

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1019
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide for a transfer to the general fund; to provide an exemption; to establish a trade promotion authority; to provide a continuing appropriation; to provide for a report to the legislative council; to provide statements of legislative intent; to direct the state tax commissioner to audit the ethanol incentive program; to create and enact a new section to chapter 15-10 and a new subsection to section 54-59-05 of the North Dakota Century Code, relating to centers of excellence and to wide area network services provided by the information technology department; to amend and reenact section 57-38.5-03 of the North Dakota Century Code, relating to the seed capital investment tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of commerce for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

| | |
|-----------------------------------|-------------------|
| Salaries and wages | \$6,713,340 |
| Operating expenses | 8,237,247 |
| Grants | 46,585,026 |
| Discretionary grants | 1,447,127 |
| North Dakota development fund | 1,550,000 |
| Agricultural products utilization | 2,983,179 |
| Lewis and Clark bicentennial | 951,911 |
| Total all funds | \$68,467,830 |
| Less estimated income | <u>52,353,107</u> |
| Total general fund appropriation | \$16,114,723 |

SECTION 2. AGRICULTURE FUEL TAX REFUNDS. The less estimated income line item in section 1 of this Act includes \$575,000 from refunds of tax for fuel used for agricultural purposes, to be used by the agricultural products utilization commission, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. EXEMPTION. The funds appropriated in the discretionary grants line item in section 1 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item may be spent during the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 4. EXEMPTION. The funds appropriated in the agricultural products utilization line item in section 1 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item relating to grants awarded may be available for continued payment of grants awarded but not paid during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 5. STATE TAX COMMISSIONER - AUDIT OF ETHANOL PRODUCTION INCENTIVE PROGRAM. The state tax commissioner shall conduct an audit of the ethanol production incentive program during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 6. GENERAL FUND TRANSFER. The industrial commission shall transfer to the general fund the sum of \$1,000,000 from the North Dakota student loan trust. The moneys must be transferred as requested by the director of the office of management and budget during the biennium beginning July 1, 2003, and ending June 30, 2005, and upon certification by the student loan trust trustee that sufficient moneys remain available to pay all debt service on student loan trust bonds, all required rebate payments to the United States treasury, and all program operating expenses.

SECTION 7. LEGISLATIVE INTENT - SEED CAPITAL - EARLY STAGE FINANCING. It is the intent of the legislative assembly that the state's seed capital investment tax credit be the primary focus to encourage the availability of seed capital or early stage financing for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 8. USE OF DEVELOPMENT FUND - ADMINISTRATIVE COSTS. Moneys in the development fund may be used for defraying the costs of administering the fund for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 9. ACCOUNTABILITY MEASURES - REPORTING. The commissioner of the department of commerce shall monitor and report annually during the 2003-04 interim to either the budget section or an interim committee designated by the legislative council regarding the following North Dakota economic goals and associated benchmarks:

1. Develop unified efforts for economic development based on collaboration and accountability:
 - a. Site selection ranking of the North Dakota department of commerce.
 - b. Share of local economic development organizations participating in statewide marketing strategy.
2. Strengthen cooperation between the university system, economic development organizations, and private businesses:
 - a. Academic research and development expenditures as percentage of gross state product.
 - b. Industry research and development expenditures as percentage of gross state product.
3. Create quality jobs that retain North Dakota's workforce and attract new high-skilled labor:
 - a. Net job growth.
 - b. New private sector businesses per one hundred thousand residents.
 - c. Average annual wage.
 - d. Net migration.
4. Create a strong marketing image that builds on the state's numerous strengths, including workforce, education, and quality of life.
 - a. Positive national and out-of-state media exposure (favorable mentions).
 - b. Number of North Dakota department of commerce web site hits per month.
 - c. Number of leads generated by the North Dakota department of commerce.
5. Accelerate job growth in sustainable, diversified industry clusters to provide opportunities for the state's economy:

- a. Net job growth in manufacturing.
 - b. Net job growth in business services.
 - c. New private sector businesses in manufacturing.
 - d. New private sector businesses in business services.
 - e. Number of utility patents per one hundred thousand residents.
6. Strengthen North Dakota's business climate to increase international competitiveness:
- a. Gross state product (annual growth rate).
 - b. Venture capital investments (thousands).
 - c. Merchandise export value (per capita).

