

HOUSE BILL NO.

Introduced by

Representative Keiser

1 A BILL for an Act relating to business subsidies; and to provide an effective date.

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

3 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

- 4 1. "Benefit date" means the date on which the recipient receives the business
5 subsidy. If the business subsidy involves the purchase, lease, or donation of
6 physical equipment, the benefit date is the date when the recipient puts the
7 equipment into service. If the business subsidy is for improvements to property,
8 the benefit date is the earlier of either when the improvements are finished for the
9 entire project or when a business occupies the property. If a business occupies
10 the property and the subsidy grantor expects that other businesses will also occupy
11 the same property, the grantor may assign a separate benefit date for each
12 subsequent business for when that subsequent business first occupies the
13 property.
- 14 2. "Business subsidy" means a state government or political subdivision grant;
15 contribution of property, infrastructure, or the principal amount of a loan at rates
16 below those commercially available to the recipient; any reduction or deferral of
17 any tax or any fee; any guarantee of any payment under any loan, lease, or other
18 obligation; or any preferential use of government facilities given to a business. The
19 term does not include:
- 20 a. Assistance that is valued at less than fifty thousand dollars.
- 21 b. Assistance that is generally available to all businesses or to a general class of
22 similar businesses, such as a line of business, size, location, or similar
23 general criteria.

- 1 c. Public improvements to buildings or lands owned by the state or political
- 2 subdivision which serve a public purpose and do not principally benefit a
- 3 single business or defined group of businesses at the time the improvements
- 4 are made.
- 5 d. Assistance provided for the sole purpose of renovating old or decaying
- 6 building stock or bringing such building stock up to code and assistance
- 7 provided for designated historic preservation districts, provided that the
- 8 assistance does not exceed fifty percent of the total cost.
- 9 e. Assistance to provide job readiness and training services if the sole purpose
- 10 of the assistance is to provide those services.
- 11 f. Assistance for housing.
- 12 g. Assistance for pollution control or abatement.
- 13 h. Assistance for energy conservation.
- 14 i. Tax reductions resulting from conformity with federal tax law.
- 15 j. Workforce safety and insurance and unemployment insurance premiums set
- 16 at regular rates.
- 17 k. Benefits derived from regulation.
- 18 l. Indirect benefits derived from assistance to educational institutions.
- 19 m. Funds from bonds issued to refund outstanding bonds, and from bonds issued
- 20 for the benefit of an organization described in section 501(c)(3) of the Internal
- 21 Revenue Code of 1986, as amended.
- 22 n. Assistance for a collaboration between a North Dakota institution of higher
- 23 education and a business.
- 24 o. Redevelopment if the recipient's investment in the purchase of the site and in
- 25 site preparation is seventy percent or more of the assessor's current year's
- 26 estimated market value.
- 27 p. General changes in tax increment financing law and other general tax law
- 28 changes of a principally technical nature.
- 29 q. Federal assistance until the assistance has been repaid to, and reinvested by,
- 30 the state or local government agency.
- 31 r. Business loans and loan guarantees of seventy-five thousand dollars or less.

- 1 s. Federal loan funds provided through the United States department of
2 commerce, economic development administration.
- 3 3. "Compensation" includes an employee's wages, salary, bonus, or other earnings;
4 health, disability, life, and retirement benefits or insurance premium paid by the
5 employer; unemployment insurance premium, workforce safety and insurance
6 premium, and other payroll taxes paid by the employer; and other fringe benefits
7 such as housing allowance, transportation expenses, or bonus.
- 8 4. "Department" means the department of commerce.
- 9 5. "Grantor" means the state or any political subdivision that grants a business
10 subsidy to a recipient.
- 11 6. "Political subdivision" means a unit of local government or special district or
12 authority in this state which has authority to grant a business subsidy and which is
13 located in or which includes a city with a population of at least twenty thousand.
14 The term includes any agency of or entity created or authorized by a political
15 subdivision.
- 16 7. "Public purpose" includes increasing the tax base, directly creating employment
17 opportunities, or indirectly creating employment opportunities through increased
18 economic activity. Job retention is only a public purpose in cases in which job loss
19 is specific and demonstrable.
- 20 8. "Recipient" means any for-profit business organization that receives a business
21 subsidy.
- 22 9. "State" means any North Dakota state government agency that has the authority to
23 award business subsidies.

