

HOUSE BILL NO.

Introduced by

Representative Keiser

1 A BILL for an Act relating to business subsidies; and to provide an effective date.

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

3 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

- 4 1. "Benefit date" means the date on which the recipient receives the business
5 subsidy. If the business subsidy involves the purchase, lease, or donation of
6 physical equipment, the benefit date is the date when the recipient puts the
7 equipment into service. If the business subsidy is for improvements to property,
8 the benefit date is the earlier of either when the improvements are finished for the
9 entire project or when a business occupies the property. If a business occupies
10 the property and the subsidy grantor expects that other businesses will also occupy
11 the same property, the grantor may assign a separate benefit date for each
12 subsequent business when that subsequent business first occupies the property.
- 13 2. "Business subsidy" means a state government or political subdivision grant;
14 contribution of property, infrastructure, or the principal amount of a loan at rates
15 below those commercially available and which result from direct interest rate
16 buydowns only; any reduction or deferral of any tax or any fee; any guarantee of
17 any payment under any loan, lease, or other obligation; or any preferential use of
18 government facilities given to a business. The term does not include:
- 19 a. Total assistance in all forms which is valued at less than twenty-five thousand
20 dollars.
- 21 b. Assistance that is generally available to all businesses or to a general class of
22 similar businesses, such as a line of business, size, location, or similar
23 general criteria.

- c. Assistance resulting from Bank of North Dakota programs and policies operating within established guidelines and limitations.
- d. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
- e. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.
- f. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services.
- g. Assistance for housing.
- h. Assistance for pollution control or abatement.
- i. Assistance for energy conservation.
- j. Tax reductions resulting from conformity with federal tax law.
- k. Benefits derived from regulation.
- l. Indirect benefits derived from assistance to educational institutions.
- m. Assistance for a collaboration between a North Dakota institution of higher education and a business.
- n. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
- o. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
- p. Federal assistance until the assistance has been repaid to, and reinvested by, the state or local government agency.
- q. Business loans and loan guarantees of fifty thousand dollars or less.
- r. Federal loan funds provided through the United States department of commerce, economic development administration.

3. "Compensation" includes an employee's wages, salary, bonus, or other earnings; health, disability, life, and retirement benefits or insurance premium paid by the employer; an employee's share of payroll taxes paid by the employer; and other fringe benefits such as housing allowance, transportation expenses, or bonus.
4. "Department" means the department of commerce.
5. "Grantor" means the state or any political subdivision that grants a business subsidy to a recipient.
6. "Political subdivision" means a unit of local government in this state which has authority to grant a business subsidy. The term includes any authority, agency, special district, or entity created by, authorized by, or under the jurisdiction of a political subdivision.
7. "Public purpose" includes assisting community development, increasing the tax base, directly creating employment opportunities, or indirectly creating employment opportunities through increased economic activity. Job retention is only a public purpose in cases in which job loss is specific and demonstrable.
8. "Recipient" means any business organization that receives a business subsidy.
9. "State" means any North Dakota state government agency that has the authority to award business subsidies.

SECTION 2. Scope - Public purpose - Notice.

1. The application of this Act is limited to business subsidies provided by grantors to recipients, unless otherwise provided.
2. A grantor may not grant a business subsidy to a recipient unless that business subsidy meets a public purpose.
3. Before the state grants a business subsidy that exceeds five million dollars, the state shall provide public notice and a hearing on the proposed business subsidy. This public hearing and notice is not required if a separate hearing and notice on the business subsidy is required by law other than this Act. The public notice must include the date, time, and place of the hearing.
4. A business subsidy in the form of a grant of money must be structured as a forgivable loan. The business subsidy agreement must state the fair market value

of the property conveyed to the recipient or other in-kind benefits provided to the recipient.

SECTION 3. Business subsidy agreement.

1. A recipient must enter a business subsidy agreement with each grantor of a business subsidy. The grantor and the recipient shall sign the agreement.
2. If a business subsidy benefits more than one recipient, the grantor shall assign a proportion of the business subsidy to each recipient that signs a business subsidy agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.
3. A business subsidy agreement must include:
 - a. A description of the business subsidy, including the amount of the subsidy, the type of subsidy, and the type of district if the subsidy is tax increment financing.
 - b. A statement of the public purposes of the business subsidy.
 - c. Goals for the business subsidy, including the number of jobs to be created and the average compensation of the new jobs created. The job and average compensation goals may include separate goals for the number of part-time or full-time jobs or, in cases in which potential job loss is specific and demonstrable, goals for the number of jobs retained. In addition to other specific goal timeframes, the job and average compensation goals must contain specific goals to be attained within two years of the benefit date.
 - d. A description of the financial obligation of the recipient if the goals are not met.
 - e. A commitment by the recipient to continue operations in the jurisdiction in which the business subsidy is used for five years or more after the benefit date.
 - f. The name and address of the parent company of the recipient, if any.
 - g. A list of all financial assistance by all grantors for the project.
 - h. The recipient's obligation if the recipient does not fulfill the business subsidy agreement.

