

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO.

Introduced by

Senator Every

A BILL for an Act to provide for collection and review of information on economic development incentives provided by the state and political subdivisions and job quality and accountability standards; and to amend and reenact subdivision www of subsection 1 of section 41-09-02 of the North Dakota Century Code, relating to providing that an employee of a person receiving development assistance is a secured party.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 9 of this Act:

1. "Corporate parent" means any legal entity that possesses, owns, or controls an interest greater than fifty percent of the recipient.
2. "Date of assistance" means the date upon which a granting body transmits the first dollar value of development assistance to a recipient.
3. "Development assistance" means any form of public assistance, including on-budget and off-budget assistance; tax expenditures made for the purpose of stimulating economic development of a given business entity, industry, geographic jurisdiction, or other subset of the state's economy; bonds, grants, equity investments, loans, loan guarantees, reduced loan interest, tax increment financing, matching funds, and tax or fee reductions or exemptions of every kind, including those provided for purposes of corporate income, individual income, sales, use, property, fuels, severance, and excise taxes; and any other state and local tax.
4. "Full-time job" means a job in which the new employee works for the recipient for an average of at least thirty-five hours per week.

- 1 5. "Granting body" means the governing authority of any state agency or institution or
2 political subdivision that provides development assistance. The term does not
3 include the tax commissioner.
- 4 6. "In effect" refers to any calendar year within the duration of the development
5 assistance, including the duration of any loan, loan guarantee, tax credit or tax
6 credit carryforward, property tax reduction or abatement, or tax increment
7 financing. For one-time forms of development assistance such as grants and land
8 price subsidies, "in effect" refers to a period of not less than five years from the
9 date of assistance.
- 10 7. "Part-time job" means a job in which the new employee works for the recipient for
11 an average of less than thirty-five hours per week.
- 12 8. "Recipient" means a legal entity that receives development assistance from a
13 granting body in this state.
- 14 9. "Small business" means a business, including its corporate parents and all its
15 subsidiaries, which employed fewer than an average of twenty full-time equivalent
16 employees or which had gross receipts of less than one million dollars in all United
17 States jurisdictions during the calendar year for which disclosure is required.
- 18 10. "Specific project site" means that distinct operational unit of a business to which
19 any development assistance is applied.
- 20 11. "Taxing entity" means a taxing district as defined in section 57-02-01.
- 21 12. "Temporary job" means a job in which the new employee is hired for a specific
22 duration of time or season.
- 23 13. "Value of assistance" means the face value of all forms of development assistance.
- 24 14. "Wages" means all payments made to or on behalf of an employee as
25 remuneration for employment, whether calculated on a time, piece, job, or
26 incentive basis, including payments made for benefits.

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

- 28 1. Before July first of each even-numbered year, beginning in 2006, the department of
29 commerce shall provide a detailed tax expenditure budget to an interim committee
30 designated by the legislative council, derived from state tax filings and other tax

information for the previous two calendar years. The report must include 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 need not be itemized as required in subdivision b, but the department of commerce shall aggregate these 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 sections 1 through 9 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 sections 1 through 9 of this Act are open records under section 44-04-18.

SECTION 3. Disclosure of property tax development assistance.

1. Before April 1, 2006, the department of commerce shall adopt a standardized disclosure registry for use by all property-taxing entities. The form must include:

- 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 became effective;
- 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 received by each public agency.
2. Before May first of each year, every taxing entity 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 2006, the department of commerce shall compile and publish all data in all of the disclosure registries.
4. If a taxing entity fails to comply with subsection 2, the department of commerce shall notify the division of economic development and finance of that failure within ten working days of the filing deadline. Upon receipt of the notice, the division of economic development and finance shall suspend within three business days any current development assistance activities under its control in the taxing entity's jurisdiction and may not complete any current development assistance or provide any future development assistance in the noncompliant jurisdiction until the 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 the 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 1. Before April 1, 2006, the department of commerce shall adopt a standardized
2 application form for on-budget development assistance for use by all granting
3 bodies. The form must include:
- 4 a. An application tracking number that is specific to both the granting agency
5 and to each application;
- 6 b. The name, street and mailing addresses, telephone number, and chief officer
7 of the granting body;
- 8 c. The name, street and mailing addresses, telephone number, and chief officer
9 of the corporate parent of the applicant;
- 10 d. The name, street and mailing addresses, telephone number, and chief officer
11 of the applicant at the specific project site for which development assistance is
12 sought;
- 13 e. The applicant corporation's total number of employees at the specific project
14 site on the date of the application and the number of full-time, part-time, and
15 temporary employees;
- 16 f. The total number of employees in this state of the applicant's corporate parent
17 and all subsidiaries of the corporate parent, as of December thirty-first of the
18 year preceding the date of application, and the number of full-time, part-time,
19 and temporary employees;
- 20 g. The kinds and value of development assistance being applied for;
- 21 h. The number of new jobs to be created by the development assistance and the
22 number of full-time, part-time, and temporary jobs;
- 23 i. The average hourly wage to be paid within one year of hiring to the new
24 employees, shown by the number of full-time, part-time, and temporary
25 employees whose hourly wage will not be more than six dollars per hour, and
26 from six dollars to seven dollars per hour, from seven dollars to eight dollars
27 per hour, from eight dollars to nine dollars per hour, from nine dollars to ten
28 dollars per hour, from ten dollars to eleven dollars per hour, from eleven
29 dollars to twelve dollars per hour, from twelve dollars to thirteen dollars per
30 hour, from thirteen dollars to fourteen dollars per hour, and more than
31 fourteen dollars per hour;

