

**SECOND ENGROSSMENT  
with Conference Committee Amendments  
REENGROSSED HOUSE BILL NO. 1168**

Introduced by

Representatives Steiner, Dockter, Hatlestad, Lefor, Porter, Rohr, Satrom, Swiontek, Wagner  
Senators Rummel, Sickler

1 A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to  
2 subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to the provision  
3 of an income tax credit for purchases of manufacturing and animal agricultural machinery and  
4 equipment to automate a manufacturing or animal agricultural process; to amend and reenact  
5 subdivision j of subsection 3 of section 54-35-26 of the North Dakota Century Code, relating to  
6 evaluation of economic development tax incentives; and to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Subdivision j of subsection 3 of section 54-35-26 of the North  
9 Dakota Century Code is amended and reenacted as follows:

10 j. ~~Manufacturing automation equipment credit~~ Twenty-first century manufacturing  
11 and animal agricultural workforce incentive.

12 **SECTION 2.** A new section to chapter 57-38 of the North Dakota Century Code is created  
13 and enacted as follows:

14 **Twenty-first century manufacturing and animal agricultural workforce incentive.**

15 1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against  
16 the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of qualifying  
17 machinery and equipment in this state to improve job quality or increase productivity.  
18 The amount of the credit under this section is fifteen percent of the cost of the  
19 qualifying machinery and equipment purchased in the taxable year. Qualified  
20 expenditures under this section may not be used in the calculation of any other income  
21 tax deduction or credit allowed under this chapter.

22 2. For purposes of this section:

23 a. "Animal agricultural machinery and equipment" means new or used automation  
24 and robotic equipment used to upgrade or advance an animal agricultural

- 1                    process. The term does not include replacement automation and robotic  
2                    equipment that does not upgrade or advance an animal agricultural process.
- 3                    b. "Animal agricultural process" means the breeding, raising, harvesting, or  
4                    processing of animals for producing meat, dairy, or eggs, or meat, dairy, or egg  
5                    products. For purposes of this subdivision, "animal" means beef or dairy cattle,  
6                    swine, sheep, goats, bison, farmed elk, or poultry.
- 7                    c. "First-time claimant" means a taxpayer that has not previously claimed a credit  
8                    against the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of  
9                    animal agricultural machinery and equipment or manufacturing machinery and  
10                   equipment for the purpose of automating manufacturing or animal agricultural  
11                   processes.
- 12                   d. "Improved job quality" means a five percent increase in average wages or a five  
13                   percent improvement in workplace safety as documented through participation in  
14                   workforce safety and insurance safety incentive programs.
- 15                   e. "Increased productivity" means no less than a five percent increase in output or a  
16                   five percent increase in the number of units produced per automated line per time  
17                   period.
- 18                   f. "Manufacturing machinery and equipment" means new or used automation and  
19                   robotic equipment used to upgrade or advance a manufacturing process. The  
20                   term does not include replacement automation and robotic equipment that does  
21                   not upgrade or advance a manufacturing process.
- 22                   g. "Primary sector business" has the meaning provided in section 1-01-49.
- 23                   h. "Purchase" includes qualifying machinery and equipment acquired under a  
24                   capital lease only for the taxable year in which the lease is executed. A capital  
25                   lease is a lease which meets generally accepted accounting principles. The  
26                   qualifying costs of the equipment acquired under a capital lease is the fair market  
27                   value of the equipment at the inception of the lease.
- 28                   i. "Qualifying machinery and equipment" means animal agricultural machinery and  
29                   equipment and manufacturing machinery and equipment for the purpose of  
30                   automating manufacturing or animal agricultural processes.

- 1       3. The taxpayer shall claim the total credit amount for the taxable year in which the  
2       qualifying machinery and equipment are purchased. The credit under this section may  
3       not exceed the taxpayer's liability as determined under this chapter for any taxable  
4       year.
- 5       4. If the amount of the credit determined under this section exceeds the liability for tax  
6       under this chapter, the excess may be carried forward to each of the next five  
7       succeeding taxable years.
- 8       5. a. The aggregate amount of credits allowed each calendar year under this section  
9       may not exceed three million dollars.
- 10       (1) From the aggregate credit limit in this subdivision, the tax commissioner  
11       shall designate:
- 12               (a) Five hundred thousand dollars for credits claimed by first-time  
13               claimants for animal agricultural machinery and equipment for the  
14               purpose of automating animal agricultural processes; and
- 15               (b) Five hundred thousand dollars for credits claimed by first-time  
16               claimants for manufacturing machinery and equipment for the purpose  
17               of automating manufacturing processes.
- 18       (2) If the portion of the aggregate limit which is designated for first-time  
19       claimants in paragraph 1 is greater than the amount of credits claimed by  
20       the corresponding first-time claimants, the remaining portion of the  
21       aggregate limit which is designated for the first-time claimants in  
22       paragraph 1 must be included in the amount available to claimants that are  
23       not first-time claimants.
- 24       (3) If the portion of the aggregate limit which is not designated for first-time  
25       claimants in paragraph 1 is greater than the amount of credits claimed by  
26       claimants that are not first-time claimants, the remaining portion of the  
27       aggregate limit which is not designated for first-time claimants in  
28       paragraph 1 must be included in the amount available to first-time claimants  
29       to the extent necessary to satisfy all first-time claims.
- 30       (4) If the sum of the portion of the aggregate limit which is designated for the  
31       corresponding first-time claimants in paragraph 1 and any amount available