The department, in cooperation with job service North Dakota, the department of human services, and the university system, shall include in its report the number of individuals trained and the number who became employed as a result of each department's workforce development and training programs, including the state's investment, the areas of occupational training, the average annual salary of those employed, and the average increase in earnings twelve months after completion of training.

SECTION 10. TOURISM DIVISION - LEWIS AND CLARK MARKETING. Notwithstanding the provisions of Senate Bill No. 2337, as approved by the fifty-eighth legislative assembly, the department of commerce shall use the \$2,900,000 appropriated in Senate Bill No. 2337, only for defraying the tourism division's expenses of marketing the Lewis and Clark bicentennial celebration for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 11. TOURISM DIVISION - LEWIS AND CLARK MARKETING CONTRACTS. The tourism division of the department of commerce shall request bids for each Lewis and Clark bicentennial-related marketing campaign developed during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 12. TOURISM DIVISION - REPORTING. The department of commerce shall provide a report to the appropriations committees of the fifty-ninth legislative assembly regarding the tourism division's appropriations and expenditures to date detail for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 13. LEGISLATIVE INTENT - PARTNERSHIPS WITH INDIAN TRIBES. It is the intent of the legislative assembly that the department of commerce assist in the creation of business partnerships with North Dakota Indian tribes in order to increase primary sector business growth on Indian reservations and other areas of the state for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 14. LEGISLATIVE INTENT - TOURISM LEARNING VACATIONS. It is the intent of the legislative assembly that the tourism division of the department of commerce establish, coordinate, and promote learning vacations in North Dakota for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 15. LEWIS AND CLARK INTERPRETIVE CENTER GRANT. The Lewis and Clark bicentennial line item in section 1 of this Act includes \$150,000 from the general fund for the tourism division for the purpose of providing a grant to the North Dakota Lewis and Clark bicentennial foundation for costs associated with the Lewis and Clark interpretive center near Washburn for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 16. VISITOR RESCUE GRANTS. The discretionary grants line item in section 1 of this Act includes \$25,000 from the general fund for the tourism division for the purpose of reimbursing

political subdivisions for extraordinary costs incurred in rescues of visitors to North Dakota tourist attractions for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 17. RED RIVER VALLEY RESEARCH CORRIDOR MARKETING. The discretionary grants line item in section 1 of this Act includes \$200,000 from the general fund for the purpose of contracting with a private organization for conducting a marketing and image-building campaign for the Red River valley research corridor during the second year of the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 18. FORT ABRAHAM LINCOLN GRANT. The Lewis and Clark bicentennial line item in section 1 of this Act includes \$150,000 from the general fund for the tourism division for the purpose of providing a grant to the fort Abraham Lincoln foundation for costs associated with the national guard reconstruction of the seventh cavalry stable, interpretation of the stable, and maintenance and repairs of other fort buildings, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 19. DEVELOPMENT FUND - CENTERS OF EXCELLENCE GRANTS. Notwithstanding chapter 10-30.5, the department of commerce shall provide a grant from the development fund of \$1,250,000 to the North Dakota state university center for technology enterprise and of \$800,000 to the university of North Dakota center for innovation. The department shall provide the grant on October 1, 2003.

SECTION 20. LEGISLATIVE INTENT - INTERNSHIP PROGRAM. It is the intent of the legislative assembly that the department of commerce workforce development division develop an internship program involving its internet web site and in conjunction with North Dakota university system programs.

SECTION 21. TRADE PROMOTION AUTHORITY - REPORT TO FIFTY-NINTH LEGISLATIVE ASSEMBLY. The department of commerce shall establish a trade promotion authority for promoting North Dakota products and improving international trade of North Dakota products for the biennium beginning July 1, 2003, and ending June 30, 2005. The department shall use \$75,000 from the general fund appropriated in the operating expenses line item in section 1 of this Act for operating costs of the authority for the 2003-05 biennium. The department shall report to the appropriations committees of the fifty-ninth legislative assembly regarding its recommendations to improve trade of North Dakota products with other countries and to overcome trade barriers and its recommendation regarding continuation of the trade promotion authority.

