

2011 HOUSE FINANCE AND TAXATION

HB 1057

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB1057

1-5-11

12581

☐ Conference Committee

Committee Clerk Signature

*Mary Brucher*

### Explanation or reason for introduction of bill/resolution:

A BILL relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

### Minutes:

**Chairman Wesley R. Belter:** We will open the hearing on HB 1057.

**Tony Grindberg, State Senator from District 41, Interim Chairman on Workforce:** Sponsor, support (attachment from Bruce Gjovig #1). This bill ties in to Governor's message yesterday about stimulating North Dakota's entrepreneurial climate. This provides expanded tax credit for out of state investors through transferability of the tax credit so that we can attract more out of state capital into North Dakota to fuel North Dakota business. That's the big picture; the details are going to have to be worked out with the experts. I have testimony provided by Bruce Gjovig at the University of North Dakota. His leadership in working with various communities in establishing the angel fund from the beginning has been very instrumental in creating these funds and creating capital for new entrepreneurial development.

**Representative Mike Nathe:** Testimony attached (#2).

**Representative Dave Weiler:** I've got a question as to the one time transfer or selling of these credits. You have somebody from out of state who invests in this fund and they get a tax credit and they're able to sell that or transfer that credit to someone else or does it have to be to somebody that has invested in the fund or they can transfer it to anybody?

**Representative Mike Nathe:** they would be able to sell it to anybody else. Chances are when they invest in the fund they are going to be investing in the company. Say it's your company and I'm investing it with you. Then there comes a time when I am going to want to sell or transfer that credit. Chances are, me as an investor, are going to say "Would you like to buy this credit?" Chances are you're going to buy it and use it for your business. If not, it would be up to the person holding that credit to sell it. Yes, it would be up to them.

**Vice Chairman Craig Headland:** You sell the tax credit to someone else; do the proceeds from that sale of that tax credit taxable?

**Representative Mike Nathe:** That would be a question for Mr. Rauschenberger, I'm not quite sure on that.

**Jennifer Clark, Legislative Counsel:** I was committee counsel on the interim Workforce Committee. My testimony is neutral. You've had two individuals introduce you to this concept to the extent that I can walk through and give you any details but let me tell you that in putting this together we worked closely with the Tax Department, they were very helpful. Taxes have some opportunity to address the issue of transferability in the R&D tax credit. So this is based on that structure and maybe flushed out a bit more than the R&D tax credit is. There is a sunset provision on this. It's good for four years. After those four years will go back to the version of the law that's in place today. So we're not repealing this law in four years, we're going back to the version that's in code right now. That report to legislative management would give the legislative assembly an opportunity to evaluate whether this is working the way we want it to and extend it at that point if they wish too. Senator Grindberg and Representative Nathe pointed out the two major provisions here are that it expands this tax credit through entities as well as providing transferability. The general structure of this is if you go to page 3 subsection 6 beginning on line 12 sets out our transferabilities and our pass throughs specifically to pass throughs. And then if you look at the bottom of that page, line 28, and subsection 7 of this bill addresses transferability relevant to all tax payers. I'd be happy to answer any questions. I'd also be happy to stay during the discussion if that would be helpful.

**Representative Dave Weiler:** I don't have a fiscal note on this. I have the paper but it is blank.

**Chairman Wesley R. Belter:** The fiscal note that we have is indeterminable. Any other testimony in support of 1057? Any opposition of 1957? Would the Tax Department like to speak?

**Ryan Rauschenberger, Office of the State Tax Commissioner:** I'd be happy to answer any technical questions of the bill. The question was "Is the income from the sale taxable?" It is income that is allocable and taxable in North Dakota from the sale.

**Vice Chairman Craig Headland:** I have to get this straight. An out of state citizen has no tax liability to the state invests in the state or invests in a business in the state; this bill would allow him to sell a tax credit that goes along with this investment. So he sells that and makes money off that and then he would have tax due in North Dakota?

**Ryan Rauschenberger:** Essentially the tax payer that would actually earn and sell that transferable credit would have to file in North Dakota.

**Vice Chairman Craig Headland:** If then he's going to file taxes, isn't he going to be ineligible for a tax credit? It's kind of a vicious circle the way I see it.

**Ryan Rauschenberger:** The liability that would be generated from that sale would be quite minimal compared to what they'd be able to use the credit to offset. So it would be a fairly small taxable liability based on that sale.

**Chairman Wesley R. Belter:** Could you walk us through an example of how this would exactly work or if you don't want to do it now prepare an example and put it on paper for us? Because I know I'm somewhat confused on how this whole process would work. I think it would be nice if we had an example as to how somebody would use this.

**Ryan Rauschenberger:** We'd be happy to do this. Just to clarify that there is a process on page 4 of the bill. This comes from existing research credit which has the transferability feature. Lines 1-11 letter b states that anybody selling the credit has to file jointly with the person who is purchasing the credit. Anybody out of state or in state that would invest in Angel Fund would earn the credit would then, if they find a buyer for the credit, both file jointly with the Tax Department. That's how the process would take place. Both parties would report to the department.

**Chairman Wesley R. Belter:** How complicated is this going to be for the Tax Department?

**Ryan Rauschenberger:** We do have the R&D credit currently on the books. It is very minimally utilized but we are willing to work with any administrative duties that would go along with transferability. It will be additional work but we would be willing and able to take care of the transferability function.

**Chairman Wesley R. Belter:** Were you involved in the interim committee process?

**Ryan Rauschenberger:** I was at just about every interim committee that involved discussion with this until the final draft. I did go to the final interim committee meeting.

**Chairman Wesley R. Belter:** Are a lot of states doing this?

**Ryan Rauschenberger:** We did present to the interim committee a report of a handful, a sample of states, specifically in the Midwest that have some sort of transferability. They're all a bit different; they're not all exactly for Angel Funds. Some are for film credits for certain companies for making movies in states. There are technology credits that are transferable. So there are transferability functions in other states but they each have their own set of limitations just as this one does.

**Chairman Wesley R. Belter:** Was there any type of particular business venture that it seems to be more attractive for? In the testimony that was given in committee, was there something pointed out that this is something that is a given type of industry would probably use more than others?

**Ryan Rauschenberger:** I guess I'm probably not the best person to answer this question as to what industry would utilize this credit more than others. I'm not aware of that.

**Representative Glen Froseth:** I believe this Angel Fund credit has been around since four or five sessions ago when it was first established. Can you give us an estimate and how often this is used, how many taxpayers have taken advantage of this Angel Fund credit?

**Ryan Rauschenberger:** I want to clarify that there are two different credits we are referring to. The credit you are referring to is the seed capital investment credit. That is a separate credit from this. This credit first went into place during the 2007 legislative session and went through some changes in the 2009 session. So this is a newer credit. A number of the limitations in the existing law were put into place last session. I apologize; I don't have the Angel Fund information with me as to the number of credits. As of today, 68 individual income tax payers have claimed \$907,000 in Angel Fund credits on their 2009 returns. Combined there are 69 tax payers that claimed \$925,000 Angel Fund credits in their 2009 returns.

**Representative Dwight Wrangham:** My attempt is to try to get an understanding of the bottom line and how this actually affects the tax payers of North Dakota. Were these investors, or these entities, or the combination of the two, who received these tax credits in North Dakota competing with other taxpaying entities? It creates a loss of revenue to the state when the tax credit is given. I assume there is nothing that links this to a reduction in spending by the state of North Dakota. So the spending is going to remain the same but the tax credit is going to cause the revenue of North Dakota to decrease. So my question is who makes up that difference?

**Ryan Rauschenberger:** As far as what kind of impact it would have with the transferability as opposed to what that would make up, I believe the Angel Fund industry would be better able to answer that.

**Representative Lonny B. Winrich:** Do we have information on what sort of types of industries use these credits? I'm trying to figure out what kinds of things the Angel Fund credit attracts, what kind of things the seed capital credit attracts, what kind of funds the Research and Development credit attracts and so on. To get an idea to figure out where the growth of industry is in this state.

**Ryan Rauschenberger:** The actual seed capital investment credit is for the individual, business, or entity investing directly in a business that's certified as a seed capital business in the state. That's basically between the investor and that end business. This is to attract equity directly into the business. The Angel Fund credit is for the act of either an individual, business, or entity investing in this fund in which equity dollars are pooled and then those funds go into an end business. It might be a seed capital business but it is typically a smaller higher risk, higher growth business as far as what the Angel Fund will invest in. They sometimes serve the same purpose but there are different avenues, whether the Angel Funds are controlling the investments. It might be individuals investing in that Angel Fund; typically, its individuals who invest in the Angel Funds and then the Angel Fund investors pool their knowledge and manage that Angel Fund and provide advice to those smaller higher growth businesses that the Angel Funds are investing in. They are two separate and distinct credits and serve different purposes.

**Representative Lonny B. Winrich:** Is it fair to say that the Angel Fund is kind of a venture capitalists sort of thing whereas the other funds are directed at specific existing industries?

**Ryan Rauschenberger:** The Angel Fund credit is really even before the venture capital even the smaller higher risk straight start ups. The seed capital has some different

employment parameters, typically primary business sectors. It has to be certified by the Department of Commerce as seed capital and meet certain employment criteria. It has a certain revenue limitation on it. As far as the targeted businesses, sometimes they do target the same businesses but they cannot be both used or double-dip. So an investor can invest in a seed capital business but an Angel Fund can also invest in that same kind of business so there is sometimes some overlap but the Angel Fund is truly towards the start up.

**Representative Dave Weiler:** Two questions; you gave us the numbers for the 2009 individuals of \$907,000. I think you stated before the law was put into effect in 2007 so were there any numbers for 2007 and 2008? Is it growing or is has it been the same 69 for two years?

**Ryan Rauschenberger:** We do have those numbers for 2008 and if my memory serves me correctly, it has grown. It was in the lower hundreds of thousands and now it's grown. It has grown with the numbers of individuals utilizing it. It is a growing credit. The seed capital credit has been around much longer and has far greater utilization but I believe the Angel Fund has grown in the past few years.

**Representative Dave Weiler:** Could we get those numbers? I know 2007 is probably too early but if we could get the 2008 numbers. And my second question; I apologize for asking but of the 69 individuals you said there are tax credits of \$907,000, that's the tax credit but if you could for me put it in terms of what the revenue was lost to the state. Was it \$907,000 and then it was the state's tax rate of \$907,000 or was it actually \$907,000 that was lost in revenue because of this?

**Ryan Rauschenberger:** The credit I stated was the amount claimed on the individual forms that were offset on their North Dakota income tax liability. So that would be the actual offset of revenue and not a deduction but an actual credit.

**Representative Dave Weiler:** So for 69 individuals this cost the state of North Dakota \$907,000?

**Ryan Rauschenberger:** With the credit that would be the impact we would report from that credit. Now where that revenue comes from would be up to the industry to state how that gets paid back in sales tax revenue additional income tax from individuals from employment but I would have them answer.

**Representative Dave Weiler:** Those numbers that you gave us look at the one side and then there's the other side of what good of the investments done. I'm sure there are positives there too.

**Representative Scot Kelsh:** Can you tell me what are high risk ventures? Are you talking about tech companies or restaurants or service industries? Can you tell me what the success rate has been with those types of industries in the short time this has been in effect?

**Ryan Rauschenberger:** I don't have the success rate numbers but as far as what the Angel Fund invests in, it's really up to the Angel Fund. A lot of people point to technology but it's truly the start up whether that's technology or it could be small manufacturing, small energy. It really would be an investment where they are looking for a high rate of return so it tends to be some of those riskier enterprises. Angel Fund investors are truly investing in those riskier enterprises but they're not all riskier but they're truly Angel Fund investors and Angel Funds are truly investing those newer businesses that might be risky because they're new.

**Representative Scot Kelsh:** Can you tell us about the success rates of those investors or since they are all in one portfolio is that information even available?

**Ryan Rauschenberger:** I'm not sure. Each fund would be different. I'm not sure if the numbers are available. We've had presentations in the past from Angel Funds and it might be contained in some of the information provided but other than that I don't have the answer to that question.

**Representative Steven L. Zaiser:** Could you enumerate some of the businesses that have had start ups and then if there's any way to approximate the number of businesses because this is pooling money from a number of sources and to perhaps less business start ups. Obviously, the sequential question to that would be what was the success rate? I am curious what businesses and how many have there been?

**Ryan Rauschenberger:** Again, I don't have that information. Just through word of mouth there have been different medical and technology companies have been invested in by North Dakota Angel Funds. I'm not sure if Mr. Lucy from the Commerce Department would have more information on that. We deal with more of the transaction between the investor and the Angel Fund and not the Angel Fund and the business. I know that a number of start up businesses have been invested in by this company.

**Representative Steven L. Zaiser:** Could you provide the committee with the information in terms of the businesses, the number, and the success/failure rate of some of those businesses. I think that would be really helpful.

**Ryan Rauschenberger:** I'll see what I can do.

**Representative Wayne Trottier:** Is there a face behind the Angel Fund?

**Ryan Rauschenberger:** The typical Angel Fund is really made up of a handful of investors that act as member managed. You would have fluent investors who could invest in the Angel Fund who all pool their investment knowledge and their lend advice to these businesses so it's really a committee.

**Representative Wayne Trottier:** Is there a Chairman or some names that you could give us?

**Ryan Rauschenberger:** There are a number of different funds in the state. There are nine certified Angel Funds in the state and I will try and find the information on those Angel Funds for you.

**Representative Dave Weiler:** when you say there are nine different funds but you mention there's a committee that is made up of individuals, can we get the individual names, not the nine names of the funds or are they one in the same? I'm just trying to find out who these people are.

**Ryan Rauschenberger:** I'll have to even look at even what we can provide as far as identifying them. This information of the tax payers that have utilized the credit would be confidential. I'm not sure what information Mr. Lucy with the Economic and Finance Division would have. They certify the Angel Funds but other than that I believe the Boards would be confidential. I don't think that it would be up to each individual fund but they would be willing to be represented here at a further meeting and talk to some of their members, I think that would be up to them.

**Representative Dave Weiler:** You've used the word committee and you've used the word board of the Angel Fund but that's all confidential?

**Ryan Rauschenberger:** As far as coming from us we don't have that information of who's on the Angel Fund Board and who's on the decision making process.

**Representative Dave Weiler:** It's simply the Tax Department responsibility to take care of the credits and that? So it's the people you work for in the Angel Fund you're not allowed to give those names out?

**Ryan Rauschenberger:** Anytime that we would receive any name of somebody that's investing in the Angel Fund it's because they've taken the credit. That is a confidential matter as far as who's investing in the Angel Fund and who's taking the credit. Other than that, we do not receive information from the Angel Fund at this time.

**Representative Dave Weiler:** I'll try to wrap this up. So if I want to invest in an Angel Fund do I come to the Tax Department? So how do I do this?

**Chairman Wesley R. Belter:** I think some of these questions should probably be answered by the Commerce Department.

**Representative Dave Weiler:** Are they allowed to give this information out?

**Chairman Wesley R. Belter:** I don't know but I think that because of confidentiality, everything should be confidential in the Tax Department. Of the 68 individuals, could you give us a breakdown? I'm curious if one person grabbed three-fourths of that amount or if you could give us some sort of breakdown of how that money was dispersed.

**Ryan Rauschenberger:** There is a \$45,000 limit on the credit so it would be spread out among the individuals.



**Representative Scot Kelsh:** Most businesses are required to register with the Secretary of State and I think a contact person should be listed on there. Are Angel Funds by definition a business venture or are they a shadowing kind of thing that isn't required to be registered by the Secretary of State?

Ryan: They are by definition a business. It would be a corporation, a partnership, limited partnership, limited liability, you name it; they are a business entity in the state. They are public entities and they are in communities. They are not anything secret it's just that we can't divulge that information we derive from the tax filing.

**Representative Glen Froseth:** What this bill would do is open up the pool of potential investors to the Angel Fund who do not have a North Dakota tax liability. If you don't have a North Dakota tax liability why would you invest in the pool?

**Ryan Rauschenberger:** That might be something for Representative Nathe to address. As far as I understand, the intent is to draw in additional out of state investors. They may see an investment that makes sense and that the Angel Fund would invest in. I would defer to Representative Nathe for that.

**Representative Nathe:** We heard testimony from the investment community as far as former North Dakotans who wanted to invest back in North Dakota. This was one of the main reasons we could open it up this way, by getting rid of the tax liability issue that they would have to have here. Some very well-to-do North Dakotans would like to come back and do it and we looked at this as one way to entice them to come back. I would like to address one question from before as to why workforce committee would take this on again. We've heard from the investment community that we needed to help raise venture capital in North Dakota. Apparently, we have one of the lowest venture capital rates in the country. Angel Funding is looked upon as gap funding from the start up phase to the venture capital phase so we were trying to find a way to stimulate that Angel Fund investing any way we could and this is one of those ways we thought we could.

**Representative Dwight Wrangham:** did these well-to-do people who have left the state and want to invest back, did they come and testify or is this hearsay?

**Representative Nathe:** We had some entrepreneurs that have contacts with former North Dakotans and their testimony was heard during the interim committee.

**Representative Bette Grande:** If I had a group of friends that I knew had some money or they had money they knew they could lose or keep, that's why they would invest because it's more on the risky side. I as a North Dakotan set up a LLC and I get this money together am I required to only invest in a North Dakota business or can I get together with the people and build a new Metrodome?

**Representative Nathe:** It would be North Dakota businesses as far as I understand. I stand corrected; it doesn't have to be a North Dakota business.

**Representative Bette Grande:** So I can build a Metrodome in Minnesota?

**Representative Nathe:** Yes.

**Representative Bette Grande:** And I would get my North Dakota tax credits from that to build in Minnesota?

**Representative Nathe:** that would be a question for Mr. Lucy. This is for more risky ventures such as tech parks, energy sector, medical, people along those lines.

**Representative Shirley Meyer:** With these high risk ventures in the Angel Funds, if they suffer a loss does the fund write that off? If the business decides to go bankrupt, does the fund write that off or is that a pass for the individuals that are investing in the fund?

**Ryan Rauschenberger:** As far as if they fail, I'm not sure how the Angel Fund would actually pass that on as far as operations. If there are losses that would end up passing through the Angel Funds to the investors too because they are the member shareholders of the business the Angel Fund is investing in. So they are taking a risk. As far as if it would actually dissolve I would have to defer to the Angel Fund community as to how they would wrap that up and how that would take place within the Angel Fund, or is they reinvest the funds or sell off shares.

**Representative Shirley Meyer:** Does the individual investor get a tax write-off?

**Ryan Rauschenberger:** If they're experiencing losses and that is flowing back to the Angel Fund and that Angel Fund invests in the business those losses are coming back to them.

**Mr. Paul Lucy, Director of Economic Development and Finance of the Department of Commerce:** Support. To answer one of the questions, the applications we receive for Angel Fund certification do have information on there for a contact individual. Most of the funds do have someone, typically, a volunteer member or investor to oversee the activities of the fund but not on the individual investors.

**Vice Chairman Craig Headland:** Are Angel Funds required to invest in something or can they just start a fund and take a tax credit?

**Mr. Lucy:** The language of the laws that exist right now requires that the fund be organized for the purpose of investing.

**Vice Chairman Craig Headland:** so there is no requirement, there's a purpose but no requirement?

**Mr. Lucy:** As I understand this, there may be different opinions on that but that is how I understand it.

**Chairman Wesley R. Belter:** In the case of an individual with a high income year they could possibly take advantage of a full tax credit in a given year if they made the assumption that the following was going to be a low income year so could they take the tax credit in the high income year and then the following year pull their money back out of the

fund and if you pull the money back out of the fund is that considered taxable or can you pull it out?

**Mr. Lucy:** I don't know the exact answer to that question. There is a requirement that we recertify certified Angel Funds every three years. At that time we would reassess that Angel Fund at the end of the three year period.

**Chairman Wesley R. Belter:** Does the individual investor have the authority to pull their money out or does it have to be an action of the board? Once you're in and that's the end of it or can you voluntarily withdraw your money?

**Mr. Lucy:** I believe it has to be a risk for three years in the fund.

**Representative Lonny B. Winrich:** In looking through the provisions of existing law of what an Angel Fund is, it has to be organized as a certain kind of business, partnership, limited partnership, etc. It must be organized through the purpose of three early stage or mid stage companies. It must have at least six credited investors and so on. After specifying all these requirements it says that they have to be certified by the Department of Commerce as an Angel Fund. So you must have all this information. In order to certify it they must have to present something to you about the organization they fund and what their assets are and so on. Is there some provision of law that prevents you from disclosing that information?

