

Sixty-second  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1409**

Introduced by

Representatives Weiler, Kasper, Streyle, Thoreson

Senators Larsen, Sitte

1 A BILL for an Act to amend and reenact sections 6-09-38, 10-33-124, and 11-37-08,  
2 subsection 1 of section 12.1-32-09, subsection 3 of section 25-04-16, sections 27-17-06,  
3 37-27-06, and 37-28-07, subsection 8 of section 40-63-01, sections 40-63-02, 40-63-07, and  
4 50-06.3-06, subsection 2 of section 52-06-30, subsection 1 of section 54-09-09, subsections 15  
5 and 27 of section 57-02-08, and section 65-04-26 of the North Dakota Century Code, relating to  
6 elimination of individual and corporate income taxes and financial institutions taxes; to repeal  
7 sections 40-63-04, 40-63-06, 40-63-09, 40-63-10, and 52-02.1-03, chapters 57-35.3, 57-38,  
8 57-38.1, 57-38.3, 57-38.4, 57-38.5, and 57-38.6, and section 57-59-02 of the North Dakota  
9 Century Code, relating to elimination of individual and corporate income taxes and financial  
10 institutions taxes; and to provide an effective date.

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

12 **SECTION 1. AMENDMENT.** Section 6-09-38 of the North Dakota Century Code is amended  
13 and reenacted as follows:

14 **6-09-38. North Dakota higher education savings plan - Administration - Rules -**  
15 **Continuing appropriation.**

16 The Bank of North Dakota shall adopt rules to administer, manage, promote, and market a  
17 North Dakota higher education savings plan. The Bank shall ensure that the North Dakota  
18 higher education savings plan is maintained in compliance with internal revenue service  
19 standards for qualified state tuition programs. The Bank, as trustee of the North Dakota higher  
20 education savings plan, may impose an annual administrative fee to recover expenses incurred  
21 in connection with operation of the plan or for other programs deemed to promote attendance at  
22 an institution of higher education. Administrative fees received by the Bank are appropriated on  
23 a continuing basis to be used as provided in this section. ~~Contributions made during the taxable~~  
24 ~~year to a higher education savings plan administered by the Bank, pursuant to the provisions of~~

1 the plan, are eligible for an income tax deduction as provided in chapter 57-38. Information-  
2 related to contributions is confidential except as is needed by the tax commissioner for  
3 determining compliance with the income tax deduction provided in chapter 57-38.

4 **SECTION 2. AMENDMENT.** Section 10-33-124 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **10-33-124. Certified nonprofit development corporation - Application - ~~Income tax~~**  
7 **credit.**

8 1. For the purposes of this section:

9 a. "Certified nonprofit development corporation" means a corporation organized  
10 under this chapter which meets the following requirements:

11 (1) Is certified by the secretary of state under this section;

12 (2) Invests a majority of its funds in primary sector businesses; and

13 (3) No part of the income is distributable to its members, directors, or officers.

14 b. "Primary sector business" means an individual, corporation, limited liability  
15 company, partnership, or association that, through a process employing  
16 knowledge and labor, adds value to a product produced for resale.

17 2. A corporation may apply to the secretary of state to become a certified nonprofit  
18 development corporation by submitting an application executed by an officer of the  
19 corporation containing:

20 a. The name of the corporation and the address of its principal executive office;

21 b. The names and addresses of the officers and directors of the corporation; and

22 c. A statement that the corporation has adopted a resolution to invest a majority of  
23 membership payments, dues, or contributions received in primary sector  
24 businesses. A copy of the resolution must be submitted with the application to the  
25 secretary of state together with the fees provided in section 10-33-140.

26 3. Upon receipt by the secretary of state of the completed application and fee, the  
27 secretary of state shall certify the applicant as a certified nonprofit development  
28 corporation.

