

**HOUSE BILL NO. 1417**

Introduced by

Representatives Winrich, Thorpe, Zaiser

Senators Every, Fairfield, Mathern

1 A BILL for an Act to provide for collection and review of information on economic development  
2 incentives provided by the state and political subdivisions and job quality and accountability  
3 standards.

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

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

- 6 1. "Corporate parent" means any legal entity that possesses, owns, or controls an  
7 interest greater than fifty percent of the recipient.
- 8 2. "Date of assistance" means the date upon which a granting body transmits the first  
9 dollar value of development assistance to a recipient.
- 10 3. "Development assistance" means any form of public assistance, including both  
11 on-budget and off-budget assistance, including tax expenditures, made for the  
12 purpose of stimulating economic development of a given business entity, industry,  
13 geographic jurisdiction, or other subset of the state's economy, including bonds,  
14 grants, equity investments, loans, loan guarantees, reduced loan interest, tax  
15 increment financing, matching funds, and tax or fee reductions or exemptions of  
16 every kind, including those provided for purposes of corporate income, individual  
17 income, sales, use, property, fuels, severance, and excise taxes, and any other  
18 state and local tax.
- 19 4. "Full-time job" means a job in which the new employee works for the recipient at an  
20 average of at least thirty-five hours per week.
- 21 5. "Granting body" means the governing authority of any state agency or institution or  
22 political subdivision that provides development assistance.
- 23 6. "In effect" refers to any calendar year within the duration of the development  
24 assistance, including the duration of any loan, loan guarantee, tax credit or tax

- 1 credit carryforward, property tax reduction or abatement, or tax increment  
2 financing. For one-time forms of development assistance such as grants and land  
3 price subsidies, "in effect" refers to a period of not less than five years from the  
4 date of assistance.
- 5 7. "Part-time job" means a job in which the new employee works for the recipient at  
6 an average of less than thirty-five hours per week.
- 7 8. "Property-taxing entity" means a taxing district of the state as defined in section  
8 57-02-01.
- 9 9. "Recipient" means a person or legal entity that receives development assistance  
10 from a granting body in this state.
- 11 10. "Small business" means a business, including its corporate parents and all  
12 subsidiaries thereof, which employed fewer than an average of twenty full-time  
13 equivalent employees or which had gross receipts of less than one million dollars  
14 in all United States jurisdictions during the calendar year for which disclosure is  
15 required.
- 16 11. "Specific project site" means that distinct operational unit of a business to which  
17 any development assistance is applied.
- 18 12. "Temporary job" means a job in which the new employee is hired for a specific  
19 duration of time or season.
- 20 13. "Value of assistance" means the face value of all forms of development assistance.

21 **SECTION 2. Disclosure of state tax expenditures.**

- 22 1. Before July first of each even-numbered year, beginning in 2004, the department of  
23 commerce shall provide a detailed tax expenditure budget to an interim committee  
24 designated by the legislative council, derived from state tax filings and other tax  
25 information for the previous two calendar years. At a minimum, the report must  
26 provide the following data:
- 27 a. The dollar amount of tax expenditures for development assistance made by  
28 the state, in the form of uncollected revenues, for each development  
29 assistance provision of the state tax laws.
- 30 b. For each of the tax expenditures reported under subdivision a, except as  
31 specified in subdivision c, an itemization of the name of each recipient

- 1 taxpayer who claimed the development assistance of any value equal to or  
2 greater than five thousand dollars, and the specific dollar amount credited to  
3 the recipient's tax liability under that development assistance for that year.
- 4 c. Development assistance claimed by recipients in amounts less than five  
5 thousand dollars must not be itemized as required in subdivision b. Instead,  
6 the department of commerce shall aggregate such claims and report them as  
7 a single unspecified group, with the number of claimants stated.
- 8 2. The tax commissioner shall provide to the department of commerce any  
9 information necessary to comply with the requirements of this Act. The department  
10 of commerce shall protect the confidentiality of any confidential information  
11 provided by the tax commissioner.
- 12 3. Except as provided in subsection 2, all data produced by the department of  
13 commerce and received by the legislative council in compliance with this Act are  
14 open records under section 44-04-18.