**Mr. Lucy:** We have maintained that the information relative to the individual investors and the amount of their investments confidential information.

**Representative Lonny B. Winrich:** Is that the law or is that the policy of the Commerce Department? How strong is that?

**Mr. Lucy:** I'd have to go back and review past discussions we had. I'm trying to remember if we had a legal opinion on that. I don't think we made a decision based on our own judgment. I believe we did get an opinion beyond the Department of Commerce but I don't have the exact answer for that.

**Representative Lonny B. Winrich:** Can you provide that for us?

**Mr. Lucy:** I can certainly find out.

**Representative Steven L. Zaiser:** When you talk about these funds, can any nonprofit organizations do this?

**Mr. Lucy:** It has to be organized as a for profit basis headquartered in North Dakota.

**Chairman Wesley R. Belter:** Any further testimony in support of 1057? Any testimony in opposition of 1057? Any neutral testimony of 1057? If not, we will close the hearing on 1057.

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1057  
January 18, 2011  
#13069

☐ Conference Committee

Committee Clerk Signature

*Mary Bruckner*

### Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

### Minutes:

*Refer to testimony #1, #2, and #3*

**Chairman Wesley R. Belter:** Individuals have asked to come in and give us additional information on angel fund investment tax credit. I will allow them to give us additional information on this.

**Mike Seifert, Resident in Bismarck:** I spent the last three years representing a lot of the small exporting businesses in the state under an EDA grant for access to capital. Essentially a quasi development function. I am a member of the Wahpeton or Southern Valley angels and have seen firsthand examples where the passes through organizations or LLC have an opportunity to partake with the angel tax fund credit or tax credit. It's been visible in many fronts and had we not had the opportunity to infuse this equity into North Dakota because of that lack of structure so we're here respectfully to at least make a case for entertaining a change. I would like to introduce two people: John Cosgriff from Invest America out of Fargo and Peter Blankenship who is the CEO of Streamline Corporation out of Minneapolis. Peter is one of the companies that not only did the Wahpeton angel fund invest in with our cash but also the Fargo and group out of Grand Forks as well. I think Peter has a real good actual story on why we are requesting some respectful adjustment to this language.

**Peter Blankenship, Founder of Streamline, Inc.:** Please refer to attached testimony #1.

**Chairman Wesley R. Belter:** What do you see in this bill to make it beneficial?

**Peter Blankenship:** The issue in this bill that some of the limitations it puts on far as transferability and pass through. The ways these angel funds are set up and structured there are a lot of different ways, its individual investors; it's entities that are putting into the funds, and the more limitations or avenues to be able to use this tax credit. They're taking a big risk in putting money into a startup company. By limiting their ability to utilize this it can rain back their effort to put into the angel funds and that's what is going to draw companies up here. The fact that angel funds have cash and have active angel investors,

it's just naturally going to bring companies up here as it's done with Streamline and quite a few other ones.

**Representative Lonny B. Winrich:** Was your company compelled to move to North Dakota as a condition of getting the support of the angel fund or did you move here simply to be closer to the support or what?

**Peter Blankenship:** The members of the angel funds are not just looking for a big score with the investment. They have a very vested interest in growing the economy here. They brought us up here, shoveled us through, Con Del Innovation, a manufacturing facility, had a very vested interest in having a presence in North Dakota. It wasn't a necessity but I don't know for sure if we would have gotten the deal done if we would have stayed in Minnesota. We making the move up here have been extremely good for the company because of the business environment the state of North Dakota is known for in businesses.

**Representative Dave Weiler:** The tax breaks that you are receiving you see as a big benefit to the angel fund investors and other investors. Those are simply the tax breaks. What would it be like if we eliminated personal and corporate income tax in North Dakota, would that benefit you guys even more?

**Peter Blankenship:** Absolutely, it would.

**Representative Steven L. Zaiser:** You mentioned two other businesses that were referred to in the Minneapolis Tribune article. Which businesses are they?

**Peter Blankenship:** I wish I brought the printout of the article but I don't know. Kathryn Grayson is the name of the lady who wrote the article. She contacted me after she wrote about Streamline. She ran into a few other companies who had a similar situation. She contacted me looking for people to contact in the state of North Dakota. We've done some work with the development fund here as well as some of the angel group. I just got the article emailed to me today so I haven't had a chance to read through it yet. But I can pass it along to anyone who is interested.

**Representative Scot Kelsh:** What advantage to you from Streamline would be the transferability or the sell ability of the credit?

**Peter Blankenship:** In Streamline incentivizing the angels. The tax credit is a pretty big deal for them to be able to fully benefit from that and whatever form they are set up in to be able to utilize that. If those are cut off it will inevitably start reducing the amount of angel money up here and companies like Streamline won't have access to that. We see it as being very important to have every incentive possible to get those angels to take that risk. I don't know the exact statistics but start ups usually don't have a great chance of surviving. It is a risk to put money into these startup companies. The fact that they can fully utilize this 45% tax credit is a pretty big deal in maintaining the abundance of accessible angel money.

**Representative Lonny B. Winrich:** If we eliminated personal and corporate income taxes entirely angel fund tax credits would not be an incentive.

**Peter Blankenship:** Typical investment size is about \$25,000.

**Representative Glen Froseth:** We have an estimate from the Tax Department that was \$907,000 worth of credits to the angel fund investors in the 2009 return. That's close to \$2 million a biennium. So we know what kind of credits are being issued but to my knowledge I've never heard of what kind of benefits have been returned to the state by new companies coming in to offset the loss to the state general fund by credits. Do you have any accountability that you could share or lend to those figures?

**Peter Blankenship:** I don't know how the state of North Dakota documents employment by these new companies coming in but I know in the development fund that's run by the state does require that you submit your employment numbers that have been created in North Dakota. Those companies that aren't dealing with the development fund, I don't know how that would be tracked. This is a relatively young tax credit that you have had; four or five years old. With any of these start ups it's not a two year turnaround and we're out there banging away. It's a process and it takes time to get that company to a point where it's sustainable and really turn it around. I think it is probably a little bit early to fully see what the effect of the tax credit and these investments into companies. I don't know how you guys track that or if something is put in place that tracks that.

**Chairman Wesley R. Belter:** We can have the Commerce Department address that or someone else.

**Mike Seifert:** Since 2006 there are about 140 angel investors in North Dakota that have infused about \$16 million of actual cash in North Dakota companies which is predominantly labor or rental payments for their facilities. From a Wahpeton fund perspective I think I can speak on behalf of my partners who invest together, we look for people like Peter who want to come to North Dakota as we know we have the 3M Com Del Corporation in Wahpeton. We also recently brought in some Salt Lake City investors, a company called Therada Sciences. All of us as angel investors are thankful for this tax credit but I can as a licensed CPA without it we wouldn't be entertaining some of these investments. Please rest assured that we do this not necessarily for a rate of return or an investment perspective as much as we believe in North Dakota. We're from North Dakota and we see wonderful young lads like Peter and his team who want to grow their businesses here and we know what that does to our future. I think that's more of the mantra; a lot of us have gained certain success and we want to share the knowledge and business acumen that we've gained in our career with people like that. This is a nice vehicle to do it. The reason that pass throughs or LLC partnership or tranfership would make it easier for us because in our cases we've got many businesses, we've got farms, whatever the issue is and when you get to your tax return at your end having a LLC or your trust if I die in a plane wreck next week it's far easier from the transfer or these other issues. There are 22 states that do what we are asking. We are going to do it either way because we believe in it but it makes it easier for us if there's a tax vehicle or even a liability vehicle that can shelter us as individuals. I think that's the simplistic side of it as angles we just want to see this refined so there's a tax or shelter vehicle in addition to us as individual angels.

**Representative Dave Weiler:** Could you share the numbers again?

**Mike Seifert:** Since 2006 we've gotten 140 angels in North Dakota and from that group we've infused about \$16 million of cash into certain projects.

**Representative Dave Weiler:** The numbers we were given during the original committee hearing was that there were 69 investors. Why is the number different?

**Mike Seifert:** I am sharing this from my counterpart in the Grand Forks fund so I am unable to answer that but I would be glad to get back to you on that.

**Representative Dave Weiler:** Yes, if we could just find out what the discrepancy is, thank you.

**Representative Lonny B. Winrich:** One of the things that came out in our previous hearing seemed to be that a great deal of information of angel funds and investors and so on was considered exempt from open records and we basically couldn't know it. Are angel funds required to report their investments similar to the way mutual funds operate so that you can learn something about what the fund is doing or how well it is doing? What information can we find out about the angel funds?

**Mike Seifert:** Each fund is governed by the Securities and Exchange Commission and it has a fund sponsor or fund manager. Each of the investments are tracked and reported annually as a fund portfolio. There's an annual report and any distributions would come out on a tax report that would go to our state tax department to make sure you're accountable to be paying any distributions that did occur.

**Representative Lonny B. Winrich:** So if we wanted to get that information should we go to the Tax Department or the Securities Department?

**Mike Seifert:** I understand it's attributable solely to the confidentiality aspects. Yes the documents do exist but I don't know where the confidentiality starts or stops.

**Representative Roscoe Streyle:** Are you taking the tax credit and then investing it out of state or is the investment in the state for the most part?

**Mike Seifert:** The investments we make are in North Dakota and the tax credit is eligible on a ND state income tax credit. It really has to be invested here in the state.

**Representative Roscoe Streyle:** So none of the funds you know of are taking the credit and investing in one or two businesses out of the state? Does the law stipulate that you have to invest in North Dakota?

**Mike Seifert:** It does not. I think you can invest anywhere.

**Representative Wayne Trottier:** inaudible question.

**Mike Seifert:** The banks in each community are really looking to the angels as a conduit to them for small startup companies. I'm a Dickinson native and I am trying to start an angel

fund there. The people who are successful in that region can be the catalyst and keep that business there.

**Representative Steven L. Zaiser:** It seems to me you indicated that some of the funds could be used to develop in other states. It would seem to me a problem if you were to get ND tax credits but yet enhance development in other states. Why would it be justified for you to get ND tax credits for development in other states?

**Mike Seifert:** From our perspective, predominantly all of our investments are in North Dakota. There have been a select few that have an out of state influence but if we do invest it has to drive economic development in Wahpeton or the region.

**Representative Lonny B. Winrich:** You said from your perspective if you do invest in something out of state it has to drive economic development in Wahpeton. Is that part of your charter or your organization or is that simply your policy.

**Mike Seifert:** It's not part of our charter but when the Southern Valley angels is larger made up of Wahpeton people therefore if we're investing in that forum we like to keep things in that area. We work closely with the Fargo and the Grand Forks funds. We invest in some of the same deals if you get an opportunity in Grand Forks for example to find the next Peter and it's really good they'll come to my fund or James's fund and say we've got this really good company in Grand Forks do you want to partake. So the network of 140 is predominantly North Dakota therefore it stays in North Dakota. If we're the lead typically it's going to feed something in the Wahpeton area and then allow John or James and his fund to co-invest in ours.

**Representative Dave Weiler:** I believe this allows for people outside of ND can invest in ND because current law says that you have to be from ND. If you invest in a company outside of North Dakota you are not going to receive the tax credit for your state income tax in North Dakota, correct?

**Representative Mark S. Owens:** It's my understanding that current angel are operating and you get a tax credit for it, but that's only against the taxable liability of North Dakota. So outside investors can come in they just can't use the tax credit. This bill sets up the transferability of that tax credit in order to entice people from outside people to invest in angel funds in North Dakota to grow North Dakota.

**Mike Seifert:** Amen. Well articulated.

**John Cosgriff:** We have to focus on forming the funds and incenting the investors on forming the funds to then invest in companies like Peter's. Limiting that really restricts what could happen.

**Vice Chairman Craig Headland:** We have an angel fund and it is set up to help this community and we have people living in other states that want to invest to help this community. They have angel funds in their own state they could invest in but they want to invest in this community so we have to give them a tax credit to do that?



**John Cosgriff:** I think it provides an incentive to them and put them on equal footing with North Dakota taxpayers. What we're talking about is transferring the credit and that's not an easy thing to do. But it does provide somebody. As Peter makes millions and millions of dollars we're going to go back to him and say you need to invest in some North Dakota angel funds. If he's a Minnesota resident he's going to say he doesn't receive the same incentives you do. If we can say look there's transferability feature that if you can't use the credits you can sell them and transfer them with some money coming back to you to compensate for that. The interesting thing is when an out of state person sells their tax credit that income becomes North Dakota income to them and they then pay taxes.

**Representative Scot Kelsh:** What happens to an angel fund investor if the business here goes out of business? What happens to the tax implications? Can you write those investments off on your federal income tax and counts for your state income tax?

**John Cosgriff:** That's a bad day for us. You lose your money. If you received a tax credit that's a partial cushion and lowered the range. But when you lose your money it depends on the length of time of the investment. It typically would be capital gains lost written off against capital gains. The end game there is you lose your money. It happens about 20-25% of the time.

**Vice Chairman Craig Headland:** Are there out of state investors waiting to invest in North Dakota and waiting for us to pass this tax credit?

**John Cosgriff:** I believe there are. The Fargo angel fund has two or three out of state investors who have invested without the tax credit and that's not an impossibility. I think we can expand that. Any incentive that you can provide will give an opportunity to have that dialogue and that discussion. I would encourage this incentive to allow that transferability. There is work beyond this to make the transferability marketable but it doesn't eliminate an outside investor or nonresident. They're going to look at the fact that everyone has an incentive that I don't have. We can put them on equal footing and we can attempt to raise more capital.

**Vice Chairman Craig Headland:** Generally what do you get for a tax credit, full value, 50%, or 25%?

**John Cosgriff:** It is truly an open market transaction. We are just exploring how we would create an efficient market for those tax credits if they become transferrable. I can't tell you at this point. When I looked at some federal tax credits that are transferrable they trade at .70 to .80 on the dollar. It really is hard to say. It's something you have to educate both the buyer and the seller.

**Vice Chairman Craig Headland:** As a committee we need to decide without any knowledge or indication of the impact on the revenues of North Dakota and we're shooting from the hip and in the dark.

**John Cosgriff:** Each fund is limited to about \$11 million, \$5 million of tax credit. So there is a limitation by the funds. We are going to see \$100 million fund raised under this as the maximum would be about a \$10 or 11 million fund.

**Representative Wayne Trottier:** What is the smallest dollar of an angel fund investment?

**John Cosgriff:** I've seen an angel fund drop to \$25,000. Angel funds are groups and partnerships. It's important to understand that an angel fund typically isn't the sole funding source for a company. Angel funds will band together, three or four or five of them may all invest in the same business so there's power in numbers.

**James Burgum, Arthur Ventures:** Please refer to attached testimony #2.

**Representative Mark S. Owens:** Can you describe what benefit do the people of North Dakota derive from that either from taxes or expansion locally or in the ability to tax the angel fund for the profits it make whatever for that tax credit that they are providing for four organizations?

**James Burgum:** The best example is a company called Boost that we just invested in. So here's a company that would into have ever considered having a location in Fargo as they are based in Rochester, Minnesota. They are now going to be putting 10 positions in Fargo so they are going to have the economic benefit that North Dakota will receive based on the credit that was given to those investors.

**Representative Mark S. Owens:** What about those that stay where they are and you're funding them.

**James Burgum:** There will be that. There will be a point where there will be investments made outside of North Dakota and there will also be companies that fail. I think that if I'm looking at this as a citizen of North Dakota and why are we giving the people outside the state the credit we are incentivizing them because we want their capital here. We want them to put their venture capital resources and their angel fund resources in North Dakota. There's a lot of other places a person can do that. You can invest in all sorts of venture funds and Silicon Valley and east coast but we want that here. We know if we can aggregate the capital long term we are going to be able to attract more companies. If you look at the long term implications of what has happened around Stanford or MIT, those places have developed those cultures and venture and angel fund is a huge component of that. If we can develop that component here we are going to be able to attract a lot of jobs and opportunities.

**Representative Lonny B. Winrich:** Is Arthur Ventures an angel fund?

**James Burgum:** Yes.

**Representative Lonny B. Winrich:** Is there a difference between an angel fund and venture capital funds?

**James Burgum:** There is. Angel funds typically in that seed to start up stage so they are investing \$25,000 to \$100,000, \$200,000 per investment. Whereas when you move up stream to venture they are investing \$1 million to \$5 million. But what has happened nationally in the private equity community most venture funds don't look at \$1 million deal

as a venture deal. The minimum of most major venture deals are going to be a \$5 million investment. These funds have gotten so large when you're managing \$100 or \$500 million or a billion dollars and trying to invest that in early stage companies you can't afford the time to do a million dollar deal. Arthur Ventures invests in the start up to early stage of \$1 to \$5 million space. There's a blend. Arthur Venture considers itself a hybrid of an angel and in institutional venture fund. We call ourselves a pre-institutional venture fund.

**Representative Lonny B. Winrich:** There's a difference in terms of size and interest but is there a difference in law? Does the law recognize a difference between angel funds and venture funds?

**James Burgum:** I believe so.

**Representative Scot Kelsh:** Can you help me understand the mechanics of whether it is a venture capital fund or an angel fund? Are they considered owners of the business? Do they have a voice in the business plan or are they strictly hands off?

**James Burgum:** Most funds are very actively involved. The angel funds and ourselves, we will always take a Board seat and so we're actively involved in working with the companies and helping them recruit talent, build their business plan, work on marketing strategies and work on financial and capital strategies. The interesting thing about the angel funds is that you get a group of individuals together with a diverse set of backgrounds. Often you will have a different person for a mentor to help that business grow.

**Representative Scot Kelsh:** What is your rate of patience as far as waiting for your return on investment? One year or several years? Do you pay a tax on capital gains or income derived from that investment?

**James Burgum:** Most seed in angel funds would be five to seven years to expect a return. So it is a patient capital, it takes times to get a return on your investment. As a fund manager you're only income comes from an exit. You make an investment your fund becomes an owner in the company and you would take a Board seat and work with that company. The only time your investors would get their money back is if you sell that company, have an exit to another company, or have a public offering. Most companies we have are startup companies so we don't expect them to cash flow.

**Peter Blankenship:** Representative Owens, I wanted to address what you were talking about earlier. You were talking about Arthur Ventures and if they were to put money outside of North Dakota into a company, utilize that tax credit, and that company stays there. I think what you're doing in North Dakota can play into almost being able to poach companies from states that aren't providing this conducive environment to businesses. By giving a fund like Arthur Ventures this tax credit you are giving them the incentive to put money into a company outside of the state. All of these funds want to grow in North Dakota and show them the state of North Dakota. That's pretty much what happened with us; the tax exemptions for x amount of years, there's a whole pamphlet of what I go through that North Dakota offers and Minnesota doesn't. You're creating the incentive for a fund to give North Dakota a chance to draw them in. The alternative to that is closing it and not

allowing them to take advantage of that and never getting the chance to show North Dakota to these other companies. I think if you took away the ability to use that tax credit and invest in companies outside the state you would close a lot of opportunity to bring them in to the state.

**Representative Mark S. Owens:** It seems to me that there was a percentage in there that was allowed to go outside and I don't recall what it was. Are angel funds limited to a percentage that could be invested outside of the state?

**John Cosgriff:** There is not a specific requirement percentagewise or anything and I would encourage you not to restrict that. The reason being that there is collaboration between venture funds and angel funds. If the angel funds weren't allowed to invest in out of state that opportunity would not exist. Reporting on this is very difficult. You're investing in private companies, private capital, and you're subject to confidentiality agreements. I think overall angel funds could report to you. The FM angel fund invests in 13 companies 18 investments approximately \$1 million. I think it's half and half, six in the state and seven out of state. The opportunity to introduce North Dakota to a company from the investor side is very powerful. Companies will come to the capital. They don't move away from capital. This is very patient capital. It's very hard to measure that.

**Representative Glen Froseth:** This bill is effective for four years. Is that going to be enough time and then at that time are you going to assess what benefits the provisions of this bill have done in those four years or come back in four years and ask for an extension?

**John Cosgriff:** The first need is to pool all the capital. The incentives under this bill and the transferability of the tax credits will allow groups to come together and form these funds. In a 2-4 year basis you probably won't be able to see all these great things happen. After that time you're going to have some successes and be able to come for this body and lay out what's happened and the good things that have happened.

**Representative Steven L. Zaiser:** By the nature of the beast the angel fund is essentially a venture capital fund. Might it be better to extend the sunset on this bill to six years so that perhaps there could be something to show for it?

**John Cosgriff:** I think that's a very good idea. Shortly into a venture or angel fund early exits are usually not a good thing. The longer you let this incubate the more you're going to see the results.

