

**SENATE BILL NO. 2051**

Introduced by

Senator Every

1 A BILL for an Act to provide for collection and review of information on economic development  
2 incentives provided by the state and political subdivisions and job quality and accountability  
3 standards; and to amend and reenact subdivision www of subsection 1 of section 41-09-02 of  
4 the North Dakota Century Code, relating to providing that an employee of a person receiving  
5 development assistance is a secured party.

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

7 **SECTION 1. Definitions.** As used in sections 1 through 9 of this Act:

- 8 1. "Corporate parent" means any legal entity that possesses, owns, or controls an  
9 interest greater than fifty percent of the recipient.
- 10 2. "Date of assistance" means the date upon which a granting body transmits the first  
11 dollar value of development assistance to a recipient.
- 12 3. "Development assistance" means any form of public assistance, including  
13 on-budget and off-budget assistance; tax expenditures made for the purpose of  
14 stimulating economic development of a given business entity, industry, geographic  
15 jurisdiction, or other subset of the state's economy; bonds, grants, equity  
16 investments, loans, loan guarantees, reduced loan interest, tax increment  
17 financing, matching funds, and tax or fee reductions or exemptions of every kind,  
18 including those provided for purposes of corporate income, individual income,  
19 sales, use, property, fuels, severance, and excise taxes; and any other state and  
20 local tax.
- 21 4. "Full-time job" means a job in which the new employee works for the recipient for  
22 an average of at least thirty-five hours per week.

- 1           5. "Granting body" means the governing authority of any state agency or institution or  
2           political subdivision that provides development assistance. The term does not  
3           include the tax commissioner.
- 4           6. "In effect" refers to any calendar year within the duration of the development  
5           assistance, including the duration of any loan, loan guarantee, tax credit or tax  
6           credit carryforward, property tax reduction or abatement, or tax increment  
7           financing. For one-time forms of development assistance such as grants and land  
8           price subsidies, "in effect" refers to a period of not less than five years from the  
9           date of assistance.
- 10          7. "Part-time job" means a job in which the new employee works for the recipient for  
11          an average of less than thirty-five hours per week.
- 12          8. "Recipient" means a legal entity that receives development assistance from a  
13          granting body in this state.
- 14          9. "Small business" means a business, including its corporate parents and all its  
15          subsidiaries, which employed fewer than an average of twenty full-time equivalent  
16          employees or which had gross receipts of less than one million dollars in all United  
17          States jurisdictions during the calendar year for which disclosure is required.
- 18          10. "Specific project site" means that distinct operational unit of a business to which  
19          any development assistance is applied.
- 20          11. "Taxing entity" means a taxing district as defined in section 57-02-01.
- 21          12. "Temporary job" means a job in which the new employee is hired for a specific  
22          duration of time or season.
- 23          13. "Value of assistance" means the face value of all forms of development assistance.
- 24          14. "Wages" means all payments made to or on behalf of an employee as  
25          remuneration for employment, whether calculated on a time, piece, job, or  
26          incentive basis, including payments made for benefits.

27           **SECTION 2. Disclosure of state tax expenditures.**

- 28           1. Before July first of each even-numbered year, beginning in 2006, the department of  
29           commerce shall provide a detailed tax expenditure budget to an interim committee  
30           designated by the legislative council, derived from state tax filings and other tax

- 1           information for the previous two calendar years. The report must include the  
2           following data:
- 3           a.   The dollar amount of tax expenditures for development assistance made by  
4           the state, in the form of uncollected revenues, for each development  
5           assistance provision of the state tax laws.
- 6           b.   For each of the tax expenditures reported under subdivision a, except as  
7           specified in subdivision c, an itemization of the name of each recipient  
8           taxpayer who claimed the development assistance of any value equal to or  
9           greater than five thousand dollars, and the specific dollar amount credited to  
10           the recipient's tax liability under that development assistance for that year.
- 11           c.   Development assistance claimed by recipients in amounts less than five  
12           thousand dollars need not be itemized as required in subdivision b, but the  
13           department of commerce shall aggregate these claims and report them as a  
14           single unspecified group, with the number of claimants stated.
- 15        2.   The tax commissioner shall provide to the department of commerce any  
16           information necessary to comply with sections 1 through 9 of this Act. The  
17           department of commerce shall protect the confidentiality of any confidential  
18           information provided by the tax commissioner.
- 19        3.   Except as provided in subsection 2, all data produced by the department of  
20           commerce and received by the legislative council in compliance with sections 1  
21           through 9 of this Act are open records under section 44-04-18.

