

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2406

Introduced by

Senators Fairfield, Every, Heitkamp

Representatives Kroeber, Winrich

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; and to create and enact a new subsection to section 57-23-06 and a new subsection
4 to section 57-55-12 of the North Dakota Century Code, relating to abatement of property taxes.

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

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

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

6. "In effect" refers to any calendar year within the duration of the development subsidy, 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 subsidies 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 any development subsidy 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 ten full-time equivalent employees or which had gross receipts of less than five hundred thousand dollars 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 subsidy 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 subsidies.

SECTION 2. Disclosure of state tax expenditures.

1. Before July first of each even-numbered year, beginning in 2004, the tax commissioner shall provide a detailed tax expenditure budget to 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 any development subsidy made by the state, in the form of uncollected revenues, for each development subsidy 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 subsidy 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 subsidy for that year.

- c. Development subsidies 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 subsidy.

1. Before April 1, 2004, 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 subsidy first took effect;
 - d. The date upon which any property tax development subsidy is scheduled to expire;
 - e. The rate or schedule of each property tax development subsidy 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 subsidy;
 - g. A compilation and summary of the entity's total foregone revenue as a result of all property tax development subsidy, including a summary of foregone revenue for each kind of development subsidy; 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 subsidies that were in effect during the previous calendar year.

3. Before June first of each year, beginning in 2004, the tax commissioner shall compile and publish, in both written and electronic forms, 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 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 subsidy activities under its control in the property-taxing entity's jurisdiction and may not complete any current development subsidy or provide any future development subsidy 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 subsidy.

1. Before April 1, 2004, the department of commerce shall promulgate a standardized application form for any on-budget development subsidy 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 any development subsidy 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 subsidy being applied for;
- h. The number of new jobs to be created by the development subsidy, and the number of full-time, part-time, and temporary jobs;
- i. The median hourly wage to be paid to current and new employees at the specific project site, shown by the number of full-time, part-time, and temporary employees whose hourly wage will not be more than nine dollars per hour, from nine dollars to twelve dollars per hour, from twelve dollars to fifteen dollars per hour, and more than fifteen 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, 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. For specific project sites located outside a metropolitan statistical area, the average weekly wage paid in the state exclusive of metropolitan statistical areas, 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;
- m. A list of all other forms of development subsidies the applicant is seeking for the specific project site and the name or names of the granting body or bodies from which that development subsidy is being sought;

- n. A narrative, if applicable, describing how the applicant's use of the development subsidy may reduce employment at any site in any United States jurisdiction controlled by the applicant or its corporate parent, including events such as automation, consolidation, merger, acquisition, product line movement, business activity movement, relocation, or restructuring by either the applicant or its corporate parent;
 - o. A list of development subsidies reviewed in this state during the ten years preceding the application; and
 - p. Any other items determined necessary by the department of commerce during the promulgation of the standardized application form.
2. Beginning April 1, 2004, every granting body in the state, jointly with an applicant, shall fill out the standardized application form as prescribed in subsection 1 each time an applicant applies for any development subsidy.

SECTION 5. On-budget development subsidy disclosure.

1. Before February first of each year, beginning in 2005, every granting body in the state shall submit to the department of commerce copies of all the standardized application forms for development subsidies, as specified in section 4 of this Act, which it has received in the previous calendar year. Upon each form, the granting body shall designate whether the development subsidy 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 subsidy 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 subsidy was approved;
- d. The kind of development subsidy and value of the subsidy 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 subsidy 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 median 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 by the number of full-time, part-time, and temporary employees whose hourly wage is not more than nine dollars per hour, from nine dollars to twelve dollars per hour, from twelve dollars to fifteen dollars per hour, and more than fifteen dollars per hour;
- 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 applicable, describing how the recipient's use of the development subsidy during the reporting year has reduced employment at any site in any United States jurisdiction controlled by the applicant or its corporate parent, including events such as automation, consolidation, merger, acquisition, product line movement, business activity movement, relocation, or restructuring by either the recipient or its corporate parent; and
 - k. Signed individual certifications by the chief officers of both the recipient and the granting body as to the accuracy of the progress report, under penalty of perjury.
4. A granting body and a recipient shall file annual progress reports for the duration of the development subsidy, or for five years, whichever is greater.
 5. The granting body and the department of commerce have full investigative authority to verify the recipient's progress report data, including inspection of the specific project site and analysis of tax and payroll records.
 6. Before June first of each year, beginning in 2005, the department of commerce shall compile and publish, in both written and electronic forms, all data in all of the development subsidy progress reports.
 7. All aspects of all development subsidy applications, progress reports, and the compilation of applications and progress reports are open records under section 44-04-18.
 8. If a granting body fails to comply with subsections 1 through 3, or if a recipient fails to comply with subdivision k of subsection 3, the division of economic development and finance, within ten business days of the filing deadline, shall suspend any current development subsidy activities under its control in the granting body's jurisdiction and may not proceed with any current or future development subsidy activities under its control in the granting body's jurisdiction until it receives notice that the noncompliant granting body or recipient is in compliance with this section.

