

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1417

Introduced by

Representatives Winrich, Thorpe, Zaiser

Senators Every, Fairfield, Mathern

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 and job quality and accountability
3 standards.

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

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

- 6 1. "Corporate parent" means any legal entity that possesses, owns, or controls an
7 interest greater than fifty percent of the recipient.
- 8 2. "Date of assistance" means the date upon which a granting body transmits the first
9 dollar value of development assistance to a recipient.
- 10 3. "Development assistance" means any form of public assistance, including both
11 on-budget and off-budget assistance, including tax expenditures, made for the
12 purpose of stimulating economic development of a given business entity, industry,
13 geographic jurisdiction, or other subset of the state's economy, including bonds,
14 grants, equity investments, loans, loan guarantees, reduced loan interest, tax
15 increment financing, matching funds, and tax or fee reductions or exemptions of
16 every kind, including those provided for purposes of corporate income, individual
17 income, sales, use, property, fuels, severance, and excise taxes, and any other
18 state and local tax.
- 19 4. "Full-time job" means a job in which the new employee works for the recipient at
20 an average of at least thirty-five hours per week.
- 21 5. "Granting body" means the governing authority of any state agency or institution or
22 political subdivision that provides development assistance. The term does not
23 include the tax commissioner.

6. "In effect" refers to any calendar year within the duration of the development assistance, including the duration of any loan, loan guarantee, tax credit or tax credit carryforward, property tax reduction or abatement, or tax increment financing. For one-time forms of development assistance such as grants and land price subsidies, "in effect" refers to a period of not less than five years from the date of assistance.
7. "Part-time job" means a job in which the new employee works for the recipient at an average of less than thirty-five hours per week.
8. "Property-taxing entity" means a taxing district of the state as defined in section 57-02-01.
9. "Recipient" means a person or legal entity that receives development assistance from a granting body in this state.
10. "Small business" means a business, including its corporate parents and all subsidiaries thereof, which employed fewer than an average of twenty full-time equivalent employees or which had gross receipts of less than one million dollars in all United States jurisdictions during the calendar year for which disclosure is required.
11. "Specific project site" means that distinct operational unit of a business to which any development assistance is applied.
12. "Temporary job" means a job in which the new employee is hired for a specific duration of time or season.
13. "Value of assistance" means the face value of all forms of development assistance.

SECTION 2. Disclosure of state tax expenditures.

1. Before July first of each even-numbered year, beginning in 2004, the department of commerce shall provide a detailed tax expenditure budget to an interim committee designated by the legislative council, derived from state tax filings and other tax information for the previous two calendar years. At a minimum, the report must provide the following data:

- a. The dollar amount of tax expenditures for development assistance made by the state, in the form of uncollected revenues, for each development assistance provision of the state tax laws.
 - b. For each of the tax expenditures reported under subdivision a, except as specified in subdivision c, an itemization of the name of each recipient 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 department of commerce shall aggregate such claims and report them as a single unspecified group, with the number of claimants stated.
2. The tax commissioner shall provide to the department of commerce any information necessary to comply with the requirements of this Act. The department of commerce shall protect the confidentiality of any confidential information provided by the tax commissioner.
 3. Except as provided in subsection 2, all data produced by the department of commerce 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, 2004, the department of commerce 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 department of commerce all property tax development assistance that was in effect during the previous calendar year.
3. Before June first of each year, beginning in 2004, the department of commerce 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 department of commerce shall within ten working days of the filing deadline notify the division of economic development and finance of that failure. Upon receipt of the notice, the division 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 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, 2004, the department of commerce 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 the 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. For specific project sites located within a metropolitan statistical area, as defined by the federal office of management and budget, the average hourly wage paid nonmanagerial employees in the applicant's industry in the state,

- 1 as most recently provided by the United States bureau of labor statistics to
2 the two-digit or three-digit standard industrial classification number
3 specification, as available;
- 4 k. For specific project sites located outside a metropolitan statistical area, the
5 average weekly wage paid in the state exclusive of metropolitan statistical
6 areas, as most recently reported by the United States department of
7 commerce in its county business patterns reports;
- 8 l. The nature of employer-paid health care coverage to be provided within
9 ninety days of hiring to the employees filling the new jobs, including any costs
10 to be borne by the new employees;
- 11 m. A list of all other forms of development assistance the applicant is seeking for
12 the specific project site and the name or names of the granting body or bodies
13 from which that development assistance is being sought;
- 14 n. A narrative, if necessary, describing how the applicant's use of the
15 development assistance may reduce employment at any site in any United
16 States jurisdiction controlled by the applicant or its corporate parent, including
17 events such as automation, consolidation, merger, acquisition, product line
18 movement, business activity movement, or restructuring by either the
19 applicant or its corporate parent; and
- 20 o. Individual certifications by the chief officers of both the applicant and the
21 granting body as to the accuracy of the application, under penalty of perjury.
- 22 2. Beginning April 1, 2004, every granting body in the state, jointly with an applicant,
23 shall fill out the standardized application form as prescribed in subsection 1 each
24 time an applicant applies for development assistance.