- 1 j. For specific project sites located within a metropolitan statistical area, as
2 defined by the federal office of management and budget, the average hourly
3 wage paid nonmanagerial employees in the applicant's industry in the state,
4 as most recently provided by the United States bureau of labor statistics to the
5 two-digit or three-digit standard industrial classification number specification,
6 as available;
- 7 k. For specific project sites located outside a metropolitan statistical area, the
8 average weekly wage paid in the state exclusive of metropolitan statistical
9 areas, as most recently reported by the United States department of
10 commerce in its county business patterns reports;
- 11 l. The nature of employer-paid health care coverage to be provided within ninety
12 days of hiring to the employees filling the new jobs, including any costs to be
13 borne by the new employees;
- 14 m. A list of all other forms of development assistance the applicant is seeking for
15 the specific project site and the name or names of the granting body or bodies
16 from which that development assistance is being sought;
- 17 n. A narrative, if necessary, describing how the applicant's use of the
18 development assistance may reduce employment at any site in any United
19 States jurisdiction controlled by the applicant or its corporate parent, including
20 events such as automation, consolidation, merger, acquisition, product line
21 movement, business activity movement, or restructuring by either the
22 applicant or its corporate parent; and
- 23 o. Individual certifications by the chief officers of both the applicant and the
24 granting body as to the accuracy of the application.
- 25 2. Beginning April 1, 2006, every granting body in the state, jointly with an applicant,
26 shall fill out the standardized application form as prescribed in subsection 1 each
27 time an applicant applies for development assistance.

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

- 29 1. Before February first of each year, beginning in 2007, every granting body shall
30 submit to the department of commerce copies of all the standardized application
31 forms for development assistance, 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 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:

- 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 its subsidiaries, 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 its subsidiaries, 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 corporate parent, including events such as automation, consolidation, merger, acquisition, product line movement, business activity movement, 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.

4. The granting body and the department of commerce have investigative authority to verify the recipient's progress report data, including inspection of the specific project site and analysis of tax and payroll records.

5. Before June first of each year, beginning in 2007, the department of commerce shall compile and publish all data in all of the development assistance progress reports.

6. All aspects of all development assistance applications, progress reports, and the compilation of applications and progress reports are open records under section 44-04-18.

7. 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 assistance activities under its control in the granting body's jurisdiction and may not proceed with any current or future development assistance

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 assistance 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 complete 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 assistance default with the department of commerce, the tax commissioner, and the recipient.
6. If a recipient is found in default on development assistance under subsection 5, the recipient shall reimburse the granting body that portion of the development

1 assistance that accrued to its benefit for the calendar year in which the default
2 occurred. For one-time forms of development assistance such as grants or
3 property tax discounts, a defaulting recipient shall reimburse the granting body
4 one-fifth of the value of assistance. Remittance of the payback by the recipient to
5 the granting body must be made within sixty calendar days of the delivery of the
6 default notice to the recipient.

7 7. If a recipient defaults on development assistance under subsection 5 in three
8 consecutive calendar years, the granting body shall declare the development
9 assistance void and shall notify the department of commerce, the tax
10 commissioner, and the recipient. Upon this declaration, the recipient corporation
11 shall repay to the granting body all remaining value of the development assistance
12 it has received and has not already repaid. Repayment by the recipient to the
13 granting body must be made within one hundred eighty calendar days of the
14 delivery of the notice to the recipient.

15 8. If the development assistance to be repaid was claimed on an income tax return
16 filed by the recipient under chapter 57-38, the recipient shall file an amended return
17 and pay any additional tax due attributable to the defaulted development
18 assistance within sixty calendar days of the delivery of the default notice. The time
19 limits for audit and assessment under subsection 9 of section 57-38-38 apply to an
20 amended return filed under this section.

21 9. Notwithstanding the time periods in section 57-38-38, if the recipient fails to file an
22 amended return under subsection 8, the tax commissioner may assess any
23 additional tax due attributable to the defaulted development assistance within two
24 years after the sixtieth calendar day following the tax commissioner's receipt of the
25 default notice.

26 10. All aspects of all development assistance default notices, recapture remittances,
27 associated correspondence, and related proceedings are open records under
28 section 44-04-18.

29 11. If a granting body fails to enforce this section, any person who paid income taxes
30 to this state or property taxes levied by the governing body in the calendar year
31 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 the 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 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.
4. The granting body shall provide notice to the recipient of its intent to recapture the development assistance and state the reasons and amount to be recaptured. The recipient shall remit to the granting body the amount within sixty calendar days of the date of the notice.

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

7 **SECTION 9. Collective bargaining agreement.** Sections 1 through 9 of this Act do
8 not require or authorize a recipient to reduce wages established by a collective bargaining
9 agreement or a state or federal prevailing wage law.

10 **SECTION 10. AMENDMENT.** Subdivision www of subsection 1 of section 41-09-02 of
11 the North Dakota Century Code is amended and reenacted as follows:

12 www. "Secured party" means:

- 13 (1) A person in whose favor a security interest is created or provided for
14 under a security agreement, regardless of whether any obligation to be
15 secured is outstanding;
- 16 (2) A person that holds an agricultural lien;
- 17 (3) A consignor;
- 18 (4) A person to which accounts, chattel paper, payment intangibles, or
19 promissory notes have been sold;
- 20 (5) A trustee, indenture trustee, agent, collateral agent, or other
21 representative in whose favor a security interest or agricultural lien is
22 created or provided for; ~~or~~
- 23 (6) A person that holds a security interest arising under section 41-02-46,
24 section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of
25 section 41-02.1-56, section 41-04-22, or section 41-05-18; or
- 26 (7) A person that has a claim for wages against a person receiving
27 development assistance.