29 ~~4. a. A corporation that buys membership in, or pays dues or contributes to, a~~  
30 ~~nonprofit development corporation is entitled to an income tax credit against the~~

- 1 tax liability under section 57-38-30 equal to twenty-five percent of the amount  
2 paid.
- 3 b. This credit may not be claimed by a corporation that is recognized as a  
4 subchapter S corporation under section 57-38-01.4.
- 5 e. No taxpayer is entitled to more than two thousand dollars in total income tax  
6 credits under this section.
- 7 d. The amount of the credit under this section in excess of the taxpayer's income  
8 tax liability may be carried forward for up to seven taxable years.
- 9 5. a. Within thirty days of the date on which a taxpayer buys membership in, or pays  
10 dues or contributes to, a certified nonprofit development corporation, the certified  
11 nonprofit development corporation must complete and file with the tax  
12 commissioner a form prescribed by the tax commissioner setting forth:
- 13 (1) The name, address, and social security number or federal employer  
14 identification number of the taxpayer making the payment;
- 15 (2) The dollar amount paid by the taxpayer;
- 16 (3) The date the certified nonprofit development corporation received the  
17 payment from the taxpayer;
- 18 (4) The name, address, and federal employer identification number of the  
19 certified nonprofit development corporation; and
- 20 (5) The signature and title of an officer authorized to act on behalf of the  
21 corporation.
- 22 b. Two copies of this form must be provided to the taxpayer. To receive the credit,  
23 the taxpayer must attach one copy of the form to the taxpayer's income tax  
24 return.

25 **SECTION 3. AMENDMENT.** Section 11-37-08 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **11-37-08. Bonds and other obligations.**

- 28 1. A commerce authority may borrow money and issue bonds, including refunding bonds,  
29 in the form and upon the terms as it may determine, payable out of any revenues of  
30 the commerce authority.

- 1       2. Any bonds issued under this section are payable, as to principal and interest, solely  
2       from revenues of the commerce authority, and must so state on the face of the bond. If  
3       any issue of bonds constitutes an indebtedness within the meaning of any  
4       constitutional or statutory debt limitation or restriction, each bond of the issue is,  
5       subject to the requirements of subsection 87, an equally valid and binding special  
6       obligation of the commerce authority or participating political subdivision, as the case  
7       may be, in accordance with its terms, in an amount proportionate to the total amount  
8       of the issue which is within the limitation or restriction. A commissioner of a commerce  
9       authority or an individual executing the bonds is not liable personally on the bonds by  
10      reason of the issuance of the bonds, except to the extent that the bonds, if constituting  
11      an indebtedness, exceed any applicable limitation or restriction.
- 12      3. If any commissioner or officer of a commerce authority whose signature appears on  
13      any bonds or coupons ceases to be a commissioner or officer after authorization but  
14      before the delivery of the bonds, the signature, is valid and sufficient for all purposes,  
15      the same as if the commissioner or officer had remained in office until delivery.
- 16      4. Any bond reciting in substance that the bond has been issued by the commerce  
17      authority under this section and for a purpose authorized by this chapter is  
18      conclusively deemed, in any proceeding involving the validity or enforceability of the  
19      bond or the security of the bond to have been issued under this section and for that  
20      purpose.
- 21      5. ~~Bonds issued by a commerce authority under this section are declared to be issued for~~  
22      ~~an essential public government purpose, and together with interest and income on the~~  
23      ~~bonds, are exempt from all individual and corporate taxes imposed under sections~~  
24      ~~57-35.3-03, 57-38-30, and 57-38-30.3.~~
- 25      6. For the security of the bonds, the commerce authority by resolution may make any  
26      covenant, agreement, or indenture authorized to be made as security for revenue  
27      bonds issued under chapter 40-35. The sums required to pay principal and interest  
28      and to create and maintain a reserve for the bonds may be payable from any revenues  
29      referred to in this chapter, before the payment of current costs of operation and  
30      maintenance of the facilities.

