

Fifty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1369

Introduced by

Representative Onstad

Senator Wardner

1 A BILL for an Act to create and enact chapter 4-42, a new subsection to section 26.1-05-19, a  
2 new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 1 of  
3 section 57-38-01.3, a new subdivision to subsection 2 of section 57-38-30.3, and a new  
4 subsection to section 57-38-30.3 of the North Dakota Century Code, relating to the  
5 establishment and operation of the farmers equity trust fund and investments and income tax  
6 credits for investments for support of the fund; and to provide an effective date.

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

8 **SECTION 1.** Chapter 4-42 of the North Dakota Century Code is created and enacted  
9 as follows:

10 **4-42-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 11 1. "Agricultural commodity" means an agricultural crop or animal capable of being  
12 raised commercially in this state.
- 13 2. "Bank" means the Bank of North Dakota.
- 14 3. "Investment" means a purchase of an interest in the farmers equity trust fund.
- 15 4. "Value-added agricultural project" means a vertically integrated enterprise  
16 operated to process and market an agricultural commodity and established as a  
17 legal entity with the majority of ownership interests owned by agricultural  
18 commodity producers.

19 **4-42-02. Farmers equity trust fund.** The industrial commission shall establish the  
20 farmers equity trust fund as a fund at the Bank of North Dakota. Moneys in the fund may be  
21 used by the value-added agriculture promotion board on behalf of the fund to acquire  
22 ownership interests in value-added agricultural projects or for loans to value-added agricultural  
23 projects. A loan under this section must be secured by ownership interests in the project.

- 1           **4-42-03. Industrial commission powers.** The industrial commission has all powers  
2 necessary to carry out its functions under this chapter, including the power to:
- 3           1. Enter contracts or other instruments or agreements necessary or incidental to the  
4           performance of its duties and functions under this chapter including contracts,  
5           instruments, or agreements with any federal or state agency or instrumentality.
  - 6           2. Sue and be sued.
  - 7           3. Receive investments in the farmers equity trust fund.
  - 8           4. Invest proceeds of investments in the farmers equity trust fund not needed for  
9           immediate disbursement, including any reserve funds, in investments the industrial  
10          commission determines to be prudent.
  - 11          5. Authorize returns to investors on farmers equity trust fund investments at the times  
12          and in the manner the industrial commission determines to be prudent.

13           **4-42-04. Value-added agriculture promotion board powers.** The value-added  
14 agriculture promotion board has all powers necessary to carry out its functions under this  
15 chapter, including the power to:

- 16          1. Make investments in and loans to value-added agricultural projects under this  
17          chapter and charge any reasonable fees to borrowers as the board determines to  
18          be appropriate.
- 19          2. Prescribe and approve forms and procedures for value-added agricultural projects  
20          to apply for investments and loans under this chapter.
- 21          3. Prescribe the terms and conditions of investments and loans to be made under this  
22          chapter.
- 23          4. Establish procedures to evaluate a value-added agricultural project's relative merit,  
24          likelihood of success, and need for an investment or loan. Evaluation of relative  
25          merit must include consideration of the number of citizens of this state who would  
26          benefit from the project and the amount of benefit.

27           **4-42-05. Bank of North Dakota.** The industrial commission and the value-added  
28 agriculture promotion board may delegate to the Bank of North Dakota and the Bank is  
29 authorized to exercise all administrative powers granted to the industrial commission and the  
30 value-added agriculture promotion board under this chapter, including reviewing applications  
31 for, and closing and servicing, investments and loans under this chapter.

1           **4-42-06. Investments not guaranteed.** Investments in the farmers equity trust fund  
2 are backed only by the balance in and obligations to the farmers equity trust fund. Investments  
3 under this chapter are not payable from or chargeable to any funds other than the farmers  
4 equity trust fund. The industrial commission and the Bank of North Dakota are not subject to  
5 any liability on investments in the farmers equity trust fund or loans or investments made from  
6 the farmers equity trust fund under this chapter.

