be
16 ~~used~~ use the funds to supplant funding for current operations or academic
17 instruction or to pay indirect costs. The board may award funds under this section
18 ~~to research universities, university related foundations, and public institutions that~~
19 ~~are located in the state which demonstrate the potential to deliver expertise and~~
20 ~~service to industry clusters that will contribute to the gross state product. A~~
21 ~~recipient of funds under this section which is~~
- 22 9. Before funds awarded under this section are distributed to an institution of higher
23 education under the control of the board of higher education or which is to a
24 nonprofit university-related or college-related foundation of an institution of higher
25 education under control of the board, the recipient shall:
- 26 a. ~~Provide~~ provide the board of higher education with detailed documentation of
27 the availability of two dollars of matching funds for each dollar of funds
28 awarded under this section ~~as a condition of eligibility for receipt of funds~~
29 ~~under this section; and.~~
- 30 b. ~~Provide~~ An institution of higher education under the control of the board or a
31 nonprofit university-related or college-related foundation of an institution of

1 higher education under control of the board which receives funds under this
2 section shall provide the board of higher education, governor, and North
3 Dakota economic development foundation with annual reports for four fiscal
4 years following receipt of the funds.

5 **SECTION 22.** A new section to chapter 54-34.3 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Local economic developer certification program.** The director shall implement a
8 certification program through which the division provides training to assist local economic
9 developers in meeting the needs of businesses. The director may contract with a third-party
10 service provider to assist in implementing the program. The director may set and charge a fee
11 for the receipt of services under this program.

12 **SECTION 23.** A new section to chapter 54-44.4 of the North Dakota Century Code is
13 created and enacted as follows:

14 **Procurement information - Web site.**

- 15 1. The office of management and budget shall establish and maintain a procurement
16 information web site on the internet. This procurement information web site must
17 provide current information regarding North Dakota government procurement
18 opportunities in order to inform potential vendors of the commodities and services
19 sought by state agencies and institutions. Notwithstanding section 54-44.4-09, for
20 each purchase of services or commodities over the amount established for small
21 purchases, the office of management and budget and every purchasing agency
22 shall provide procurement information on the web site. The time period and
23 manner of providing procurement information on the web site must be in
24 accordance with rules adopted by the office of management and budget. The
25 office of management and budget may contract with a third party to assist in
26 providing or maintaining the procurement information web site.
- 27 2. A state agency or institution may elect to use the procurement information web site
28 for the purchase of services and commodities that are not subject to the
29 procurement requirements of this chapter, including:
- 30 a. Commodities and services exempted under section 54-44.4-02;
31 b. Public improvements under title 48;

- 1 c. Architect, engineer, construction management, and land surveying services
2 under chapter 54-44.7; and
3 d. Concessions under chapter 48-09.

4 **SECTION 24.** A new section to chapter 54-60 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Target industries - Report to legislative council.** The commissioner shall identify
7 target industries on which the commissioner shall focus economic development efforts. The
8 commissioner shall designate one of these target industries as a special focus target industry.
9 In identifying and updating target industries, the commissioner shall solicit the advice of the
10 foundation and the North Dakota university system. The commissioner may contract for the
11 services of a third party in identifying target industries. The commissioner shall report biennially
12 to the legislative council. This report must include information regarding the process used and
13 factors considered in identifying and updating the target industries, the specific tactics the
14 department has used to specifically address the needs of the target industries, the unique
15 tactics and the specific incentives the department has used to support the growth of the special
16 focus target industry, and any recommended legislative changes necessary to better focus
17 economic development services on these industries.

18 **SECTION 25.** A new section to chapter 54-60 of the North Dakota Century Code is
19 created and enacted as follows:

20 **North Dakota image information program.** The commissioner shall implement a
21 program for use by state agencies to assist state agencies and state agencies' employees to
22 present to the public a positive image of the state. The commissioner may expand the program
23 to include use of the program by the private sector.

24 **SECTION 26.** A new section to chapter 54-60 of the North Dakota Century Code is
25 created and enacted as follows:

26 **Business hotline.** The commissioner shall create and implement a business hotline
27 program. The program must provide for a telephone number through which the department
28 shall provide, during regular business hours, in-state and out-of-state callers with information
29 regarding how to do business in the state, the services and assistance available to businesses,
30 the advantages of doing business in the state, and information on state and other resources
31 that provide assistance to businesses in the state. In addition to directly providing information,

1 the department may use the business hotline as a clearinghouse through which to refer callers
2 to other federal, state, local, or private sector economic developers. The program must include
3 an in-state and out-of-state marketing campaign in support of the program. The commissioner
4 shall follow up on business leads gained through the program and shall gather data on the
5 results of calls, including business expansion, location, and startup.