1     ~~7.6.~~   When bonds are issued under this section and made payable from revenues of a  
2           commerce authority involving political subdivisions with a population over ten  
3           thousand, subject to the requirements of subsection ~~8.7.~~, the governing bodies of the  
4           political subdivisions, if at any time all revenues, including taxes, appropriated and to  
5           that time collected for the bonds are insufficient to pay the principal or interest then  
6           due, shall levy a general tax upon all of the taxable property in the political  
7           subdivisions for the payment of the deficiency. If a deficiency is likely to occur within  
8           one year for the payment of principal and interest due on the bonds, the governing  
9           bodies, in their declaration, may levy a general tax upon all the taxable property in the  
10          political subdivisions for the payment of the deficiency. The taxes are not subject to  
11          any limitation of rate or amount applicable to other political subdivisions taxes.

12     ~~8.7.~~   For bonds issued under this section to be an obligation of a political subdivision or  
13          commerce authority, the issuance of the bonds must be approved by a majority vote of  
14          the governing body of each political subdivision involved or, within thirty days after the  
15          commerce authority decides to issue the bonds, the political subdivision or commerce  
16          authority must put the question, specifying the amount of the bond at issue, to the  
17          electors at any primary, general, or special election. If a majority of the qualified  
18          electors voting on the issue vote in favor of issuing the bonds, the commerce authority  
19          or political subdivision, to the amount authorized in the election, may pledge the  
20          general obligation of the commerce authority or political subdivision to guarantee the  
21          repayment of the principal and interest on the bonds.

22         **SECTION 4. AMENDMENT.** Subsection 1 of section 12.1-32-09 of the North Dakota  
23     Century Code is amended and reenacted as follows:

- 24         1.   A court may sentence a convicted offender to an extended sentence as a dangerous  
25           special offender or a habitual offender in accordance with this section upon a finding of  
26           any one or more of the following:
- 27           a.   The convicted offender is a dangerous, mentally abnormal person whose conduct  
28                has been characterized by persistent aggressive behavior and the behavior  
29                makes the offender a serious danger to other persons.
- 30           b.   The convicted offender is a professional criminal who has substantial income or  
31                resources derived from criminal activity.

- 1           c. The convicted offender is a habitual offender. The court may not make such a  
2           finding unless the offender is an adult and has previously been convicted in any  
3           state or states or by the United States of two felonies of class C or above  
4           committed at different times when the offender was an adult. For the purposes of  
5           this subdivision, a felony conviction in another state or under the laws of the  
6           United States is considered a felony of class C or above if it is punishable by a  
7           maximum term of imprisonment of five years or more.
- 8           d. The offender was convicted of an offense that seriously endangered the life of  
9           another person and the offender had previously been convicted of a similar  
10          offense.
- 11          e. The offender is especially dangerous because the offender used a firearm,  
12          dangerous weapon, or destructive device in the commission of the offense or  
13          during the flight therefrom.

14          A conviction shown on direct or collateral review or at the hearing to be invalid or for  
15          which the offender has been pardoned on the ground of innocence must be  
16          disregarded for purposes of subdivision c. In support of findings under subdivision b, it  
17          may be shown that the offender has had control of income or property not explained  
18          as derived from a source other than criminal activity. For purposes of subdivision b, a  
19          substantial source of income means a source of income which for any period of one  
20          year or more exceeds the minimum wage, determined on the basis of a forty-hour  
21          week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of  
22          the Fair Labor Standards Act of 1938, as amended, for an employee engaged in  
23          commerce or in the production of goods for commerce, and which for the same period  
24          exceeds fifty percent of the offender's declared federal adjusted gross income under  
25          chapter ~~57-38~~.