22        **SECTION 3. Disclosure of property tax development assistance.**

- 23        1.   Before April 1, 2006, the department of commerce shall adopt a standardized  
24           disclosure registry for use by all property-taxing entities. The form must include:
- 25           a.   The name of the property owner;  
26           b.   The address and description of the property;  
27           c.   The date upon which any property tax development assistance became  
28           effective;
- 29           d.   The date upon which any property tax development assistance is scheduled  
30           to expire;

- 1           e. The rate or schedule of each property tax development assistance for the  
2           period between the date it took effect and the date it is scheduled to expire;  
3           f. The entity's aggregate foregone revenue for the calendar year as a result of  
4           each item of property tax development assistance;  
5           g. A compilation and summary of the entity's total foregone revenue as a result  
6           of all property tax development assistance, including a summary of foregone  
7           revenue for each kind of development assistance; and  
8           h. The respective shares of the entity's property tax revenues in the reported  
9           year received by each public agency.
- 10          2. Before May first of each year, every taxing entity shall employ this standardized  
11          registry to report to the department of commerce all property tax development  
12          assistance that was in effect during the previous calendar year.
- 13          3. Before June first of each year, beginning in 2006, the department of commerce  
14          shall compile and publish all data in all of the disclosure registries.
- 15          4. If a taxing entity fails to comply with subsection 2, the department of commerce  
16          shall notify the division of economic development and finance of that failure within  
17          ten working days of the filing deadline. Upon receipt of the notice, the division of  
18          economic development and finance shall suspend within three business days any  
19          current development assistance activities under its control in the taxing entity's  
20          jurisdiction and may not complete any current development assistance or provide  
21          any future development assistance in the noncompliant jurisdiction until the taxing  
22          entity is in compliance with subsection 2.
- 23          5. If any state agency fails to enforce subsection 3 or 4, any person who paid income  
24          taxes to this state in the calendar year before the year in dispute may sue to  
25          compel the state to enforce this section. The court shall award the plaintiff who  
26          prevails reasonable attorney's fees and costs in the enforcement action.
- 27          6. All data generated in compliance with this section are open records under section  
28          44-04-18.

29          **SECTION 4. Standardized applications for on-budget development assistance.**

- 1           1. Before April 1, 2006, the department of commerce shall adopt a standardized  
2           application form for on-budget development assistance for use by all granting  
3           bodies. The form must include:
- 4           a. An application tracking number that is specific to both the granting agency  
5           and to each application;
- 6           b. The name, street and mailing addresses, telephone number, and chief officer  
7           of the granting body;
- 8           c. The name, street and mailing addresses, telephone number, and chief officer  
9           of the corporate parent of the applicant;
- 10          d. The name, street and mailing addresses, telephone number, and chief officer  
11          of the applicant at the specific project site for which development assistance is  
12          sought;
- 13          e. The applicant corporation's total number of employees at the specific project  
14          site on the date of the application and the number of full-time, part-time, and  
15          temporary employees;
- 16          f. The total number of employees in this state of the applicant's corporate parent  
17          and all subsidiaries of the corporate parent, as of December thirty-first of the  
18          year preceding the date of application, and the number of full-time, part-time,  
19          and temporary employees;
- 20          g. The kinds and value of development assistance being applied for;
- 21          h. The number of new jobs to be created by the development assistance and the  
22          number of full-time, part-time, and temporary jobs;
- 23          i. The average hourly wage to be paid within one year of hiring to the new  
24          employees, shown by the number of full-time, part-time, and temporary  
25          employees whose hourly wage will not be more than six dollars per hour, and  
26          from six dollars to seven dollars per hour, from seven dollars to eight dollars  
27          per hour, from eight dollars to nine dollars per hour, from nine dollars to ten  
28          dollars per hour, from ten dollars to eleven dollars per hour, from eleven  
29          dollars to twelve dollars per hour, from twelve dollars to thirteen dollars per  
30          hour, from thirteen dollars to fourteen dollars per hour, and more than  
31          fourteen dollars per hour;