24 **SECTION 2. Scope - Public purpose - Criteria.**

- 25 1. The application of this Act is limited to business subsidies provided by grantors to
26 recipients, unless otherwise provided.
- 27 2. A grantor may not grant a business subsidy to a recipient unless that business
28 subsidy meets a public purpose.
- 29 3. A grantor may not grant a business subsidy until the grantor adopts criteria for
30 awarding business subsidies. The criteria must set specific minimum requirements
31 that a business must meet to be eligible to receive a business subsidy. The criteria

1 must include a specific target for the number of jobs to be created and a specific
2 target for the average compensation to be paid by the business for the new jobs. A
3 grantor may deviate from the criteria by documenting the reason for the deviation
4 and attaching a copy of the documentation to that grantor's next annual report to
5 the department. A grantor may develop different criteria for different categories of
6 businesses, such as recruited businesses, business expansions within the state, or
7 business startups. Each grantor shall submit a copy of the criteria to the
8 department along with the grantor's annual report.

9 4. Before the state grants a business subsidy that exceeds five million dollars, the
10 state shall provide public notice and a hearing on the proposed business subsidy.
11 This public hearing and notice is not required if a separate hearing and notice on
12 the business subsidy is required by law other than this Act. The public notice must
13 include the date, time, and place of the hearing.

14 5. A business subsidy in the form of a grant of money must be structured as a
15 forgivable loan. For any other type of business subsidy, the business subsidy
16 agreement must state the fair market value of the business subsidy to the recipient,
17 including the value of conveying property at less than a fair market price, or other
18 in-kind benefits to the recipient.

19 **SECTION 3. Business subsidy agreement.**

20 1. A recipient must enter a business subsidy agreement with each grantor of a
21 business subsidy. The grantor and the recipient shall sign the agreement. Before
22 a grantor signs an agreement, the grantor shall check with the compilation and
23 summary report required under section 7 of this Act to determine if the recipient is
24 eligible to receive a business subsidy.

25 2. If a business subsidy benefits more than one recipient, the grantor shall assign a
26 proportion of the business subsidy to each recipient that signs a business subsidy
27 agreement. The proportion assessed to each recipient must reflect a reasonable
28 estimate of the recipient's share of the total benefits of the project.

29 3. A business subsidy agreement must include:

- 1 a. A description of the business subsidy, including the amount of the subsidy,
2 the type of subsidy, and the type of district if the subsidy is tax increment
3 financing.
- 4 b. A statement of the public purposes of the business subsidy.
- 5 c. Goals for the business subsidy, including the number of jobs to be created
6 and the average compensation of the new jobs created. The job and average
7 compensation goals must include the average compensation goals for any job
8 created or retained, and may include separate goals for the number of
9 part-time or full-time jobs or, in cases in which job loss is specific and
10 demonstrable, goals for the number of jobs retained. In addition to other
11 specific goal timeframes, the job and average compensation goals must
12 contain specific goals to be attained within two years of the benefit date.
- 13 d. A description of the financial obligation of the recipient if the goals are not
14 met.
- 15 e. A statement of why the business subsidy is needed.
- 16 f. A commitment by the recipient to continue operations in the jurisdiction in
17 which the business subsidy is used for five years or more after the benefit
18 date.
- 19 g. The name and address of the parent company of the recipient, if any.
- 20 h. A list of all financial assistance by all grantors for the project.
- 21 i. The recipient's obligation if the recipient does not fulfill the business subsidy
22 agreement.

23 **SECTION 4. Failure to meet goals - Modification of goals.** At a minimum, a
24 business subsidy agreement may require of a recipient that fails to meet subsidy agreement
25 goals that the recipient pay back to the grantor the assistance, prorated to reflect any partial
26 fulfillment of goals. After a public hearing, a grantor may extend for up to one year the period
27 for meeting the job and average compensation goals. A grantor may extend the period for
28 meeting job and average compensation goals by another additional year by documenting in
29 writing the reason for the extension and attaching a copy of the documentation to the grantor's
30 next annual report to the department. Notwithstanding the five-year commitment in the
31 business subsidy agreement, a grantor may authorize a recipient to move from the jurisdiction

1 in which the subsidy is used within the five-year period after the benefit date if, after a public
2 hearing, the grantor approves the recipient's request to move. If a grantor determines that a
3 business subsidy agreement goal of creation or retention of jobs has changed and justifies a
4 decrease, after a public hearing, the grantor may decrease the job goals in the agreement to a
5 lesser number or to zero. Justification for decreasing job goals may include that other public
6 benefits adequately offset the failure to meet the initial job goals. A recipient that fails to meet
7 the terms of a business subsidy agreement may not receive a business subsidy from any
8 grantor for a period of five years from the date of failure or until a recipient satisfies the
9 repayment obligation under this section, whichever occurs first.