26          **SECTION 5. AMENDMENT.** Subsection 3 of section 25-04-16 of the North Dakota Century  
27          Code is amended and reenacted as follows:

- 28          3. Any patient, former patient, parent of a patient or former patient, guardian, or personal  
29          representative who seeks relief from the payment of the cost of care and treatment by  
30          filing an application for relief of payment shall do so with the understanding that the  
31          supervising department may, in its discretion, and to its satisfaction, verify any

1 statement made in such application for relief of payment by a request for information  
2 from financial institutions, including commercial banks, and from other sources likely to  
3 possess verifying information. ~~Notwithstanding the provisions of section 57-38-57,~~  
4 ~~this~~This verification may include a review of such applicant's ~~state income tax return or~~  
5 ~~any other~~ document or report submitted to or held by any office or department of the  
6 state of North Dakota or any of its political subdivisions.

7 **SECTION 6. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

- 10 1. From and after July 1, 1973, each judge of the supreme or district court serving on that  
11 date and each former judge of the supreme or district court, not receiving judicial  
12 retirement salary, may elect to withdraw the judge's previous contributions made  
13 pursuant to this chapter, and thereafter not participate in a judicial retirement program  
14 provided for by law. This option ceases to be available and may not be exercised after  
15 June 30, 1975. If a judge selects this option, the judge is entitled to receive the  
16 combined total of the following sums:
- 17 a. The entire amount of the judge's previous contributions made pursuant to this  
18 chapter, to be calculated to the date of election under this section; plus
  - 19 b. An amount calculated by applying the vesting schedule set forth in section  
20 54-52-11 to an amount equal to sixty percent of the judge's individual  
21 contributions as calculated in subsection 1, plus earnings thereon as calculated  
22 in subsection 3; plus
  - 23 c. An amount calculated by applying the figure .05625 to the periodic annual or  
24 partial annual balances in the individual judge's account during the judge's years  
25 of service prior to selecting the option provided by this section. The figure applied  
26 pursuant to this subdivision must be compounded annually.
- 27 2. ~~The total amounts received pursuant to this section may not be considered taxable~~  
28 ~~income for the purposes of chapter 57-38.~~ Selection of the option provided by this  
29 section must be made in writing to the director of the office of management and  
30 budget.

1       **SECTION 7. AMENDMENT.** Section 37-27-06 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **37-27-06. Payments exempt from taxation and from execution - Assignments void -**  
4 **Debts to state and political subdivisions not deducted.**

5       Payments under this chapter are exempt from all state and local taxes, ~~including an income~~  
6 ~~tax liability determined under section 57-38-30.3,~~ and from levy, garnishment, attachment, and  
7 sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or  
8 interest in any claim or payment under this chapter is void and payment to the veteran may not  
9 be denied because of any sums owed to the state or any political subdivisions, except as  
10 provided in section 37-27-05.

11       **SECTION 8. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13       **37-28-07. Payments exempt from taxation and from execution - Assignments void -**  
14 **Debts to state and political subdivisions not deducted.**

15       Payments under this chapter are exempt from all state and local taxes, ~~including taxes~~  
16 ~~determined under section 57-38-30.3,~~ and from levy, garnishment, attachment, and sale on  
17 execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in  
18 any claim or payment under this chapter is void and payment to the veteran may not be denied  
19 because of any sums owed to the state or any political subdivisions, except as provided in  
20 section 37-26-05.

21       **SECTION 9. AMENDMENT.** Subsection 8 of section 40-63-01 of the North Dakota Century  
22 Code is amended and reenacted as follows:

23       8. "Taxpayer" means an individual, corporation, financial institution, or trust ~~subject to the~~  
24 ~~taxes imposed by chapter 57-35.3 or 57-38~~ and includes a partnership, subchapter S  
25 corporation, limited partnership, limited liability company, or any other passthrough  
26 entity.

27       **SECTION 10. AMENDMENT.** Section 40-63-02 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29       **40-63-02. Eligibility - Local zone authority designation.**

30       Any incorporated city may apply to the department of commerce division of community  
31 services to designate a portion of the city as a renaissance zone. Any individual, partnership,



1 limited partnership, limited liability company, trust, or corporation may apply for a tax credit or  
2 exemption under ~~sections 40-63-04 through 40-63-07~~ section 40-63-05. The governing body of a  
3 city may designate a local zone authority to implement a development plan on behalf of the city.