15 **SECTION 3. Disclosure of property tax development assistance.**

- 16 1. Before April 1, 2004, the department of commerce shall promulgate a standardized  
17 disclosure registry for use by all property-taxing entities. The form must include the  
18 following data:
- 19 a. The name of the property owner;
- 20 b. The address and description of the property;
- 21 c. The date upon which any property tax development assistance first took  
22 effect;
- 23 d. The date upon which any property tax development assistance is scheduled  
24 to expire;
- 25 e. The rate or schedule of each property tax development assistance for the  
26 period between the date it took effect and the date it is scheduled to expire;
- 27 f. The entity's aggregate foregone revenue for the calendar year as a result of  
28 each item of property tax development assistance;
- 29 g. A compilation and summary of the entity's total foregone revenue as a result  
30 of all property tax development assistance, including a summary of foregone  
31 revenue for each kind of development assistance; and



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- 1           d. The name, street and mailing addresses, telephone number, and chief officer  
2           of the applicant at the specific project site for which development assistance is  
3           sought;
- 4           e. The applicant corporation's total number of employees at the specific project  
5           site on the date of the application and the number of full-time, part-time, and  
6           temporary employees;
- 7           f. The total number of employees in this state of the applicant's corporate parent  
8           and all subsidiaries thereof, as of December thirty-first of the year preceding  
9           the date of application, and the number of full-time, part-time, and temporary  
10          employees;
- 11          g. The kinds and value of development assistance being applied for;
- 12          h. The number of new jobs to be created by the development assistance, and  
13          the number of full-time, part-time, and temporary jobs;
- 14          i. The average hourly wage to be paid within one year of hiring to the new  
15          employees, shown by the number of full-time, part-time, and temporary  
16          employees whose hourly wage will not be more than six dollars per hour, and  
17          from six dollars to seven dollars per hour, from seven dollars to eight dollars  
18          per hour, from eight dollars to nine dollars per hour, from nine dollars to ten  
19          dollars per hour, from ten dollars to eleven dollars per hour, from eleven  
20          dollars to twelve dollars per hour, from twelve dollars to thirteen dollars per  
21          hour, from thirteen dollars to fourteen dollars per hour, and more than  
22          fourteen dollars per hour;
- 23          j. For specific project sites located within a metropolitan statistical area, as  
24          defined by the federal office of management and budget, the average hourly  
25          wage paid nonmanagerial employees in the applicant's industry in the state,  
26          as most recently provided by the United States bureau of labor statistics to the  
27          two-digit or three-digit standard industrial classification number specification,  
28          as available;
- 29          k. For specific project sites located outside a metropolitan statistical area, the  
30          average weekly wage paid in the state exclusive of metropolitan statistical

- 1 areas, as most recently reported by the United States department of  
2 commerce in its county business patterns reports;
- 3 l. The nature of employer-paid health care coverage to be provided within ninety  
4 days of hiring to the employees filling the new jobs, including any costs to be  
5 borne by the new employees;
- 6 m. A list of all other forms of development assistance the applicant is seeking for  
7 the specific project site and the name or names of the granting body or bodies  
8 from which that development assistance is being sought;
- 9 n. A narrative, if necessary, describing how the applicant's use of the  
10 development assistance may reduce employment at any site in any United  
11 States jurisdiction controlled by the applicant or its corporate parent, including  
12 events such as automation, consolidation, merger, acquisition, product line  
13 movement, business activity movement, or restructuring by either the  
14 applicant or its corporate parent; and
- 15 o. Individual certifications by the chief officers of both the applicant and the  
16 granting body as to the accuracy of the application, under penalty of perjury.
- 17 2. Beginning April 1, 2004, every granting body in the state, jointly with an applicant,  
18 shall fill out the standardized application form as prescribed in subsection 1 each  
19 time an applicant applies for development assistance.

20 **SECTION 5. On-budget development assistance disclosure.**

- 21 1. Before February first of each year, beginning in 2005, every granting body in the  
22 state shall submit to the department of commerce copies of all the standardized  
23 application forms for development assistance, as specified in section 4 of this Act,  
24 which it has received in the previous calendar year. Upon each form, the granting  
25 body shall designate whether the development assistance is pending, was  
26 approved, or was not approved, and for those applications that were approved, the  
27 date of assistance if the date of assistance occurred in the previous calendar year.
- 28 2. For those applications that were approved but for which the date of assistance did  
29 not occur in the same calendar year, each granting body shall report the relevant  
30 dates of assistance in its next subsequent annual report to the department of  
31 commerce.