6 **SECTION 27. AMENDMENT.** Section 57-38.5-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-38.5-01. Definitions.** As used in this chapter, unless the context otherwise
9 requires:

- 10 1. "Director" means the director of the department of commerce division of economic
11 development and finance.
- 12 2. "New wealth" means revenues to a North Dakota business which are generated by
13 sales of products or services to customers outside of the state. "New wealth" also
14 includes revenues to a qualified business the customers of which previously were
15 unable to acquire, or had limited availability of, the product or service from a North
16 Dakota provider.
- 17 3. "Passthrough entity" means a corporation that for the applicable tax year is treated
18 as an S corporation or a general partnership, limited partnership, limited liability
19 partnership, trust, or limited liability company and which for the applicable tax year
20 is not taxed as a corporation under chapter 57-38.
- 21 4. "Primary sector business" means a qualified business that through the
22 employment of knowledge or labor adds value to a product, process, or service
23 and which results in the creation of new wealth but does not include an ethanol
24 production facility.
- 25 4- 5. "Qualified business" means a business other than a real estate investment trust
26 which is:
 - 27 a. A primary sector business that:
 - 28 (1) Is incorporated or its satellite operation is incorporated as a for-profit
29 corporation or is a partnership, limited partnership, limited liability
30 company, limited liability partnership, or joint venture;

- 1 (2) Is in compliance with the requirements for filings with the securities
2 commissioner under the securities laws of this state;
3 (3) Has North Dakota residents as a majority of its employees in the North
4 Dakota principal office or the North Dakota satellite operation; and
5 (4) Has its principal office in this state and has the majority of its business
6 activity performed in this state, except sales activity, or has a significant
7 operation in North Dakota that has or is projected to have more than
8 ten employees or one hundred fifty thousand dollars of sales annually;
9 or

10 b. An organization that:

- 11 ~~(1) Is in compliance with the requirements for filings with the securities~~
12 ~~commissioner under the securities laws of this state; and~~
13 ~~(2) Attracts investments to build and own a value added agricultural~~
14 ~~processing facility that it leases with an option to purchase to a primary~~
15 ~~sector business that qualifies under subdivision a~~ is a primary sector
16 business as described in subdivision a which is operated in partnership
17 with a research university, university-related foundation, or public
18 institution eligible to receive funding under section 15-10-41.

19 ~~5-~~ 6. "Taxpayer" means an individual, estate, or trust or a corporation or passthrough
20 entity but does not include a real estate investment trust.

21 **SECTION 28. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **57-38.5-02. Certification - Investment reporting by qualified businesses -**
24 **Maximum investments in qualified businesses.** The director shall certify whether a
25 business that has requested to become a qualified business meets the requirements of
26 subsection 4 of section 57-38.5-01 and the certification must include the period of time the
27 certification covers. The director shall establish the necessary forms and procedures for
28 certifying qualified businesses. For investments made after December 31, 2004, the maximum
29 aggregate amount of qualified investments a qualified business may receive is limited to five
30 hundred thousand dollars under this chapter. The limitation on investments under this section

1 may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not
2 applying for a credit.

3 **SECTION 29. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified
6 investment in a qualified business, the taxpayer is entitled to a credit against state income tax
7 liability under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a
8 taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified
9 businesses during the taxable year, subject to the following:

- 10 1. The aggregate annual investment for which a taxpayer may obtain a tax credit
11 under this section is not ~~less than five thousand dollars and not~~ more than two
12 hundred fifty thousand dollars. This subsection may not be interpreted to limit
13 additional investment by a taxpayer for which that taxpayer is not applying for a
14 credit.
- 15 2. In any taxable year, a taxpayer may claim no more than one-third of the credit
16 under this section which is attributable to investments in a single taxable year.
- 17 3. Any amount of credit under this section not allowed because of the limitations in
18 this section may be carried forward for up to four taxable years after the taxable
19 year in which the investment was made.
- 20 4. A ~~partnership~~ passthrough entity that invests in a qualified business must be
21 considered to be the taxpayer for purposes of the investment limitations in this
22 section and the amount of the credit allowed with respect to a ~~partnership's~~
23 passthrough entity's investment in a qualified business must be determined at the
24 ~~partnership~~ passthrough entity level. The amount of the total credit determined at
25 the ~~partnership~~ passthrough entity level must be allowed to the ~~partners, limited to~~
26 ~~individuals, estates, and trusts,~~ members in proportion to their respective interests
27 in the ~~partnership~~ passthrough entity.
- 28 5. The investment must be at risk in the business. An investment for which a credit is
29 received under this section must remain in the business for at least three years.
30 Investments placed in escrow do not qualify for the credit.

