

Fifty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2417

Introduced by

Senators Kelsh, T. Mathern, O'Connell, Robinson, Thane

Representative Gulleason

1 A BILL for an Act to provide for the establishment of empowerment zones and to provide tax  
2 credits for businesses located within empowerment zones; to create and enact a new  
3 subsection to section 57-38-30.3 of the North Dakota Century Code, relating to empowerment  
4 zone tax credits; to provide an appropriation; and to provide an effective date.

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

6 **SECTION 1. Powers of the department of economic development and finance.**

7 The department of economic development and finance shall:

- 8 1. Monitor the implementation and operation of this Act and conduct a continuing  
9 evaluation of the progress made in the empowerment zones.
- 10 2. Evaluate an application from a qualified applicant to be designated an  
11 empowerment zone and determine if the applicant qualifies for that designation.
- 12 3. Provide technical assistance to applicants in developing applications for  
13 designation as empowerment zones.
- 14 4. Assist applicants designated as empowerment zones in obtaining assistance from  
15 the federal government and entities of the state.
- 16 5. Assist a qualified business in obtaining the benefits of an incentive or inducement  
17 program authorized by this Act.
- 18 6. Prepare an annual evaluation evaluating the effectiveness of the program  
19 established under this Act and submit the report to the governor and the legislative  
20 council.

21 **SECTION 2. Criteria for designation of empowerment zones - Application.**

- 22 1. An applicant seeking designation as an empowerment zone shall file an  
23 application with the department of economic development and finance that, in  
24 addition to complying with other requirements of this Act:

- 1           a.    Verifies that the geographical area of the county or counties does not exceed  
2                    three thousand square miles [777000 hectares].
- 3           b.    Verifies that the county or counties have a population of not more than eight  
4                    thousand, no city within the county or counties has a population of over two  
5                    thousand five hundred, and the county or counties have had an outmigration  
6                    of population of at least twenty percent of the total population of the county or  
7                    counties since 1980.
- 8           c.    Provides clear evidence of the need for development in the county or  
9                    counties.
- 10         2.    The application must be in the form specified by the department and must include  
11                the following information:
- 12           a.    A plan developed by the applicant that identifies local contributions meeting  
13                    the requirements of section 3 of this Act.
- 14           b.    The applicant has a development plan that outlines:
- 15                (1)   The types of investment and development within the zone that the  
16                    applicant expects to take place if the incentives specified in this Act are  
17                    provided.
- 18                (2)   The specific investment or development reasonably expected to take  
19                    place.
- 20                (3)   Any commitments obtained from businesses.
- 21                (4)   The projected number of jobs that will be created and the anticipated  
22                    wage level of those jobs.
- 23                (5)   Any proposed emphasis on the type of jobs created.
- 24                (6)   A copy of the applicant's economic development plan to demonstrate  
25                    coordination between the zone and overall county goals.
- 26           c.    The applicant's proposed means of assessing the effectiveness of the  
27                    development plan or other programs to be implemented within the zone once  
28                    the plan or programs have been implemented.
- 29           d.    Any additional information required by the department.
- 30           e.    Any additional information the applicant considers relevant to its designation  
31                    as an empowerment zone.

1           **SECTION 3. Qualifying local contributions.**

- 2           1. An area may be designated as an empowerment zone only if the applicant agrees  
3           to make a qualifying local contribution.
- 4           2. The qualifying local contribution may vary depending on available resources, and  
5           may include such elements as:
- 6           a. Simplified procedures for obtaining permits.
- 7           b. Dedication of available government grants.
- 8           c. Dedication of training funds.
- 9           d. Waiver of business license fees.
- 10          e. Infrastructure improvements.
- 11          f. Private contributions.
- 12          g. Utility rate concessions.
- 13          h. Small business incubator programs.
- 14          i. Management assistance programs.
- 15          3. Each county within an empowerment zone shall impose a one percent sales tax to  
16          be designated for use for zone activities.

17           **SECTION 4. Eligibility review.**

- 18          1. The department of economic development and finance shall review and evaluate  
19          the applications submitted under section 2 of this Act.
- 20          2. In designating empowerment zones, the department shall consider and evaluate  
21          an application using the following criteria:
- 22          a. The pervasiveness of poverty, outmigration of population, unemployment, and  
23          general distress in the proposed zone.
- 24          b. The extent of chronic abandonment, deterioration, or reduction in value of  
25          commercial, industrial, or residential structures in the proposed zone, and the  
26          extent of property tax arrearages in the proposed zone.
- 27          c. The potential for new investment and economic development in the proposed  
28          zone.
- 29          d. The applicant's proposed use of other state and federal development funds or  
30          programs to increase the probability of new investment and development  
31          occurring.

