

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1027

Page 1, line 1, remove "two new sections to"

Page 1, line 2, remove "chapter 15-10,"

Page 1, line 3, replace "ten" with "two" and remove "a new section to chapter"

Page 1, line 4, remove "54-60.1,"

Page 1, line 6, remove "a state board of higher education report and grant program,"

Page 1, line 8, remove "a department of commerce"

Page 1, remove line 9

Page 1, line 10, remove "incentives, a tourism enhancement grant program, talent attraction,"

Page 1, line 12, remove "subdivision c of subsection 1 of section"

Page 1, line 13, remove "6-09.15-01, section 6-09.15-03," and remove "15-69-02,"

Page 1, line 15, remove the first "and" and replace "subsections 1 and 3 of" with "and"

Page 1, line 16, remove the first "section" and remove ", and section 57-39.2-04.3"

Page 1, line 17, remove "beginning entrepreneur loan guarantee"

Page 1, line 18, remove the first "program,"

Page 1, line 20, replace "a" with "updating" and replace "division of innovation and technology"  
with "law"

Page 1, line 23, remove "sales tax exemptions for"

Page 1, line 24, remove "tourism equipment and wireless service provider equipment,"

Page 2, line 1, after the comma insert "a tax expenditure report pilot project and a state  
business incentive expenditure report pilot project and reports on the pilot projects,"

Page 2, line 3, remove "to provide an expiration date;"

Page 2, remove lines 29 and 30

Page 3, remove lines 1 through 19

Page 3, remove lines 26 through 31

Page 4, remove lines 1 through 23

Page 5, line 1, remove "division of"

Page 5, line 2, remove "innovation and technology"

Page 5, remove lines 3 through 29

Page 6, remove lines 1 through 7

Page 7, line 8, replace "provide" with "consider the potential need"

Page 8, line 3, replace "shall" with "may"

Page 8, line 19, remove "If a"

Page 8, remove line 20

Page 8, line 21, remove "must have specifically designated the center as addressing infrastructure needs."

Page 9, line 5, remove "The commission may not direct distribution of funds if the private sector"

Page 9, line 6, remove "participants cease to participate."

Page 9, after line 17, insert:

"5. The commission may use funds appropriated for the centers of excellence program to pay for the commission's administrative expenses, which may include contracting for independent, expert reviews of complete applications. The amount of funds the commission uses each biennium for administrative expenses may not exceed two and one-half percent of the funds appropriated for the program that biennium."

Page 10, line 31, remove the overstrike over "and"

Page 11, line 1, remove "A division of innovation and technology; and"

Page 11, line 2, remove "f."

Page 12, remove lines 1 through 30

Page 13, remove lines 1 and 2

Page 13, line 3, replace "Nine" with "Two"

Page 13, remove lines 5 through 31

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 30

Page 16, remove lines 1 and 2

Page 16, line 3, replace "**Workforce**" with "**Division of workforce**" and after "**internships**" insert "**and work experience opportunities**"

Page 16, line 4, remove "1.", after "The" insert "division of", remove "division", and remove "higher education internship"

Page 16, line 5, after "internships" insert "and work experience opportunities for higher education students"

Page 16, line 8, after "internship" insert "and work experience"

Page 16, remove lines 9 through 18

Page 16, line 19, replace "**Workforce**" with "**Division of workforce**", remove "**division**", and replace "**education - Career promotion**" with "**specialist**"

Page 16, line 20, remove "1."

Page 16, line 23, replace "providing" with "promoting North Dakota", replace "education" with "opportunities", replace "kindergarten" with "grades nine", and remove "grade"

Page 16, line 24, replace "subsection" with "section"

Page 16, line 25, replace "counselor" with "specialist"

Page 16, line 26, remove "Each career"

Page 16, remove lines 27 through 31

Page 17, remove lines 1 through 29

Page 20, line 11, remove "specified direct", remove the first "of", and replace "associated with recruitment of" with "incurred during the tax year to recruit and hire"

Page 20, line 12, after "state" insert "for which the annual salary for the position meets or exceeds the state average weekly wage"

Page 20, line 13, remove "the lesser of twenty-five"

Page 20, line 14, remove "thousand dollars or" and replace "direct costs incurred" with "salary paid"

Page 20, line 15, replace "associated with recruiting for a" with "to the employee for the" and remove "in"

Page 20, line 16, remove "this state"

Page 20, replace lines 17 through 31 with:

- a. "Extraordinary recruitment methods" means using one or more of the following:
  - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
  - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
  - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
  - (4) Participation in a job or career fair.
  - (5) Payment for professional licensing or certification required for the position.
  - (6) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
- b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods.
- c. "State average wage" means the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired."

Page 21, line 3, replace "passthrough entity that incurs direct costs associated with recruiting for" with "partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section"

Page 21, line 4, remove "hard-to-fill employment positions within this state"

Page 21, line 5, remove "with"

Page 21, line 6, remove "respect to a passthrough entity's costs associated with that recruiting"

Page 21, line 16, after the underscored period insert "To qualify for the credit under this section, the internship program must meet the following qualifications:"

- a. The intern must be an enrolled full-time student in an institution of higher education who is engaged in a major field of study closely related to the work experience performed for the taxpayer;
- b. The internship must be taken for academic credit; and
- c. The intern must be supervised and evaluated by the taxpayer."