4 **SECTION 11. AMENDMENT.** Section 40-63-07 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **40-63-07. Renaissance fund organization – ~~Exemption from taxation.~~**

- 7 1. Each city with a designated renaissance zone may establish a renaissance fund  
8 organization, if the detailed plan for such an organization is clearly established in the  
9 development plan and approved with the plan, or is submitted at a later date to the  
10 department of commerce division of community services for approval after the  
11 designation of a renaissance zone.
- 12 2. The purpose of a renaissance fund organization is solely to raise funds to be used to  
13 make investments in zone projects and to make investments in designated  
14 renaissance zone cities. A renaissance fund organization may provide financing to  
15 projects undertaken by individuals, partnerships, limited partnerships, limited liability  
16 companies, trusts, corporations, nonprofit organizations, and public entities. The  
17 financing may include any combination of equity investments, loans, guarantees, and  
18 commitments for financing. The amount of financing is not limited by this chapter.
- 19 3. ~~A renaissance fund organization is exempt from any tax imposed by chapter 57-35.3~~  
20 ~~or 57-38. An exemption under this section may be passed through to any shareholder,~~  
21 ~~partner, and owner if the renaissance fund organization is a passthrough entity for tax~~  
22 ~~purposes. A corporation or financial institution entitled to the exemption provided by~~  
23 ~~this subsection shall file required returns and report income to the tax commissioner~~  
24 ~~as required by the provisions of those chapters as if the exemption did not exist. If an~~  
25 ~~employer, this subsection does not exempt a renaissance fund organization from~~  
26 ~~complying with the income tax withholding laws.~~
- 27 4. ~~A credit against state tax liability as determined under section 57-35.3-03, 57-38-30, or~~  
28 ~~57-38-30.3 is allowed for investments in a renaissance fund organization. The amount~~  
29 ~~of the credit is fifty percent of the amount invested in the renaissance fund~~  
30 ~~organization during the taxable year. Any amount of credit which exceeds a taxpayer's~~

1 tax liability for the taxable year may be carried forward for up to five taxable years after  
2 the taxable year in which the investment was made.

3 5. ~~The total amount of credits allowed under this section may not exceed, in the~~  
4 ~~aggregate, seven million five hundred thousand dollars for investments in renaissance~~  
5 ~~fund organizations. A renaissance fund organization that has received investments~~  
6 ~~that qualify for these additional credits under this subsection may not use more than~~  
7 ~~fifty percent of such investments for organization investments outside of a renaissance~~  
8 ~~zone.~~

9 6. Income to a renaissance fund organization derived from the sale or refinancing of  
10 zone properties financed wholly or in part by the organization may be disbursed as  
11 annual dividends equal to the income, minus ten percent, derived from all sources and  
12 proportional to the investment. In the event of a loss to the fund resulting in a  
13 temporary diminishment of the fund below the original principal amount, no annual  
14 dividend may be paid until the fund is restored.

15 7.4. Income to a renaissance fund organization derived from interest or the temporary  
16 investment of its funds in certificates of deposit, bonds, treasury bills, or securities may  
17 be used for administration.

18 8. ~~If an investment in a renaissance fund organization which is the basis for a credit~~  
19 ~~under this section is redeemed by the investor within ten years of the date it is~~  
20 ~~purchased, the credit provided by this section for the investment must be disallowed,~~  
21 ~~and any credit previously claimed and allowed with respect to the investment must be~~  
22 ~~paid to the tax commissioner with the appropriate return of the taxpayer covering the~~  
23 ~~period in which the redemption occurred. When payments are made to the tax~~  
24 ~~commissioner under this section, the amount collected must be handled in the same~~  
25 ~~manner as if no credit had been allowed.~~