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

- 26 1. Before February first of each year, beginning in 2005, every granting body in the
27 state shall submit to the department of commerce copies of all the standardized
28 application forms for development assistance, as specified in section 4 of this Act,
29 which it has received in the previous calendar year. Upon each form, the granting
30 body shall designate whether the development assistance is pending, was

approved, or was not approved, and for those applications that were approved, the date of assistance if the date of assistance occurred in the previous calendar year.

2. For those applications that were approved but for which the date of assistance did not occur in the same calendar year, each granting body shall report the relevant dates of assistance in its next subsequent annual report to the department of commerce.

3. For each development assistance application that was approved, and for which the date of assistance has occurred in the reporting year, each granting agency shall submit to the department of commerce a progress report, which must include the following data:

- 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,

- 1 and temporary employees, and a statement of the gain or loss in each
2 category from the earliest reported year to the most recent;
- 3 h. The average hourly wage paid as of December thirty-first of the reporting year
4 to employees filling the new jobs at the specific project site, shown for
5 categories of full-time, part-time, and temporary employees;
- 6 i. The nature of employer-paid health care coverage being provided within
7 ninety days of hiring to the employees filling the new jobs, including any costs
8 being borne by the new employees;
- 9 j. A narrative, if necessary, describing how the recipient's use of the
10 development assistance during the reporting year has reduced employment
11 at any site in any United States jurisdiction controlled by the applicant or its
12 corporate parent, including events such as automation, consolidation, merger,
13 acquisition, product line movement, business activity movement, or
14 restructuring by either the recipient or its corporate parent; and
- 15 k. Signed individual certifications by the chief officers of both the recipient and
16 the granting body as to the accuracy of the progress report, under penalty of
17 perjury.
- 18 4. The granting body and the department of commerce have full investigative
19 authority to verify the recipient's progress report data, including inspection of the
20 specific project site and analysis of tax and payroll records.
- 21 5. Before June first of each year, beginning in 2005, the department of commerce
22 shall compile and publish all data in all of the development assistance progress
23 reports.
- 24 6. All aspects of all development assistance applications, progress reports, and the
25 compilation of applications and progress reports are open records under section
26 44-04-18.
- 27 7. If a granting body fails to comply with subsections 1 through 3, or if a recipient fails
28 to comply with subdivision k of subsection 3, the division of economic development
29 and finance, within ten business days of the filing deadline, shall suspend any
30 current development assistance activities under its control in the granting body's
31 jurisdiction and may not proceed with any current or future development

1 assistance activities under its control in the granting body's jurisdiction until it
2 receives notice that the noncompliant granting body or recipient is in compliance
3 with this section.

4 **SECTION 6. Recapture.**

- 5 1. Recipients must achieve their job creation and wage and benefit goals within two
6 years of the date of assistance and must maintain their wage and benefit goals as
7 long as the development assistance is in effect. Corporate parents of recipients
8 must maintain at least ninety percent of their original employment in this state, as
9 specified in subdivision f of subsection 1 of section 4 of this Act and subdivision g
10 of subsection 3 of section 5 of this Act.
- 11 2. Granting bodies, within ten business days after the second anniversary of the date
12 of assistance, shall fill out a standardized progress report, in the same form as
13 prescribed in section 5 of this Act, and the recipient shall sign the report. The
14 granting body shall file this second anniversary progress report with the
15 department of commerce with the granting body's next annual filing of progress
16 reports.
- 17 3. The granting body shall indicate on the second anniversary progress report
18 whether the recipient has achieved its job creation and wage and benefit goals and
19 whether the corporate parent has maintained ninety percent of its state
20 employment.
- 21 4. On all subsequent annual progress reports, the granting body shall indicate
22 whether the recipient corporation is still in compliance with its job creation and
23 wage and benefit goals and whether the corporate parent is still in compliance with
24 its state employment maintenance requirement.
- 25 5. If on any progress report occasion, beginning with the second anniversary
26 progress report, a granting body finds that a recipient has not achieved its job
27 creation or wage or benefit goals or the corporate parent has not maintained ninety
28 percent of its state employment, the granting body, within ten business days, shall
29 file a finding of development assistance default with the department of commerce,
30 the tax commissioner, and the recipient.