**Jim Carlson, Qualified Investor in Fargo:** Support. Investors are not investing in the community we're investing in the people, we're investing in the concept, and we're investing in where this is going. Where the management team is in the state is irrelevant. This state has a tremendous amount of things to offer, medical technology, lentils/dry beans, etc. Angels is truly a venture, an adventure. We have a ton of youth with great ideas. The angel funds are important. I decided to invest back into North Dakota. Out of state investments didn't work for me. Angels invest in the ideas. By bringing in the people from out of state and giving them the transferability gives us the opportunities.

**Representative Shirley Meyer:** What happens first; are angel funds created and then they go look for investments or you have an entrepreneur who owns his business and knows he needs more and he is looking for capital?

**Jim Carlson:** Yes and yes. It goes both ways. You have people with an idea that knows there's an angel fund and you have people who don't know but they will come and find the angel funds.

**Representative Shirley Meyer:** Now we're getting people together and creating a pool of money and they may or may not have investments yet?

**Jim Carlson:** Technically true but if you're going to put together an angel fund from out of the woodwork these projects and investments appear they kind of go parallel. There really is no one thing happens and then you put up a banner and something else happens. It really all sort of happens together.

**Chairman Wesley R. Belter:** No further discussion.

Written testimony #3 written by Tom Kenville, UND Center for Innovation.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1057  
February 1, 2011  
#13816

☐ Conference Committee

Committee Clerk Signature

*Mary Buckner*

## Explanation or reason for introduction of bill/resolution:

A Bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

## Minutes:

*See attached amendments.*

**Representative Dwight Wrangham:** This allows the Tax Commissioner to release information regarding the extent to which a taxpayer uses this tax credit on their income tax return. I move this amendment.

**Representative Mark S. Owens:** Seconded.

**Representative Steven L. Zaiser:** When there has been a request for the information it would seem to me that "shall" would be more appropriate in the first line of the amendment rather than "may." If there's been a request for that information they are not requesting it for a permissive response. They wouldn't request the information if they didn't want the Tax Commissioner to disclose it.

**Chairman Wesley R. Belter:** Is this language similar to the renaissance language?

**Representative Dwight Wrangham:** I believe it's exactly the same.

**Representative Lonny B. Winrich:** I think the point is that under current law the Tax Commissioner is essentially prohibited from disclosing such information. This simply gives the Commissioner permission to do so once a written request is filed.

**Representative Steven L. Zaiser:** If there's been a request for that information the Tax commissioner could refuse to give out that information the way it's written now, is that your understanding?

**Chairman Wesley R. Belter:** That would be my understanding.

**Representative Dwight Wrangham:** With respect to the open records law, there are confidential records that by law are not available. There are also exempted records which are set up by department policy. Some of the Commerce records, for example, have been

determined to be exempted through a procedure they go through in the department and that information is held in confidence. Everything else is open record. Right now the records of the Tax Commissioner with respect to income tax returns are confidential. State law prohibits their disclosure. This law would take this particular bit of information out of that category. If the Tax Department goes through the appropriate procedure and has them exempted then it would be permissive but under this I think they are open records. If he gets a request then this simply gives him permission to release the information and would have to do so under the open records law.

**Representative Steven L. Zaiser:** The issue is the request. Once this allows the request he has to give that information. To me then it would make sense to use the word "shall." Until the request is made then it's confidential.

**Representative Dwight Wrangham:** I understand the concerns. My intent was to have it "may" because the only time I want the Tax Commissioner to give it out is when it is requested and under the open records law he should be able to give it out.

**Representative Shirley Meyer:** Are these exempt records or are they confidential records? What does this fall under? It's a big distinction.

**Representative Dwight Wrangham:** My understanding is that at the present time under current law, the income tax records of the Tax Commissioner are confidential. They may not be disclosed. This amendment would take those records out of the confidential category without explicitly making them exempt, that's an administrative procedure, so they would be open records, at least this portion of the information would be open record and available by request.

**Voice vote taken to favor the amendment: MOTION CARRIED.**

**Representative Mark S. Owens: Made a motion for a DO PASS AS AMENDED.**

**Vice Chairman Craig Headland: Seconded.**

**A roll call vote was taken: YES 12 NO 1 ABSENT 1**

**MOTION CARRIED-DO PASS AS AMENDED.**

**Representative Mark S. Owens will carry HB 1057.**

# FISCAL NOTE

Requested by Legislative Council  
04/26/2011

Amendment to: Engrossed  
HB 1057

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed House Bill 1057 with Conference Committee Amendments makes a number of changes to the angel fund investment income tax credit law and provides for a study.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed House Bill 1057 with Conference Committee Amendments changes the angel fund investment income tax credit law to allow the credit to passthrough entities and to allow investors in an angel fund to sell or transfer up to \$100,000 of their credit to another taxpayer. Most of the changes to the angel fund credit provisions are effective for the 2011 and 2012 tax years, after which the changes will expire.

These changes to the angel fund investment income tax law will potentially decrease state general fund revenues. The amount of the potential decrease cannot be determined because the extent to which the changes will contribute to increased investment activity during the 2011-13 biennium is not known.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*



<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	04/26/2011

**FISCAL NOTE**  
Requested by Legislative Council  
04/05/2011

Amendment to: Engrossed  
HB 1057

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed House Bill 1057 with Senate Amendments makes a number of changes to the angel fund investment income tax credit law and provides for a study.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed House Bill 1057 with Senate Amendments changes the angel fund investment income tax credit law to (1) allow the credit to passthrough entities, (2) allow investors in an angel fund to sell or transfer up to \$100,000 of their credit to another taxpayer, (3) require an angel fund to invest only in primary sector businesses, (4) prohibit an angel fund from investing in a business if one of its investors indirectly owns 50 percent or more of the business, (5) require an angel fund to provide to the tax commissioner information about the investments received from its investors, (6) extend the unused credit carryover period from 4 to 19 years, and (7) provide for a Legislative Management study of the tax policy and related impacts of allowing tax credits to be transferred from one taxpayer to another. The changes to the angel fund credit provisions are effective for the 2011 and 2012 tax years, after which the changes will expire.

These changes to the angel fund investment income tax law will potentially decrease state general fund revenues. The amount of the potential decrease cannot be determined because the extent to which the changes will contribute to increased investment activity during the 2011-13 biennium is not known.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	04/05/2011

**FISCAL NOTE**  
Requested by Legislative Council  
04/01/2011

Amendment to:           Engrossed  
                                HB 1057

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed House Bill 1057 with Senate Amendments makes a number of changes to the angel fund investment income tax credit law and provides for a study.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed House Bill 1057 with Senate Amendments changes the angel fund investment income tax credit law to (1) allow the credit to passthrough entities, (2) define what is meant by early-stage and mid-stage businesses, (3) require angel funds to provide to the tax commissioner information about the investments made in angel funds by investors, (4) limit investor eligibility for the credit to taxpayers who own directly or indirectly less than 50 percent of any business in which the angel fund invests its funds, and (5) provide for a study of the transferability of the credit.

These changes to the angel fund investment income tax law will potentially decrease state general fund revenues, but the amount of the potential decrease cannot be determined because it is not known to what extent the changes will contribute to increased investment activity during the 2011-13 biennium.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

*continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	04/01/2011

# FISCAL NOTE

Requested by Legislative Council  
12/15/2010

Bill/Resolution No.: HB 1057

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1057 expands the provisions of the angel fund investment tax credit to enable pass-through entities such as partnerships and LLCs to participate. The bill also allows unused tax credits to be sold, assigned, or transferred to other taxpayers.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of HB 1057 expands the angel fund tax credit program to additional types of businesses and allows for the sale, assignment, or transfer of unused angel fund investment tax credits. These provisions will likely decrease state general fund revenues as more credits are generated and used, sold, assigned, or transferred. The exact amount of the decrease in state general fund revenues cannot be determined as it is not known to what extent the new angel fund credit provisions will be utilized.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/03/2011

PROPOSED AMENDMENT TO HOUSE BILL NO. 1057

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to angel fund investment disclosure;"

Page 5, after line 11 insert:

**"SECTION 2.** A new subsection to section 57-38-57 is created and enacted as follows:

The tax commissioner, upon written request, may disclose a taxpayer's name and address, the amount of tax credits the taxpayer claimed under section 57-38-01.26, and the name and address of the angel fund with which the taxpayer invested."

Page 5, line 16, after the period insert "Section 2 of the Act is effective for angel fund investments made after June 30, 2011."

Renumber accordingly



Date: 2-1-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1057

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Wrangham Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

AYE NAY  
MOTION CARRIES

February 1, 2011

VR  
2/2/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1057

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to angel fund investment disclosure;"

Page 5, after line 11, insert:

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

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Page 5, line 16, after the period insert "Section 2 of this Act is effective for angel fund investments made after June 30, 2011."

Renumber accordingly

Date: 2-1-11  
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1057

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Owens Seconded By Rep. Headland

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	AB		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham		✓			

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Owens

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1057: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1057 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to angel fund investment disclosure;"

Page 5, after line 11, insert:

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

The tax commissioner, upon written request, may disclose a taxpayer's name and address, the amount of tax credits the taxpayer claimed under section 57-38-01.26, and the name and address of the angel fund with which the taxpayer invested."

Page 5, line 16, after the period insert "Section 2 of this Act is effective for angel fund investments made after June 30, 2011."

Renumber accordingly

**2011 SENATE FINANCE AND TAXATION**

**HB 1057**

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1057  
3/8/2011  
Job Number 15113

☐ Conference Committee

A. Bittmiller

### Explanation or reason for introduction of bill/resolution:

Relating to angel fund investment disclosure; relating to angel fund investment tax credit; to provide a report to the legislative management

### Minutes:

Written Testimony Attached

**Chairman Cook** opened the hearing on HB 1057.

**Jennifer Clark, Legislative Council** – This bill amends existing law, the angel fund investment tax credit. It's amended here to allow pass through entities to utilize this credit, it is amended to allow transferability of that credit, and provides for legislative management receipt of report from the Tax Commissioner. I want to point out that it has a 4 tax year sunset.

**Senator Dotzenrod** – Does this provide for the person who gets the credits to be able to sell them?

**Jennifer Clark, Legislative Council** – That is correct.

**Senator Grindberg** – I'm here today in support of HB 1057. I was just in front of House Finance and Tax where SB 2248 was scheduled at the exact same time. HB 1057 comes to you from interim Workforce Economic Development Committee that looked at the whole progress and tool of having angel tax credit program in our state. We looked at other programs in other states and we set our sights on the transferability portion to incent additional capital into the state. That's the foundation of HB 1057 and why it's here. Representative Nathe who was my vice chairman in the committee worked very hard on this through the interim and the bill as you know made it through the House and is here. In December of last year I organized an angel summit with about 20-25 investors and it was an afternoon session. The feedback and some of the requests from those investors to improve the program led to SB 2248. So that is why there are 2 bills. I just requested that the House Finance and Tax Committee kill SB 2248. The reason for that is when I had Council put a summary together of your actions in SB 2248 and the House approved HB 1057. They are very similar. Over the weekend I pulled some of those investors and it doesn't make any sense to work on 2 bills. My advice was to work on HB 1057. I also have

written testimony from Mr. James Burgum who was part of the testimony of the House side who could not be here with us today. (Testimony A and B)

**Chairman Cook** – When we had SB 2248 here we put an amendment I believe it was an amendment we put on, I don't think you introduced it with this language, SB 2248 states, the investment used to calculate the credit under this section may not be used to calculate any other tax income tax credit any other income tax deduction or credit allowed by law. That is what we put into SB 2248. Do you have a problem with that amendment?

**Senator Grindberg** – If you would allow me some time to think that through, I do not have an answer right now.

**Chairman Cook** – This other amendment goes in to the early stage is up to \$2 million and mid stage needs revenues up to \$2 million not to exceed \$10 million, and we added an amendment that early stage and mid stage entities do not include those who have more than 40% of their revenue from income producing real estate. Do you have a problem with that?

**Senator Grindberg** – Again not knowing the background on the real estate piece, it doesn't appear to be a problem for me.

**Chairman Cook** – The only other question I have is, the whole concept of selling or transferring income tax credits is one that seems to be received very well in the economic development world, it's never received a whole lot of favorable support here at the Tax Committee table. Is this something that the tax policy people have never really embraced? We recognize that this session that there always seems to be a conflict in opinions from one agenda committee to another and that is why we put an amendment on SB 2248 so that the Tax Committee might study the benefits of selling or transferring tax credits to see if there is, through a study, that all of the sudden we might see the benefits of it and change the philosophy that seems to be so prevalent. Now you got HB 1057 back here and my understanding of why you want HB 1057 to pass and not SB 2248 is because this has the sell ability of tax credits.

**Senator Grindberg** – That is the primary issue.

**Chairman Cook** – I'll give you the chance now to sell us on the concept of selling tax credits. What is the real benefit, what might happen if we sell a tax credit, that isn't happening because we don't? I can understand you might get more investments, but speak to the issue of tax credits.

**Senator Grindberg** – In my opinion if we can incent and attract more out of state capital into the state, that's a simple answer. That's the motivation behind it. I know there are some investors here that will give you a perspective of how they would view that better than I. It's happening in other states and that doesn't justify a strong enough reason that we have to do it, but it certainly warrants a movement. We are working on building an entrepreneurial state. If you look at economic development policy in the 80's and 90's, was marketing abundant labor. It was about attraction and retention of our existing businesses. That was a sound approach, the last 10 years we've been emerging into the third leg of the stool as

you have heard me describe in the past on entrepreneurship. You need capital to take risks and start companies. Just look at the policy changes we've made and the investments. We are clearly putting a high profile strategy around entrepreneurship and this is a component of that.

**Dan Hudgson, Linn Grove Ventures** – The angel tax credit was the most powerful tool that we could possibly have to both attract 3 medical device companies to North Dakota and a pipeline of others that are now manufacturing and located in locations nearby. I'm also a partner in Linn Grove Ventures in which we are raising a bigger engine and I would speak to the issue of transferability. We have a commodity driven economy. This is a state that grows products and ships carload and trainloads and truckloads and we are at the mercy of those who take those good will pay for them. We work hard to build value added agriculture. The world's economy has reached a point where there is a little farm land left to put into production and a growing demand for food yet we control very little of the IP around here. In the areas that we see opportunity we think there's a tremendous opportunity to bring research to the state to start creating opportunities from the very start around food, to create more value here from what we have. In the early stage of a company, capital is at its greatest risk, if you are going to invest in early stage companies, you put your money in; you may never get it back. You certainly won't get it back if the company fails. It may simply sit there if the company is never able to experience a liquidity of that to be sold, so it's the greatest risk capital in the economy. If you watch the places where companies are growing, there was \$21 billion in venture capital invested last year in the U.S. Zero of those dollars, because they aren't counting the angel funds, were invested in North Dakota. We are not known for growing our IP companies from the start. I think there is a phenomenal opportunity in the economy, I learned it from what I saw already, and we believe that we own the food, and we have a tremendous opportunity here, we also build companies for much less cash than others do. If I learned anything from trying to create opportunity from a crisis it's that capital drives it. I think you would find a very interesting equation if you look hard at what first appears to be counterintuitive, it appears transferability might not make sense and find a tremendous driver in an area where we can move from a commodity economy, which suffers a great problem which is, we keep getting more efficient so it takes less bodies to drive it, to an innovation economy that can really hit a super high gear or tremendous drive.

**Senator Dotzenrod** – If we don't do the transferability and we just require those people who invest to hang on to those credits, haven't we created by doing that an incentive for those investors to actually sort of be involved and be part of what's going on and actually be sort of owning the business so to speak or have that sense of it where if you do the transferability you are attracting the capital, capital comes in and it's transferred then that person has something that they can resell which is a credit. It certainly would be a benefit and will have some capital here that we didn't have before, but you won't have any sense of ownership over the intellectual property or the project. That's what I'm wondering about.

**Dan Hudgson, Linn Grove Ventures** – You absolutely want to be sure we build companies and build the roots deep.



**Senator Dotzenrod** – It seems to me by transferring you sort of created a disconnect. It appears by allowing an investor to take advantage of the credit and sell that credit off and participate only for that reason, they've made a contribution of capital into the system, but by keeping the way we have it now where there isn't transferability it seems to me that what you've done is sort of connected the investor to the project. Maybe I'm seeing this all wrong, explain it to me.

**Dan Hudgson, Linn Grove Ventures** – I would say it's about the amount of capital. It's about being able to do projects where you can raise \$750,000 and you have to raise enough capital for the company to become successful. There is a relationship between amount of capital and size of company.

**Senator Dotzenrod** – Maybe the part I don't get is that it appears that there are some investors that are outside North Dakota that would like to invest and because of the lack of transferability they're not allowed to?

**Dan Hudgson, Linn Grove Ventures** – I'd reverse it. There are people outside the state we think we could draw to invest. There is a great shortage of early stage capital.

**James Carlson, Private Investor** – (See attached testimony C in favor of HB 1057)

**Senator Dotzenrod** – Existing law says that an angel fund has to have at least 6 investors. The projects you have talked about are fairly significant in size, do you have groups of people that are quite a bit larger than 6?

**James Carlson, Private Investor** – Our fund, probably closer to 100 because of the size of the fund.

**Senator Dotzenrod** – If this bill were to pass, how would the investors be made aware that this is something they could put money into or you would have to have an investor who has a North Dakota liability and then that investor would be able to sell to someone else who is not from North Dakota?

**James Carlson, Private Investor** – You would sell the credit to someone in the state that has North Dakota liability. It's the out of state investors that have no North Dakota liability; they want to sell their tax credit to someone within the state.

**Senator Dotzenrod** – You are saying they would want to invest and have some knowledge about they are investing in. They are not going to do this to get some tax credit and then let the money go to some person whose judgment they trust. They are going to want to be putting that money to something specific that they know about.

**James Carlson, Private Investor** – They are interested in the area not necessarily specific projects. They know these are the projects we have looked at because we've got a chicken and egg issue here. We need to have the money so we can invest in the company but if we don't have the money we can't really spend a lot of time, we don't want to waste the companies time telling us what they need to invest.

**Senator Dotzenrod** – You believe if this were to pass there would be a significant response.

**James Carlson, Private Investor** – Yes, I think it will definitely enhance recruitment. Can I increase my recruitment by 100%? I can't give you that number because right now I'm getting people to fall in love with North Dakota and what we have to offer here.

**Deana Wiese, Information Technology Council of North Dakota** – (See attached testimony D in favor of HB 1057)

**Cal Klewin, Economic Development Association of North Dakota** – (See attached testimony E in favor of HB 1057)

**Chairman Cook** asked for testimony opposed to HB 1057. No one came forward.

**Chairman Cook** asked for neutral testimony for HB 1057. No one came forward.

**Senator Triplett** – There was some concern on the part, one of the persons who testified here today about whether the name, address, and social security number that is required in a couple of different places in this bill would be public information or would be use only by the Tax Department for tracking purposes.

**Donnita Wald, Tax Department** – The language in page 2 line 24 and following on page 3 that's confidential information. I do not believe the information on page 5 section 2, that does not require social security numbers, that's that disclosure language that the House put on.

**Chairman Cook** – A taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit. What's the difference as far as your office is concerned when you look at tax statements between sell, transfer, or assign, or is there a difference?

**Donnita Wald, Tax Department** – From a legal view point I think assign and transfer may be done sometimes without consideration however from internal discussions we believe that it's all kind of means to sell for consideration. Of course it could always be used to assign or just me give it to you, but I doubt that is the intent of these provisions.

**Chairman Cook** – Do you have any idea what they sell for?

**Donnita Wald, Tax Department** – I do not. I think it depends on a number of things.

**Chairman Cook** – What type of an administrative burden do selling tax credits place on the Tax Department?

**Donnita Wald, Tax Department** – The language that we've placed in here, we believe would not be difficult to administer as long as there is a one on one, one transfer to one person.

**Chairman Cook** – The amendments that were put on SB 2248 section 1, the investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law. Those were amendments that I think we put on SB 2248, how important is that in the eyes of the Tax Department?

**Donnita Wald, Tax Department** – I'm neutral on that. That's a policy decision that you all have to make.

**Senator Dotzenrod** – Do you know where we are at this time in the kind of participation that we've had in the angel fund? Does the Tax Department have a dollar figure or how many dollars per year worth of tax credits have been requested since we started with the angel fund?

**Donnita Wald, Tax Department** – The 2007 tax year, the number of returns filed claiming the credit were 32, total credits claimed were (rounding up) \$257,000. In 2008 there were 54 returns filed claiming the credit, for a total of \$603,000. In 2009 there were 69 returns filed, claiming a total of (rounding up) \$926,000.

