CHAPTER 40-57.1
TAX EXEMPTIONS FOR NEW AND EXPANDING BUSINESSES

40-57.1-01. Declaration and finding of public purpose.

The legislative assembly declares and finds that it is and has been its purpose in preparing and adopting the provisions of this chapter to sanction, authorize, and encourage activities in the public interest and for the welfare of the state, its subdivisions, and people by assisting in the establishment of additional industrial plants, the expansion and retention of existing business, and promotion of economic activities within the state and thereby increasing production of wealth and adding to the volume of employment, particularly during those seasons when employment in farming and ranching is slack, thus alleviating unemployment among the people of the state.

It is the intent of the legislative assembly that political subdivisions and the state board of equalization in their determination of whether the tax exemptions authorized by this chapter shall be granted shall give due weight to their impact and effect upon existing industry and business to the end that an unfair advantage shall not be given to new or expanded enterprises which is to the substantial detriment of existing enterprises.

40-57.1-02. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

1. "Local development organization", as used in section 40-57.1-04.3, means a profit or nonprofit corporation incorporated under the laws of this state or a limited liability company organized under the laws of this state, formed for the purpose of furthering the economic development of its community and environs, with authority to promote and assist the growth and development of business concerns in the areas covered by its operations. The operations of the corporation or limited liability company must be limited to a specified area in this state. The controlling interest in the corporation or limited liability company must be held by at least twenty-five persons residing or doing business in the community or its environs. These persons must control not less than seventy-five percent of the voting control of the corporation or limited liability company. A shareholder or member of the corporation or limited liability company may not own in excess of twenty-five percent of the voting control in the corporation or limited liability company if that shareholder or member has a direct pecuniary interest in any project or business concern that will occupy the property of the corporation or limited liability company. The primary objective of the corporation or limited liability company must be to benefit the community through increased employment, payroll, business volume, and corresponding factors rather than monetary profits to its shareholders or members. Any monetary profits or other benefits going to the shareholders or members must be merely incidental to the primary objective of the corporation or limited liability company.
2. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01.
3. "Primary sector business" has the meaning provided in section 1-01-49.
4. "Project" means any revenue-producing enterprise, or any combination of two or more of these enterprises. For the purpose of the income tax exemption, "project" means "primary sector business" as defined by this section and includes the establishment of a new qualifying business or the expansion of a qualifying existing business.

40-57.1-03. Municipality's authority to grant or revoke tax exemption or payments in lieu of taxes - Notice to competitors - Limitations.

1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation

on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations. Before a municipality may grant a partial or complete exemption from ad valorem taxation under this section:

a. The governing body of the municipality must have received the certification of the department of commerce division of economic development and finance that the project is a primary sector business, as defined in subsection 3 of section 40-57.1-02; or

b. The city council or commission, if the project is proposed to be located within the boundaries of a city of fewer than forty thousand population, or the board of county commissioners, of a county of fewer than forty thousand population and if the project is proposed to be located in the county but outside the corporate limits of any city, may grant a partial or complete exemption from ad valorem taxation for a project operating in the retail sector if that governing body has obtained the approval of exemption of property under this subdivision from a majority of the qualified electors of the city or county voting on the question at a city or county election held in conjunction with a statewide general election and if that governing body has established by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant a partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. The ballot for elector approval of exemption of property under this subdivision must present the question at the election for a yes or no vote on the question:

Shall the governing body of [name of county or city] be empowered to grant property tax exemptions upon application of new or expanding retail sector businesses?

Only a governing body of a city or county that meets the requirements of this subdivision may grant a partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. Criteria established by the governing body under this subdivision, at a minimum, must be intended to require:

(1) Evaluation of the potential positive or adverse consequences for existing retail sector businesses in the municipality from granting the exemption;

(2) Evaluation of the short-term and long-term effects for other property taxpayers in the municipality from granting the exemption;

(3) A written agreement with the project operator, including performance requirements for which the exemption may be terminated by the governing body of the municipality if those requirements are not met; and

(4) Evaluation of whether the project operator would locate the project within the municipality without the exemption.

2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

3. Before a governing body may grant a partial or complete exemption from ad valorem taxation or the option to make payments in lieu of ad valorem taxes under this chapter, the governing body shall consult with the department of commerce. If the department

of commerce determines that the total project costs are estimated to exceed one billion dollars, the department of commerce shall conduct a public hearing and notice of that hearing must be provided to each affected taxing district and any existing business within the municipality for which the potential project would be a competitor.

4. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.
5. Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.
6. By motion approved by the governing body of the municipality before the beginning of a taxable year for which a property tax exemption or the option to make payments in lieu of taxes under this section previously has been approved by the governing body, a property tax exemption may be revoked or reduced and payments in lieu of taxes may be revoked or increased for that taxable year for reasons specified in a negotiated agreement or if the governing body finds that:
    a. Information provided by the project operator during the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes has proven to be inaccurate or untrue;
    b. Use of the property by the project operator does not comply with the reasonable expectations of the governing body at the time the property tax exemption or the option to make payments in lieu of taxes was approved;
    c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or
    d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.

7. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action. Before granting a property tax incentive on any parcel of property that is anticipated to receive a property tax incentive for more than five years, the governing body of a city must comply with the requirements in section 40-05-24.
8. A city or county may not supersede or expand the provisions of this section under home rule authority.

40-57.1-04. Exemption from income tax - Notice to competitors - Limitations.