- 1           3. For each development assistance application that was approved, and for which the  
2           date of assistance has occurred in the reporting year, each granting agency shall  
3           submit to the department of commerce a progress report, which must include the  
4           following data:
- 5           a. The application tracking number;
  - 6           b. The name, street and mailing addresses, telephone number, and chief officer  
7           of the granting body;
  - 8           c. The name, street and mailing addresses, telephone number, and chief officer  
9           of the recipient at the specific project site for which the development  
10          assistance was approved;
  - 11          d. The kind of development assistance and value of assistance that was  
12          approved;
  - 13          e. The recipient's total level of employment at the specific project site on the  
14          date of the application and the recipient's total level of employment at the  
15          specific project site on the date of the report and the number of full-time,  
16          part-time, and temporary employees and a computation of the gain or loss in  
17          each category;
  - 18          f. The number of new jobs the recipient stated in its application would be  
19          created by the development assistance and the number of full-time, part-time,  
20          and temporary employees;
  - 21          g. The total level of employment in this state of the recipient's corporate parent  
22          and all subsidiaries thereof, as of December thirty-first of the year preceding  
23          the date of application and the total level of employment in the state of the  
24          applicant's corporate parent and all subsidiaries thereof, as of each December  
25          thirty-first through the reporting year, showing full-time, part-time, and  
26          temporary employees, and a statement of the gain or loss in each category  
27          from the earliest reported year to the most recent;
  - 28          h. The average hourly wage paid as of December thirty-first of the reporting year  
29          to employees filling the new jobs at the specific project site, shown for  
30          categories of full-time, part-time, and temporary employees;

- 1           i.    The nature of employer-paid health care coverage being provided within  
2                    ninety days of hiring to the employees filling the new jobs, including any costs  
3                    being borne by the new employees;
- 4           j.    A narrative, if necessary, describing how the recipient's use of the  
5                    development assistance during the reporting year has reduced employment at  
6                    any site in any United States jurisdiction controlled by the applicant or its  
7                    corporate parent, including events such as automation, consolidation, merger,  
8                    acquisition, product line movement, business activity movement, or  
9                    restructuring by either the recipient or its corporate parent; and
- 10          k.    Signed individual certifications by the chief officers of both the recipient and  
11                   the granting body as to the accuracy of the progress report, under penalty of  
12                   perjury.
- 13          4.    The granting body and the department of commerce have full investigative  
14                   authority to verify the recipient's progress report data, including inspection of the  
15                   specific project site and analysis of tax and payroll records.
- 16          5.    Before June first of each year, beginning in 2005, the department of commerce  
17                   shall compile and publish all data in all of the development assistance progress  
18                   reports.
- 19          6.    All aspects of all development assistance applications, progress reports, and the  
20                   compilation of applications and progress reports are open records under section  
21                   44-04-18.
- 22          7.    If a granting body fails to comply with subsections 1 through 3, or if a recipient fails  
23                   to comply with subdivision k of subsection 3, the division of economic development  
24                   and finance, within ten business days of the filing deadline, shall suspend any  
25                   current development assistance activities under its control in the granting body's  
26                   jurisdiction and may not proceed with any current or future development assistance  
27                   activities under its control in the granting body's jurisdiction until it receives notice  
28                   that the noncompliant granting body or recipient is in compliance with this section.

29          **SECTION 6. Recapture.**

- 30          1.    Recipients must achieve their job creation and wage and benefit goals within two  
31                   years of the date of assistance and must maintain their wage and benefit goals as

- 1 long as the development assistance is in effect. Corporate parents of recipients  
2 must maintain at least ninety percent of their original employment in this state, as  
3 specified in subdivision f of subsection 1 of section 4 of this Act and subdivision g  
4 of subsection 3 of section 5 of this Act.
- 5 2. Granting bodies, within ten business days after the second anniversary of the date  
6 of assistance, shall fill out a standardized progress report, in the same form as  
7 prescribed in section 5 of this Act, and the recipient shall sign the report. The  
8 granting body shall file this second anniversary progress report with the  
9 department of commerce with the granting body's next annual filing of progress  
10 reports.
- 11 3. The granting body shall indicate on the second anniversary progress report  
12 whether the recipient has achieved its job creation and wage and benefit goals and  
13 whether the corporate parent has maintained ninety percent of its state  
14 employment.
- 15 4. On all subsequent annual progress reports, the granting body shall indicate  
16 whether the recipient corporation is still in compliance with its job creation and  
17 wage and benefit goals and whether the corporate parent is still in compliance with  
18 its state employment maintenance requirement.
- 19 5. If on any progress report occasion, beginning with the second anniversary  
20 progress report, a granting body finds that a recipient has not achieved its job  
21 creation or wage or benefit goals or the corporate parent has not maintained ninety  
22 percent of its state employment, the granting body, within ten business days, shall  
23 file a finding of development assistance default with the department of commerce  
24 and with the recipient.
- 25 6. If a recipient is found in default on development assistance under subsection 5, the  
26 recipient shall reimburse the granting body that portion of the development  
27 assistance that accrued to its benefit for the calendar year in which the default  
28 occurred. For one-time forms of development assistance such as grants or  
29 property tax discounts, a defaulting recipient shall reimburse the granting body  
30 one-fifth of the value of assistance. Remittance of the payback by the recipient to