- 1 6. The entire amount of an investment for which a credit is claimed under this section
2 must be expended by the qualified business for plant, equipment, research and
3 development, marketing and sales activity, or working capital for the qualified
4 business.
- 5 7. A taxpayer who owns a controlling interest in the qualified business or whose
6 full-time professional activity is the operation of the business is not entitled to a
7 credit under this section. A member of the immediate family of a taxpayer
8 disqualified by this subsection is not entitled to the credit under this section. For
9 purposes of this subsection, "immediate family" means the taxpayer's spouse,
10 parent, sibling, or child or the spouse of any such person.
- 11 8. The tax commissioner may disallow any credit otherwise allowed under this
12 section if any representation by a business in the application for certification as a
13 qualified business proves to be false or if the taxpayer or qualified business fails to
14 satisfy any conditions under this section or any conditions consistent with this
15 section otherwise determined by the tax commissioner. The amount of any credit
16 disallowed by the tax commissioner that reduced the taxpayer's income tax liability
17 for any or all applicable tax years, plus penalty and interest as provided under
18 section 57-38-45, must be paid by the taxpayer.

19 **SECTION 30. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-38.5-04. Taxable year for seed capital investment tax credit.** The tax credit
22 under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the
23 taxable year in which ~~full consideration for~~ the investment in the qualified business was
24 received by the qualified business.

25 **SECTION 31. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **57-38.5-05. Seed capital investment tax credit limits.** The aggregate amount of
28 seed capital investment tax credit allowed for investments under this chapter ~~through calendar~~
29 ~~year 2002 is limited to one million dollars and after calendar year 2002~~ is limited to two million
30 five hundred thousand dollars for each calendar year. If investments in qualified businesses
31 reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for

1 investments imposed by this section, the credit must be allowed to taxpayers in the
2 chronological order of their investments in qualified businesses as determined from the forms
3 filed under section 57-38.5-07.

4 **SECTION 32.** A new section to chapter 57-38.5 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Credit for investments made before 2005.** An investment made before January 1,
7 2005, which did not qualify for the tax credit under this chapter because of the two million five
8 hundred thousand dollar credit limitation in effect before the effective date of this Act is entitled
9 to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount
10 of forty-five percent of the amount invested by the taxpayer in a qualified business subject to
11 the following:

12 1. The aggregate investment for which a taxpayer may obtain a credit under this
13 section is not less than five thousand dollars and not more than two hundred fifty
14 thousand dollars.

15 2. In any taxable year, a taxpayer may claim no more than one-fourth of the credit
16 under this section which is attributable to investments made before January 1,
17 2005.

18 3. Any amount of credit under this section not allowed because of the limitations in
19 this section may be carried forward for up to five taxable years after the taxable
20 year in which the investment was made.

21 4. This section does not apply to investments made in an ethanol production facility.

22 **SECTION 33. REPEAL.** Section 15-10-41 of the North Dakota Century Code is
23 repealed.

24 **SECTION 34. DAKOTA MANUFACTURING INITIATIVE.** The department of
25 commerce shall seek to contract with the Dakota manufacturing extension partnership,
26 incorporated, to implement the Dakota manufacturing initiative. The initiative includes building
27 a membership association of manufacturers in North Dakota and South Dakota, complementing
28 existing national, regional, and local manufacturing entities; providing nonduplicative services to
29 the association's manufacturing members which address critical needs, including identifying
30 and developing private procurement opportunities; and developing a consortium of major
31 manufacturers in North Dakota and South Dakota to design and support overall supply chain

1 development and supplier development. Under the initiative, state funds must be leveraged
2 with additional public and private funds, which may include federal funding sources, South
3 Dakota state funding, and funding from manufacturers.