**Senator Dotzenrod** – Are there credits that investors have obtained that they can use in future years that we don't see here but they may need them later years? Is there some carry forward amount that you have record of?

**Donnita Wald, Tax Department** – We would not know at the time the return is filed because of the fact that they have the maximum so there still may be some to carry forward but we don't know what that amount would be.

**Chairman Cook** – The credits that are out there already could be sold or transferred also.

**Donnita Wald, Tax Department** – No. This act would be effective only for those tax credits earned after the effective date.

**Chairman Cook** closed the hearing on HB 1057.

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1057  
3/30/2011  
Job Number 16175

☐ Conference Committee

*A. B. Miller*

### Explanation or reason for introduction of bill/resolution:

Relating to angel fund investment disclosure; relating to angel fund investment tax credit; to provide a report to the legislative management

### Minutes:

Committee Work

**Chairman Cook** opened discussion on HB 1057.

**Donnita Wald, Tax Department** explained what amendments were put on SB 2248 by the House and now it changed the bill.

**Vice Chairman Miller** – I'll move a Do Not Pass.

Discussion followed on comparison of HB 1057 and SB 2248.

**Vice Chairman Miller** withdrew his motion.

**Chairman Cook** closed discussion on HB 1057.

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1057  
3/30/2011  
Job Number 16202

☐ Conference Committee

*A. R. Miller*

### Explanation or reason for introduction of bill/resolution:

Relating to angel fund investment disclosure; relating to angel fund investment tax credit; to provide a report to the legislative management

### Minutes:

Committee Work

**Chairman Cook** opened discussion on HB 1057.

**Emily Thompson, Tax Department** explained that the name, address, and social security number is confidential information and name and address can be released upon written request.

**Senator Hogue** – As I read the marked up copy, the way the House amended our bill is they did take the transferability out.

**Emily Thompson, Tax Department** – That is correct.

**Chairman Cook** – I would think we should have the Legislative Management shall consider having the Tax Interim Committee study the transferability of tax credits.

**Senator Triplett** – I would agree. I don't know that traditionally we've done studies where the legislature directly assigns something to an interim committee but we could certainly say we want Legislative Management to assign it to a particular committee.

**Vice Chairman Miller** – I'll move the amendments.

Seconded by **Senator Oehlke**.

**Chairman Cook** – All in favor say yea, opposed? (7-0-0)

**Vice Chairman Miller** – I'll move a Do Pass as Amended.

Seconded by **Senator Burckhard**.

**Chairman Cook** – Ask the clerk to take the roll. (6-1-0)

Carried by **Senator Oehlke**.

March 30, 2011

*JS*  
3-30-11  
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1057

Page 1, line 1, remove "to create and enact a new subsection to section 57-38-57 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to angel fund investment disclosure;"

Page 1, line 4, after the first "provide" insert "for"

Page 1, line 4, remove "report to the"

Page 1, line 4, after "management" insert "study"

Page 1, line 13, overstrike "invested" and insert immediately thereafter "remitted"

Page 1, line 13, overstrike "in" and insert immediately thereafter "to"

Page 1, line 15, after the period insert "The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 1, line 21, overstrike "four" and insert immediately thereafter "nineteen"

Page 2, line 10, after the underscored period insert "Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate."

Page 3, line 1, replace "paid for the investment" with "remitted"

Page 3, line 3, replace "on which full consideration" with "the payment"

Page 3, line 18, remove "If a passthrough entity does not elect to sell, transfer, or assign the credit as"

Page 3, line 19, replace "provided under this subsection and subsection 7, the" with "The"

Page 3, remove lines 23 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 18

Page 5, line 19, remove "REPORT TO THE"

Page 5, line 19, after "MANAGEMENT" insert "STUDY - TRANSFERABILITY OF TAX CREDITS"

Page 5, line 19, remove "and"

Page 5, replace lines 20 and 21 with "interim, the legislative management shall consider studying the transferability of tax credits. The study must include an analysis of the tax policy reasons for implementing transferable credits, a review of the effectiveness of transferable credits in terms of potential annual state revenue losses and benefits, the use and effectiveness of transferable tax credits in other states, the impact on the sellers and purchasers of transferable credits, and the administration of transferable credits. The legislative management shall report its findings and recommendations,

together with any legislation required to implement the recommendations, to the  
sixty-third legislative assembly."

Page 5, remove line 24

Renumber accordingly

Date: 3-29-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1057

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Verbal vote



Date: 3-29-11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1057

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett		X
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Oehlke

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1057, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1057 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact a new subsection to section 57-38-57 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to angel fund investment disclosure;"

Page 1, line 4, after the first "provide" insert "for"

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Page 3, line 19, replace "provided under this subsection and subsection 7, the" with "The"

Page 3, remove lines 23 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 18

Page 5, line 19, remove "**REPORT TO THE**"

Page 5, line 19, after "**MANAGEMENT**" insert "**STUDY - TRANSFERABILITY OF TAX CREDITS**"

Page 5, line 19, remove "and"

Page 5, replace lines 20 and 21 with "interim, the legislative management shall consider studying the transferability of tax credits. The study must include an analysis of the tax policy reasons for implementing transferable credits, a review of the effectiveness of transferable credits in terms of potential annual state revenue losses and benefits, the use and effectiveness of transferable tax credits in other states, the impact on the sellers and purchasers of transferable credits, and the administration of transferable credits. The legislative management shall report its findings and recommendations,

together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Page 5, remove line 24

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1057

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1057  
April 11, 2011  
#16537

☒ Conference Committee

Committee Clerk Signature

*Mary Brucker*

## Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

## Minutes:

No attachments.

**Chairman Owens:** We have an amended bill for the HB 1057 from the Senate. We'd like to have some discussion and ask the Senate to explain their thought processes on some of their changes.

**Senator Hogue:** I'm looking off of the version .02000. One of the things we tried to do on page two was to put some more criteria into what exactly an early stage and a mid stage fund would look like. We started trying to define that in terms of its revenues and how it could earn those revenues. If you look at page two you will see what the differentiation between an early stage and a mid stage entity and they differ in terms of their revenues; \$2 million for an early stage and over \$2 million and not to exceed \$10 million for a mid stage. The change on the bottom of page two was at the request of the tax commissioner's office I believe but I think they wanted some administrative assistance in tracking these investors. It was made clear to us that even though this information would have to be made available to the tax commissioner's office this is not information that would be available to the public or anybody that requested it; it would be strictly for the internal control of the tax commissioner's office. We felt that if there was going to be a transfer then it should be a onetime transfer so we put the transferability back into the fund. We didn't want it to have a cycle of transfers so we put some restrictions on the transfers on page three acknowledging that a lot of funds would be incorporated into an LLC or another passthrough entity. We wanted to make sure that was also workable from the tax commissioner's office in terms of trying to track if I have a percentage interest in an LLC that interest has to flow directly to the credit.

**Chairman Owens:** This was 1057 and it was my impression if I remember correctly we passed this out with transferability to the original. It came back from the Senate without the transferability in but this does have the transferability in. I was looking at our engrossed version and that's between 3000 and 4000 where you add the calculation so they don't get a double deduction. You added the part about the revenue from income producing real estate to quantify that part.

**Senator Hogue:** I'm sorry; I think we probably need to go to the 4000 version.

**Chairman Owens:** That's not a problem but I'm losing the transferability in 4000, did you take it out? Oh, it's the 5000 version. I knew it was still here.

**Senator Hogue:** I will work off the 5000 version then.

**Chairman Owens:** I was curious about changing on page 1 line 11 from invest to remit, it seems like a non-player but I keep thinking about the term "invest" versus "remit" is huge as opposed to "remit to an angel fund" versus "invest" but then we have the requirement for the tax credit that it has to be at risk for three years in order to take the tax credit so I don't necessarily see a problem there. The Senate's statement about not being able to use the credit to calculate for any other income tax deductions certainly makes sense. I will admit though on line 21 going from 4 to 19 years for carry over kind of shocked us as it seemed like an awfully large jump. I was wondering about the thought process in going from 4 to 19 years.

**Senator Oehlke:** The thought process in going from 4 to 19 was that these tax credits are pretty big. When you start talking about the amount of the tax credit that you can get for putting \$100,000 into an angel fund for instance and the state income tax is fairly low so many times it appeared that four years the tax credit would not get used up. If you allow that to stretch out for a longer period of time that individual would then likely be able to use up that tax credit and make the angel fund investment a little more attractive. It seemed like four years for a significant angel fund investment didn't seem like a logical number.

**Chairman Owens:** It is my understanding that we have six angel funds in the state and I'm trying to remember the number of tax credits and the amount of money invested and I want to say \$16 million so far in angel funds across the state since we started this in 2005. It's been the five year time frame for the tax credit ever since then. I understand your point but I just don't know if we could bite off 19 years upstairs to be honest with you. You altered the definition of early stage and mid stage by adding 25% of their revenue from income producing real estate and I believe we understand the genesis there.

**Senator Oehlke:** When we first started talking about it the number was 50% but there was an effort to limit that more so that angel fund investors just didn't become IRATs because that's not really a risk. If that's all you're doing is investing money in real estate to get some income off it then what's the point. The idea of an angel fund is to get some risk capital out there for people to take a bit of a chance and have a reward. Sometimes it works and sometimes it doesn't. Limiting it to 25% would give that angel fund the opportunity to build a business and use 25% of the money to build the structure and to make the business run and make those kinds of investments but not just go out and invest in apartment buildings.

**Chairman Owens:** I understood that ability within the renaissance zone for investors but in looking at page three line six I don't have a problem personally with the way it reads "as defined in" because we're talking about the definition of primary sector businesses. We can talk to the commerce department and the tax department if we need to in order to discuss the restrictions of the primary sector businesses in that section of code. That

section may need to say something about section 5738-30.5(4c) just to limit it to the definition only is the only thing I'm thinking as a possibility. Then on page five lines 18-22 there was something you cut out that dealt with the tax commissioner being able to track the name and address the amount of tax credits the taxpayer claimed and the name and address of the angel fund.

**Senator Oehlke:** I think we took that out because we didn't want just anybody to get that information. It would allow the tax department to get that information for their purposes but not to just disclose it to anybody.

**Chairman Owens:** The situation we encountered before is that when the House or the committee wanted to know how many are in state, out of state, how much, etc. it turns out that without some language in there we can't even get it as its restricted just to the tax department. I know that's why that was put in there. So you're telling me that its all about privacy?

**Senator Oehlke:** Yes, that's correct.

**Chairman Owens:** Because of that I've also got on page 5 lines 23-31 which would have been the study. This bill doesn't sunset transferability after two years, it sunsets the entire angel fund after two years.

**Senator Oehlke:** I believe you're probably right on that. Are you referencing an email you got?

**Chairman Owens:** No, I'm referencing section three where it says all of section one disappears after two years and that takes care of the entire angel fund.

**Senator Oehlke:** I believe it was our intent to make that relative to the transferability. Our main reason for that was that if you look around North Dakota nobody else does transfer of credits on angel funds. The other states may have some other vehicles for doing similar things but they don't allow transfer of credits on this other than to their residents. That's why we thought it would be a good idea to do some kind of a study on that issue and see if it's necessary.

**Chairman Owens:** I have no problem with it being sunsetted and us trying it and studying it at the same time. What I believe happened is we have a large number of investors in other states looking at North Dakota throughout this down turn and investors are only interested in looking where they can invest money and possibly get a little bit better return than normal. This may be a situation where we have an opportunity to garner a lot of outside money that may go away once the economy improves or we may not have as much money looking to come to North Dakota once the economy improves. While we could just study it I'm personally not against it but I don't know if it's going to pass the House again.

**Senator Hogue:** When it left the Finance and Tax Committee we had taken the transferability out and on the floor it was amended to put it back in so that's why we're a little undecided on the Senate side as to whether we freely allow the transferability of credits.

**Chairman Owens:** Those were the only things that I saw. I had a brief conversation with the Department of Commerce and because we are adding limited partnerships, LLCs, trusts, etc. on the 5000 line 9 on page 1 where it says "incorporated in" it doesn't apply to LLCs or limited partnerships or what not so we would also want to consider amending that to read "companies established under North Dakota law." We could really take out "this state" as well on line 10. In this first meeting I wanted to understand the genesis for your changes and what precipitated them and share that information and whatever information I had from the House with you. Does anyone else have any comments they would like to make in reference to this bill and the discussion we've had so far. Let's come back and try to solve this problem in the next meeting. Meeting adjourned.



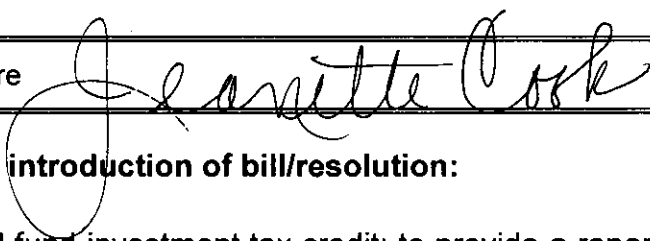
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1057  
April 19, 2011  
Job # 16749

☒ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

## Minutes:

See attached amendments.

**Chairman Owens:** Distributed amendments .03005 and reviewed. Please refer to attached amendments.

**Chairman Owens moved the amendments for discussion.**

**Senator Oehlke: Seconded.**

**Senator Oehlke:** You and I had a discussion on the transferability from Section 6 to Section 7 and it does appear to me that Section 6 in B and C both refer to Section 7, so it is always an "and" situation under this subsection – and Subsection 7. So, is that clear that the sunseting of the transferability for both the pass through entities and individuals would be a two year deal?

**Chairman Owens:** Yes, it is clear. But, because it is constantly referring to Subsection 7, once it sunsets in two years, there is no Subsection 7, and therefore it is not transferrable under the pass through entities. However, we could ask the tax department to clarify that, if they would. Could you just confirm or deny that the sunset in Subsection 7 takes care of Subsection 6, as long as Subsection 6 constantly references that in Subsection 7.

**Senator Oehlke:** Under Subsection 6 both B and C it mentions this section and Section 7.

**Donita Wald, General Counsel for Office of State Tax Commissioner:** From a tax geek perspective it would make it clearer if that particular language was also included in Subsection 6B and 6C, to make it clearer. That is how we like it, but if you have it in the record that the sunset applies to Subsection 6 then it would probably be fine, if the question was ever raised.

**Chairman Owens:** I started to add it under subsection 6, and it didn't really apply to all of Subsection 6, the sunset didn't, it only applied to B and C. That is why I backed off. I have no problem adding the sunset phrase to both B and C just to eliminate any confusion. That is the purpose of this, to sunset the transferability after two years.

**Senator Hogue:** I would suggest that we get John Walstad to clarify that.

**Chairman Owens:** We can do that.

**Chairman Owens** continued to review the amendments.

**Senator Triplett:** Why are the words "upon request" there on page 5 line 20? Why don't we just leave that out and say "shall report"?

**Chairman Owens:** We can do that; I just wasn't going to add to the long list of reports that they do now unless we actually wanted the information. I have no problem with that.

**Senator Triplett:** I would prefer that if we are going to agree to delete the rest of the information.

**Chairman Owens:** Okay.

**Chairman Owens:** John Walstad is in the middle of something, so we will have to wait to talk to him.

**Senator Hogue:** I'm comfortable if you want to visit with him informally just to make sure that the transferability sunsets. If he thinks that there are further revisions that are necessary to this amendment, then we will go ahead and put those in.

**Chairman Owens:** If it is satisfactory to all the committee members, I will do that and report to you.

**Senator Triplett:** I'd have a slightly different take on that. I think that if the Tax Commissioner's staff says that they are more comfortable having it clarified, rather than leaving it to Mr. Walstad to say whether he thinks is clear enough already, I would just ask him to clarify it to the satisfaction of the tax department. They are the people that have to work with it. Have him consult with Ms. Wald, so that they know what they are doing.

**Chairman Owens:** Your point is well taken. We will do that.

**Chairman Owens** continued to walk through the amendments.

**Senator Hogue:** Do we have resolution on the issue raised by Senator Triplett as far as requiring the Tax Commission to report to Legislative Management or do we want to wrestle with that now?

**Chairman Owens:** I thought that when we finished here, we will table the motion until we get the answers, and then we can bring it up when we actually dealt with the amendment to see where everybody stands. Then we can deal with that issue before we take on the whole amendment.

**Senator Oehlke:** I will also speak about the "upon request" thing. I know this session when we had to request that information then they had to make a special effort to do that. If they were prepared ahead of time and knew that the Tax Department had to make that information available, it might be easier for them in the long run to do it that way.

**Chairman Owens:** We can do that if it is the legislature's request. We can force them to do the report.

**I will move to table the motion for the amendment** until our next meeting.

I have the page 5, line 29 the words "upon request" removed from the amendments if there is no objection from any of the committee members.

**Senator Triplett:** A point of procedural order, it might be easier if you just withdraw your motion on the amendment.

**Chairman Owens** withdrew his motion.  
**The meeting was adjourned.**

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1057  
April 20, 2011  
Job # 16785

☒ Conference Committee

Committee Clerk Signature

*Janette Cook*

## Explanation or reason for introduction of bill/resolution:

A BILL relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

## Minutes:

See amendment .03006.

**Chairman Owens:** We reviewed the amendment last time, and you have another before you (.03006). It addresses the issues that were brought up last time in 6B and 6C and removes the language of "upon request" for the report in Subsection 2. Please refer to attached amendment.

**Representative Kelsh:** The reporting of the credits is to each individual angel fund, not the investor?

**Chairman Owens:** Yes, it is going to provide us by angel fund the aggregate count and protect the individual identity of the investors, but we will still know the dollar amounts of tax credits and the dollar amounts of tax credits transferred. That seems to be the important metric if we are going to test this transferability over a two year period to see if it actually does bring in money to North Dakota, which is its stated purpose.

**Senator Hogue moved that the Senate recede from its amendments** as printed on pages 1331 and 1332 of the House Journal and pages 1062 and 1063 of the Senate Journal, and that we further amend and adopt .03006.

**Representative Kelsh:** Seconded.

**Senator Triplett:** I still have concerns about why the identity of these people needs to remain confidential, given that we are offering a pretty substantial tax credit to them. Why is it not in the public interest to know who these people who are investing and getting a tax credit?

**Chairman Owens:** I believe that information is currently part of the angel fund reporting to the tax commissioner. Already, the individual investor is in another section, regardless of in-state or out-of-state. It is just in this section, since we are dealing with the transferability

that it wasn't important for us to understand the identity. The metric that we are really tracking is: 'Did we get outside money into the state?' While we did have it written the other way, it was the Senate that took it out. I assumed that the Senate did not want them identified.

**Senator Triplett:** Maybe the Senate in general, but not this Senator in particular.

**Representative Streyle:** I agree with this amendment, but I still don't know if it will pass the House floor with the transferability, and there is no cap on the amount of credits available.

**Chairman Owens:** I heard some discussion on the cap of the total tax credits that are available for transferability. I was going to see if we could get the bill adjusted according to this amendment and then ask for any further consideration. I would like to discuss that after this.

**A roll call vote was taken on Amendment .03006:**

YES 6                      NO 0                      ABSENT 0

**MOTION CARRIED.**

**Chairman Owens:** There has been some concern about the total amount of tax credits that would be transferrable, even in this two year period, without a cap on it and without knowing how much that would be. We know in the House and other parts of the government, I don't know about the Senate. I wanted to know if that would be worth investigating as another amendment.

**Senator Oehlke:** What's your thought on the cap?

**Chairman Owens:** Currently in the angel fund, the total lifetime tax credit is \$5 million throughout the lifetime of the angel fund. That is limited for the lifetime. I was thinking for this two year period not to exceed \$1 million per angel fund. We have 6-9 angel funds. So, we would have to find exactly how many angel funds there are today and limit it to \$1 million dollars per angel fund, not to exceed \$6 million or \$9 million in tax credits available for transfer, if we are interested in doing that. That gives us a cap on what we know would possibly be credited against future revenues. It is just a suggestion.

**Senator Oehlke:** It's a good idea. I don't know if a million per angel fund is an accurate number, but it is probably a place to start discussion.

**Senator Hogue:** I think I would support some type of cap. What we have to remember about these funds is that they are going to benefit the individuals that are extraordinarily wealthy because to have this sort of state income tax liability you have to have a good healthy seven figure income before you think about this. As we start lowering individual income tax rates and lowering the tax liability of every tax payer, it takes a lot of income before any of them would consider these angel funds. A cap would be a way to limit the effective tax rate of those very high income earners in our state.

**Senator Oehlke:** Having a cap might actually make this happen faster. If there are people out there that are sincerely interested in investing to get the tax credit, they may want to beat the other guy to the punch. It might be a way to encourage the investment to happen more quickly.