- 1 the granting body must be made within sixty calendar days of the delivery of the  
2 default notice to the recipient.
- 3 7. If a recipient defaults on development assistance under subsection 5 in three  
4 consecutive calendar years, the granting body shall declare the development  
5 assistance void and shall notify the department of commerce and the recipient.  
6 Upon such declaration, the recipient corporation shall repay to the granting body all  
7 remaining value of the development assistance it has received and has not already  
8 repaid. Repayment by the recipient to the granting body must be made within one  
9 hundred eighty calendar days of the delivery of the notice to the recipient.
- 10 8. All aspects of all development assistance default notices, recapture remittances,  
11 associated correspondence, and related proceedings are open records under  
12 section 44-04-18.
- 13 9. If a granting body fails to enforce this section, any person who paid income taxes  
14 to this state or property taxes levied by the governing body in the calendar year  
15 prior to the year in dispute, or any organization representing such taxpayers, may  
16 sue to compel enforcement under this section. The court shall award to any  
17 prevailing plaintiff reasonable attorney's fees and costs in such enforcement action.

18 **SECTION 7. Job quality standards.** A granting body may not grant development  
19 assistance to an applicant unless the wages paid to employees at the specific project site are at  
20 least equal to the average wage as specified in subdivisions j and k of subsection 1 of section 4  
21 of this Act. However, for a small business, the average wage must be at least seventy-five  
22 percent of the amounts specified in subdivisions j and k of subsection 1 of section 4 of this Act.  
23 The computation of wages under this section applies only to a recipient that provides the health  
24 care coverage as approved by the granting body in its application.

25 **SECTION 8. Accountability standards.**

- 26 1. A recipient shall fulfill its job creation, wage, health care, and other benefit  
27 requirements for the project site within two years of the date of development  
28 assistance. The recipient shall maintain its wage and benefit goals as long as the  
29 development assistance is in effect, or five years, whichever is longer.

- 1           2.    The corporate parent of a recipient shall maintain at least ninety percent of its  
2                    employment in this state as long as the development assistance is in effect, or not  
3                    less than five years, whichever is longer.
- 4           3.    If the requirements under subsections 1 and 2 are not fulfilled, the granting body  
5                    shall recapture the development assistance from the recipient as follows:
  - 6                    a.    Upon a failure by the recipient to create the required number of jobs or to pay  
7                            the required wages or benefits, the amount recaptured must be based on the  
8                            pro rata amount by which the unfulfilled jobs, wages, or benefits bears to the  
9                            total amount of the development assistance.
  - 10                   b.   Upon a failure of the corporate parent to maintain ninety percent of its  
11                            employment in this state, the rate of recapture must equal twice the  
12                            percentage by which the employment is less than ninety percent.
- 13           4.    The granting body shall provide notice to the recipient of its intent to recapture the  
14                    development assistance and state the reasons and amount to be recaptured. The  
15                    recipient shall remit to the granting body the amount within sixty calendar days of  
16                    the date of the notice.
- 17           5.    If a recipient defaults on any development assistance in three consecutive calendar  
18                    years, the granting body shall declare the development assistance void, and shall  
19                    notify the department of commerce and the recipient. The recipient shall pay to the  
20                    granting body any remaining value of the development assistance that it has not  
21                    previously repaid within one hundred eighty calendar days of the date of the notice  
22                    of the default.

23           **SECTION 9. Collective bargaining agreement.** This Act does not require or  
24 authorize a recipient to reduce wages established by a collective bargaining agreement or a  
25 state or federal prevailing wage law.