

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1403

Introduced by

Representatives Winrich, Fairfield, Hawken

Senator Christenson

1 A BILL for an Act to provide for collection and review of information on economic development
2 incentives provided by the state and political subdivisions.

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

4 **SECTION 1. Definitions.** As used in this Act:

- 5 1. "Corporate parent" means any legal entity that possesses, owns, or controls an
6 interest greater than fifty percent of the recipient.
- 7 2. "Date of assistance" means the date upon which a granting body transmits the first
8 dollar value of development assistance to a recipient.
- 9 3. "Development assistance" means any form of public assistance, including both
10 on-budget and off-budget assistance, including tax expenditures, made for the
11 purpose of stimulating economic development of a given business entity, industry,
12 geographic jurisdiction, or other subset of the state's economy, including bonds,
13 grants, loans, loan guarantees, reduced loan interest, tax increment financing,
14 matching funds, and tax or fee reductions or exemptions of every kind, including
15 those provided for purposes of corporate income, individual income, sales, use,
16 property, fuels, severance, and excise taxes, and any other state and local tax.
- 17 4. "Full-time job" means a job in which the new employee works for the recipient at
18 an average of at least thirty-five hours per week.
- 19 5. "Granting body" means the governing authority of any state agency or political
20 subdivision that provides development assistance.
- 21 6. "In effect" refers to any calendar year within the duration of the development
22 assistance, including the duration of any loan, loan guarantee, tax credit or tax
23 credit carryforward, property tax reduction or abatement, or tax increment
24 financing. For one-time forms of development assistance such as grants and land

- 1 price subsidies, "in effect" refers to a period of not less than five years from the
2 date of assistance.
- 3 7. "Part-time job" means a job in which the new employee works for the recipient at
4 an average of less than thirty-five hours per week.
- 5 8. "Property-taxing entity" means a taxing district of the state as defined in section
6 57-20-01.
- 7 9. "Recipient" means a person or legal entity that receives development assistance
8 from a granting body in this state.
- 9 10. "Small business" means a business, including its corporate parents and all
10 subsidiaries thereof, which employed fewer than an average of twenty full-time
11 equivalent employees or which had gross receipts of less than one million dollars
12 in all United States jurisdictions during the calendar year for which disclosure is
13 required.
- 14 11. "Specific project site" means that distinct operational unit of a business to which
15 any development assistance is applied.
- 16 12. "Temporary job" means a job in which the new employee is hired for a specific
17 duration of time or season.
- 18 13. "Value of assistance" means the face value of all forms of development
19 assistance.

20 **SECTION 2. Disclosure of state tax expenditures.**

- 21 1. Before July first of each even-numbered year, beginning in 2002, the tax
22 commissioner shall provide a detailed tax expenditure budget to an interim
23 committee designated by the legislative council, derived from state tax filings and
24 other tax information for the previous two calendar years. At a minimum, the
25 report must provide the following data:
- 26 a. The dollar amount of tax expenditures for development assistance made by
27 the state, in the form of uncollected revenues, for each development
28 assistance provision of the state tax laws.
- 29 b. For each of the tax expenditures reported under subdivision a, except as
30 specified in subdivision c, an itemization of the name of each recipient
31 taxpayer who claimed the development assistance of any value equal to or

greater than five thousand dollars, and the specific dollar amount credited to the recipient's tax liability under that development assistance for that year.

- c. Development assistance claimed by recipients in amounts less than five thousand dollars must not be itemized as required in subdivision b. Instead, the tax commissioner shall aggregate such claims and report them as a single unspecified group, with the number of claimants stated.

2. All data produced by the tax commissioner and received by the legislative council in compliance with this Act are open records under section 44-04-18.

SECTION 3. Disclosure of property tax development assistance.

1. Before April 1, 2002, the tax commissioner shall promulgate a standardized disclosure registry for use by all property-taxing entities. The form must include the following data:
 - a. The name of the property owner;
 - b. The address and description of the property;
 - c. The date upon which any property tax development assistance first took effect;
 - d. The date upon which any property tax development assistance is scheduled to expire;
 - e. The rate or schedule of each property tax development assistance for the period between the date it took effect and the date it is scheduled to expire;
 - f. The entity's aggregate foregone revenue for the calendar year as a result of each item of property tax development assistance;
 - g. A compilation and summary of the entity's total foregone revenue as a result of all property tax development assistance, including a summary of foregone revenue for each kind of development assistance; and
 - h. The respective shares of the entity's property tax revenues in the reported year which went to each public agency.
2. Before May first of each year, every property-taxing entity in the state shall employ this standardized registry to report to the tax commissioner all property tax development assistance that was in effect during the previous calendar year.