1                   to the first-time claimants under paragraph 3 is less than the amount of  
2                   credits claimed by the first-time claimants, the tax commissioner shall  
3                   prorate the credits among the first-time claimants.

4           b. If the maximum amount of allowed credits are not claimed in any calendar year,  
5           any remaining unclaimed credits may be carried forward and made available in  
6           the next succeeding calendar year.

7           c. After determining the credits claimed by the first-time claimants as provided in  
8           subdivision a, if the aggregate amount of credits claimed under this section by  
9           claimants that are not first-time claimants exceeds the amount available to  
10           claimants that are not first-time claimants in a calendar year, the tax  
11           commissioner shall prorate the credits among the claimants that are not first-time  
12           claimants.

13       6. If a taxpayer entitled to the credit provided by this section is a member of a group of  
14       corporations filing a North Dakota consolidated tax return using the combined  
15       reporting method, the credit may be claimed against the aggregate North Dakota tax  
16       liability of all the corporations included in the North Dakota consolidated return.

17       7. A passthrough entity entitled to the credit under this section must be considered to be  
18       the taxpayer for purposes of calculating the credit. The amount of the allowable credit  
19       must be determined at the passthrough entity level. The total credit determined at the  
20       entity level must be passed through to the partners, shareholders, or members in  
21       proportion to their respective interests in the passthrough entity. An individual taxpayer  
22       may take the credit passed through under this subsection against the individual's state  
23       income tax liability under section 57-38-30.3.

24       8. The department of commerce shall provide the tax commissioner the name, address,  
25       and federal identification number or social security number of the taxpayer approved  
26       as qualifying for the credit under this section, and a list of those items approved as a  
27       qualified expenditure by the department. The taxpayer claiming the credit shall file with  
28       the taxpayer's return, on forms prescribed by the tax commissioner, the following  
29       information:

30           a. The name, address, and federal identification number or social security number  
31           of the taxpayer that made the purchase; and

- 1           b. An itemization of:
- 2           (1) Each item of machinery or equipment purchased for automation, including a
- 3           description of the equipment or system being upgraded or advanced, and
- 4           an explanation of how the upgrade or advancement will improve job quality
- 5           or increase productivity;
- 6           (2) The amount paid for each item of machinery or equipment if the amount
- 7           paid for the machinery or equipment is being used as a basis for calculating
- 8           the credit; and
- 9           (3) The date on which payment for the purchase was made.
- 10        9. Within one year after claiming a tax credit under this section, a taxpayer shall file with
- 11        the tax commissioner a report that documents the improved job quality or increased
- 12        productivity required under this section and any other information the tax
- 13        commissioner determines is necessary for administration of this section. Failure to
- 14        document the improved job quality or increased productivity requirements is cause to
- 15        disallow the credit attributable to the noncompliance. The tax commissioner shall
- 16        provide notice of the disallowed credit to the taxpayer. Within ninety days after the
- 17        date of the notice, the taxpayer shall file an amended return for each taxable year in
- 18        which the disallowed credit reduced the taxpayer's tax liability and pay the amount
- 19        due. If an amended return is not filed timely, the tax commissioner shall disallow the
- 20        credit and assess any tax due. An assessment of tax made under this subsection is
- 21        final and irrevocably fixed.
- 22        10. Notwithstanding the time limitations contained in section 57-38-38, this section does
- 23        not prohibit the tax commissioner from conducting an examination of the credit
- 24        claimed and assessing additional tax due under section 57-38-38.

25        **SECTION 3.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota  
26 Century Code is created and enacted as follows:

27           Twenty-first century manufacturing and animal agricultural workforce incentive  
28           under section 2 of this Act.

29        **SECTION 4. EFFECTIVE DATE.** Sections 2 and 3 of this Act are effective for taxable years  
30 beginning after December 31, 2022.