- 1 e. The extent to which the projected development in the zone will provide
- 2 employment to residents of the county or counties and particularly individuals
- 3 who are unemployed or who are economically disadvantaged.
- 4 f. The degree to which the applicant's application promotes innovative solutions
- 5 to economic development problems and demonstrates local initiative.
- 6 g. Other relevant factors that the department specifies in its recommendation.
- 7 3. The department may designate up to three zones during each biennium.

8 **SECTION 5. Duration of designation.** Each empowerment zone has a duration of  
9 five years, at the end of which the county or counties may reapply for the designation.

10 **SECTION 6. Revocation of designations.** The department of economic development  
11 and finance may revoke the designation of an empowerment zone if no businesses use the tax  
12 incentives during any calendar year. Before that action, the department shall conduct a public  
13 hearing to determine reasons for inactivity and explore possible alternative actions.

14 **SECTION 7. Disqualifying transfers.** Tax incentives provided by this Act are not  
15 available to businesses that close or permanently curtail operations in another part of the state  
16 in connection with a transfer of any part of its business operations to an empowerment zone if  
17 the closure or permanent curtailment is reasonably expected to diminish employment in that  
18 part of the state.

19 **SECTION 8. State tax credits.**

- 20 1. Subject to the limitations of subsections 2 through 4, the following state tax credits  
21 against individual income taxes or corporate income taxes are applicable in an  
22 empowerment zone:
  - 23 a. A tax credit of seven hundred fifty dollars may be claimed by a business for  
24 each new full-time position filled for at least six months during a given tax  
25 year.
  - 26 b. An additional credit of seven hundred fifty dollars may be claimed if the new  
27 position is in a business that adds value to agricultural commodities through  
28 manufacturing or processing.
  - 29 c. An additional credit of two hundred dollars may be claimed for two  
30 consecutive years for each new employee who is insured under an

- 1 employer-sponsored health insurance program if the employer pays at least  
2 fifty percent of the premium cost for two consecutive years.
- 3 d. A credit of fifty percent of the value of a cash contribution to a private  
4 nonprofit corporation, except that the credit claimed may not exceed one  
5 hundred thousand dollars:
- 6 (1) That is exempt from federal income taxation under Internal Revenue  
7 Code section 501(c)(3) [26 U.S.C. 501(c)(3)];  
8 (2) That has the primary purpose of community and economic  
9 development; and  
10 (3) That has been recognized as eligible under this Act by the department.
- 11 e. A credit of twenty-five percent of the first two hundred thousand dollars spent  
12 on rehabilitating a building in the empowerment zone that has been vacant for  
13 two years or more.
- 14 f. An annual investment tax credit of ten percent of the first two hundred fifty  
15 thousand dollars in investment, and five percent of the next one million dollars  
16 qualifying investment in plant, equipment, or other depreciable property.
- 17 2. a. Subject to the limitations of this subsection, a taxpayer claiming a credit under  
18 subdivisions a, b, and c of subsection 1 may claim a credit for thirty full-time  
19 employee positions or less in each of its taxable years.
- 20 b. A business that received a credit for its full-time employee positions under  
21 subsection 1 may claim an additional credit for a full-time employee position  
22 if:
- 23 (1) The business creates a new full-time employee position;  
24 (2) The total number of full-time employee positions at the business is  
25 greater than the number of full-time employee positions previously  
26 claimed by the business under subsection 1; and  
27 (3) The total number of credits the business has claimed for its current  
28 taxable year, including the new full-time employee position for which  
29 the business is claiming a credit, is less than or equal to thirty.

- 1           c. A business existing in an empowerment zone on the date of its designation  
2                   shall calculate the number of full-time positions based on the average number  
3                   of employees reported to job service North Dakota.
- 4           d. Construction jobs are not eligible for the tax credit under subdivisions a, b,  
5                   and c of subsection 1.
- 6           3. If the amount of a tax credit under this section exceeds a business entity's tax  
7                   liability under this chapter for a taxable year, the amount of the credit exceeding  
8                   the liability may be carried forward for a period that does not exceed the next three  
9                   taxable years.
- 10          4. A partnership, limited partnership, subchapter S corporation, limited liability  
11                   company or any other pass-through entity that invests in an empowerment zone  
12                   must be considered to be the taxpayer for purposes of any credit calculations or  
13                   investment limitations in this section, and the amount of the credit allowed with  
14                   respect to the entity's investments must be determined at the pass-through entity  
15                   level. The amount of the total exemption or credit determined at the entity level  
16                   must be passed through to the partners, shareholders, or members in proportion to  
17                   their respective interests in the pass-through entity.
- 18          5. The tax credits under subdivisions a, b, and c of subsection 1 may not be claimed  
19                   by a business engaged in retail trade or by a public utilities business.