3. Before June first of each year, beginning in 2002, the tax commissioner shall compile and publish all data in all of the disclosure registries.
4. If a property-taxing entity fails to comply with subsection 2, the tax commissioner shall within ten working days of the filing deadline notify the department of economic development and finance of that failure. Upon receipt of the notice, the department of economic development and finance shall suspend within three working days any current development assistance activities under its control in the property-taxing entity's jurisdiction and may not complete any current development assistance or provide any future development assistance in the noncompliant jurisdiction until it receives notice from the tax commissioner that the property-taxing entity is in compliance with subsection 2.
5. If any state agency fails to enforce subsection 3 or 4, any person who paid income taxes to this state in the calendar year before the year in dispute may sue to compel the state to enforce this section. The court shall award the plaintiff who prevails reasonable attorney's fees and costs in any such enforcement action.
6. All data generated in compliance with this section are open records under section 44-04-18.

SECTION 4. Standardized applications for on-budget development assistance.

1. Before April 1, 2002, the tax commissioner shall promulgate a standardized application form for on-budget development assistance for use by all granting bodies. The form must include the following data:
 - a. An application tracking number that is specific to both the granting agency and to each application;
 - b. The name, street and mailing addresses, telephone number, and chief officer of the granting body;
 - c. The name, street and mailing addresses, telephone number, and chief officer of the corporate parent of the applicant;
 - d. The name, street and mailing addresses, telephone number, and chief officer of the applicant at the specific project site for which development assistance is sought;

- e. The applicant corporation's total number of employees at the specific project site on the date of the application and the number of full-time, part-time, and temporary employees;
- f. The total number of employees in this state of the applicant's corporate parent and all subsidiaries thereof, as of December thirty-first of the year preceding the date of application, and the number of full-time, part-time, and temporary employees;
- g. The kinds and value of development assistance being applied for;
- h. The number of new jobs to be created by the development assistance, and the number of full-time, part-time, and temporary jobs;
- i. The average hourly wage to be paid within one year of hiring to the new employees, shown by number of full-time, part-time, and temporary employees whose hourly wage will not be more than six dollars per hour, and from six dollars to seven dollars per hour, from seven dollars to eight dollars per hour, from eight dollars to nine dollars per hour, from nine dollars to ten dollars per hour, from ten dollars to eleven dollars per hour, from eleven dollars to twelve dollars per hour, from twelve dollars to thirteen dollars per hour, from thirteen dollars to fourteen dollars per hour, and more than fourteen dollars per hour;
- j. The average hourly wage paid nonmanagerial employees in the applicant's industry in the state, as most recently provided by the United States bureau of labor statistics to the two-digit or three-digit standard industrial classification number specification, as available;
- k. The average weekly wage paid in the county, as most recently reported by the United States department of commerce in its county business patterns reports;
- l. The nature of employer-paid health care coverage to be provided within ninety days of hiring to the employees filling the new jobs, including any costs to be borne by the new employees;

- 1 m. A list of all other forms of development assistance the applicant is seeking for
2 the specific project site and the name or names of the granting body or bodies
3 from which that development assistance is being sought;
- 4 n. A narrative, if necessary, describing how the applicant's use of the
5 development assistance may reduce employment at any site in any United
6 States jurisdiction controlled by the applicant or its corporate parent, including
7 events such as automation, consolidation, merger, acquisition, product line
8 movement, business activity movement, or restructuring by either the
9 applicant or its corporate parent; and
- 10 o. Individual certifications by the chief officers of both the applicant and the
11 granting body as to the accuracy of the application, under penalty of perjury.

- 12 2. Beginning April 1, 2002, every granting body in the state, jointly with an applicant,
13 shall fill out the standardized application form as prescribed in subsection 1 each
14 time an applicant applies for development assistance.

15 **SECTION 5. On-budget development assistance disclosure.**

- 16 1. Before February first of each year, beginning in 2003, every granting body in the
17 state shall submit to the tax commissioner copies of all the standardized
18 application forms for development assistance, as specified in section 4 of this Act,
19 which it has received in the previous calendar year. Upon each form, the granting
20 body shall designate whether the development assistance is pending, was
21 approved, or was not approved, and for those applications that were approved, the
22 date of assistance if the date of assistance occurred in the previous calendar year.
- 23 2. For those applications that were approved but for which the date of assistance did
24 not occur in the same calendar year, each granting body shall report the relevant
25 dates of assistance in its next subsequent annual report to the tax commissioner.
- 26 3. For each development assistance application that was approved, and for which the
27 date of assistance has occurred in the reporting year, each granting agency shall
28 submit to the tax commissioner a progress report, which must include the following
29 data:
- 30 a. The application tracking number;