- 1           j. For specific project sites located within a metropolitan statistical area, as  
2           defined by the federal office of management and budget, the average hourly  
3           wage paid nonmanagerial employees in the applicant's industry in the state,  
4           as most recently provided by the United States bureau of labor statistics to the  
5           two-digit or three-digit standard industrial classification number specification,  
6           as available;
- 7           k. For specific project sites located outside a metropolitan statistical area, the  
8           average weekly wage paid in the state exclusive of metropolitan statistical  
9           areas, as most recently reported by the United States department of  
10          commerce in its county business patterns reports;
- 11          l. The nature of employer-paid health care coverage to be provided within ninety  
12          days of hiring to the employees filling the new jobs, including any costs to be  
13          borne by the new employees;
- 14          m. A list of all other forms of development assistance the applicant is seeking for  
15          the specific project site and the name or names of the granting body or bodies  
16          from which that development assistance is being sought;
- 17          n. A narrative, if necessary, describing how the applicant's use of the  
18          development assistance may reduce employment at any site in any United  
19          States jurisdiction controlled by the applicant or its corporate parent, including  
20          events such as automation, consolidation, merger, acquisition, product line  
21          movement, business activity movement, or restructuring by either the  
22          applicant or its corporate parent; and
- 23          o. Individual certifications by the chief officers of both the applicant and the  
24          granting body as to the accuracy of the application.
- 25          2. Beginning April 1, 2006, every granting body in the state, jointly with an applicant,  
26          shall fill out the standardized application form as prescribed in subsection 1 each  
27          time an applicant applies for development assistance.

28          **SECTION 5. On-budget development assistance disclosure.**

- 29          1. Before February first of each year, beginning in 2007, every granting body shall  
30          submit to the department of commerce copies of all the standardized application  
31          forms for development assistance, as specified in section 4 of this Act, which it has

- 1           received in the previous calendar year. Upon each form, the granting body shall  
2           designate whether the development assistance is pending, was approved, or was  
3           not approved, and for those applications that were approved, the date of  
4           assistance if the date of assistance occurred in the previous calendar year.
- 5           2. For those applications that were approved but for which the date of assistance did  
6           not occur in the same calendar year, each granting body shall report the relevant  
7           dates of assistance in its next subsequent annual report to the department of  
8           commerce.
- 9           3. For each development assistance application that was approved, and for which the  
10           date of assistance has occurred in the reporting year, each granting agency shall  
11           submit to the department of commerce a progress report, which must include:
- 12           a. The application tracking number;  
13           b. The name, street and mailing addresses, telephone number, and chief officer  
14           of the granting body;  
15           c. The name, street and mailing addresses, telephone number, and chief officer  
16           of the recipient at the specific project site for which the development  
17           assistance was approved;  
18           d. The kind of development assistance and value of assistance that was  
19           approved;  
20           e. The recipient's total level of employment at the specific project site on the  
21           date of the application and the recipient's total level of employment at the  
22           specific project site on the date of the report and the number of full-time,  
23           part-time, and temporary employees and a computation of the gain or loss in  
24           each category;  
25           f. The number of new jobs the recipient stated in its application would be  
26           created by the development assistance and the number of full-time, part-time,  
27           and temporary employees;  
28           g. The total level of employment in this state of the recipient's corporate parent  
29           and all its subsidiaries, as of December thirty-first of the year preceding the  
30           date of application and the total level of employment in the state of the  
31           applicant's corporate parent and all its subsidiaries, as of each December

- 1                   thirty-first through the reporting year, showing full-time, part-time, and  
2                   temporary employees, and a statement of the gain or loss in each category  
3                   from the earliest reported year to the most recent;
- 4                   h. The average hourly wage paid as of December thirty-first of the reporting year  
5                   to employees filling the new jobs at the specific project site, shown for  
6                   categories of full-time, part-time, and temporary employees;
- 7                   i. The nature of employer-paid health care coverage being provided within  
8                   ninety days of hiring to the employees filling the new jobs, including any costs  
9                   being borne by the new employees;
- 10                  j. A narrative, if necessary, describing how the recipient's use of the  
11                  development assistance during the reporting year has reduced employment at  
12                  any site in any United States jurisdiction controlled by the applicant or its  
13                  corporate parent, including events such as automation, consolidation, merger,  
14                  acquisition, product line movement, business activity movement, or  
15                  restructuring by either the recipient or its corporate parent; and
- 16                  k. Signed individual certifications by the chief officers of both the recipient and  
17                  the granting body as to the accuracy of the progress report.
- 18                  4. The granting body and the department of commerce have investigative authority to  
19                  verify the recipient's progress report data, including inspection of the specific  
20                  project site and analysis of tax and payroll records.
- 21                  5. Before June first of each year, beginning in 2007, the department of commerce  
22                  shall compile and publish all data in all of the development assistance progress  
23                  reports.
- 24                  6. All aspects of all development assistance applications, progress reports, and the  
25                  compilation of applications and progress reports are open records under section  
26                  44-04-18.
- 27                  7. If a granting body fails to comply with subsections 1 through 3, or if a recipient fails  
28                  to comply with subdivision k of subsection 3, the division of economic development  
29                  and finance, within ten business days of the filing deadline, shall suspend any  
30                  current development assistance activities under its control in the granting body's  
31                  jurisdiction and may not proceed with any current or future development assistance



1            activities under its control in the granting body's jurisdiction until it receives notice  
2            that the noncompliant granting body or recipient is in compliance with this section.