SECTION 4. Failure to meet goals - Modification of goals. At a minimum, a business subsidy agreement must require a recipient that fails to meet subsidy agreement goals to pay back to the grantor the assistance, prorated to reflect any partial fulfillment of goals. A grantor may extend for up to one year the period for meeting the job and average compensation goals if the grantor determines that circumstances have made it impossible for the recipient to achieve the required goals. A grantor may extend the period for meeting job and average compensation goals by another additional year by documenting in writing the reason for the extension and attaching a copy of the documentation to the grantor's next annual report. Notwithstanding the five-year commitment in the business subsidy agreement, a grantor may authorize a recipient to move from the jurisdiction in which the subsidy is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. If after extending the period for achieving the goals of the subsidy agreement for two years a grantor determines that a business subsidy agreement goal of creation or retention of jobs has changed and justifies a decrease, after a public hearing, the grantor may decrease the job goals in the agreement to a lesser number or to zero and may adjust the average compensation goals to reflect changed circumstances. Justification for decreasing job goals may include that other public benefits adequately offset the failure to meet the initial job goals. A recipient that fails to meet the terms of a business subsidy agreement may not receive a business subsidy from any grantor for a period of five years from the date of failure or until a recipient satisfies the repayment obligation under this section, whichever occurs first.

SECTION 5. State grantor recipient reports.

1. The department shall create state grantor recipient report forms that include:
 - a. The name and address of the recipient;
 - b. The type, public purpose, and amount of the business subsidy, including the number of new jobs to be created in association with the subsidy;
 - c. The average compensation of all jobs created in association with the business subsidy, including all benefits provided by the employer on all jobs created in association with the subsidy;
 - d. The date the job and average compensation goals are expected to be reached;

- e. A statement of goals identified in the business subsidy agreement and an update on achievement of these goals, including the actual number of jobs created and the average compensation of jobs created at that point;
- f. The location of the recipient prior to receiving the business subsidy;
- g. The name and address of the parent corporation of the recipient, if any;
- h. A list of business subsidies by all grantors for the project; and
- i. Other information the department and grantor may request.

2. Each state grantor shall use recipient report forms created by the department to monitor the progress by each state grantor recipient in achieving business subsidy agreement goals. At a minimum, each of these recipients shall provide the state grantor with an annual recipient report for two years following the benefit date or until the goals are met, whichever is later. If the business subsidy agreement goals are not met, the state grantor recipient shall continue to provide recipient reports to the state grantor until the subsidy is repaid. A state grantor shall file with the department a copy of each completed recipient report.
3. Before March 1, 2007, and each March first thereafter, a state grantor recipient shall file with the state grantor the recipient report for the previous calendar year. If a state grantor recipient fails to file a recipient report before March eighth, the state grantor shall mail the recipient a warning letter. If a noncompliant state grantor recipient fails to file the recipient report within fourteen days of the postmarked date of the warning letter, the recipient shall pay to the state grantor a penalty of one hundred dollars for each subsequent day until the report is filed. The maximum penalty under this section may not exceed one thousand dollars.

SECTION 6. State grantor reports. Before April 1, 2007, and each April first thereafter, each state agency that has granted a subsidy within the last five calendar years shall file an annual state grantor report with the department. The department shall create the state grantor report form required under this section. A state grantor report must include a list of all recipients and those recipients' job and average compensation goals, and must include a report on each recipient's progress toward the goals. If the department does not receive a state grantor report before May first, the department shall issue a warning letter to the noncompliant grantor. If the department has not received a state grantor report from the noncompliant

grantor before June first, that noncompliant grantor may not award any business subsidy until the past-due grantor report is filed with the department.

SECTION 7. Compilation and summary - Report to legislative council.

1. Beginning in 2007 and annually thereafter, the department shall publish a compilation and summary of the results of the state grantor reports for the previous calendar year. Beginning in 2007 and annually thereafter, the department of commerce shall file the reports of the state grantors and the compilation and summary with the legislative council. The department shall organize the compilation and summary so that useful comparisons across time periods and across grantors can be made. The department may add other information to the compilation and summary as deemed necessary to evaluate business subsidies.
2. The compilation and summary must include:
 - a. The number of jobs targeted to be created by each recipient receiving a business subsidy in that year.
 - b. The average compensation of jobs targeted to be created by each recipient that year.
 - c. The number of jobs achieved in comparison to the jobs targeted for each business year by year.
 - d. A distribution of business subsidies by type of business and by public purpose.
 - e. The percentage of business subsidies that reached goals within two, three, four, and five years from the benefit date.
 - f. The percentage of business subsidies that did not meet goals and that did not receive repayment.

SECTION 8. Political subdivision grantor annual reports.

1. A political subdivision shall maintain records of business subsidies provided to recipients.
2. Before April 1, 2007, and each April first thereafter, each political subdivision that granted a subsidy during the previous calendar year shall prepare an annual political subdivision grantor report. This annual report must include:
 - a. The names of the businesses receiving business subsidies during that year;

- 1 b. The number of new jobs expected to be created by each business;
- 2 c. The total dollar value of all business subsidies provided by the political
- 3 subdivision during that year; and
- 4 d. The average compensation expected to be provided for the new jobs
- 5 expected to be created as a result of the business subsidies.

6 **SECTION 9. Appropriation requests.** A state agency may not request an
7 appropriation for the purpose of providing a business subsidy grant unless the agency includes
8 with the request a statement of the expected benefits associated with the grant.

9 **SECTION 10. EFFECTIVE DATE.** This Act becomes effective January 1, 2006.