

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1369

Introduced by

Representative Onstad

Senator Wardner

1 A BILL for an Act to create and enact chapter 4-42, a new subsection to section 26.1-05-19, a
2 new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 1 of
3 section 57-38-01.3, a new subdivision to subsection 2 of section 57-38-30.3, and a new
4 subsection to section 57-38-30.3 of the North Dakota Century Code, relating to the
5 establishment and operation of the farmers equity trust fund and investments and income tax
6 credits for investments for support of the fund; and to provide an effective date.

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

8 **SECTION 1.** Chapter 4-42 of the North Dakota Century Code is created and enacted
9 as follows:

10 **4-42-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 11 1. "Agricultural commodity" means an agricultural crop or animal capable of being
12 raised commercially in this state.
- 13 2. "Bank" means the Bank of North Dakota.
- 14 3. "Investment" means a purchase of an interest in the farmers equity trust fund.
- 15 4. "Value-added agricultural project" means a vertically integrated enterprise
16 operated to process and market an agricultural commodity and established as a
17 legal entity with the majority of ownership interests owned by agricultural
18 commodity producers.

19 **4-42-02. Farmers equity trust fund.** The industrial commission shall establish the
20 farmers equity trust fund as a fund at the Bank of North Dakota. Moneys in the fund may be
21 used by the value-added agriculture promotion board on behalf of the fund to acquire
22 ownership interests in value-added agricultural projects or for loans to value-added agricultural
23 projects. A loan under this section must be secured by ownership interests in the project.

1 **4-42-03. Industrial commission powers.** The industrial commission has all powers
2 necessary to carry out its functions under this chapter, including the power to:

- 3 1. Enter contracts or other instruments or agreements necessary or incidental to the
4 performance of its duties and functions under this chapter including contracts,
5 instruments, or agreements with any federal or state agency or instrumentality.
- 6 2. Sue and be sued.
- 7 3. Receive investments in the farmers equity trust fund.
- 8 4. Invest proceeds of investments in the farmers equity trust fund not needed for
9 immediate disbursement, including any reserve funds, in investments the industrial
10 commission determines to be prudent.
- 11 5. Authorize returns to investors on farmers equity trust fund investments at the times
12 and in the manner the industrial commission determines to be prudent.

13 **4-42-04. Value-added agriculture promotion board powers.** The value-added
14 agriculture promotion board has all powers necessary to carry out its functions under this
15 chapter, including the power to:

- 16 1. Make investments in and loans to value-added agricultural projects under this
17 chapter and charge any reasonable fees to borrowers as the board determines to
18 be appropriate.
- 19 2. Prescribe and approve forms and procedures for value-added agricultural projects
20 to apply for investments and loans under this chapter.
- 21 3. Prescribe the terms and conditions of investments and loans to be made under this
22 chapter.
- 23 4. Establish procedures to evaluate a value-added agricultural project's relative merit,
24 likelihood of success, and need for an investment or loan. Evaluation of relative
25 merit must include consideration of the number of citizens of this state who would
26 benefit from the project and the amount of benefit.

27 **4-42-05. Bank of North Dakota.** The industrial commission and the value-added
28 agriculture promotion board may delegate to the Bank of North Dakota and the Bank is
29 authorized to exercise all administrative powers granted to the industrial commission and the
30 value-added agriculture promotion board under this chapter, including reviewing applications
31 for, and closing and servicing, investments and loans under this chapter.

1 **4-42-06. Investments not guaranteed.** Investments in the farmers equity trust fund
2 are backed only by the balance in and obligations to the farmers equity trust fund. Investments
3 under this chapter are not payable from or chargeable to any funds other than the farmers
4 equity trust fund. The industrial commission and the Bank of North Dakota are not subject to
5 any liability on investments in the farmers equity trust fund or loans or investments made from
6 the farmers equity trust fund under this chapter.

7 **4-42-07. Farmers equity trust fund investment tax credit.** If a taxpayer makes a
8 qualified investment under this chapter in the farmers equity trust fund, the taxpayer is entitled
9 to a credit against state income tax liability as determined under section 57-38-29, 57-38-30, or
10 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the
11 amount invested during the taxable year by the taxpayer, subject to the following:

- 12 1. In any taxable year, a taxpayer may claim no more than fifty percent of the credit
13 under this section which is attributable to qualified investments in a single taxable
14 year. The aggregate amount of credits under this section for any taxable year may
15 not exceed fifty percent of the taxpayer's tax liability as otherwise determined
16 under chapter 57-38.
- 17 2. Any amount of credit under this section not allowed because of the limitations of
18 this section may be carried forward for up to one taxable year after the taxable
19 year in which the investment was made.
- 20 3. A partnership or other passthrough entity that invests under this chapter in the
21 farmers equity trust fund must be considered to be the taxpayer for purposes of the
22 investment limitations in this section and the amount of the credit allowed with
23 respect to an investment in the farmers equity trust fund must be determined at the
24 partnership or passthrough entity level. The amount of the total credit determined
25 at the partnership or passthrough entity level must be allowed to the partners or
26 shareholders in proportion to their respective interests in the partnership or
27 passthrough entity.
- 28 4. A qualified investment must be at risk in the farmers equity trust fund. An
29 investment for which a credit is received under this section must remain in the fund
30 for at least three years.

5. The tax credit under this section accrues to the taxpayer for the taxable year in which full consideration for the investment under this chapter was received by the industrial commission.

4-42-08. Tax credit procedure and reporting. To receive the tax credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner.

4-42-09. Rules and administration. The tax commissioner shall administer the provisions of this chapter which relate to the income tax credits and deductions allowed under this chapter and has the same powers as provided under section 57-38-56 for purposes of this chapter. The industrial commission shall administer the provisions of this chapter which relate to investments in the farmers equity trust fund under this chapter and the commission may adopt rules for that purpose in accordance with chapter 28-32. The value-added agriculture promotion board shall administer the provisions of this chapter which relate to investments or loans from the farmers equity trust fund and may adopt rules for that purpose in accordance with chapter 28-32.

SECTION 2. A new subsection to section 26.1-05-19 of the North Dakota Century Code is created and enacted as follows:

Investments under chapter 4-42.

SECTION 3. A new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of any returns received by the taxpayer during the taxable year on investments under chapter 4-42 to the extent that those returns were included in the taxpayer's federal taxable income.

SECTION 4. A new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of any returns received by the corporation during the taxable year on investments under chapter 4-42 to the extent those returns were included in the corporation's federal taxable income.

SECTION 5. A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

1 Reduced by returns received by the taxpayer during the taxable year on
2 investments under chapter 4-42 to the extent those returns were included in
3 the taxpayer's federal taxable income.

4 **SECTION 6.** A new subsection to section 57-38-30.3 of the North Dakota Century
5 Code is created and enacted as follows:

6 An individual, estate, or trust is entitled to a credit against the tax as determined
7 under this section for farmers equity trust fund investments as determined under
8 section 4-42-14.

9 **SECTION 7. EFFECTIVE DATE.** Sections 2 through 6 of this Act are effective for
10 taxable years beginning after December 31, 2002.