

Fifty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2396

Introduced by

Senators Goetz, Grindberg, Wogsland

Representatives Dorso, Keiser, Poolman

1 A BILL for an Act to provide for establishment and operation of the North Dakota low-risk
2 incentive fund; and to provide a penalty.

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

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

- 5 1. "Capitalization" means the total amount invested in the corporation or limited
6 liability company established under section 2 of this Act.
- 7 2. "Fund" means the North Dakota low-risk incentive fund.
- 8 3. "Governing board" means the board of directors of the corporation or board of
9 governors of the limited liability company established under section 2 of this Act.
- 10 4. "Insurer" means any foreign or domestic corporation, association, benefit society,
11 exchange, partnership, limited liability company, or individual engaged as principal
12 in the business of insurance in this state.
- 13 5. "Primary sector business" means an individual, corporation, limited liability
14 company, partnership, or association that through the employment of knowledge or
15 labor adds value to a product, process, or service which results in the creation of
16 new wealth.

17 **SECTION 2. Establishment - Organization.** Upon approval by the commissioner of
18 insurance, insurers may incorporate or organize a corporation or limited liability company to
19 own and operate the North Dakota low-risk incentive fund. All authority regarding the articles of
20 incorporation or articles of organization is the province of the governing body. However, the
21 governing body may not distribute more than seventy-five percent of the net profit of the fund in
22 any of the first five years of operation and an insurer or group of affiliated insurers may not own
23 more than forty-nine percent of the ownership interests in the corporation or limited liability
24 company established under this section.

1 **SECTION 3. North Dakota low-risk incentive fund use.** The fund may be used only
2 for making loans to low-risk businesses for primary sector business projects in this state. The
3 governing body shall establish the rate of interest and terms of repayment for a loan from the
4 fund.

5 **SECTION 4. Loan administration.** An application for a loan from the fund must
6 contain the information prescribed by the governing body. Except as provided in this section,
7 information contained in applications for loans from the fund is confidential. The Bank of North
8 Dakota shall review each loan application and report to the governing board whether the
9 applicant is a primary sector business project. No more than fifteen percent of the capitalization
10 of the fund may be loaned to a single business entity or affiliated group of business entities. A
11 loan from the fund may not be made to an insurer. The commissioner of insurance may audit
12 the fund and activities of insurers in connection with the fund to assure compliance with
13 title 26.1.

14 **SECTION 5. Audited financial statement - Report of fund operations.** The
15 governing body shall contract annually with a certified public accountant for preparation of an
16 audited financial statement of the fund prepared in accordance with generally accepted
17 accounting principles and a report containing an analysis of the impact of the fund on the state's
18 economy, business and employment activity generated by loans from the fund, and the effects
19 of that activity on state and local tax revenues. The governing body shall provide the statement
20 and report to the governor, the commissioner of insurance, and the legislative council and make
21 copies available to the public. The cost of the statement and report must be paid from the fund.

22 **SECTION 6. Tax credit - Penalty.** An insurer is entitled to a credit against taxes due
23 under section 26.1-03-17 as determined under this section.

- 24 1. The credit for an insurer is twenty percent of its investment in capitalization of the
25 fund.
- 26 2. An insurer may not claim more than twenty percent of the total credit to which it is
27 entitled under this section during any taxable year and may carry unused credit
28 forward.
- 29 3. Credit for an insurer under this section is disallowed if that insurer, within three
30 years of its initial investment in the fund, transfers its interest in the corporation or
31 limited liability company established under section 2 of this Act or withdraws its

- 1 investment from the fund. Credits for all insurers under this section are disallowed
2 if after the third year of operation of the fund less than fifty percent of the
3 capitalization of the fund has not been loaned to businesses. Credits disallowed
4 under this subsection which have been claimed by an insurer must be repaid with
5 penalty and interest under chapter 26.1-03.
- 6 4. Credits under this section for all insurers may not exceed one million dollars in a
7 calendar year. If claims for credits under this section exceed the limitation in this
8 subsection, credits must be allowed to insurers up to the limitation based on the
9 chronological order of the investments on which the credits are claimed.