**Chairman Owens:** That is a good point, I hadn't thought of that. It would be added value. Not only would we know the maximum amount that we would be obligating from the tax payers in tax credits, but we could cause a 'land rush', so to speak. What I would like to do then, since the main concern came from the House side, is have a subcommittee look into that part. Then let's have another meeting on a tax cap. I'll appoint Senator Houge, Representative Streyle, and Representative Kelsh for that.

**Senator Oehlke:** Would we be able to have that meeting yet today?

**Chairman Owens:** I can check into it; if not first thing in the morning. Then we can hopefully be done with this one.

**Representative Kelsh:** My conference committee schedule is pretty full today.

**Chairman Owens:** Could I entice Senator Triplett to join the subcommittee?

**Senator Triplett:** Agreed.

**Chairman Owens:** I focused on the House just because that is where I heard the majority of the concern about the caps. We will work on this as quickly as we can.

The meeting was adjourned.

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1057  
April 21, 2011  
#16816

☒ Conference Committee

Committee Clerk Signature

*Mary Brucker*

### Explanation or reason for introduction of bill/resolution:

A Bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

### Minutes:

*See attached amendment 11.0255.03007.*

**Chairman Owens:** We have an amended bill that takes into account what the House is interested in and some of the things the Senate had amended. We got to where we wanted to at the last meeting but we held over one more time to have a discussion on possible limits to transferability as this issue was raised at the last meeting. We can talk about that now or if there is no discussion or no desire for a limit we will send the bill forward the way it is.

**Representative Kelsh:** Was there any subcommittee meeting on this provision?

**Senator Hogue:** I will give you my copy of what has been provided to me from the Tax Commissioner. It's some date on the trending on claiming that the credit. The number of returns and the credits claimed has been trending upward. The numbers jump out at me from the 2010 return. I see the average is going up. There was at least one individual who claimed the maximum credit of the \$45,000 per year. My thought is that maybe there should be some cap on the overall amount that an individual taxpayer can claim in a lifetime, either the taxpayer and the taxpayer's spouse or the corporate entity and the affiliates of the corporate entity. I had some amendments prepared and they say there are lifetime credits for this fund for claiming these credits. I put it at \$150,000 per taxpayer so if you're that one of several individuals that's maxing this out right now you would get this tax party for three years and then the state would say that is your limit. We've given you \$150,000 to help you advance your investments in this fund and that's enough. That's the thought and I have those with me if you want to talk about them.

**Chairman Owens:** You're talking about a cap on all investors not just on the transferability of credits, correct?

**Representative Kelsh:** When you said spouse and taxpayer is that a combined credit between the two or is that individually? What if they end up getting divorced?

**Senator Hogue:** I didn't address a contingency where they would get divorced but presumably those credits or piece of property that would be divided up during the divorce I don't know if it would be that big of a tracking problem because there are 50 returns. If you didn't set a cap at husband and wife then you would just have an effect for those that wanted to keep going you would have a \$3,000 cap because the other spouse would just take marital property and invest in the angel fund. The same thing with an entity, if I wanted to go around the restriction I would create a new LLC as an affiliate and capitalize that with the money to invest in the angel fund. I added that language to make it clear that it's restricted to the one entity that is involved.

**Chairman Owens:** Any further discussion on the cap on individual investors? My problem with that is that for the types of people that invest in the angel funds we have a limited pool to begin with and then if we restrict them in a lifetime that turns around and shrinks that pool over time even greater. I understand what you're doing and I don't disagree with your intent but it almost seems like we're going to do away with the angel funds through attrition over time since it's a lifetime cap.

**Senator Hogue:** We're attriting these potential investors every time we lower the income tax rates and we're going to do that a second time I think. You could restrict the transferability but the people who are advocates of this fund say they want transferability because that's the way they get more capital into North Dakota that isn't already here. You could do it by lowering the percentage as 45% is a pretty healthy percentage to give an incentive to invest in these angel funds. If it's \$100,000 and I have a high tax liability you've just given me \$45,000 back right away. Distributed amendments 11.0255.03007. Please refer to attached amendments.

**Chairman Owens:** You're correct, you get a 45% return on money you invested if it's at risk and then it has to stay at risk for three years in the angel fund and generally that type of venture capital that you have at the beginning and then the initial angel fund at the early and mid stage are looking for 30% or greater. So the 45% was by design in the original angel fund to entice investors because it doesn't mean that they are still going to get that original investment back so all of a sudden that 45% return may just equate to a 55% loss. In this bill the way we have it sitting right now we've extended the carry over to accommodate that lower income tax rate. As you say as we lower it we further limit the investors through attrition and we've extended that now to eight years of income tax credit the first year and seven years of carry over. If we have a motion we can consider it.

**Senator Hogue:** I wanted to correct something I said. I think the way the law is written now I could make that investment into that angel fund in December of 2011 and I could get that 45% return back that same year because if I look at subsection two of the existing law line 17 the credit must be claimed in the taxable year of which the investment in the angel fund was received by the angel fund. I think it's a pretty good deal and I have to confess that I'm interested in this thing.

**Chairman Owens:** Let me warn you though that you will that you will refund that 45% credit if it's not immediately invested. If you did it at the end of the year and for some reason the angel fund put it in escrow and held it for an opportunity in the future and the tax



commissioner's office found out they are going to look for you for the tax you deducted. They might include some interest and penalties.

**Senator Hogue:** I think the people at those income levels are accustomed to those tax risks and that doesn't both them very much. There are a number of ways to solve the problem and the cap is one, lowering the percentage is two, and limiting the transferability is three. I just don't think we are there with the limitation because the more I study this the more I'm convinced we are being a little too generous. What separates these angel funds from just normal private investors investing in any risky enterprise? All of them have risk. I'm not persuaded the angel fund investments have such incremental increased risk that we should be subsidizing them to the extent of 45%.

**Chairman Owens:** Understood. Are there any other comments on the individual investor cap? Do I have a motion? What are the committee's wishes?

**Senator Oehlke:** I'm going to move amendment 11.0255.03007.

**Senator Triplett:** Seconded.

**A roll call vote was taken: YES 3                      NO 3                      ABSENT 0**  
**MOTION FAILED.**

**Chairman Owens:** Was the subcommittee able to discuss a suggestive for limiting transferability? In the transferability in subsection 7a it talks about the taxpayers credit sale transfers assignment of this section may not exceed \$100,000 over any combined taxable year. I will offer an amendment that at the end of line four on page four we remove the period and add "and limited to \$500,000 lifetime per angel fund." I'm working on the bill version 5000.

**Senator Hogue:** I'm wondering how this will affectively act as a limit for somebody who wants to keep transferring. What in the bill would prohibit them from creating another angel fund?

**Chairman Owens:** There isn't anything but an out of state entity is not going to be able to create an angel fund. The people who want to transfer are the out of state investors who come in and put in their capital then they turn around and sell the credits for even less than the 45% that you're talking about in order to garner an immediate return. We still foot the bill for the 45% depending on who they sell it too naturally but we limit the total number of credits per angel fund. We could even say "per angel fund as established by a given date" if you prefer. Right now there are nine angel funds in North Dakota I believe. If the committee prefers I could get this put into amendment form today. I was hoping the subcommittee would have brought something on that and I had this ready just in case we didn't have anything.

**Senator Oehlke:** Is the \$500,000 limit on an angel fund for a lifetime?

**Chairman Owens:** That is what I read. I said "and limited to \$500,000 lifetime per angel fund." We can certainly say "and limited to \$500,000 lifetime per angel fund established

prior to December 31, 2010." That would limit it to the angel funds for transferability that already exist.

**Senator Triplett:** Would it just leave no limitation to angel funds produced and created after that date? I would prefer to see this drafted by Legislative Council to make sure we don't have any unintended consequences.

**Chairman Owens:** Good point. Let me get an amendment drafted and I will schedule this again just as fast as I can. Any additional comments or concerns?

**Senator Triplett:** I don't have this drafted up but I would intend to move on page 1 section 1 lines 10 and 13 in each case where it says "45% and \$45,000" maybe change that to 25% and \$25,000. I would appreciate a little conversation on that.

**Chairman Owens:** If we are going to meet one more time then so by all means do that. As I stated in an early stage of a venture capital they look for a 30-35% return, 25% may not be enough to entice the investors because they can go out and get the 30-35% without going through an angel fund. That is where I would have a problem with the 25%. Even with 30 and 32% in some cases it was the exit strategy we ran into a problem in getting venture capital in the beginning. I'm talking from my own experience when I started Meridian.

**Senator Oehlke:** Has there ever been thought about maybe not changing the 45% but changing the limit that would be transferrable to 25%?

**Chairman Owens:** That's what I was hoping to talk about today is limiting the cap on transferability. The limit is already in the bill not to exceed \$100,000 per taxpayer so you're already limited there anyway. That's for any combination of taxable years going out.

**Senator Oehlke:** When you suggested limiting it to \$500,000 per angel fund for a lifetime what would the investment dollars be then in that case?

**Chairman Owens:** To reach that maximum. It would be a little over double the investment so if we say "angel funds established prior to" and there were nine then that's \$450,000 so that's \$4.5 million so you would double that to nine with a little more and it would be just under \$10 million would be the maximum investment for the \$4.5 million credit.

**Senator Oehlke:** Is that type of investing hamstringing an angel fund?

**Chairman Owens:** To a certain degree but it tells us what the maximum limit is that we can expect that is going to come out of the revenues from the state and that's the key here. We're trying to find out that if we do this then what is the cost and that's the purpose of the cap on the transferability of the angel fund. What is the cost to the state coffers? That's what has people concerned. This would give us the maximum number of what it could cost. Since we said transferability to December 31, 2010 for two years taxable years after that by the time this thing passes you're only going to have 18 months to put it together. Let's get the limitation on transferability amendment done quickly and I'll entertain a

secondary discussion on percentage if you want to but my concern is if we go below 40 we are going to scare them off. Are there any other questions or concerns?

Meeting adjourned.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1057  
April 21, 2011  
#16825

☒ Conference Committee

Committee Clerk Signature

*Mary Bruckner*

## Explanation or reason for introduction of bill/resolution:

A Bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

## Minutes:

*See attached amendments 11.0255.03008.*

**Chairman Owens:** Distributed amendments 11.0255.03008. Please refer to attached amendments. We need to make a motion to reconsider our motions on our previous amendment.

**Representative Roscoe Streyle:** I move that we reconsider.

**Representative Scot Kelsh:** Seconded.

**A voice vote was taken: MOTION CARRIED TO RECONSIDER ACTIONS.**

**Chairman Owens:** We are back to the original bill. You have before you a bill that includes everything we have amended in before but it offers on the bottom of page three line 31 and page four line two and page five line 12 key components of a cap. The cap has changed even more now. The cap is for new angel funds only beginning August 1, 2011 for about 15 months because it's for the two taxable years 2011 and 2012. It limits the maximum transferable cap for the angel fund to half of its lifetime cap; its lifetime cap is \$5 million so it limits it to \$2.5 million. Each individual is limited to \$100,000 regardless and since it's a one-time transfer that sets it up for the maximum transfer per individual entity would be \$100,000 as well. The final item is for the tax department to be able to make the necessary rules and applications under this law to track and control the tax credit transferability and make sure we do not exceed what we've put into law. I offer this for a motion and for consideration and discussion.

**Representative Roscoe Streyle:** I would move the amendment.

**Senator Oehlke:** Seconded.

**Senator Hogue:** I would reject the amendments. The more I've had an opportunity to study this I think it's a little too rich for the people of North Dakota. I don't think we're

getting a good deal from this at all. The purpose of this is to stimulate and incentivize an investment and when you start doing the math on these projects it seems like its too great a benefit for too few taxpayers. It used to be you had to collect and claim the credits over four years and we're expanding it to seven years. I thought that put the brakes on some of this but now expanding it to seven without a lifetime limit or without that 45% back I think this is a bad deal for the state of North Dakota so I don't support the amendments.

**Chairman Owens:** I appreciate your comments. I didn't realize the 45% had come up until today. That had never been part of any Senate amendments on the floor or anything we had discussed in committee. Any further discussion?

**Senator Oehlke:** I think when we sent it over didn't we have 19 years and you guys brought it back to seven.

**Chairman Owens:** Not us, we all did. This conference committee brought it back to seven. You brought it over at 19 years which basically allowed the tax credit to be taken over 20 years because there is always that first year and then the carry over is 19 so we've taken it down to eight the first year and the carry over is seven because we thought that when you had it at 19 you made a valid argument for it but 19 seemed excessive and we reached an agreement on seven.

**Senator Oehlke:** On page 4 line 2 the 50%, did we have the ability to crunch any numbers on this to see where it comes out?

**Chairman Owens:** Is your question how much could it cost over the 15 months?

**Senator Oehlke:** Sure.

**Chairman Owens:** Since it's limited to new angel funds only then no, there's no way to do it. We don't know how many new angel funds may start. There are so many limits in this thing because you've got new angel funds after August 1 so none of the current angel funds can do it and they wouldn't want to invite an outside investor because if they do then they shrink the value of their current assets to their current investors. The transferability itself is taxable in the state of North Dakota. When that does occur and it would be less than the 45% because nobody is going to pay 100% for tax and the odds are they are going to buy something at a reduced amount so they get a benefit. But that sale is taxable. The individual taxpayer is limited to \$100,000 credit anyway per lifetime.

**Senator Hogue:** Per fund.

**Chairman Owens:** I believe it's per lifetime.

**Senator Oehlke:** On top of page four.

**Chairman Owens:** "Over any combination of taxable years" so it's per that taxpayer. It is only \$100,000 per that taxpayer for that sale. They can only do it one time. They can't do \$50,000 to one person and \$50,000 to another; it has to be a one-time sale. On top of all that you still have the requirement that before you get the tax credit off it has to be at risk.

There are a lot of hoops to jump through to get that tax credit. I don't discount your comment about the 45% but I highlight the 45% as opposed to what venture capitalists normally do at 30-35% because the angel fund would be a greater risk because they are investing in the angel fund not in a specific business. Then the angel fund gets to decide which angel fund they get to invest in and that could put them at greater risk so there's a little bit greater return is how I look at it.

**Senator Hogue:** The \$100,000 limit is the limitation on what the taxpayer can transfer.

**Chairman Owens:** Sale, transfer, or sign.

**Senator Hogue:** I could acquire interest in a separate fund as long as I don't transfer more than \$100,000 I could still have \$200,000 worth of credits as long as I only transfer \$100,000. Is that your understanding?

**Chairman Owens:** I believe so but it's only up to your tax liabilities so you're restricted there again. The transferability doesn't really benefit the North Dakota taxpayer at all, it only benefits out of state investors. They wouldn't actually get the 45% because in order to entice a North Dakota taxpayer to give them that money to sell it they would have to sell it below par.

**A roll call vote was taken: YES 4                      NO 2                      ABSENT 0**  
**MOTION FAILED.**

**Chairman Owens:** I have nothing else to offer. Does anyone else have anything?

**Senator Triplett:** This morning I suggested the possibility of 25% but I won't even bother going upstairs if there wasn't any support and you assured me there was no support from your side of the table so why don't we try 30%?

**Chairman Owens:** I appreciate your point but I highlighted the difference between the 30 and 35% for venture capital so I'm not speaking for anybody else but I couldn't support that for that reason. Anything else? Then I will adjourn on 1057 and we'll see where we'll go from here.

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1057  
April 25, 2011  
#16863

☒ Conference Committee

Committee Clerk Signature

*May Brucher*

### Explanation or reason for introduction of bill/resolution:

A Bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

### Minutes:

*See attached amendments .03009.*

**Chairman Owens:** A new amendment was distributed and asked Senator Hogue to explain the amendments. Please refer to attached amendments .03009.

**Senator Hogue:** Reviewed amendments. These are a combination of amendments that you had previously offered and two other changes. The first change relates to putting a lifetime cap on each taxpayer for the amount of angel fund tax credits that they can claim in their lifetime and caps it at \$150,000. The second change is the recording requirement on page two of the amendments that requires the ...there is a mistake because we wanted to ask the Commerce Commissioner to make the report but the amendments have the Tax Commissioner receiving the reports from the angel funds. The purpose of the report is so that we could have public information about who is receiving the angel fund dollars and where that business is located. Those are the two changes. I don't feel strongly that it should go to the Tax Commissioner versus the Commerce Commissioner as long as the information is available so that the legislature can see where this money is being invested.

**Chairman Owens:** We are still maintaining the tracking of the metric if there is any transfer of credits. Senator Hogue mentioned before he had noticed one person taking the tax credit that was available and with your amendment you would be limiting that. I don't see any big problem with that personally limiting the overall maximum that one individual or one set of taxpayers can take such as a married couple or a pass through entity. To date, the tax credits have been the only thing these people have benefited from because there's been no return on investment from any of the investments that the angel funds have made yet because it usually takes a longer time period for those. I think they refer to it as there has been no harvesting of the angel funds yet. I certainly have no problem with the additional metrics so we can see if the program is working properly or it's doing what we think it should be doing. I assume your point here is how many are truly being invested here versus out of state, is that correct?

**Senator Hogue:** Yes. I think we might feel differently with about something that is in Moorhead or western Minnesota or if the angel fund is investing in entities in California or on the coast as there are two different considerations. As long as we know where their principle place of business is presumably where they are creating jobs or where they are having an economic impact would be useful to know.

**Chairman Owens:** At this point we know of six organizations that they've invested in outside of North Dakota and two of those moved to North Dakota and four of them are using a manufacturing plant in Wahpeton even though they are still outside. They didn't move but they're using other facilities in North Dakota.

**Senator Triplett:** Can you tell us what the source of your information is when you say there's been no return on investments for any of the angel funds?

**Chairman Owens:** Bruce Gjovig provided us with that information.

**Senator Triplett:** I'm just trying to make a record. Did that come through our State Commerce Department and is it already available or did you have some other outside source?

**Chairman Owens:** No, it did not. I got that information from Bruce Gjovig, Center for Innovation at the University of North Dakota.

**Senator Triplett:** Senator Hogue, we had some conversations in the committee last week about the need for additional information and I understood that you were planning to meet with people from the Commerce Department. I'm wondering if those meetings have taken place and if this amendment is a result of that and is the professional opinion from the folks at Commerce that this is an adequate amount of information to be collected.

**Senator Hogue:** We had a conference call with a couple investment representatives who are familiar with these angel funds. We talked about the lifetime cap, reporting requirements, and reducing the incentive from its current 45%. They described some of their difficulties in trying to obtain investments into these angel funds. Justin Dever was in on the conference call. They weren't crazy about any of those ideas but they resigned themselves to the fact that if it would help move this along they would agreeable to these amendments.

**Senator Triplett:** I'm probably less interested in what the investors want or would consider acceptable than what our Commerce Committee thinks is a good level of reporting in public information. I still don't know if there's buy in from the Commerce Department that this is the appropriate level of public reporting and public information that we should be requesting and requiring.

**Senator Hogue:** Mr. Dever was pretty quiet at this meeting so I should let him speak to that. I don't recall what his thoughts were.

**Justin Dever, ND Department of Commerce:** The main person within Commerce that deals with angel funds is Mr. Paul Lucy who is the Director of EDF but he has not had a



chance to see the proposed amendments so I'm not sure how comfortable he is with this reporting requirement. I think it is beneficial to have some type of reporting requirement so that we know what investments are taking place and what benefits are to North Dakota.

**Senator Triplett:** No particular questions but maybe we should have some involvement with Mr. Lucy to give him an opportunity to look at this and report back to us. I think rather than just guessing at what seems right for the people who have been working with this and have an understanding of the process we should have him be involved. Is that a fair request?

**Chairman Owens:** We know from the hearings from the Senate and everything the original reporting requirement nobody was comfortable with because it dealt with the specific name of the investor and to do it in aggregate was much more favorable. Now what we've done here is just for the funds that are investing in so we're still not dealing with the investors themselves. This is not too onerous because they already know this information. You keep talking about the Commerce Department and they keep working with this yet this says the Tax Commissioner. Do we want to change that to the Commerce Department or the Tax Commissioner? We could get them down here to answer this question.

**Senator Hogue:** I don't have a preference because I share your view that it's not a burdensome report to identify the recipient and where they do business. I think it's a pretty easy thing to put together.

**Chairman Owens:** Would the tax department like to comment on this reporting requirement?

**Donnita Wald, General Counsel for Office of State Tax Commissioner:** If you look on page 2 of the bill we already the angel fund reporting to us to include the name of the investor and the dollar amount of the investment made. The only thing I see missing in this amendment is the business that the angel fund invests in. If you so desire the Tax Commissioner to provide this report you would have to put this type of language in that section which is 3 (i).