- b. The name, street and mailing addresses, telephone number, and chief officer of the granting body;
- c. The name, street and mailing addresses, telephone number, and chief officer of the recipient at the specific project site for which the development assistance was approved;
- d. The kind of development assistance and value of assistance that was approved;
- e. The recipient's total level of employment at the specific project site on the date of the application and the recipient's total level of employment at the specific project site on the date of the report and the number of full-time, part-time, and temporary employees and a computation of the gain or loss in each category;
- f. The number of new jobs the recipient stated in its application would be created by the development assistance and the number of full-time, part-time, and temporary employees;
- g. The total level of employment in this state of the recipient's corporate parent and all subsidiaries thereof, as of December thirty-first of the year preceding the date of application and the total level of employment in the state of the applicant's corporate parent and all subsidiaries thereof, as of each December thirty-first through the reporting year, showing full-time, part-time, and temporary employees, and a statement of the gain or loss in each category from the earliest reported year to the most recent;
- h. The average hourly wage paid as of December thirty-first of the reporting year to employees filling the new jobs at the specific project site, shown for categories of full-time, part-time, and temporary employees;
- i. The nature of employer-paid health care coverage being provided within ninety days of hiring to the employees filling the new jobs, including any costs being borne by the new employees;
- j. A narrative, if necessary, describing how the recipient's use of the development assistance during the reporting year has reduced employment at any site in any United States jurisdiction controlled by the applicant or its

- 1 corporate parent, including events such as automation, consolidation, merger,
2 acquisition, product line movement, business activity movement, or
3 restructuring by either the recipient or its corporate parent; and
4 k. Signed individual certifications by the chief officers of both the recipient and
5 the granting body as to the accuracy of the progress report, under penalty of
6 perjury.
- 7 4. The granting body and the tax commissioner have full investigative authority to
8 verify the recipient's progress report data, including inspection of the specific
9 project site and analysis of tax and payroll records.
- 10 5. Before June first of each year, beginning in 2003, the tax commissioner shall
11 compile and publish all data in all of the development assistance progress reports.
- 12 6. All aspects of all development assistance applications, progress reports, and the
13 tax commissioner compilation of applications and progress reports are open
14 records under section 44-04-18.
- 15 7. If a granting body fails to comply with subsections 1 through 3, or if a recipient fails
16 to comply with subdivision k of subsection 3, the department of economic
17 development and finance, within ten business days of the filing deadline, shall
18 suspend any current development assistance activities under its control in the
19 granting body's jurisdiction and may not proceed with any current or future
20 development assistance activities under its control in the granting body's
21 jurisdiction until it receives notice that the noncompliant granting body or recipient
22 is in compliance with this section.

23 **SECTION 6. Recapture.**

- 24 1. Recipients must achieve their job creation and wage and benefit goals within two
25 years of the date of assistance. They must maintain their wage and benefit goals
26 as long as the development assistance is in effect. Corporate parents of recipients
27 must maintain at least ninety percent of their original employment in this state, as
28 specified in subdivision f of subsection 1 of section 4 of this Act and subdivision g
29 of subsection 3 of section 5 of this Act.
- 30 2. Granting bodies, within ten business days after the second anniversary of the date
31 of assistance, shall fill out a standardized progress report, in the same form as

prescribed in section 5 of this Act, and the recipient shall sign the report. The granting body shall file this second anniversary progress report with the tax commissioner with the granting body's next annual filing of progress reports.

3. The granting body shall indicate on the second anniversary progress report whether the recipient has achieved its job creation and wage and benefit goals and whether the corporate parent has maintained ninety percent of its state employment.

4. On all subsequent annual progress reports, the granting body shall indicate whether the recipient corporation is still in compliance with its job creation and wage and benefit goals and whether the corporate parent is still in compliance with its state employment maintenance requirement.

5. If on any progress report occasion, beginning with the second anniversary progress report, a granting body finds that a recipient has not achieved its job creation or wage or benefit goals or the corporate parent has not maintained ninety percent of its state employment, the granting body, within ten business days, must file a finding of development assistance default with the tax commissioner and with the recipient.

6. If a recipient is found in default on development assistance under subsection 5, it must reimburse the granting body that portion of the development assistance that accrued to its benefit for the calendar year in which the default occurred. For one-time forms of development assistance such as grants or property tax discounts, a defaulting recipient must reimburse the granting body one-fifth of the value of assistance. Remittance of the payback by the recipient to the granting body must be made within sixty calendar days of the delivery of the default notice to the recipient.

7. If a recipient defaults on development assistance under subsection 5 in three consecutive calendar years, the granting body shall declare the development assistance void and shall notify the tax commissioner and the recipient. Upon such declaration, the recipient corporation must repay to the granting body all remaining value of the development assistance it has received and has not already

- 1 repaid. Repayment by the recipient to the granting body must be made within one
2 hundred eighty calendar days of the delivery of the notice to the recipient.
- 3 8. All aspects of all development assistance default notices, recapture remittances,
4 associated correspondence, and related proceedings are open records under
5 section 44-04-18.
- 6 9. If a granting body fails to enforce this section, any person who paid income taxes
7 to this state or property taxes levied by the governing body in the calendar year
8 prior to the year in dispute, or any organization representing such taxpayers, may
9 sue to compel enforcement under this section. The court shall award to any
10 prevailing plaintiff reasonable attorney's fees and costs in such enforcement
11 action.