20           **SECTION 9. State agency assistance.** State agencies, departments, and officers  
21 shall provide the following assistance to counties designated as empowerment zones:

- 22           1. The department of economic development and finance shall develop special  
23                   programs and target grant programs for use in empowerment zones.
- 24           2. The Bank of North Dakota shall assist counties within empowerment zones in  
25                   establishing a seed capital fund and provide up to one hundred thousand dollars in  
26                   initial funding for the seed capital fund.
- 27           3. The Bank of North Dakota shall provide one hundred thousand dollars to each  
28                   empowerment zone to be used by the county or counties in the zone for the  
29                   establishment of a revolving loan fund for economic development projects.

- 1           4.    The adjutant general shall provide assistance to counties designated as an  
2                    empowerment zone through the use of national guard training missions to assist in  
3                    the completion of infrastructure projects.
- 4           5.    Job service North Dakota shall provide necessary labor studies for counties  
5                    designated as empowerment zones and shall focus work force 2000 funds toward  
6                    empowerment zones.
- 7           6.    The director of the office of management and budget shall give counties  
8                    designated as empowerment zones priority, after state agencies, with respect to  
9                    transfers of surplus property under section 54-44-04.6.
- 10          7.    The state housing finance agency shall create special home mortgage programs  
11                    for use in empowerment zones.
- 12          8.    The department of transportation shall provide a transportation analysis for  
13                    counties designated as an empowerment zone and target highway funding toward  
14                    projects within empowerment zones.
- 15          9.    The tourism department, in conjunction with the state historical society and the  
16                    parks and recreation department, shall provide a cultural and recreational analysis  
17                    for counties within an empowerment zone.
- 18          10.   Institutions of higher education shall design programs through the business  
19                    colleges to provide internships and pilot projects for empowerment zones.
- 20          11.   The water commission shall give priority to recreational and water development  
21                    projects located within empowerment zones.
- 22          12.   The state census data center shall provide technical assistance to counties within  
23                    empowerment zones, when requested.
- 24          13.   The agricultural products utilization commission shall designate at least ten  
25                    percent of its funds each biennium for projects within empowerment zones and  
26                    shall give priority consideration to value-added projects in empowerment zones.
- 27          14.   State agencies in need of additional or new office space shall consider locating in  
28                    communities within empowerment zones.
- 29          15.   The tax commissioner shall provide to political subdivisions located within  
30                    empowerment zones which levy sales taxes a rebate from state sales tax

1 revenues of one percent. The political subdivision receiving a rebate shall deposit  
2 the rebate in the zone seed capital fund and the revolving loan fund.

3 16. The superintendent of public instruction shall develop jobs development, work  
4 force training, and entrepreneurial training programs and curriculums to be used in  
5 schools located within empowerment zones.

6 17. The superintendent of public instruction, subject to legislative appropriations, shall  
7 provide school districts within empowerment zones additional per pupil payments.

8 **SECTION 10. Annual report.** Each applicant designated as an empowerment zone  
9 annually shall report to the department of economic development and finance regarding the  
10 economic activity that has occurred in the zone following the designation. This information  
11 must include the number of jobs created in the zone, the number of economically  
12 disadvantaged individuals receiving public job training assistance in the zone, the average  
13 wage level of the jobs created, the amount of the applicant's local contribution, and the number  
14 of businesses qualifying for, or directly benefiting from, the local contribution.

15 **SECTION 11.** A new subsection to section 57-38-30.3 of the 1997 Supplement to the  
16 North Dakota Century Code is created and enacted as follows:

17 An individual, estate, or trust is allowed, as a credit against the tax otherwise due  
18 under this section, the empowerment zone tax credits under section 8 of this Act.

19 **SECTION 12. APPROPRIATION.** There is hereby appropriated from the accumulated  
20 and undivided profits of the Bank of North Dakota, not otherwise appropriated, the sum of  
21 \$600,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the  
22 purpose of providing seed capital funds and revolving loan funds as provided in section 9 of this  
23 Act, for the biennium beginning July 1, 1999, and ending June 30, 2001.

24 **SECTION 13. EFFECTIVE DATE.** Section 8 of this Act is effective for taxable years  
25 beginning after December 31, 1998, and does not apply to any investments or activities that  
26 occurred before January 1, 1999.