Upon application by a project operator to the state board of equalization, the net income of a project may be exempt from state income tax for a period not exceeding five years from commencement of project operations. The application for the exemption must be reviewed as to the eligibility of the project by the department of commerce division of economic development and finance and its recommendations forwarded to the state board of equalization. The project operator shall provide notice to competitors in the manner prescribed by the state board of equalization. The board shall determine whether the granting of the exemption is in the best interest of the people of North Dakota and, if it so determines, approve the exemption. The board shall, after making its determination, certify the findings back to the applicant and to the tax commissioner. Nothing contained herein shall have the effect of exempting the project from filing an annual income tax return.

40-57.1-04.1. Ad valorem tax exemption for existing structures - Requirements.

Notwithstanding any other provision of this chapter, a project operator who otherwise qualifies under this chapter may, upon application consistent with the provisions of this chapter, receive a partial or complete exemption from ad valorem taxation on any existing structure used in or necessary to the operation of the project for a period not exceeding five years from the date of commencement of project operations in the structure. For taxable years beginning after December 31, 1988, the governing body of a municipality may grant additional exemptions of property under this section during a period not exceeding ten years from the date of commencement of project operations in the structure if the structure is owned by the United States, the state, or a political subdivision of the state and leased to the project operator. The project operator shall apply to the governing body of the municipality annually for the exemption and the governing body of the municipality may grant the exemption for only one year at a time.

40-57.1-04.2. Local development corporation defined - Requirements - Purpose.

Repealed by S.L. 1991, ch. 447, § 10.

40-57.1-04.3. Property tax exemption on speculative industrial buildings and properties owned by a local development organization.

A municipality may, in its discretion, grant partial or complete exemption from ad valorem taxation on buildings, structures, and improvements constructed and owned by a local development organization for the express purpose of attracting new industry to this state. This exemption from ad valorem taxation is only available on new buildings, structures, and improvements while they remain unoccupied. Once the building, structure, or improvement is occupied, the exemption continues until the next annual assessment date following the first occupancy. This section does not affect the eligibility for property tax exemption of a business available under other provisions of this chapter, provided application for the tax exemption is granted prior to occupancy. A written request for the exemption is to be filed by the local development organization with the municipality. The request will be reviewed at an official meeting of the governing body and will be placed on the agenda for final action at the next

official meeting. The governing body of the municipality shall notify the county director of tax equalization with respect to any exemption granted under this section.

40-57.1-04.4. Clearance of tax obligations and tax liens of record.

1. A project operator is not eligible for the income tax exemption under section 40-57.1-04 until a showing is made that the project operator has satisfied all state or local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes owed to the state or a political subdivision.
2. A certificate from the tax commissioner to the state board of equalization satisfies the requirement of subsection 1.
3. If the project operator is a corporation or a passthrough entity defined in section 57-38-01, any of its officers, governors, or managers charged with the responsibility for making either property, income, income withholding, sales, or use tax returns and payments are subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable. If the project operator is a partnership, each general partner is subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations or tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable.

40-57.1-05. Reapplication for tax exemption - Discretion of board of equalization.

The municipality or the state board of equalization, upon the presentation of additional facts and circumstances which were not presented or discovered at the time of the original application for tax exemption under the provisions of this chapter, may accept reapplications from project operators at any time if the project operators first publish notice of application for tax exemption as required by this chapter.

40-57.1-06. Change in investment, new location, or change in project operator or use requiring reapplication for tax exemption or payments in lieu of taxes.

If the capital investment in the buildings, structures, fixtures, and improvements comprising the project exceeds the original investment or total investment after an approved reapplication under this section because expansion of the project has increased the investment in the project by more than twenty percent, the project operator must reapply to receive an exemption or to make payments in lieu of taxes on the added value of the property. If the project operator does not reapply, or if the reapplication is disapproved, the increased capital value of the buildings, structures, fixtures, and improvements comprising the project is subject to ad valorem taxation. If at any time a project operator who is exempt from taxation or subject to payments in lieu of taxes under this chapter moves the business to a new location, the project operator must reapply to retain the remaining balance of the property tax exemption or the option to make payments in lieu of taxes or elect to make application as a new business. A business relocation has no effect on the income tax exemption of the project operator if it is shown by the project operator to the satisfaction of the state board of equalization that the nature of the business has not been changed by the move and that the effect of the business upon competitors has not been changed by the move. In addition, a property tax exemption or option to make payments in lieu of taxes provided by this chapter applies only to the project operator to whom it is granted and is valid only while the property is used for the purposes stated in the application. If there is a change in use of the property or if a new project operator takes possession of the property, the property tax exemption or option to make payments in lieu of taxes terminates and the project operator must file a new application with the municipality for a tax exemption or option to make payments in lieu of taxes for the remainder of the exemption or payments in lieu of taxes period provided under section 40-57.1-03.

40-57.1-07. Exemptions - Time for making application.

1. No property tax exemption shall be granted under this chapter unless the application for it is granted as provided in this chapter prior to the commencement of construction of the project as that term is defined in section 40-57.1-02 or prior to occupancy by the project operator if the project is an existing building.
2. Application for an income tax exemption as provided in this chapter must be made by the project operator no later than one year after the commencement of project operations.

40-57.1-08. Large industrial projects - Exclusion from provisions of chapter.

Repealed by S.L. 1994, ch. 784, § 7.