26 9.5. A renaissance fund organization shall secure an annual audit of its financial records,  
27 prepared by an independent certified public accounting firm in accordance with  
28 generally accepted auditing standards. The audit report must include a statement of  
29 the percentage of annual investments received by the organization which have been  
30 invested by the organization in investments permitted under this chapter, including the  
31 use of investments, distinguishing between organization investments made in

1 renaissance zones and outside renaissance zones. A renaissance fund organization  
2 shall file a copy of each audit of its financial records under this subsection with the  
3 governing body of the city in which it was established, the department of commerce  
4 division of community services, and the tax commissioner. The department of  
5 commerce division of community services shall provide an annual report to the budget  
6 section of the legislative management showing the conclusions of audit reports filed  
7 under this subsection.

8 **SECTION 12. AMENDMENT.** Section 50-06.3-06 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **50-06.3-06. Application for waiver of fees and expenses - Review procedure.**

- 11 1. Any person liable for the expenses of care and treatment at the state hospital may  
12 make application to the department to pay less than the expenses charged. The  
13 application must be accompanied by proof of the applicant's inability to pay. Any  
14 person who seeks relief from the payment of expenses for services provided by the  
15 state hospital shall do so with the understanding that the department may verify any  
16 statement made in such application by a request for information from financial  
17 institutions, including commercial banks. ~~Notwithstanding the provisions of section-~~  
18 ~~57-38-57, this~~ This verification may include a review of the applicant's ~~state income tax~~  
19 ~~return or any other~~ document or report submitted to or held by any office or  
20 department of the state of North Dakota, or any of its political subdivisions.
- 21 2. Upon receipt of an application made pursuant to subsection 1, the department shall  
22 direct the county social service board of the applicant's county of residence to  
23 determine the applicant's ability to pay all, a portion, or none of the expenses charged.  
24 The department shall approve, reject, or amend the determination made by the county  
25 social service board. The determination made by the department may be appealed to  
26 the district court of the applicant's county of residence.

27 **SECTION 13. AMENDMENT.** Subsection 2 of section 52-06-30 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29 2. An individual filing a new claim for unemployment compensation benefits, at the time  
30 of filing the claim, must be advised that:

- 1           a.   Unemployment compensation is subject to federal income tax and state income-  
2           tax;
- 3           b.   Requirements exist pertaining to estimated federal and state tax payments;
- 4           c.   The individual may elect to have federal income tax deducted and withheld from  
5           the individual's payment of unemployment compensation benefits at the amount  
6           specified in the federal Internal Revenue Code; and
- 7           d.   ~~The individual, having elected to have federal income tax withheld, may also~~  
8           ~~elect to have state income tax deducted and withheld from the individual's~~  
9           ~~payment of unemployment compensation at a rate determined by the tax~~  
10          ~~commissioner pursuant to section 57-38-59; and~~
- 11          e.   The individual is permitted to change a previously elected withholding status.  
12           Amounts deducted and withheld from unemployment compensation must remain  
13           in the unemployment fund until transferred to the federal and state taxing  
14           authority as payment of income tax. The bureau shall follow all procedures  
15           specified by the United States department of labor; and the federal internal  
16           revenue service, ~~and the tax commissioner~~ pertaining to the deducting and  
17           withholding of income tax. Amounts must be deducted and withheld under this  
18           section only after amounts are deducted and withheld for any overpayments of  
19           unemployment compensation, child support obligations, or any other amounts  
20           required to be deducted and withheld under this chapter.