SECTION 22. GIFTS, GRANTS, AND OTHER INCOME - CONTINUING APPROPRIATION. The department of commerce may accept gifts, grants, or other income for use by the trade promotion authority which are hereby appropriated for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 23. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Centers of excellence.

1. The state board of higher education shall establish a centers of excellence program relating to economic development consistent with the purpose under subsection 2. The board shall designate centers of excellence. A designation by the board of a center of excellence within the economic development category does not preclude the board or a higher education institution from designating a center of excellence in an academic or service area. Centers of excellence relating to economic development include the North Dakota state university center for technology enterprise and the university of North Dakota center for innovation.

Before January 1, 2004, the board, in consultation with the North Dakota economic development foundation and with private sector input, shall establish definitions and

eligibility criteria for centers of excellence relating to economic development. The board shall present the definitions and eligibility criteria for the centers of excellence relating to economic development to an interim committee designated by the legislative council. The North Dakota economic development foundation may identify and recommend high priority centers of excellence relating to economic development for consideration by the state board of higher education for future budget requests.

2. The purpose of the program is to develop and engage strategies for science and technology research and development, commercialization, entrepreneurship, infrastructure, growth and expansion of knowledge-based industries, and activities in the state to develop innovative approaches that expand the gross state product; to assist efforts to attract private and federal assistance for science and technology research and development and for commercialization in growth clusters most likely to increase the gross state product; to increase collaboration among state, federal, and private research and development and technology commercialization organizations in the state; to strengthen the leadership and support of the national science foundation experimental program to stimulate competitive research programs and to encourage partnerships with other state institutions for expanded efforts to stimulate economic growth in identified industry clusters; to provide leadership in science and technology policy at a regional, a national, and an international level; and to create employment opportunities for North Dakota university system graduates. Identified industry clusters include advanced manufacturing, aerospace, energy, information and technology, tourism, and value-added agriculture.
3. The state board of higher education shall allocate funds from appropriations for undesignated centers of excellence relating to economic development based on the criteria established and shall report on such allocations, in partnership with the North Dakota economic development foundation, to the budget section. A recipient of funds under this section shall use the funds to enhance capacity, enhance infrastructure, and leverage state, federal, and private sources of funding. Funds awarded under this section may not be used to supplant funding for current operations or academic instruction or to pay indirect costs. The board may award funds under this section to research universities, university-related foundations, and public institutions that are located in the state which demonstrate the potential to deliver expertise and service to industry clusters that will contribute to the gross state product. A recipient of funds under this section which is an institution of higher education under the control of the board of higher education or which is a nonprofit university-related foundation shall:
 - a. Provide the board of higher education with documentation of the availability of two dollars of matching funds for each dollar of funds awarded under this section as a condition of eligibility for receipt of funds under this section; and
 - b. Provide the board of higher education, governor, and North Dakota economic development foundation with annual reports for four fiscal years following receipt of the funds.

SECTION 24. A new subsection to section 54-59-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 11, the department may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

SECTION 25. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-03. Seed capital investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section

57-38-29 or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is ~~thirty~~ forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not less than five thousand dollars and not more than two hundred fifty thousand dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than ~~fifty percent~~ one-third of the credit under this section which is attributable to investments in a single taxable year.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A partnership that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's investment in a qualified business must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.
5. The investment must be at risk in the business. An investment for which a credit is received under this section must remain in the business for at least three years.
- ~~6.~~ ~~Tax credits for investments in one qualified business may not exceed two hundred fifty thousand dollars.~~
- ~~7.~~ 6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- ~~8.~~ 7. A taxpayer who owns a controlling interest in the qualified business or whose full-time professional activity is the operation of the business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- ~~9.~~ 8. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

SECTION 26. EFFECTIVE DATE. Section 25 of this Act is effective for taxable years beginning after December 31, 2002.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1019.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 42 Nays 4 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State