4 **SECTION 35. NORTH DAKOTA BUSINESS CLIMATE INITIATIVE - LEGISLATIVE**

5 **COUNCIL STUDY.** During the 2005-06 and 2007-08 interims, the legislative council shall
6 study the state's business climate through a business climate initiative. The business climate
7 initiative must include receipt of agency reports regarding economic development legislation
8 introduced by the legislative council during previous legislative sessions, active participation in
9 business climate focus groups across the state, and active participation in biennial business
10 congresses. The focus groups shall discuss ways to enhance the state's business climate to
11 stimulate job growth and enhance economic prosperity by encouraging the growth of existing
12 businesses in the state, creating new businesses in the state, and encouraging expansion or
13 relocation of businesses to this state. Each business congress must receive a report on the
14 activities of the focus group discussions, shall identify methods to enhance the state's business
15 climate to stimulate job growth and enhance economic prosperity, and shall evaluate the impact
16 of existing state economic development programs. The department of commerce shall
17 organize the business climate focus groups and the business congresses. Before each
18 business congress, which must be held before June 1, 2006, and before June 1, 2008, the
19 department shall hold a minimum of six focus group discussions, two of which specifically focus
20 on local economic developers and four of which specifically focus on private business needs.
21 The department shall consult with the legislative council in compiling focus group and business
22 congress participant invitation lists and drafting and distributing invitations, establishing focus
23 group and business congress dates and locations, and preparing agendas for focus groups and
24 business congresses. The legislative council shall contract with a third party to provide
25 professional services to plan, facilitate, report on, and coordinate followup for the focus groups
26 and business congresses. The legislative council shall report its findings and
27 recommendations, together with any legislation required to implement the recommendations, to
28 the sixtieth and sixty-first legislative assemblies.

29 **SECTION 36. CENTERS OF EXCELLENCE - REPORT TO LEGISLATIVE COUNCIL.**

30 During the 2005-06 interim, the state board of higher education and the centers of excellence
31 commission shall report to the legislative council on the status of the centers of excellence

1 program under section 15-10-41. The report must include information regarding funding,
2 private sector participation, and accomplishments of each center of excellence and whether
3 there are potential changes that could be made to improve the centers of excellence program.

4 **SECTION 37. LOCAL ECONOMIC DEVELOPERS CERTIFICATION PROGRAM -**

5 **REPORT TO LEGISLATIVE COUNCIL.** During the 2005-06 interim, the commissioner of
6 commerce shall report to the legislative council on the status of the certification program
7 through which the division of economic development and finance provides training services to
8 local economic developers under section 22 of this Act. The report must include information
9 regarding what services have been provided under the program to assist local economic
10 developers, to whom the services were provided, local economic developer level of satisfaction
11 with the program, whether the program should continue, and whether there are changes that
12 could be made to better assist local economic developers.

13 **SECTION 38. PROCUREMENT ASSISTANCE STUDY - REPORT TO LEGISLATIVE**

14 **COUNCIL.** During the 2005-06 interim, the director of the office of management and budget
15 shall report to the legislative council on the status of providing procurement information through
16 the internet under section 23 of this Act; perform a study on the most effective manner in which
17 to provide for a procurement assistance center; and report to the legislative council on the
18 outcome of the procurement assistance center study, including what services might be
19 provided by such a center, how services might be provided by such a center, and what
20 legislative changes would be required to implement such a center.

21 **SECTION 39. IMAGE INFORMATION PROGRAM - REPORT TO LEGISLATIVE**

22 **COUNCIL.** During the 2005-06 interim, the commissioner of commerce shall report to the
23 legislative council on the status of the image information program under section 25 of this Act.
24 The report must include information regarding what information the program provides to state
25 agencies and state agencies' employees, the manner in which the information is provided, the
26 state agencies reached through the program, whether the program has been expanded to
27 provide information to the private sector, whether the program should continue, and whether
28 there are potential changes that could be made to better enhance the state's and private
29 sector's ability to present a positive image of the state.

30 **SECTION 40. BUSINESS HOTLINE PROGRAM - REPORT TO LEGISLATIVE**

31 **COUNCIL.** During the 2005-06 interim, the commissioner of commerce shall report to the

1 legislative council on the status of the business hotline program under section 26 of this Act.
2 This report must include information regarding what information the program provides to
3 callers; the number of calls made to the business hotline number; the manner in which the
4 information is provided to callers; followup data; how the program is marketed; whether the
5 program should continue; and whether there are potential changes that could be made to
6 improve the dissemination of business information to businesses in the state, to persons
7 planning on starting a business in the state, and to businesses wishing to do business in the
8 state.

9 **SECTION 41. TAX STUDY - REPORT TO LEGISLATIVE COUNCIL.** During the
10 2005-06 interim, the tax commissioner shall conduct a study of the corporate taxing system and
11 tax incentives to stimulate business. The study must include consideration of gaps in tax
12 incentives, include consideration of successful actions taken by other states to improve their tax
13 environment for doing business, and focus on approaches that are specifically tailored to the
14 state's unique circumstances. The tax commissioner may contract with a third party to conduct
15 the study. Before July 1, 2006, the tax commissioner shall report to the legislative council the
16 outcome of the study and identify proposed legislative changes necessary to implement any
17 recommendations to stimulate the state's business climate.