21           **SECTION 14. AMENDMENT.** Subsection 1 of section 54-09-09 of the North Dakota  
22   Century Code is amended and reenacted as follows:

- 23          1.   The secretary of state shall maintain a computerized central indexing system that  
24           contains the information filed with the office of the secretary of state or with any of the  
25           offices of the recorder in this state pursuant to sections 35-13-02, 35-17-04, 35-20-16,  
26           35-30-02, 35-31-02, 35-34-04, 35-34-06, 41-09-72, 57-28-29, ~~57-38-49~~, 57-39.2-13,  
27           57-40.2-16, 57-40.3-07.1, 57-43.1-17.4, 57-43.2-16.3, and 57-51-11. The system must  
28           connect each recorder's office to the secretary of state's office through the information  
29           technology department. The system must allow access to financing statement  
30           information by equipment that conforms to requirements determined by the information  
31           technology department. The system must have safeguards to allow access to

information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state.

**SECTION 15. AMENDMENT.** Subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands.

- (1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
- (2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm building or improvement.
- (3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.
- (4) The following factors may not be considered in application of the exemption under this subsection:
  - (a) Whether the farmer grows or purchases feed for animals raised on the farm.
  - (b) Whether animals being raised on the farm are owned by the farmer.
  - (c) Whether the farm's replacement animals are produced on the farm.

(d) Whether the farmer is engaged in contract feeding of animals on the farm.

b. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:

(1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years.

(2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years. For purposes of this paragraph, "farmer" includes a:

(a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.

(b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied

as a farmer the residence in which the person lives and for which the exemption is claimed.

(c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.

(3) "Net income from farming activities" means taxable income from those activities as computed for federal income tax purposes ~~pursuant to chapter 57-38~~ adjusted to include the following:

(a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.

(b) Interest expenses from farming activities which have been deducted in computing taxable income.

(c) Depreciation expenses from farming activities which have been deducted in computing taxable income.

(4) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, net income from farming activities.

(5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars

during each of the three preceding calendar years. This paragraph does not apply to a retired farmer or a beginning farmer as defined in paragraph 2.

(6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

(7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

**SECTION 16. AMENDMENT.** Subsection 27 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

27. Installations, machinery, and equipment of systems in new or existing buildings or structures, designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by utilization of solar, wind, or geothermal energy; provided, that if the solar, wind, or geothermal energy device is part of a system which uses other means of energy, only that portion of the total system directly attributable to solar, wind, or geothermal energy shall be exempt. Provided, however, that any exemptions granted by this subsection shall be valid for a five-year period following installation of any such system and apply only to locally assessed property. For the purposes of this subsection, solar or wind energy ~~devices shall have the meaning provided in section 57-38-01.8~~device means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method that converts the natural energy of the sun or wind and geothermal energy device means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

**SECTION 17. AMENDMENT.** Section 65-04-26 of the North Dakota Century Code is amended and reenacted as follows:



1       **65-04-26. Lien priority and filing - Remedies available in action for delinquent**  
2       **premiums - Exemptions restricted.**

3       The claim of the organization in bankruptcy, probate, insolvency, and receivership  
4       proceedings for premiums in default and penalties is a lien with the same priority as prior  
5       ~~income~~sales tax liens, except that this lien is not enforceable against a purchaser, including a  
6       lien creditor, of real estate or personal property for valuable consideration without notice. Notice  
7       of this lien must be filed in the place and manner provided for in section ~~57-38-49~~57-39.2-13. A  
8       certificate of the organization that premiums and penalties are due for the period stated in the  
9       certificate is prima facie evidence of this fact. In any action brought for the recovery of  
10      premiums in default and penalties, the remedies of garnishment or attachment, or both, are  
11      available. No exemptions except absolute exemptions under section 28-22-02 may be allowed  
12      against any levy under execution pursuant to judgment recovered in the action.

13      **SECTION 18. REPEAL.** Sections 40-63-04, 40-63-06, 40-63-09, 40-63-10, and 52-02.1-03,  
14      chapters 57-35.3, 57-38, 57-38.1, 57-38.3, 57-38.4, 57-38.5, and 57-38.6, and section 57-59-02  
15      of the North Dakota Century Code are repealed.

16      **SECTION 19. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
17      December 31, 2010. Any provision of law that applied for taxable years before the effective date  
18      of this Act continues to apply for those taxable years.