**Chairman Owens:** Which requires them to report to you where they invest.

**Donnita Wald, General Counsel for Office of State Tax Commissioner:** That's correct. Right now we're getting from the angel fund the taxpayer's name, amount of the investment, and the date of which the investment was received by the angel fund. If you had that they could tell us where the angel fund is investing. The Deputy Commissioner is sitting back there and is nodding his head that it's okay to do this.

**Senator Hogue:** I wanted to make sure that if we put it in 3 (i) that the legislature and the public would have access to the information that we're identifying in the amendment. I don't want to lock that information up if we put it in there.

**Donnita Wald, General Counsel for Office of State Tax Commissioner:** You would also have to take that language and put it in there that it was available. I would put in there

"except for the taxpayer's name" then everything else could be public record. I would "except" that from the open records. I would "except" all of subdivision one. It would say "someone from the angel fund shall provide the Tax Commissioner this information plus the business in which the angel fund invested" and also put some exception in there that says "except the Tax Commissioner shall not provide the name, address, social security number, etc."

**Senator Hogue:** Section 3 (i) is talking about the person putting up the capital to go to the investment into the angel fund. My amendment is interested in the recipients of the funds; who are they and where are they located. Section 3 (i) deals with the people that are capitalizing the angel fund.

**Chairman Owens:** Section 3 (i) states an investor in the angel fund shall file with the Tax Commissioner. In order to provide your report on page five they are asking for this type of information of who they invest in should be included as part of the angel fund's report to the Tax Commissioner. That's all it's doing.

**Donnita Wald, General Counsel for Office of State Tax Commissioner:** That's correct. We're going to have to have all this information at the end of the calendar year anyway. It could be two reports; who the taxpayer is that's investing and who the angel funds made investments in. It's possible to make that work.

**Chairman Owens:** The reporting requirement stays in page five so they can report that to us and the public. All we're doing is adding the information that the angel fund must provide to the Tax Commissioner the information needed to provide your reporting requirement.

**Donnita Wald, General Counsel for Office of State Tax Commissioner:** That may be helpful information to us too.

**Chairman Owens:** We can just add these ourselves and add it to your amendment or we can go back and get the amendments done. Does this conversation going to the Tax Commissioner and everything answer your question of earlier?

**Senator Triplett:** Not really. I would just like to know from someone in the Commerce Department if they think this type of information would be adequate for them to have a sense of whether or not the angel fund investments are actually having the desired result of doing good for North Dakota. The only point of giving away a huge tax credit to people is if it's doing some good for the people of North Dakota. I'm not convinced the amendment as drafted is going to give us enough information that we can figure that out years down the road yet.

**Chairman Owens:** I will have this language added to this amendment and we will come back this afternoon.

**Senator Oehlke:** I think the wording needs to state to whom that report is available. Is it to the public or just legislative people or what? I don't see the official wording in there for that so I think we need to make sure and address that too.

**Chairman Owens:** You're talking about page 5 adding who they can report to and who has access to the report. The minute the legislature gets a hold of it then its public. I will get another meeting scheduled this afternoon.

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee

Fort Totten Room, State Capitol

HB 1057

April 25, 2011

#16871

☒ Conference Committee

Committee Clerk Signature

*Mary Bruckner*

### Explanation or reason for introduction of bill/resolution:

A Bill relating to the angel fund investment tax credit; to provide a report to the legislative management; to provide an effective date; and to provide an expiration date.

### Minutes:

*See attached amendments .03010.*

**Chairman Owens:** Discussed the attached amendments .03010. This amendment takes into account the added reporting requirement that didn't have the necessary information for the Tax Commissioner to report.

**Representative Roscoe Streyle:** Made a motion to move the attached amendments.

**Senator Oehlke:** Seconded.

**John Walstad:** Explained the amendments. The amendment you have before you is essentially what you looked at this morning, .03009 version. I was asked to put in a couple changes. Read the amendment. I just learned in the hallway coming in here that there was some other language discussed that I was not aware of so these are the only changes I made in this draft.

**Senator Triplett:** The additional language that was discussed was indicating if these investments being made benefited North Dakota even if they happened to be made out of the state. If we're interested in some kind of a long term record and would like to know 3-7 years down the road if this plan is working and if these credits are providing some benefit to the state then it seems to me that we should start collecting that information now. We should require them to say how their investment is benefiting North Dakota.

**John Walstad:** I was not aware of that. I was visiting with the folks from the Tax Department and I think they are trying to pencil in some language that will work. If I understand correctly you are talking about this subsection J of the investments that the angel fund makes and a description of what that investment does to benefit North Dakota.

**Chairman Owens:** I'm curious as to what they would report. How would they report it was benefiting North Dakota? At the point of investment that may be highly subjective. It would always have to be after the fact; otherwise it would just be guessing.

**Senator Triplett:** I think at some point legislature down the road is going to think about this again and wonder if there's been any benefit. We need to make sure there is some kind of reporting going on or no one will know.

**Chairman Owens:** I understand your point. But having a report just for the sake of having a report bothers me a bit.

**Senator Triplett:** It's not for the sake of the report it's for the sake of generating useful information for future legislators.

**Chairman Owens:** I'm concerned about the usefulness of the information if it's all guesswork.

**Senator Hogue:** I think with the information we are requesting now we will be able to form some useful judgments without asking the angel fund to tell us what those benefits are. We can look at the location of the business and nature of the business and then we can make our own judgments.

**Chairman Owens:** We have a motion on the table.

**Senator Triplett:** I requested that the folks from the Tax Department and Commerce Department to try to come up with some language and if they haven't gotten any then I would move to amend this and then I'll throw my own language at you and we could discuss it.

**Representative Kelsh:** At one point we had the transferability ending after two years, is that out of the bill now?

**Chairman Owens:** It is in section 8 and section 7(b and c) on page 4 in the Christmas tree version of the bill. It is still there.

**A roll call vote was taken: YES 5                      NO 1                      ABSENT 0**  
**MOTION CARRIED.**

**Senator Triplett:** I would propose we add an additional amendment. On page three, line 14 replace the period at the end and put a comma and say "including such information as the Tax Department may require that indicates potential benefits to the state of North Dakota." Leave it wide open.

**Chairman Owens:** I appreciate what you're trying to do but that phrasing would scare me to death if I was a business because now I don't know what information I'm supposed to attempt to report. I won't know what information they are going to ask for on any given day and how much manpower I may have to put together to go back and review records to get that information.

**Senator Triplett:** I would trust our Tax Department. I think that if we are going to be encouraging these angel funds we have to start collecting information that will let future legislators be able to evaluate whether the tax credit we're giving away is of any value to the state of North Dakota. If we're not able to come up with different language **then I would request this be my amendment.**

**Chairman Owens:** We have a motion for an amendment. Do we have a second?

**Representative Scot Kelsh: Seconded.**

**Chairman Owens:** Any comments or questions?

**A roll call vote was taken: YES 2                      NO 4                      ABSENT 0**  
**MOTION FAILED.**

**Chairman Owens:** Closed conference committee on HB 1057.

**Off the record Representative Scot Kelsh requested his vote on the first vote today be changed to a YES vote. The final roll call vote count on the first motion for the Senate to recede from the Senate amendments and further amend was YES 6 NO 0 ABSENT 0.**

# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1057 as (re) engrossed

Date: 4-13-11, 4-19-11

Roll Call Vote #: \_\_\_\_\_

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) \_\_\_\_\_

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed)

was placed on the Seventh order

of business on the calendar

\* MOVED AMENDMENTS \* (WITHDREW)

Motion Made by: Rep. Owens Seconded by: Senator Aehlke

Representatives	4-13	4-19	Yes	No		Senators	4-13	4-19	Yes	No
Chairman Owens	✓	✓				Senator Hogue	✓	✓		
Rep. Streible	✓	✓				Senator Aehlke	✓	✓		
Rep. S. Kelsh	✓	✓				Senator Triplett	✓	✓		

Vote Count Yes: \_\_\_\_\_ No: \_\_\_\_\_ Absent: \_\_\_\_\_

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

April 21, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1057

Page 1, line 15, after the period insert "The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is one hundred fifty thousand dollars."

Renumber accordingly



# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1057 as (re) engrossed

Date: 4-21-11 am

Roll Call Vote #: 1

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows  
11. 0255. 03007

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Sen. Oehlke Seconded by: Sen. Triplett

Representatives	<u>12</u>		Yes	No		Senators	<u>7</u>		Yes	No
Chairman Owens	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		Senator Hogue	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Rep. Streible	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		Senator Oehlke	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Rep. S. Kalah	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		Senator Triplett	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	

Vote Count Yes: 3 No: 3 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION FAILS.

Roll Call Vote #: 1

☐ HOUSE accede to Senate amendments

☐ HOUSE accede to Senate amendments and further amend

☐ SENATE recede from Senate amendments

☐ SENATE recede from Senate amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Streyle <sup>previous motion</sup> Seconded by: Rep. Kelsh

[illegible]

Statement of purpose of amendment



## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1057

That the Senate recede from its amendments as printed on pages 1331 and 1332 of the House Journal and pages 1062 and 1063 of the Senate Journal and that Engrossed House Bill No. 1057 be amended as follows:

Page 1, line 1, remove "to create and enact a new subsection to section 57-38-57 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to angel fund investment disclosure;"

Page 1, line 4, after the first "provide" insert "for"

Page 1, line 11, after "in" insert "a domestic organization created under the laws of"

Page 1, line 13, overstrike "invested" and insert immediately thereafter "remitted"

Page 1, line 13, overstrike "in" and insert immediately thereafter "to"

Page 1, line 15, after the period insert "The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 1, line 21, overstrike "four" and insert immediately thereafter "seven"

Page 2, line 5, after "three" insert "primary sector companies that are"

Page 2, line 7, replace "early stage" with "early-stage"

Page 2, line 10, after the underscored period insert "Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate."

Page 3, line 1, replace "paid for the investment" with "remitted"

Page 3, line 3, replace "on which full consideration" with "the payment"

Page 3, line 18, replace "If" with "For the first two taxable years beginning after December 31, 2010, if"

Page 3, line 23, replace "If" with "For the first two taxable years beginning after December 31, 2010, if"

Page 3, line 30, replace "A" with "For the first two taxable years beginning after December 31, 2010, a"

Page 3, line 31, after "section" insert "for investment in an angel fund established after July 31, 2011."

Page 4, line 2, after the underscored period insert "The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 5."

Page 5, line 12, after "to" insert "establish necessary administrative provisions for the credit under this section, including provisions to"

Page 5, remove lines 14 through 18

Page 5, line 20, remove "the status"

Page 5, replace line 21 with "the number of in-state and out-of-state investors, amount of investment, amount of tax credits accrued, claimed, and transferred by each individual angel fund."

Page 5, line 22, remove "- EXPIRATION DATE"

Page 5, line 22, replace "Section 1 of this" with "This"

Page 5, line 23, remove "the first four"

Page 5, line 23, remove ", and is thereafter ineffective"

Page 5, remove line 24

Renumber accordingly

# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1057 as (re) engrossed

Date: 4-21-11 pm

Roll Call Vote #: 2

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows  
11. 0255. 03008

House/Senate Amendments on HJ/SJ page(s) ..

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Streyle Seconded by: Sen. Oehlke

Representatives			Yes	No		Senators			Yes	No
<u>Chairman Owens</u>			✓			<u>Senator Hogue</u>				✓
<u>Rep. Streyle</u>			✓			<u>Senator Oehlke</u>			✓	
<u>Rep. S. Kelch</u>			✓			<u>Senator Triplett</u>				✓

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION FAILED.

VR  
4/25/11  
log 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1057

That the Senate recede from its amendments as printed on pages 1331 and 1332 of the House Journal and pages 1062 and 1063 of the Senate Journal and that Engrossed House Bill No. 1057 be amended as follows:

Page 1, line 1, remove "to create and enact a new subsection to section 57-38-57 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to angel fund investment disclosure;"

Page 1, line 4, after the first "provide" insert "for"

Page 1, line 4, after the first semicolon insert "and"

Page 1, line 4, remove "; and to provide"

Page 1, line 5, remove "an expiration date"

Page 1, line 11, overstrike "incorporated in" and insert immediately thereafter "a domestic organization created under the laws of"

Page 1, line 13, overstrike "invested" and insert immediately thereafter "remitted"

Page 1, line 13, overstrike "in" and insert immediately thereafter "to"

Page 1, line 15, after the period insert "The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is one hundred fifty thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 1, line 21, overstrike "four" and insert immediately thereafter "seven"

Page 2, line 5, after "three" insert "primary sector companies that are"

Page 2, line 10, after the underscored period insert "Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate."

Page 3, line 1, replace "paid for the investment" with "remitted"

Page 3, line 3, replace "on which full consideration" with "the payment"

Page 3, after line 4, insert:

"j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment."

Page 3, line 5, after "4." insert "The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3."

5."

Page 3, line 11, overstrike "5." and insert immediately thereafter "6."

Page 3, line 14, replace "6." with "7."

Page 3, line 18, replace "If" with "For the first two taxable years beginning after December 31, 2010, if"

Page 3, line 19, replace "7" with "8"

Page 3, line 23, replace "If" with "For the first two taxable years beginning after December 31, 2010, if"

Page 3, line 24, replace "7" with "8"

Page 3, line 29, replace "7" with "8"

Page 3, line 30, replace "7." with "8."

Page 3, line 30, replace "A" with "For the first two taxable years beginning after December 31, 2010, a"

Page 3, line 31, after "section" insert "for investment in an angel fund established after July 31, 2011."

Page 4, line 2, after the underscored period insert "The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6."

Page 5, line 12, after "to" insert "establish necessary administrative provisions for the credit under this section, including provisions to"

Page 5, remove lines 14 through 18

Page 5, line 20, remove "the status"

Page 5, replace line 21 with "the number of in-state and out-of-state investors, amount of investment, and amount of tax credits accrued, claimed, and transferred by each individual angel fund."

Page 5, line 22, remove "- EXPIRATION DATE"

Page 5, line 22, replace "Section 1 of this" with "This"

Page 5, line 23, remove "the first four"

Page 5, line 23, remove ", and is thereafter ineffective"

Page 5, remove line 24

Renumber accordingly

# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1057 as (re) engrossed

Date: 4-25-11 am, 4-25-11 pm

Roll Call Vote #: 1

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1331 -- 1332

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1057 was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Streyle Seconded by: Senator Oehlke

Representatives	Y	N	Y	N	Senators	Y	N	Y	N
Chairman Owens	✓	✓	✓		Senator Hogue	✓	✓	✓	
Rep Streyle	✓	✓	✓		Senator Oehlke	✓	✓	✓	
Rep S. Kelsh	✓	✓	✓	✓	Senator Triplett	✓	✓	✓	

Vote Count Yes: 56 No: 10 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier Sen. Oehlke

LC Number 11.0255 . 03010 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**MOTION CARRIED.**



# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. 1057 as (re) engrossed

Date: 4-25-11

Roll Call Vote #: 2

## Action Taken

- ☐ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows

P. 3 line 14

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Triplett Seconded by: Rep. Kelah

Representatives				Yes	No		Senators				Yes	No
<u>Chairman Owens</u>					✓		<u>Senator Hogue</u>					✓
<u>Rep. Streyle</u>				✓	✓		<u>Senator Oehlke</u>				✓	✓
<u>Rep. S. Kelah</u>							<u>Senator Triplett</u>				✓	

Vote Count Yes: 2 No: 4 Absent: \_\_\_\_\_

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION FAILED.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1057, as engrossed:** Your conference committee (Sens. Hogue, Oehlke, Triplett and Reps. Owens, Streytle, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1331-1332, adopt amendments as follows, and place HB 1057 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1331 and 1332 of the House Journal and pages 1062 and 1063 of the Senate Journal and that Engrossed House Bill No. 1057 be amended as follows:

Page 1, line 1, remove "to create and enact a new subsection to section 57-38-57 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to angel fund investment disclosure;"

Page 1, line 4, after the first "provide" insert "for"

Page 1, line 4, after the first semicolon insert "and"

Page 1, line 4, remove "; and to provide"

Page 1, line 5, remove "an expiration date"

Page 1, line 11, overstrike "incorporated in" and insert immediately thereafter "a domestic organization created under the laws of"

Page 1, line 13, overstrike "invested" and insert immediately thereafter "remitted"

Page 1, line 13, overstrike "in" and insert immediately thereafter "to"

Page 1, line 15, after the period insert "The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is one hundred fifty thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 1, line 21, overstrike "four" and insert immediately thereafter "seven"

Page 2, line 5, after "three" insert "primary sector companies that are"

Page 2, line 10, after the underscored period insert "Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate."

Page 3, line 1, replace "paid for the investment" with "remitted"

Page 3, line 3, replace "on which full consideration" with "the payment"

Page 3, after line 4, insert:

"j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment."

Page 3, line 5, after "4." insert "The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3."

5."

Page 3, line 11, overstrike "5." and insert immediately thereafter "6."

Page 3, line 14, replace "6." with "7."

Page 3, line 18, replace "If" with "For the first two taxable years beginning after December 31, 2010, if"

Page 3, line 19, replace "7" with "8"

Page 3, line 23, replace "If" with "For the first two taxable years beginning after December 31, 2010, if"

Page 3, line 24, replace "7" with "8"

Page 3, line 29, replace "7" with "8"

Page 3, line 30, replace "7." with "8."

Page 3, line 30, replace "A" with "For the first two taxable years beginning after December 31, 2010, a"

Page 3, line 31, after "section" insert "for investment in an angel fund established after July 31, 2011."

Page 4, line 2, after the underscored period insert "The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6."

Page 5, line 12, after "to" insert "establish necessary administrative provisions for the credit under this section, including provisions to"

Page 5, remove lines 14 through 18

Page 5, line 20, remove "the status"

Page 5, replace line 21 with "the number of in-state and out-of-state investors, amount of investment, and amount of tax credits accrued, claimed, and transferred by each individual angel fund."

Page 5, line 22, remove "- **EXPIRATION DATE**"

Page 5, line 22, replace "Section 1 of this" with "This"

Page 5, line 23, remove "the first four".

Page 5, line 23, remove ", and is thereafter ineffective"

Page 5, remove line 24

Renumber accordingly

Engrossed HB 1057 was placed on the Seventh order of business on the calendar.

**2011 TESTIMONY**

**HB 1057**

Grindberg, Tony S.

From: Bruce Gjovig [bruce@innovators.net]  
Sent: Tuesday, January 04, 2011 10:35 PM  
To: Grindberg, Tony S.  
Subject: HB 1057 Angel Tax Credits for pass-through entities

**For HB 1057 (with amendments) encourages pass-through entities to invest in pooled angel funds, attracts wealth out-of-state investors to invest in North Dakota angel funds and ventures.**

1. Goal of HB 1057 will increase the number of angel investors in North Dakota by including not only individual accredited investors but also **pass through entities** (Sub-S, LLP, LLC, etc.) Pooled angel funds target the right ventures (high growth) and the right angels (multiple investments, at least 10 in a portfolio) to have the most economic impact. Pooled angel funds utilize collective wisdom, expertise and judgment of several investors to draw additional investors (increased seed capital).
2. HB 1057 extends the existing 45% state investment tax credit for pooled angel funds to **pass-through entities**, which many accredited investors utilize for investment purposes. Including those entities increases the potential investor pool to meet the needs of early-stage capital for venture growth.
3. More than 20 states offer an income tax credit to encourage private investment to create and grow early-stage ventures. Most include pass through entities. More investors means more investment. Allowing the tax credits to be sold, transfer or assigned **encourages out-of-state investors** to participate in the incentive, and encourages them to invest in North Dakota pooled funds and entrepreneurs. This helps attract more capital. State like Minnesota and Connecticut utilize the feature.
4. Changes allow pass-through entities to pass the tax credits to individual investor partners/shareholders. This is useful. If the entity cannot utilize the tax credits, it allows the entity to sell, transfer or assign a credit, which is good. However there is a **"all or none" provision which should be removed** so that it is the **unused credit** can be transferred so it is not all or none. To limit the sale to either 100% or 0% does not make sense, and makes the provision less useful. (Page 3, section 6.c).
5. There is a cap of \$100,000 over any combination of taxable years on Page 3, Section 7 a. **Eliminate this \$100,000 lifetime cap.** That is burdensome to administer (lifetime?), and there are already caps on each fund (\$5 M total) and to the individual (\$45,000 per year). It is not useful or helpful to have multiple caps applied several ways.
6. Previously a four-year carry forward provision was allowed (Page 1, Section 2, line 19-20). The **carry forward provision should be extended to 10 years** as early-stage investments have proved to have a long horizon to harvest a high ROI (7 to 15 years) if at all. This is especially true with technologies like medical devices. Early-stage capital is necessary to accelerate innovation, start and grow entrepreneur ventures and create the jobs we need.. Angels offer patient money that is higher risk with a longer horizon for liquidity which is why public and private venture prefers later-stage venture deals, thus incentives to fill the funding gap. The higher risk and long horizons define the need for this tax incentive. The carry-forward should match the time horizon of the majority of investments. No fund organized in 2006 has yet had a harvest going into the 5<sup>th</sup> year.
7. Since 2006, nine pooled angel funds were formed in Grand Forks, Fargo, Wahpeton and Bismarck regions. New funds are getting momentum in Jamestown, and Minot and are being explored in Williston, Dickinson areas. Expect 5-8 more angel funds over next two years. To date, about 140 angel investors committed more than \$16 M in pooled funds, and made over 30 investments since 2006. The State Investment Tax Credit has significantly increased access to equity by engaging our state's accredited investors. It is an unqualified early success, with far more potential as we improve the law. The recommended change will help

Bill 1057  
#1  
M.1

other funds form increasing our equity capital resources. Funds work well to share deal flow, due diligence, expertise, and monitoring, and to handle larger deals beyond the capacity of one fund. More funds means more capital, more efficiency, and lower transaction costs.