18 **SECTION 42. DAKOTA MANUFACTURING INITIATIVE - REPORT TO**
19 **LEGISLATIVE COUNCIL.** During the 2005-06 interim, the commissioner of commerce shall
20 report to the legislative council on the status of the Dakota manufacturing initiative provided for
21 under section 34 of this Act. This report must include information regarding how the initiative
22 has been established and regarding the activities of the Dakota manufacturing extension
23 partnership, incorporated. The commissioner shall include in the report whether the state
24 should continue this initiative or whether the goal of assisting manufacturers would be better
25 served by alternative means. The commissioner shall report whether there are potential
26 changes that could be made to improve the networking of manufacturing businesses and other
27 suppliers in this state.

28 **SECTION 43. INTELLECTUAL PROPERTY RIGHTS STUDY - REPORT TO**
29 **LEGISLATIVE COUNCIL.** During the 2005-06 interim, the department of commerce, in
30 consultation with the state board of higher education, shall conduct a study of the state's
31 intellectual property laws as they relate to the protection of intellectual property rights. The

1 study must include a review of the state's intellectual property laws, including barriers that may
2 inhibit research and development in the state, and must include consideration of successful
3 actions taken by other states to improve the protection of intellectual property rights. The
4 department shall contract with a third party in performing this study. Before July 1, 2006, the
5 commissioner of commerce shall report to the legislative council the outcome of the study and
6 identify proposed legislative changes necessary to implement any recommendations to improve
7 the protection of intellectual property rights.

8 **SECTION 44. ACCOUNTABILITY MEASURES - REPORTING.** The commissioner of
9 the department of commerce shall monitor and report annually during the 2005-06 interim to
10 either the budget section or an interim committee designated by the legislative council
11 regarding the following North Dakota economic goals and associated benchmarks:

- 12 1. Develop unified efforts for economic development based on collaboration and
13 accountability:
 - 14 a. Site selection ranking of the North Dakota department of commerce.
 - 15 b. Share of local economic development organizations participating in statewide
16 marketing strategy.
- 17 2. Strengthen cooperation between the university system, economic development
18 organizations, and private businesses:
 - 19 a. Academic research and development expenditures as percentage of gross
20 state product.
 - 21 b. Industry research and development expenditures as percentage of gross
22 state product.
- 23 3. Create quality jobs that retain North Dakota's workforce and attract new
24 high-skilled labor:
 - 25 a. Net job growth.
 - 26 b. New private sector businesses per one hundred thousand residents.
 - 27 c. Average annual wage.
 - 28 d. Net migration.
- 29 4. Create a strong marketing image that builds on the state's numerous strengths,
30 including workforce, education, and quality of life:
 - 31 a. Positive national and out-of-state media exposure (favorable mentions).

- 1 b. Number of North Dakota department of commerce web site hits per months.
- 2 c. Number of leads generated by the North Dakota department of commerce.
- 3 5. Accelerate job growth in sustainable, diversified industry clusters to provide
- 4 opportunities for the state's economy:
- 5 a. Net job growth in manufacturing.
- 6 b. Net job growth in business services.
- 7 c. New private sector businesses in manufacturing.
- 8 d. New private sector businesses in business services.
- 9 e. Number of utility patents per one hundred thousand residents.
- 10 6. Strengthen North Dakota's business climate to increase international
- 11 competitiveness:
- 12 a. Gross state product (annual growth rate).
- 13 b. Venture capital investments (thousands).
- 14 c. Merchandise export value (per capita).

15 The department, in cooperation with job service North Dakota, the department of human
16 services, and the university system, shall include in its report the number of individuals trained
17 and the number who became employed as a result of each department's workforce
18 development and training programs, including the state's investment, the areas of occupational
19 training, the average annual salary of those employed, and the average increase in earnings
20 twelve months after completion of training.

21 **SECTION 45. EFFECTIVE DATE - EXPIRATION DATE.** Sections 27 through 31 of
22 this Act are effective for taxable years beginning after December 31, 2004. Section 32 of this
23 Act is effective for taxable year 2004 and is thereafter ineffective, except any unused credit may
24 be carried forward as provided in section 31 of this Act. Section 33 of this Act becomes
25 effective August 1, 2009.

26 **SECTION 46. EXPIRATION DATE.** Section 26 of this Act is effective through July 31,
27 2007, and after that date is ineffective. Section 25 of this Act is effective through July 31, 2009,
28 and after that date is ineffective.