7           **4-42-07. Farmers equity trust fund investment tax credit.** If a taxpayer makes a  
8 qualified investment under this chapter in the farmers equity trust fund, the taxpayer is entitled  
9 to a credit against state income tax liability as determined under section 57-38-29, 57-38-30, or  
10 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the  
11 amount invested during the taxable year by the taxpayer, subject to the following:

- 12           1. In any taxable year, a taxpayer may claim no more than fifty percent of the credit  
13           under this section which is attributable to qualified investments in a single taxable  
14           year. The aggregate amount of credits under this section for any taxable year may  
15           not exceed fifty percent of the taxpayer's tax liability as otherwise determined  
16           under chapter 57-38.
- 17           2. Any amount of credit under this section not allowed because of the limitations of  
18           this section may be carried forward for up to one taxable year after the taxable  
19           year in which the investment was made.
- 20           3. A partnership or other passthrough entity that invests under this chapter in the  
21           farmers equity trust fund must be considered to be the taxpayer for purposes of the  
22           investment limitations in this section and the amount of the credit allowed with  
23           respect to an investment in the farmers equity trust fund must be determined at the  
24           partnership or passthrough entity level. The amount of the total credit determined  
25           at the partnership or passthrough entity level must be allowed to the partners or  
26           shareholders in proportion to their respective interests in the partnership or  
27           passthrough entity.
- 28           4. A qualified investment must be at risk in the farmers equity trust fund. An  
29           investment for which a credit is received under this section must remain in the fund  
30           for at least three years.

1           5.    The tax credit under this section accrues to the taxpayer for the taxable year in  
2                    which full consideration for the investment under this chapter was received by the  
3                    industrial commission.

4           **4-42-08. Tax credit procedure and reporting.** To receive the tax credit provided by  
5 this chapter, a taxpayer must claim the credit on the taxpayer's annual state income tax return  
6 in the manner prescribed by the tax commissioner.

7           **4-42-09. Rules and administration.** The tax commissioner shall administer the  
8 provisions of this chapter which relate to the income tax credits and deductions allowed under  
9 this chapter and has the same powers as provided under section 57-38-56 for purposes of this  
10 chapter. The industrial commission shall administer the provisions of this chapter which relate  
11 to investments in the farmers equity trust fund under this chapter and the commission may  
12 adopt rules for that purpose in accordance with chapter 28-32. The value-added agriculture  
13 promotion board shall administer the provisions of this chapter which relate to investments or  
14 loans from the farmers equity trust fund and may adopt rules for that purpose in accordance  
15 with chapter 28-32.

16           **SECTION 2.** A new subsection to section 26.1-05-19 of the North Dakota Century  
17 Code is created and enacted as follows:

18                   Investments under chapter 4-42.

19           **SECTION 3.** A new subdivision to subsection 1 of section 57-38-01.2 of the North  
20 Dakota Century Code is created and enacted as follows:

21                   Reduced by the amount of any returns received by the taxpayer during the  
22                   taxable year on investments under chapter 4-42 to the extent that those  
23                   returns were included in the taxpayer's federal taxable income.

24           **SECTION 4.** A new subdivision to subsection 1 of section 57-38-01.3 of the North  
25 Dakota Century Code is created and enacted as follows:

26                   Reduced by the amount of any returns received by the corporation during the  
27                   taxable year on investments under chapter 4-42 to the extent those returns  
28                   were included in the corporation's federal taxable income.

29           **SECTION 5.** A new subdivision to subsection 2 of section 57-38-30.3 of the North  
30 Dakota Century Code is created and enacted as follows:

1                   Reduced by returns received by the taxpayer during the taxable year on  
2                   investments under chapter 4-42 to the extent those returns were included in  
3                   the taxpayer's federal taxable income.

4                   **SECTION 6.** A new subsection to section 57-38-30.3 of the North Dakota Century  
5 Code is created and enacted as follows:

6                   An individual, estate, or trust is entitled to a credit against the tax as determined  
7                   under this section for farmers equity trust fund investments as determined under  
8                   section 4-42-14.

9                   **SECTION 7. EFFECTIVE DATE.** Sections 2 through 6 of this Act are effective for  
10 taxable years beginning after December 31, 2002.