

**FIRST ENGROSSMENT  
with Conference Committee Amendments  
ENGROSSED HOUSE BILL NO. 1057**

Introduced by

Legislative Management

(Workforce Committee)

1 A BILL for an Act to amend and reenact section 57-38-01.26 of the North Dakota Century Code,  
2 relating to the angel fund investment tax credit; to provide for a report to the legislative  
3 management; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38-01.26. Angel fund investment tax credit.**

- 8 1. A taxpayer is entitled to a credit against state income tax liability under section  
9 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is ~~incorporated~~  
10 ~~in a domestic organization created under the laws of this state.~~ The amount of the  
11 credit to which a taxpayer is entitled is forty-five percent of the amount  
12 ~~invested~~remitted by the taxpayer ~~into~~ an angel fund during the taxable year. The  
13 aggregate annual credit for which a taxpayer may obtain a tax credit is not more than  
14 forty-five thousand dollars. The aggregate lifetime credits under this section that may  
15 be obtained by an individual, married couple, passthrough entity and its affiliates, or  
16 other taxpayer is one hundred fifty thousand dollars. The investment used to calculate  
17 the credit under this section may not be used to calculate any other income tax  
18 deduction or credit allowed by law.
- 19 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least  
20 three years. Investments placed in escrow do not qualify for the credit. The credit must  
21 be claimed in the taxable year in which the investment in the angel fund was received  
22 by the angel fund. The credit allowed may not exceed the liability for tax under this  
23 chapter. If the amount of credit determined under this section exceeds the liability for  
24 tax under this chapter, the excess may be carried forward to each of the ~~four~~seven

1 succeeding taxable years. A taxpayer claiming a credit under this section may not  
2 claim any credit available to the taxpayer as a result of an investment made by the  
3 angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

4 3. An angel fund must:

- 5 a. Be a partnership, limited partnership, corporation, limited liability company, limited  
6 liability partnership, trust, or estate organized on a for-profit basis which is  
7 headquartered in this state.
- 8 b. Be organized for the purpose of investing in a portfolio of at least three primary  
9 sector companies that are early-stage and mid-stage private, nonpublicly traded  
10 enterprises with strong growth potential. For purposes of this section, an  
11 early-stage entity means an entity with annual revenues of up to two million  
12 dollars and a mid-stage entity means an entity with annual revenues over two  
13 million dollars not to exceed ten million dollars. Early-stage and mid-stage entities  
14 do not include those that have more than twenty-five percent of their revenue  
15 from income-producing real estate.
- 16 c. Consist of at least six accredited investors as defined by securities and exchange  
17 commission regulation D, rule 501.
- 18 d. Not have more than twenty-five percent of its capitalized investment assets  
19 owned by an individual investor.
- 20 e. Have at least five hundred thousand dollars in commitments from accredited  
21 investors and that capital must be subject to call to be invested over an  
22 unspecified number of years to build a portfolio of investments in enterprises.
- 23 f. Be member-managed or a manager-managed limited liability company and the  
24 investor members or a designated board that includes investor members must  
25 make decisions as a group on which enterprises are worthy of investments.
- 26 g. Be certified as an angel fund that meets the requirements of this section by the  
27 department of commerce.
- 28 h. Be in compliance with the securities laws of this state.
- 29 i. Within thirty days after the date on which an investment in an angel fund is made,  
30 the angel fund shall file with the tax commissioner and provide to the investor

1           completed forms prescribed by the tax commissioner which show as to each  
2           investment in the angel fund the following:

3           (1) The name, address, and social security number or federal employer  
4           identification number of the taxpayer or passthrough entity that made the  
5           investment;

6           (2) The dollar amount remitted by the taxpayer or passthrough entity; and

7           (3) The date the payment was received by the angel fund for the investment.

8           j. Within thirty days after the end of a calendar year, the angel fund shall file with  
9           the tax commissioner a report showing the name and principal place of business  
10          of each enterprise in which the angel fund has an investment.

11          4. The tax commissioner may disclose to the legislative management the reported  
12          information described under paragraphs 2 and 3 of subdivision i of subsection 3 and  
13          the reported information described under subdivision j of subsection 3.

14          5. Angel fund investors may be actively involved in the enterprises in which the angel  
15          fund invests but the angel fund may not invest in any enterprise if any one angel fund  
16          investor owns directly or indirectly more than forty-nine percent of the ownership  
17          interests in the enterprise. The angel fund may not invest in an enterprise if any one  
18          partner, shareholder, or member of a passthrough entity that directly or indirectly owns  
19          more than forty-nine percent of the ownership interests in the enterprise.

20          5.6. Investors in one angel fund may not receive more than five million dollars in aggregate  
21          credits under this section during the life of the angel fund but this provision may not be  
22          interpreted to limit additional investments in that angel fund.

23          7. a. A partnership, subchapter S corporation, limited partnership, limited liability  
24          company, or any other passthrough entity entitled to the credit under this section  
25          must be considered to be the taxpayer for purposes of this section, and the  
26          amount of the credit allowed must be determined at the passthrough entity level.

27          b. For the first two taxable years beginning after December 31, 2010, if a  
28          passthrough entity does not elect to sell, transfer, or assign the credit as provided  
29          under this subsection and subsection 8, the amount of the total credit determined  
30          at the entity level must be passed through to the partners, shareholders, or  
31          members in proportion to their respective interests in the passthrough entity.

c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.

8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:

a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.

b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.

c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use

1           the credit under the terms that would have applied to the tax credit transferor.

2           This subsection does not limit the ability of the tax credit purchaser to reduce the  
3           tax liability of the purchaser, regardless of the actual tax liability of the tax credit  
4           transferor.

5           d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and  
6           the purchaser of the tax credit may not sell, assign, or otherwise transfer the  
7           credit.

8           e. If the amount of the credit available under this section is changed as a result of  
9           an amended return filed by the transferor, or as the result of an audit conducted  
10          by the internal revenue service or the tax commissioner, the transferor shall  
11          report to the purchaser the adjusted credit amount within thirty days of the  
12          amended return or within thirty days of the final determination made by the  
13          internal revenue service or the tax commissioner. The tax credit purchaser shall  
14          file amended returns reporting the additional tax due or claiming a refund as  
15          provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit  
16          these returns and assess or issue refunds, even though other time periods  
17          prescribed in these sections may have expired for the purchaser.

18          f. Gross proceeds received by the tax credit transferor must be assigned to North  
19          Dakota. The amount assigned under this subsection cannot be reduced by the  
20          taxpayer's income apportioned to North Dakota or any North Dakota net  
21          operating loss of the taxpayer.

22          g. The tax commissioner has four years after the date of the credit assignment to  
23          audit the returns of the credit transferor and the purchaser to verify the  
24          correctness of the amount of the transferred credit and if necessary assess the  
25          credit purchaser if additional tax is found due. This subdivision does not limit or  
26          restrict any other time period prescribed in this chapter for the assessment of tax.

27          h. The tax commissioner may adopt rules to establish necessary administrative  
28          provisions for the credit under this section, including provisions to permit  
29          verification of the validity and timeliness of the transferred tax credit.

30          **SECTION 2. REPORT TO THE LEGISLATIVE MANAGEMENT.** During the 2011-12 and  
31          2013-14 interims, the tax commissioner shall report to the legislative management on the

- 1 number of in-state and out-of-state investors, amount of investment, and amount of tax credits
- 2 accrued, claimed, and transferred by each individual angel fund.
- 3 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
- 4 December 31, 2010.