- 1 6. If a recipient is found in default on development assistance under subsection 5, the
2 recipient shall reimburse the granting body that portion of the development
3 assistance that accrued to its benefit for the calendar year in which the default
4 occurred. For one-time forms of development assistance such as grants or
5 property tax discounts, a defaulting recipient shall reimburse the granting body
6 one-fifth of the value of assistance. Remittance of the payback by the recipient to
7 the granting body must be made within sixty calendar days of the delivery of the
8 default notice to the recipient.
- 9 7. If a recipient defaults on development assistance under subsection 5 in three
10 consecutive calendar years, the granting body shall declare the development
11 assistance void and shall notify the department of commerce, the tax
12 commissioner, and the recipient. Upon such declaration, the recipient corporation
13 shall repay to the granting body all remaining value of the development assistance
14 it has received and has not already repaid. Repayment by the recipient to the
15 granting body must be made within one hundred eighty calendar days of the
16 delivery of the notice to the recipient.
- 17 8. If the development assistance to be repaid was claimed on an income tax return
18 filed by the recipient under chapter 57-38, the recipient shall file an amended
19 return and pay any additional tax due attributable to the defaulted development
20 assistance within sixty calendar days of the delivery of the default notice. The time
21 limits for audit and assessment under subsection 9 of section 57-38-38 apply to an
22 amended return filed under this section.
- 23 9. Notwithstanding the time periods in section 57-38-38, if the recipient fails to file an
24 amended return under subsection 8, the tax commissioner may assess any
25 additional tax due attributable to the defaulted development assistance within two
26 years after the sixtieth calendar day following the tax commissioner's receipt of the
27 default notice.
- 28 10. All aspects of all development assistance default notices, recapture remittances,
29 associated correspondence, and related proceedings are open records under
30 section 44-04-18.

11. If a granting body fails to enforce this section, any person who paid income taxes to this state or property taxes levied by the governing body in the calendar year prior to the year in dispute, or any organization representing such taxpayers, may sue to compel enforcement under this section. The court shall award to any prevailing plaintiff reasonable attorney's fees and costs in such enforcement action.

SECTION 7. Job quality standards. A granting body may not grant development assistance to an applicant unless the wages paid to employees at the specific project site are at least equal to the average wage as specified in subdivisions j and k of subsection 1 of section 4 of this Act. However, for a small business, the average wage must be at least seventy-five percent of the amounts specified in subdivisions j and k of subsection 1 of section 4 of this Act. The computation of wages under this section applies only to a recipient that provides the health care coverage as approved by the granting body in its application.

SECTION 8. Accountability standards.

1. A recipient shall fulfill its job creation, wage, health care, and other benefit requirements for the project site within two years of the date of development assistance. The recipient shall maintain its wage and benefit goals as long as the development assistance is in effect, or five years, whichever is longer.
2. The corporate parent of a recipient shall maintain at least ninety percent of its employment in this state as long as the development assistance is in effect, or not less than five years, whichever is longer.
3. If the requirements under subsections 1 and 2 are not fulfilled, the granting body shall recapture the development assistance from the recipient as follows:
 - a. Upon a failure by the recipient to create the required number of jobs or to pay the required wages or benefits, the amount recaptured must be based on the pro rata amount by which the unfulfilled jobs, wages, or benefits bears to the total amount of the development assistance.
 - b. Upon a failure of the corporate parent to maintain ninety percent of its employment in this state, the rate of recapture must equal twice the percentage by which the employment is less than ninety percent.

1 4. The granting body shall provide notice to the recipient of its intent to recapture the
2 development assistance and state the reasons and amount to be recaptured. The
3 recipient shall remit to the granting body the amount within sixty calendar days of
4 the date of the notice.

5 5. If a recipient defaults on any development assistance in three consecutive
6 calendar years, the granting body shall declare the development assistance void,
7 and shall notify the department of commerce and the recipient. The recipient shall
8 pay to the granting body any remaining value of the development assistance that it
9 has not previously repaid within one hundred eighty calendar days of the date of
10 the notice of the default.

11 **SECTION 9. Collective bargaining agreement.** This Act does not require or
12 authorize a recipient to reduce wages established by a collective bargaining agreement or a
13 state or federal prevailing wage law.