8. Nationwide for each (1) startup that secures venture capital (250 per year) annually over 200 startup companies (50,000) secure angel investment. Less than 1 in 10 startups receive angel funds as few provide high enough return on investment (ROI) from growth. Angels are vital to the entrepreneur ecosystem and to secure equity capital. The tax incentive is targeted at high growth ventures.

9. Angels are more than funding: they also expertise, coaching, contacts, and problem solvers. This is value added investing.

*Most of economics can be summarized in four words: 'People respond to incentives.' "The rest is just commentary." Steven Landsburg, the Armchair Economist, U of Rochester (NY)*

Bill 1057 pg. 2  
#1

Mr. Chairman and members of the committee my name is Rep. Mike Nathe Dist 30 Bismarck, I am here today on the behalf of the Interim Workforce Committee and HB #1057.

HB 1057 would change the eligibility requirements for investing in Angels Funds and open up the mobility of the tax credit.

Mr. Chairman the Workforce Committee heard testimony in regards to the eligibility of being able to participate in Angel Fund investments in North Dakota. Angel funds are currently available only to investors with a North Dakota state income tax liability. What this bill would do is to open up the pool of potential investors to the Angel Fund who do not have a North Dakota tax liability; this bill would expand the pool of investors to include out-of state investors.

Also Mr. Chairman we learned that the transferability of these tax credits was an issue within the investing community. Currently an Angel Fund investor is not able to transfer or sell their credits. This bill would allow a onetime transfer/sell of these credits, the added ability to have this option would be a very attractive feature to potential investors, thus bringing in more investors and allowing the funding of more business in the state.

The bill also requires that the tax commissioner report to legislative management on the results of the bill during the 2011-2012 and 2013-2014 interims, giving the state information to evaluate the bills progress. It also contains a sunset provision that the bill will expire in 2014. This will give the state the flexibility to either extend these changes or discontinue depending on the results.

Mr. Chairman and members of the committee given the tenuous condition of the country, and the surrounding states. I believe we have a real window of opportunity to attract more investors and businesses to North Dakota who otherwise may not have been interested in our state. HB 1057 will help in attracting those investors that are either current North Dakota residents, former North Dakotans looking to invest back home or a savvy investor from across the country.

The changes contained in HB 1057 to open up the requirements in Angel Fund investing in North Dakota will help to make our states investment environment more attractive and in response develop more business for our state.

Thank you, Mr. Chairman that concludes my testimony. I would be happy to answer any questions.

**HB 1057 – Angel Fund Investment Tax Credit**

Members of the House Finance and Taxation Committee

My name is Peter Blankenship and I'm the founder of Streamline, Inc.; a medical device company that develops and sells medical technologies in the durable medical equipment field. Over the last year we have systematically shifted Streamline's operations from Minnesota to North Dakota. Many factors played into this but they all fell under the umbrella of incentive.

Streamline was founded in 2007. After two successful rounds of financing, the economy dipped and the capital available to startups in Minnesota went dry. However, this capital drought wasn't due to a lack of money, but a lack of incentive. Given the risk associated with startups and a rocky economy, Minnesota angel investors opted to sit on their check books; and Minnesota companies started looking for the exit.

In the late fall of 2009, at a conference in Minneapolis, I was introduced to a few North Dakota angel funds, and there was some interest in Streamline. A fund in Grand Forks began the due diligence process, followed by syndicating Streamline throughout North Dakota's angel network, and eventually Streamline's round of financing was closed. A year and a half ago I would have never seen Streamline moving operations out of Minnesota, but during that process the root necessities of our business, which are the same for any business, made the move a no brainer.

There's a saying among startups; "cash is king." This applies in three areas and, unfortunately, we only have control over one, 1) frugal spending. The other two are external elements: 2) Are you operating in a business friendly environment? and 3) Do you have access to an abundant source of investment capital? It's those last two factors that brought Streamline to North Dakota with the plan to grow here. We have already shifted manufacturing from St. Paul, MN to Wahpeton, ND and created two FTE's. As we continue to grow, everything from customer support and logistics to R&D and engineering will reside here; we estimate creating 25 FTE's by the end of 2012 in North Dakota. *(The handouts shows this breakdown)*

The point is, by nature, new companies will gravitate to where ever they have the most incentive. And that starts with maintaining and enhancing the incentive for the angels to take a risk with us.

I've read through the proposed bill and like any investment tax credit it's based on the idea that if we give angels the incentive to take that risk and offer their talents the state will be better for it. But there are also some provisions that conflict with this idea (i.e. multiple ways of capping the tax credit and a "look back" clause on transferred credits). I think it's important to focus on the overall philosophy of this bill; that by leaving the incentive it provides as unhindered as possible the smart and entrepreneurial investors of North Dakota will continue to grow, innovate, and attract new business to the state; like they did so well with Streamline.



January 18<sup>th</sup>, 2011

I joke that North Dakota is the one-stop-shop for startups, but it's true. And that comes through good policy and an energized entrepreneurial and investment community. Like all of you, I'm looking forward to help fuel that.

Streamline's story echoes true with any start up. We want to succeed, we want to grow, provide jobs, innovate, and create things that have a positive impact. But we need help. And that's where angels come in. More than providing the financial means to launch a company they bring experience, expertise, contacts, and problem solving skills. They're essential to startups and the more of them there are the more businesses will follow.

Trust the root idea of this bill; incentivizing will lead to growth. I encourage you to keep and expand on the elements that incentive, and reevaluate the areas that impede an investor's ability to fully and freely utilize the tax credit. The more freedom they have with this bill the more they'll be able to give back to the state.

Streamline would not be where it is today if it weren't for the effort of the North Dakota angel network. We're excited to continue working with them and the state of North Dakota.

Thank you for your time.

Peter Blankenship,  
Founder and Technical Director

**Streamline, Inc.**

[PBlankenship@StreamlineSafe.com](mailto:PBlankenship@StreamlineSafe.com)

Office: 866.345.8898 x 701

Mobile: 952.693.1305

Testimony #1

# Streamline, Inc

North Dakota Operations Hiring Projections (through 2012)

ISS Volume			
	<u>2011</u>	<u>2012</u>	<u>2013</u>
ISS Poles sold	1150	3450	8625
ISS Mounts sold	400	1200	3000

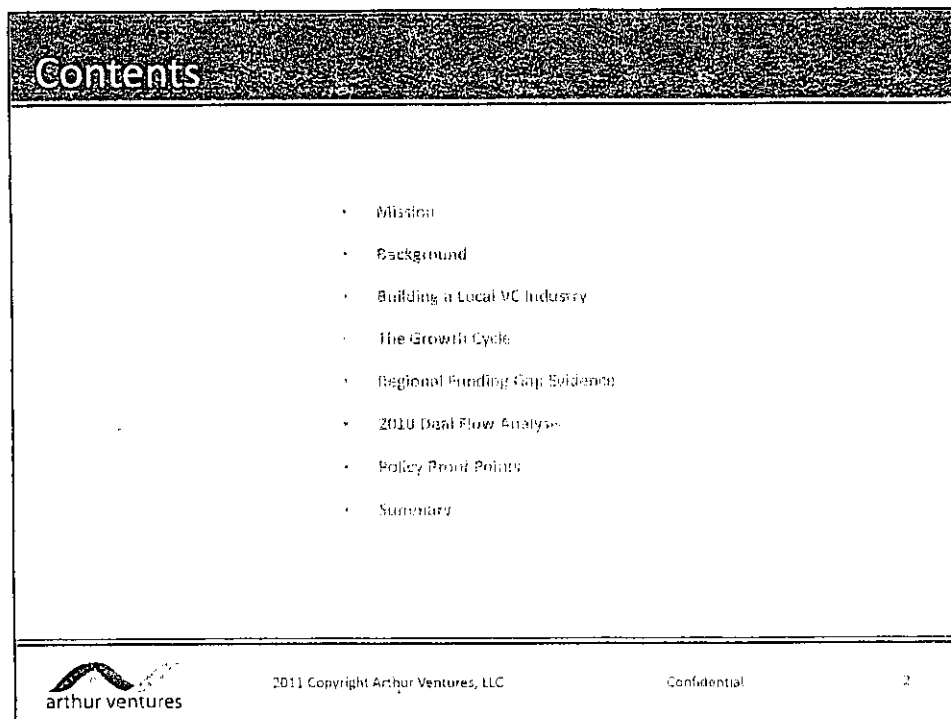
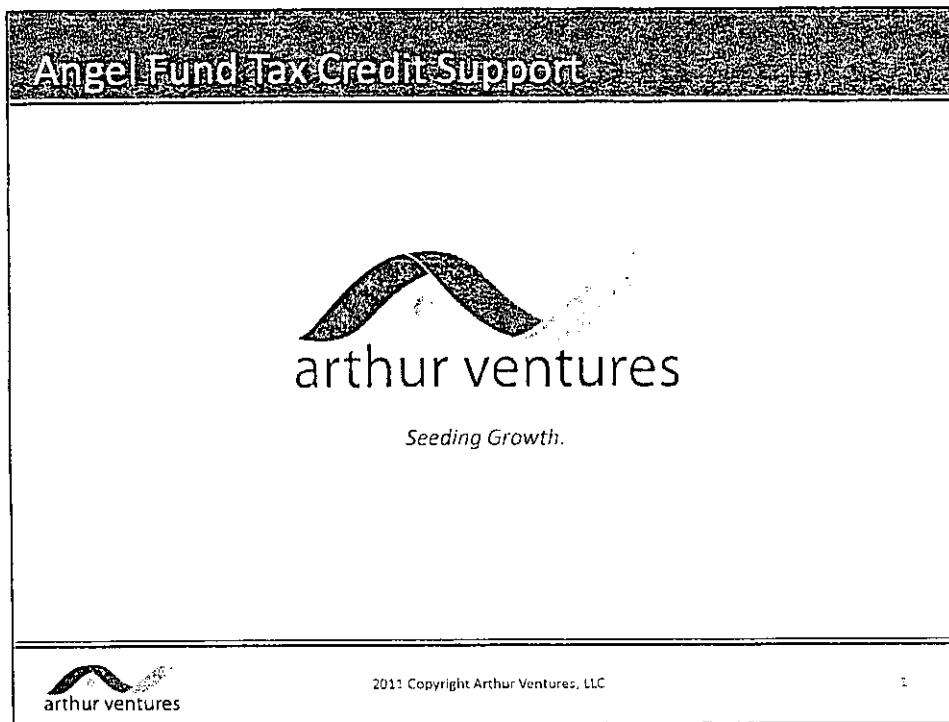
	<u>Position</u>	<u>Annual Compensation</u>	<u>FTEs</u>	<u>Total Compensation</u>
<b>Year 2010-11</b>				
	VP of Operations	\$ 75,000.00	1.00	\$ 75,000.00
	Admin Assistant/Accounts Payable	\$ 35,000.00	1.00	\$ 35,000.00
	Customer Support Representative	\$ 35,000.00	1.00	\$ 35,000.00
	Customer Support Representative	\$ 37,000.00	0.50	\$ 18,500.00
<b>2010 (partial)</b>	Assmby Tech	\$ 35,000.00	1.11	\$ 38,701.92
<b>2010 (partial)</b>	Maintenance Tech	\$ 50,000.00	4.42	\$ 221,153.85
<b>2010 (partial)</b>	Engineer	\$ 75,000.00	0.25	\$ 18,750.00
<b>2010 (partial)</b>	Logistics/shipping	\$ 37,000.00	<u>0.25</u>	\$ 9,250.00

**Total ND hires 9.53 \$ 451,355.77**

## Year 2012

	VP of Operations	\$ 75,000.00	1.00	\$ 75,000.00
	Admin Assistant	\$ 35,000.00	1.00	\$ 35,000.00
	Customer Support Representative	\$ 35,000.00	2.00	\$ 70,000.00
	Customer Support Representative	\$ 37,000.00	0.50	\$ 18,500.00
	Assmby Tech	\$ 35,000.00	3.32	\$ 116,105.77
	Maintenance Tech	\$ 50,000.00	13.27	\$ 663,461.54
	Engineer	\$ 75,000.00	0.75	\$ 56,250.00
	Logistics/shipping	\$ 37,000.00	0.50	\$ 18,500.00
	Logistics/shipping	\$ 37,000.00	1.00	\$ 37,000.00
	R&D	\$ 52,000.00	1.00	\$ 52,000.00
	Accounts Payable	\$ 35,000.00	1.00	\$ 35,000.00
	QA Engineer	\$ 58,000.00	<u>0.50</u>	\$ 29,000.00

**Total ND hires 25.84 \$ 1,205,817.31**



## Mission

Our mission is to enable growth in our partners' businesses. In the pursuit of that growth, we expect to create jobs and opportunities that will positively and meaningfully impact the lives of people we touch and in our industry. The companies that we partner with will improve the human condition will satisfying the economic conditions that will support a continuous cycle of innovation, entrepreneurship, investment, and global growth.



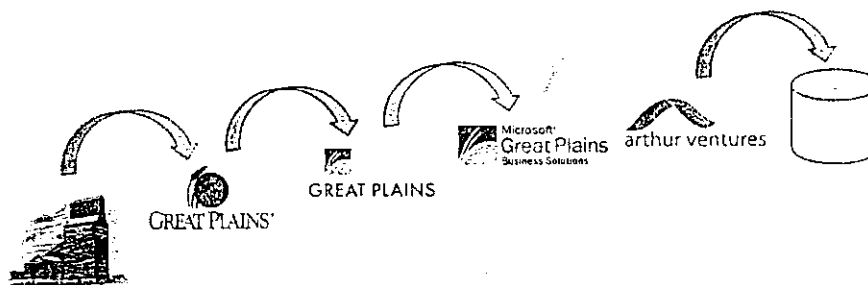
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## Sharing success with regional entrepreneurs

Arthur Ventures is the "Grain Elevator" for regional technology start-ups.

- 15 years ago there was no start-up capital for Great Plains, a fledgling North Dakota software company.
- Great Plains acquired its start-up venture capital from a local grain elevator.
- From that early stage capital, Great Plains grew and matured to be acquired by Microsoft for \$1.1 billion.
- Great Plains is a great example of creating significant mutual jobs organically.
- In 2012, there *still exists* a significant lack of early stage venture capital for technology ventures. Entrepreneurs still need to go to their local elevator to raise equity capital.



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## Building a local venture industry

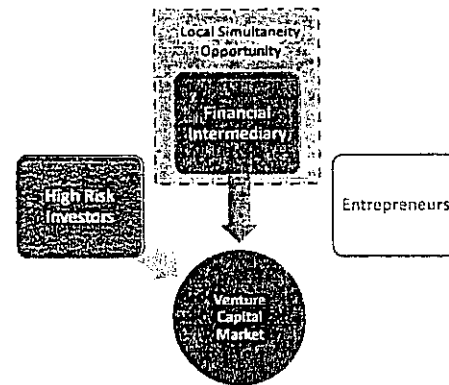
According to Professor Ronald Gibson at Stanford University Law School, three central inputs are necessary to engineer a productive venture capital market:

- Entrepreneurship
- Investment with the funds and the taste for high-risk, high return investment, and
- A specialized financial intermediary to serve as the nexus of a set of sophisticated contacts

Any one of these inputs will emerge if the other two are present, but none will emerge in isolation of the others

A Local Simultaneity Opportunity exists due to lack of accessible venture capital intermediary

ND is well-positioned to capitalize on the Local Simultaneity Opportunity by continuing its successful policy of increasing the availability of early-stage venture capital through Angel Fund investment Tax Credits



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## The Growth Cycle

### • Belief

- Limited availability of start-up and early-stage capital is inhibiting entrepreneurial growth
- Making start-up and early-stage capital accessible to entrepreneurs will create a high-growth technology-based economy, increase wealth creation, and grow high-paying jobs
- Angel funds and early-stage venture funds in the State of ND play a critical role in the life cycle of the business growth cycle

### • Policy Focus

- North Dakota must create an attractive environment that incentivizes capital aggregation through funds to turn delivering efficiency for both entrepreneurs and investors

Stage	Regional Funding Gap			
	Seed	Startup	Early Stage	
Source		Nonprofit venture development groups, grants, Regional venture capital firms, and angel investors	Regional venture capital firms and angel investors	Regional and national venture funds, and mezzanine/debt capital sources
Investment		\$100,000 - \$1,000,000	\$1,000,000 - \$5,000,000	\$5,000,000 - \$50,000,000

Business Investment Progression →

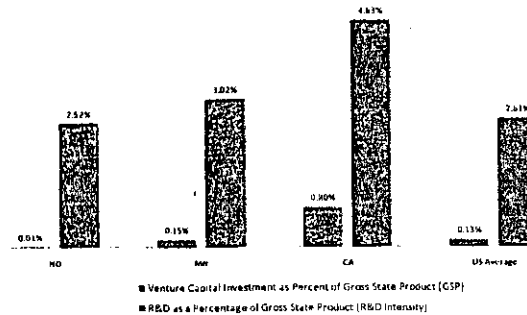


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## Regional Funding Gap Evidence

North Dakota is 13x below the national average in VC funding but close to the national average in R&D.



Source: Kohnen to Arthur & National Venture Capital Association, 2009 data



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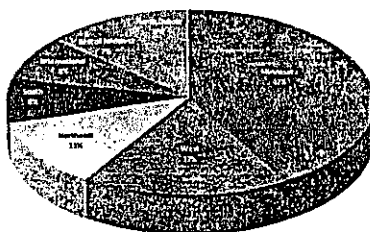
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## 2010 deal flow analysis

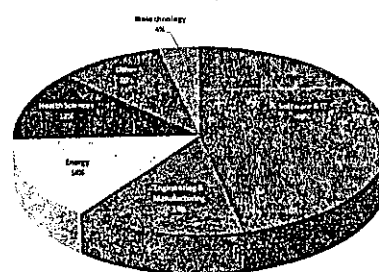
Numerous opportunities to recruit companies to ND as well as fund opportunities here

- Deal flow reached 552 in 2010, which was a 91% increase from 2009
- 16 regional deals worth a closer look were seeking \$332.5 million of venture capital
- 56% of all deals were sourced from the Midwest

Geography



Industry



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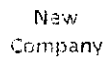
## Policy Proof Points



- Business Description: IntelligentInSites delivers real-time enterprise visibility and information solutions that decrease the bottom line and increase productivity by streamlining flows, costs while improving the level of care.
- Jobs: 70
- Success: FMS Angel Fund and Distance Angel Fund were critical to this company's initial growth. In addition, ND Development Fund programs continue to play a key role.



- Business Description: Altravox develops vaccines by emulating, accelerating and commercializing the evolution of new genes that can represent the disease components of a bacterial or viral pathogen.
- Jobs: 13 FTE
- Success: Transferred technology from California company. The company is partnering and licensing vaccine research at North Dakota State University to develop vaccines.



- Business Description: New Company is focused toward the development of applications and an open platform for the growing mobile healthcare industry.
- Jobs: Currently 1, growing to 10
- Success: New Company has developed a "trust sourcing" strategy. Although HCL is not based in ND, they are moving development jobs from India to North Dakota.