10 **SECTION 5. Recipient reports.**

- 11 1. The department shall create recipient report forms that include:
- 12 a. The name and address of the recipient;
 - 13 b. The type, public purpose, and amount of the business subsidy, including the
14 number of new jobs to be created in association with the subsidy;
 - 15 c. The average compensation of all jobs created in association with the business
16 subsidy, including a breakdown of the average cost of all benefits provided by
17 the employer on all jobs created in association with the subsidy;
 - 18 d. The date the job and average compensation goals are expected to be
19 reached;
 - 20 e. A statement of goals identified in the business subsidy agreement and an
21 update on achievement of these goals;
 - 22 f. The location of the recipient prior to receiving the business subsidy;
 - 23 g. The name and address of the parent corporation of the recipient, if any;
 - 24 h. A list of business subsidies by all grantors for the project; and
 - 25 i. Other information the department and grantor may request.
- 26 2. Each grantor shall use recipient report forms created by the department to monitor
27 the progress by each recipient in achieving business subsidy agreement goals. At
28 a minimum, each recipient shall provide the grantor with an annual recipient report
29 for two years following the benefit date or until the goals are met, whichever is
30 later. If the business subsidy agreement goals are not met, the recipient shall
31 continue to provide recipient reports to the grantor until the subsidy is repaid. A

1 grantor that is a state agency shall file with the department a copy of each
2 completed recipient report.

3 3. Before March 1, 2007, and each March first thereafter, a recipient shall file with the
4 grantor the recipient report for the previous calendar year. If a recipient fails to file
5 a recipient report before March eighth, the grantor shall mail the recipient a
6 warning letter. If a noncompliant recipient fails to file the recipient report within
7 fourteen days of the postmarked date of the warning letter, the recipient shall pay
8 to the grantor a penalty of one hundred dollars for each subsequent day until the
9 report is filed. The maximum penalty under this section may not exceed one
10 thousand dollars.

11 **SECTION 6. Grantor reports.** Before April 1, 2007, and each April first thereafter,
12 each state agency and political subdivision that has granted a subsidy within the last five
13 calendar years shall file an annual grantor report with the department. The department shall
14 create the grantor report form required under this section. A grantor report must include a list of
15 recipients that did not complete the recipient report, a list of recipients that did not meet the
16 recipients' job and average compensation goals, and the steps being taken to bring these
17 recipients into compliance or to recoup these subsidies. If the department does not receive a
18 grantor report before May first, the department shall issue a warning letter to the noncompliant
19 grantor. If the department has not received a grantor report from the noncompliant grantor
20 before June first, that noncompliant grantor may not award any business subsidy until the
21 past-due grantor report is filed with the department.

22 **SECTION 7. Compilation and summary - Report to legislative council.**

23 1. Beginning in 2007 and annually thereafter, the department shall publish a
24 compilation and summary of the results of the criteria, recipient reports, and
25 grantor reports for the previous calendar year. Beginning in 2007 and annually
26 thereafter, the department of commerce shall file the reports of the grantors and
27 the compilation and summary with the legislative council. The department shall
28 organize the compilation and summary so that useful comparisons across time
29 periods and across grantors can be made. The department may add other
30 information to the compilation and summary as deemed necessary to evaluate
31 business subsidies.

- 1 2. The compilation and summary must include:
- 2 a. The number of jobs targeted to be created by each recipient receiving a
- 3 business subsidy in that year.
- 4 b. The average compensation of jobs targeted to be created by each recipient
- 5 that year.
- 6 c. The number of jobs achieved in comparison to the jobs targeted for each
- 7 business year by year.
- 8 d. A distribution of business subsidies by type of business and by public
- 9 purpose.
- 10 e. The percentage of business subsidies that did not reach goals within two
- 11 years from the benefit date.
- 12 f. The percentage of business subsidies that did not meet goals and that did not
- 13 receive repayment.
- 14 g. A list of recipients that have failed to meet the terms of a business subsidy
- 15 agreement in the past five years and have not satisfied their repayment
- 16 obligations.
- 17 h. A compilation of granting agencies' criteria policies adopted in the previous
- 18 calendar year.

19 **SECTION 8. Appropriation requests.** A state agency may not request an

20 appropriation for the purpose of providing a business subsidy grant unless the agency includes

21 with the request a statement of the expected benefits associated with the grant.

22 **SECTION 9. EFFECTIVE DATE.** This Act becomes effective January 1, 2006.