SECTION 6. Recapture.

1. Recipients must achieve their job creation and wage and benefit goals within two years of the date of assistance and must maintain their wage and benefit goals as long as the development subsidy is in effect. Corporate parents of recipients must

maintain at least ninety percent of their original employment in this state, as specified in subdivision f of subsection 1 of section 4 of this Act and subdivision g of subsection 3 of section 5 of this Act.

2. Granting bodies, within ten business days after the second anniversary of the date 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 department of commerce 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, shall file a finding of development subsidy default with the department of commerce, the tax commissioner, and the recipient.

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

1 of this Act. However, for a small business, the average wage must be at least eighty-five
2 percent of the amounts specified in subdivisions j and k of subsection 1 of section 4 of this Act.
3 The computation of wages under this section applies only to a recipient that provides the health
4 care coverage as approved by the granting body in its application.

5 **SECTION 8. Political subdivisions - Economic development authorities.**

6 1. One or more political subdivisions may establish an economic development
7 authority to:

- 8 a. Promote, stimulate, develop, and enhance commerce within its jurisdiction;
- 9 b. Endeavor to increase commerce, wages, and quality of life and employment
10 within its jurisdiction through planning, development, technical assistance,
11 education, training, workforce development, advertising, lending, and
12 investment; and
- 13 c. Support the creation, expansion, and modernization of new businesses and
14 support growth of economic activity that enhances commerce, wages, quality
15 of life and employment, business and microenterprise development, and the
16 prosperity of its jurisdiction.

17 2. One or more political subdivisions may form an economic development authority
18 as follows:

- 19 a. A political subdivision may create, by resolution of the governing body, a
20 public body to be known as an economic development authority that is
21 authorized to exercise its functions upon the election and qualification of the
22 first commissioners of the authority.
- 23 b. Two or more political subdivisions may create by execution of a joint
24 agreement authorized by resolution of the governing body of each
25 participating subdivision, an economic development authority.
- 26 c. The qualified electors of the participating subdivisions shall elect, pursuant to
27 the joint agreement, no fewer than five individuals as commissioners of the
28 economic development authority.
- 29 d. An economic development authority may be increased to serve one or more
30 additional political subdivisions if each additional political subdivision and
31 each of the political subdivisions then participating in the authority, adopt a

1 resolution consenting to the addition and hold an election for the additional
2 political subdivisions' designated seats on the commission. Each participating
3 political subdivision shall elect at least one member of the economic
4 development authority.

5 e. An economic development authority may not represent more than three
6 counties or political subdivisions in more than three counties.

7 3. An economic development authority shall establish, as soon after the election and
8 qualification of the commissioners as practicable and before assuming the
9 responsibilities of the authority, minimum standards for economic development
10 within the jurisdiction of the authority and policies and procedures for the operation
11 of the authority. The commissioners of the authority shall hold a public hearing for
12 input on the minimum standards and policies and procedures of the authority
13 within the jurisdiction of each political subdivision participating in the economic
14 development authority. Minimum standards for economic development relating to
15 job quality standards, disclosure of incentives, recapture, and other accountability
16 measures may exceed state standards but may not be less than those established
17 by state law.

18 **SECTION 9. Public hearing.** A political subdivision granting body shall hold a public
19 hearing before the granting body provides any development subsidy in the amount of
20 twenty-five thousand dollars or more to a recipient. The granting body shall publish notice of
21 the public hearing in the official newspaper of the political subdivision at least two weeks in
22 advance of the public hearing.

23 **SECTION 10. Collective bargaining agreement.** This Act does not require or
24 authorize a recipient to reduce wages established by a collective bargaining agreement or a
25 state or federal prevailing wage law.

26 **SECTION 11.** A new subsection to section 57-23-06 of the North Dakota Century Code
27 is created and enacted as follows:

28 Property taxes levied by a school district may not be abated for the purposes of
29 economic development.

30 **SECTION 12.** A new subsection to section 57-55-12 of the North Dakota Century Code
31 is created and enacted as follows:

- 1 Property taxes levied by a school district may not be abated for the purposes of
- 2 economic development.