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## Legislative Testimony Summary

- Seed/Angel Tax Credits Work
  - Goal: To attract and incent investment into funds building a foundation for innovation, entrepreneurship, and job growth
  - Impact: Angel Fund tax policy impacts LONG TERM job creation
  - Proof Points: 5 companies and ~60 high-paying, ND jobs – increased tax base
- What can we do to improve this successful policy?
  - Increase the Total Fund Credit: This allows a greater amount of capital to be pooled into a single fund (expansion)
  - Extend Carry Forward: Provides the tax incentive to greater population of investors (inclusion)
  - Accommodate Pass Through Entities: Statute should allow for pass-through entities to invest into funds (efficiency)
  - Transfer/Sale of Tax Credits: This would allow for capital raised out of state (opportunity)



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## Entrepreneur Capital through Angel Investors and Angel Funds

How do early-stage entrepreneurs typically finance their start-up capital needs?

- Use personal savings
- Use personal credit cards
- Sell personal assets (i.e. boats, guns, etc.)
- Take a 2<sup>nd</sup> mortgage on their home
- Turn to friends and family for assistance

Sources of capital for entrepreneurial business development

- Vendors, suppliers, or other companies
- Commercial bank loans
- "Angels" or private investors
- Government grants
- Venture capital

Sources of equity capital

- 1 in 10 start-ups secure capital from angel investors
- 1 in 1,000 start-ups secure capital from venture capital financing
- 1 in 10,000 companies go public to raise capital
- 1 in 10 angel fund invested deals attract venture capital funds
- 1 in 100 angel fund invested ventures go public through an Independent Public Offering (IPO)
- In a study conducted by Coopers & Lybrand of 328 fast-growth manufacturing and service start-ups, the following were the sources of capital for these projects
  - 71% - from the owner, friends and family
  - 13% - from private investors
  - 8% - from suppliers and/or customer alliances
  - 8% - from bank loans
  - Funding from banks typically came in the 28<sup>th</sup> month


Sources of equity funding (nationwide)

- There are 500,000 to 1,000,000 new start-ups per year
- 64 were financed through IPOs in 2009 (385 were financed this way in 2000)
- 57,200 start-ups were financed through angel investors to the amount of \$18 billion
- Venture capital funds invest in less than 4,000 companies per year
  - Venture capital funds are not interested in start-ups – not because of poor ROI – but rather because they have large sums of money to invest and are looking for large projects
- Angel investors provide approximately 90% of the seed and early stage equity outside equity capital for start-up entrepreneurs

Purpose of Angel Funds

- Provide early-stage and high risk capital to businesses and expect a higher ROI





What does an average angel investor look like?


- They are typically entrepreneurs and/or business owners
- 40 to 60 years old with 2 college degrees
- \$100,000 to \$250,000 of annual income
- Invest within 40 miles of their home
- There are more than 400,000 active angel investors in the country

Why be an angel investor?

- Have an expectation of good ROI
- Want to diversify their investment portfolio
- They are financially in a position to be able to lose their entire investment
- They want to stay involved and be useful to the entrepreneur
- Have an affection for entrepreneurs
- They enjoy venturing – building companies
- They want to be involved in their community
- They have been successful and they want to give back and help others

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**All information provided above was made available through a presentation made by Tom Kenville, UND Center for Innovation, at the Economic Development Association of ND meeting on December 7<sup>th</sup>, 2010.**

There are presently 9 angel funds based in the following North Dakota communities, that have received certification which qualifies investors in that fund to receive the angel fund investment tax credit.

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- 1 – Wahpeton
- 1 – Grand Forks

The location of the registered address of the fund should not suggest that fund does not invest in projects in other North Dakota communities.

**Legislative Testimony - HB 1057 and SB 2248**

My name is James Burgum. I am submitting this written testimony in favor of HB 1057 (with suggested amendments) as a vehicle for updating the ND Century Code with regards to the Angel Fund Tax Credit.

I co-founded and manage Arthur Ventures; a venture capital firm based in Fargo, ND. In addition, I am an active member of the FM Angel Fund. For the last 8 years, I have been involved with the entrepreneurial community in North Dakota as well as various economic development initiatives, including: Operation: Intern, the development of Young Professional Networks, and the formation of the North Dakota Trade Office. Considering my experiences with both private enterprise and the Office of the Governor, I struggle to find an economic policy that contains as much positive, long-term impact as our Angel Tax Credit legislation. I am appreciative of the effort this legislative body has undertaken to not only strengthen, but also update this crucial law to provide greater clarity, more opportunity, and ultimately increase jobs in North Dakota.

As we consider economic incentives, such as the Angel Fund Tax Credit, it is important to keep the legislative intent top-of-mind. The goal of the Angel Fund Tax Credit is not to entice investment into ND-Based Companies (although we expect this to occur); the goal is to simply **INCENTIVIZE THE AGGREGATION OF CAPITAL IN ND.** We want to encourage investors to commit capital to funds that are managed with-in our state (rather than the west or east coasts). Our citizens will reap the benefits of capital aggregation in many ways. For example, they will observe companies re-locating or moving operations to ND. In addition, companies will seek to leverage our highly competitive business environment, and most importantly, seek to capitalize on the amazing human capital that resides in our state.

How do we define success? I would like to suggest a key metric. Although important, we should not initially analyze the number of jobs created in ND or even the number of investments made in ND. I submit that the critical metric should be the total amount of capital under management in ND dedicated to private equity activities. More specifically, capital dedicated to angel investments and early-stage venture capital (the very first stages of business formation). This is a metric our state must focus on and strive to improve.

According to the National Venture Capital Association in 2010 North Dakota ranked – **DEAD LAST** in new venture capital investments, we tied for **ZERO** venture capital investment for all of 2010 (tied with South Dakota, Mississippi, and Arkansas). This unnerving statistic is only for venture capital and does not include angel investments (over 30 have been made in ND in the last few years). Angel fund investments often do not get reported.

Last year, ND did not receive 1 cent of the nearly \$21 billion that was invested into startup companies in this country. **YES, THAT IS RIGHT, \$21 BILLION!** As a citizen of this great state, it is disconcerting that with such a tremendous comparative advantage to other states that there was not a single startup investment in ND made by venture capital firms. I believe the reason for this disparity is because we do not have a large amount of pooled angel or venture capital. Even though we are fortunate to have significant capital, we do not have the necessary financial intermediaries built up that can support our entrepreneurial ecosystem.

The seminal angel fund legislation was an unqualified success, but we can do more. The expansion of HB 1057 will help our state take another step in the right direction. The key provisions and changes needed are highlighted in testimony provided by Mr. Bruce Gjovig from the Center for Innovation. I am in favor of passing the HB 1057 with these amendments: **(1) INCLUDE THE CARRY-FORWARD PROVISION PROVIDED FOR IN SB 2248; AND**  
**(2) REMOVE THE DISCLOSURES LANGUAGE FROM THE ENGROSSED HB 1057.**

With these minor changes, I believe this legislation will continue to provide a firm foundation for the formation of angel funds, for investment into entrepreneurial companies, and for vital aggregation of capital.

I sincerely apologize for not testifying in person. I am attending our bi-monthly angel fund meeting in Fargo today and was unable to miss this meeting because Loyalty Builders, Inc., one of our existing partner companies, will be presenting. This company is located in New Hampshire and is a software company focused on Customer Marketing Management (CMM) solutions. We are considering expanding operations into ND if we secure a local capital investment. These jobs would be high-paying and could be a great opportunity for ND.

This is a strategy Arthur Ventures is pursuing and implementing across our partner companies. For example, Preventice, Inc. (a Rochester, MN based company) is establishing operations in ND because of Arthur Ventures' involvement with and investment in the company. They plan to hire 10 software developers over the next 12 months. Further, they are working to leverage both the optimum business climate in ND and the top-talent that we grow at our universities. If we continue to lead with a cutting edge capital aggregation policy, these early success stories will become more common.

In five to ten years, I truly believe we will look upon this legislation as being an important catalyst in seeding the future economic growth for ND.

Thank you for all your efforts and for your continued support of this important policy. If you have any questions, please do not hesitate to contact me at:

Email - [james@arthurventures.com](mailto:james@arthurventures.com)

Phone - 701.232.529

Respectfully Submitted,

James Burgum

## Entrepreneur Capital through Angel Investors and Angel Funds

How do early-stage entrepreneurs typically finance their start-up capital needs?

- Use personal savings
- Use personal credit cards
- Sell personal assets (i.e. boats, guns, etc.)
- Take a 2<sup>nd</sup> mortgage on their home
- Turn to friends and family for assistance

Sources of capital for entrepreneurial business development

- Vendors, suppliers, or other companies
- Commercial bank loans
- "Angels" or private investors
- Government grants
- Venture capital

Sources of equity capital

- 1 in 10 start-ups secure capital from angel investors
- 1 in 1,000 start-ups secure capital from venture capital financing
- 1 in 10,000 companies go public to raise capital
- 1 in 10 angel fund invested deals attract venture capital funds
- 1 in 100 angel fund invested ventures go public through an Independent Public Offering (IPO)
- In a study conducted by Coopers & Lybrand of 328 fast-growth manufacturing and service start-ups, the following were the sources of capital for these projects
  - 71% - from the owner, friends and family
  - 13% - from private investors
  - 8% - from suppliers and/or customer alliances
  - 8% - from bank loans
  - Funding from banks typically came in the 28<sup>th</sup> month

Sources of equity funding (nationwide)

- There are 500,000 to 1,000,000 new start-ups per year
- 64 were financed through IPOs in 2009 (385 were financed this way in 2000)
- 57,200 start-ups were financed through angel investors to the amount of \$18 billion
- Venture capital funds invest in less than 4,000 companies per year
  - Venture capital funds are not interested in start-ups – not because of poor ROI – but rather because they have large sums of money to invest and are looking for large projects
- Angel investors provide approximately 90% of the seed and early stage equity outside equity capital for start-up entrepreneurs

Purpose of Angel Funds

- Provide early-stage and high risk capital to businesses and expect a higher ROI

What does an average angel investor look like?

- They are typically entrepreneurs and/or business owners
- 40 to 60 years old with 2 college degrees
- \$100,000 to \$250,000 of annual income
- Invest within 40 miles of their home
- There are more than 400,000 active angel investors in the country

Why be an angel investor?

- Have an expectation of good ROI
- Want to diversify their investment portfolio
- They are financially in a position to be able to lose their entire investment
- They want to stay involved and be useful to the entrepreneur
- Have an affection for entrepreneurs
- They enjoy venturing – building companies
- They want to be involved in their community
- They have been successful and they want to give back and help others

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To: Members of Senate Finance & Taxation Committee  
Members of the House Finance & Taxation Committee

08 Mar 11

From: James Carlson, Fargo  
Private Investor  
Partner in Linn Grove Ventures, LLC

Re: SB 2248 and HB 1057

Background: To prepare North Dakota for the future, section 57-38-57 of the North Dakota Century Code was a brilliant stroke of genius to entice internal investors to increase investment within the state for high growth, high technology businesses and high salaries. However, restricting our growth to only internal investors restricts our growth potential and places excessive pressure on internal state investors. For example, most new businesses require up to 3 years to assure viability. If a company is grown without external investment or experienced guidance, it may take another 3-10 years of organic growth before achieving 'high growth' status for job creation and financial return. North Dakota small business owners have historically had minimal access to investors aside from family and friends. Attracting external investment will bring new expertise and broaden the new business venture landscape for our hardy citizenry.

Comments on both SB 2248 and HB 1057:

1. Both bills support angel fund credits of 45% (aggregate up to \$45,000) per year per investor. The aggregate wording for HB 1057 allows the investor to spread their financial support over several angel investment funds within this state. The number of North Dakota individual investors is limited; therefore the inclusion of pass-through entities will expand the investment pool while offering opportunities to family farm trusts and related small investment pools interested in investing within the state. The angel funds typically include 15-25 investors to spread the risk as well as include expertise to assist the growth of the target company.

The angel funds and pass-through entities typically invest in multiple high risk ventures to spread the investor's money over a variety of risk ventures to minimize the loss from any single failing company. While the state is worried about giving up tax dollars, these are high risk ventures with an anticipated failure rate of 10-25% (100% loss with \$0 return). The failed companies are a total loss of investment and the state misses opportunity dollars.

In some cases, the high risk venture will only generate enough revenue to keep it afloat. The investor is neither gaining nor losing but the state is gaining employee income tax with, at best, marginal corporate profits tax. A larger portion of the high risk companies will be successful and provide state tax revenue from both company profits and employee salaries. And last of all, a small portion of the high risk companies will do very well and return the entire investment back to the investor along with a profit. In short, the investor is risking their entire investment hoping 10+% of their venture companies will provide a worthwhile return on their total investment.

2. The definition for early stage entities as 'revenues of up to \$2 million' and mid-stage entities as 'up to \$10 million' is a good guidepost at this time. Excluding entities with over 40% of revenues from real-estate is appropriate since this bill is targeting tax credits to investors interested in supporting high risk business entities / high growth companies within the state. These early to mid-stage entities will require a higher level of education and expertise which will bring a higher salary and income tax to the state.
3. HB1057 - The public disclosure of the investor's identity, investment amount and date is an invasion of privacy. North Dakota State law should not allow this disclosure. Public disclosure creates a shopping list for anyone seeking donations or seeking targets for electronic theft and dramatically reduces an investor's interest in investing in North Dakota.
4. Restricting the investment entities to 'for profit' with not more than 25% owned by a single individual and include 6 or more qualified investors is appropriate. Pooling money and expertise provides a better monetary fund for investment and brings a wider variety in investor expertise to bear on the success of the target company. In my experience, a fund of 10-20 persons provides better due diligence of the target company (before investment) as well as experience and expertise to assist in the growth of a high risk company.
5. The opportunity to sell or transfer the tax credits to a large utility, bank or North Dakota business is a very unique approach to attracting out of state dollars. *North Dakota does not have enough in-state investors to adequately support the potential number of new companies we can create.* Secondly, it would be logical to broker the sale of tax credits which will probably devalue the face value of the tax credit. Unfortunately, the amount of the reduction will be unknown until the opportunity is available. Regardless of whether the transfer is for face value or a lesser value, this should be an extremely powerful tool to attract a high level of investment dollars which create corporate taxes as well as employee taxes.
6. The HB1057 lifetime cap of \$100,000 is an unfriendly gesture towards investors when there already exists a cap of \$45,000 per year and \$5M per fund. The larger the investment in new state businesses the greater the potential for corporate and salary taxes to fund the state.
7. The SB 2248 extended the carry forward to 19 years versus the 4 years in HB 1057. It will be extremely difficult for anyone to optimize their \$45,000 tax credit in a short time period of 4 years. Venture funds typically request investor to pay in annually for up to 10+ years. The longer carry forward will help an investor optimize their investment plan.

#### Summary Comments:

North Dakota has placed itself in a strong position to develop business cores in the areas of: value-added foods / functional foods, nutraceuticals, cosmeceuticals, healthcare (vaccines and

medical devices), and biomass fuels. To support this observation, North Dakota is the lead producer for 12 major crops; the innovator in new vaccine platforms; the certified manufacturer of qualified medical devices; and has proven biomass fuel crops. We have the opportunity to positively influence our future and keep our youth local. All these business opportunities need millions of dollars of investment to step from concept, to early stage, to mid stage, to late stage and finally commercial success. Our angel funds have done an excellent job at investing in concept to early stage. Tweaking this law will entice in and out of state angel investors to continue investing and growing grow companies in state through the mid and late stage size and on to the commercial market. Rather than seeking federal or state support, we need to attract more private investment and investor expertise to this state to help us grow these ideas to commercial maturity.



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### **Testimony of Deana Wiese**

Executive Director, Information Technology Council of North Dakota

In Support of HB 1057

March 8, 2011

Chairman Cook and members of the Senate Finance and Tax Committee:

My name is Deana Wiese, and I am the executive director of the Information Technology Council of North Dakota (ITCND), and am here today to voice ITCND's support of HB 1057.

ITCND is a trade association for the information technology (IT) industry and has nearly 100 member organizations, with representation from both the public and private sectors, that have come together to support the growth and development of IT in North Dakota.

One of ITCND's legislative priorities is supporting IT entrepreneurial, venture capital and financing initiatives, one of which is the angel fund investment tax credit. Angel funds have assisted in funding several North Dakota IT start-up companies since 2007 when the tax credit was put into statute. This change will assist in attracting out-of-state investors, which will create additional business opportunities for our state's entrepreneurs.

We thank you for your support of the angel fund investment tax credit in the past and would urge your support of HB 1057.



Testimony of

Economic Development Association of North Dakota

HB 1057

March 8, 2011

Chairman Cook and members of the committee, my name is Cal Klewin. I am representing the Economic Development Association of North Dakota (EDND).

EDND is the voice of the state's economic development community and provides networking for its 80 members, which include development organizations, communities, businesses and state agencies. Our mission is to increase economic opportunities for residents of the state by supporting primary sector growth, professionalism among economic development practitioners and cooperation among development organizations.

The attraction of out-of-state investment in North Dakota ventures is critical to the growth of the state's economy. The state is uniquely positioned to address this long-standing challenge as North Dakota continues to expand its positive profile.

EDND supports strategic modifications to the Angel Fund Investment Tax Credit that will increase the availability of critical funding for rapidly growing and early- to mid-stage companies in North Dakota.

EDND urges a **DO PASS** on HB 1057.

Thank you. I would be happy to answer your questions.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1057

Page 1, line 11, overstrike "incorporated in" and insert immediately thereafter  
"established under North Dakota law"

Page 1, line 12, overstrike "this state"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1057

That the Senate recede from its amendments as printed on pages 1331 and 1332 of the House Journal and pages 1062 and 1063 of the Senate Journal and that Engrossed House Bill No. 1057 be amended as follows:

Page 1, line 1, remove "to create and enact a new subsection to section 57-38-57 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to angel fund investment disclosure;"

Page 1, line 4, after the first "provide" insert "for"

Page 1, line 11, overstrike "incorporated in" and insert immediately thereafter "a domestic organization created under the laws of"

Page 1, line 13, overstrike "invested" and insert immediately thereafter "remitted"

Page 1, line 13, overstrike "in" and insert immediately thereafter "to"

Page 1, line 15, after the period insert "The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 1, line 21, overstrike "four" and insert immediately thereafter "seven"

Page 2, line 5, after "three" insert "primary sector companies that are"

Page 2, line 10, after the underscored period insert "Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate."

Page 3, line 1, replace "paid for the investment" with "remitted"

Page 3, line 3, replace "on which full consideration" with "the payment"

Page 3, line 30, replace "A" with "For the first two taxable years beginning after December 31, 2010, a"

Page 5, removes line 14 through 18

Page 5, line 20, after the comma insert "upon request"

Page 5, line 20, remove "the status"

Page 5, replace line 21 with "the number of in-state and out-of-state investors, amount of investment, amount of tax credits accrued, claimed, and transferred by each individual angel fund."

Page 5, line 22, remove "- EXPIRATION DATE"

Page 5, line 22, replace "Section 1 of this" with "This"

Page 5, line 23, remove "the first four"

Page 5, line 23, remove ", and is thereafter ineffective"

Page 5, remove line 24

Renumber accordingly



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Page 2, line 7, replace "early stage" with "early-stage"

Page 2, line 10, after the underscored period insert "Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate."

Page 3, line 1, replace "paid for the investment" with "remitted"

Page 3, line 3, replace "on which full consideration" with "the payment"

Page 3, line 18, replace "If" with "For the first two taxable years beginning after December 31, 2010, if"

Page 3, line 23, replace "If" with "For the first two taxable years beginning after December 31, 2010, if"

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April 22, 2011

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Page 1, line 4, after the first semicolon insert "and"

Page 1, line 4, remove "; and to provide"

Page 1, line 5, remove "an expiration date"

Page 1, line 11, overstrike "incorporated in" and insert immediately thereafter "a domestic organization created under the laws of"

Page 1, line 13, overstrike "invested" and insert immediately thereafter "remitted"

Page 1, line 13, overstrike "in" and insert immediately thereafter "to"

Page 1, line 15, after the period insert "The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is one hundred fifty thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law."

Page 1, line 21, overstrike "four" and insert immediately thereafter "seven"

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Page 3, line 30, replace "A" with "For the first two taxable years beginning after December 31, 2010, a"

Page 3, line 31, after "section" insert "for investment in an angel fund established after July 31, 2011."

Page 4, line 2, after the underscored period insert "The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 5."

Page 5, line 12, after "to" insert "establish necessary administrative provisions for the credit under this section, including provisions to"

Page 5, after line 13, insert:

"8. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment."

Page 5, remove lines 14 through 18

Page 5, line 20, remove "the status"

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