Page 21, line 20, remove "For purposes of this subsection:"

Page 21, remove lines 21 through 23

Page 21, line 24, replace "b." with "a."

Page 21, after line 25, insert:

- "b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity."

Page 21, line 29, after "57-38-01.25" insert "and subsection 4 of section 57-38-30.5"

Page 22, line 4, after "million" insert "hundred"

Page 23, line 1, after "assign" insert "or transfer, for consideration,"

Page 23, line 7, replace "If the taxpayer elects to assign an excess credit under this" with:

- "a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
- "b. If the taxpayer elects to assign or transfer an excess 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 tax 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 tax 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 the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- "d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.

- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit."

Page 23, remove lines 8 through 11

Page 23, after line 16, insert:

- "6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 5.
- 7. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section 57-38-29 or 57-38-30.3."

Page 23, line 26, replace "Subsections 1 and 3 of section" with "Section"

Page 23, line 27, replace "are" with "is"

Page 23, replace lines 28 through 31 with:

**57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 1. "Agricultural commodity processing facility" means a :
  - a. A facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state; or

- b. A livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility.
- 2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:
  - a. Involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials;
  - b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
  - c. Involved in a soybean or canola crushing facility.
- 3. "Director" means the director of the department of commerce division of economic development and finance.
- ~~3.~~ 4. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
  - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of ~~processing and marketing~~ being an agricultural commodities capable of being raised in this state commodity processing facility;
  - b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state;
  - c. Has an agricultural commodity processing facility, or intends to locate one, in this state; and
  - d. Is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5.
- ~~4.~~ 5. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company."

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 31

Page 26, remove lines 1 through 31

Page 27, remove lines 1 through 31

Page 28, remove lines 1 through 19

**"SECTION 27. TAX EXPENDITURE REPORT PILOT PROJECT.**

1. During the 2007-09 biennium, the commissioner of commerce, in consultation with the tax commissioner, shall select a tax expenditure for the purposes of conducting a tax expenditure report pilot project.
2. Before the tenth legislative day of the sixty-first legislative assembly, the commissioner of commerce shall submit to the president of the senate and the speaker of the house a tax expenditure report. This report must be based upon information available to the tax commissioner and information available to the department of commerce, and must include an analysis of the selected tax expenditure which includes a description of the annual state revenue losses and benefits and a cyclical analysis of these losses and benefits.
3. The tax commissioner shall compile tax expenditure data and provide this data to the department of commerce. Notwithstanding section 57-38-57 and other confidentiality statutes, the tax commissioner shall provide the department of commerce the information necessary to accomplish and effectuate the intent of this section. The tax commissioner may request the assistance of the office of management and budget as necessary to compile this tax expenditure data.
4. The tax commissioner may establish the procedure by which the tax commissioner will compile the tax expenditure data and the format in which the tax commissioner will provide this data to the department of commerce. The department of commerce may establish the manner in which the tax expenditure data will be analyzed, organized, and presented in the report.
5. Confidential tax information the department of commerce receives from the tax commissioner may not be divulged by the department of commerce unless the information is in the aggregate and in a manner that will not divulge information specific to any taxpayer.
6. For purposes of this section, the term tax expenditure means a provision in the state tax laws, including an exclusion, a deduction, a tax preference, a credit, and a deferral designed to encourage certain activities or to aid a taxpayer in special circumstances.

**SECTION 28. STATE BUSINESS INCENTIVE EXPENDITURE REPORT PILOT PROJECT.**

1. During the 2007-09 biennium, the commissioner of commerce shall select a state business incentive for the purposes of conducting a state business incentive expenditure report pilot project.
2. Before the tenth legislative day of the sixty-first legislative assembly, the commissioner of commerce shall submit to the president of the senate and the speaker of the house a state business incentive expenditure report. This report must be based upon information available to the department and must include an analysis of the selected state business incentive which includes a description of the annual state revenue losses and benefits and a cyclical analysis of these losses and benefits.
3. The administering agency for the selected state business incentive shall compile state business incentive expenditure data and provide this data to

the department. The department shall determine the data appropriate to measure the losses and benefits for the selected state business incentive and shall inform the administering agency of the specific data required and the format in which the administering agency shall provide this data to the department.

4. For purposes of this section, the term business incentive does not include a tax expenditure as defined under section 27 of this Act."

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 10

Page 33, line 23, replace "\$5,000,000" with "\$2,500,000"

Page 33, line 27, replace "\$5,000,000" with "\$2,500,000"

Page 34, line 10, replace "41" with "33" and replace "42" with "34"

Page 34, line 14, replace "41" with "33" and replace "42" with "34"

Page 34, after line 19, insert:

**"SECTION 37. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of performing the tax expenditure report and state business incentive expenditure report pilot projects, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 38. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the department of commerce for the business and tourism acceleration commission, for the biennium beginning July 1, 2007, and ending June 30, 2009."

Page 34, line 26, remove "- **EXPIRATION DATE**" and replace "22, 23, 24, 25, 26," with "16, 17, 18, 19, 20, 21, and 23"

Page 34, line 27, remove "27, and 30" and after the period insert "Section 19 of this Act is effective for tax credits earned and assigned after December 31, 2006."

Page 35, remove lines 1 and 2

Page 35, line 3, replace "3, 4, 11, 41, 42, and 43" with "7, 33, 34, and 35"

Renumber accordingly