3            **SECTION 6. Recapture.**

- 4            1. Recipients must achieve their job creation and wage and benefit goals within two  
5            years of the date of assistance and must maintain their wage and benefit goals as  
6            long as the development assistance is in effect. Corporate parents of recipients  
7            must maintain at least ninety percent of their original employment in this state, as  
8            specified in subdivision f of subsection 1 of section 4 of this Act and subdivision g  
9            of subsection 3 of section 5 of this Act.
- 10          2. Granting bodies, within ten business days after the second anniversary of the date  
11          of assistance, shall complete a standardized progress report, in the same form as  
12          prescribed in section 5 of this Act, and the recipient shall sign the report. The  
13          granting body shall file this second anniversary progress report with the  
14          department of commerce with the granting body's next annual filing of progress  
15          reports.
- 16          3. The granting body shall indicate on the second anniversary progress report  
17          whether the recipient has achieved its job creation and wage and benefit goals and  
18          whether the corporate parent has maintained ninety percent of its state  
19          employment.
- 20          4. On all subsequent annual progress reports, the granting body shall indicate  
21          whether the recipient corporation is still in compliance with its job creation and  
22          wage and benefit goals and whether the corporate parent is still in compliance with  
23          its state employment maintenance requirement.
- 24          5. If on any progress report occasion, beginning with the second anniversary  
25          progress report, a granting body finds that a recipient has not achieved its job  
26          creation or wage or benefit goals or the corporate parent has not maintained ninety  
27          percent of its state employment, the granting body, within ten business days, shall  
28          file a finding of development assistance default with the department of commerce,  
29          the tax commissioner, and the recipient.
- 30          6. If a recipient is found in default on development assistance under subsection 5, the  
31          recipient shall reimburse the granting body that portion of the development

1           assistance that accrued to its benefit for the calendar year in which the default  
2           occurred. For one-time forms of development assistance such as grants or  
3           property tax discounts, a defaulting recipient shall reimburse the granting body  
4           one-fifth of the value of assistance. Remittance of the payback by the recipient to  
5           the granting body must be made within sixty calendar days of the delivery of the  
6           default notice to the recipient.

7           7. If a recipient defaults on development assistance under subsection 5 in three  
8           consecutive calendar years, the granting body shall declare the development  
9           assistance void and shall notify the department of commerce, the tax  
10           commissioner, and the recipient. Upon this declaration, the recipient corporation  
11           shall repay to the granting body all remaining value of the development assistance  
12           it has received and has not already repaid. Repayment by the recipient to the  
13           granting body must be made within one hundred eighty calendar days of the  
14           delivery of the notice to the recipient.

15           8. If the development assistance to be repaid was claimed on an income tax return  
16           filed by the recipient under chapter 57-38, the recipient shall file an amended return  
17           and pay any additional tax due attributable to the defaulted development  
18           assistance within sixty calendar days of the delivery of the default notice. The time  
19           limits for audit and assessment under subsection 9 of section 57-38-38 apply to an  
20           amended return filed under this section.

21           9. Notwithstanding the time periods in section 57-38-38, if the recipient fails to file an  
22           amended return under subsection 8, the tax commissioner may assess any  
23           additional tax due attributable to the defaulted development assistance within two  
24           years after the sixtieth calendar day following the tax commissioner's receipt of the  
25           default notice.

26           10. All aspects of all development assistance default notices, recapture remittances,  
27           associated correspondence, and related proceedings are open records under  
28           section 44-04-18.

29           11. If a granting body fails to enforce this section, any person who paid income taxes  
30           to this state or property taxes levied by the governing body in the calendar year  
31           prior to the year in dispute, or any organization representing such taxpayers, may

1           sue to compel enforcement under this section. The court shall award to any  
2           prevailing plaintiff reasonable attorney's fees and costs in the enforcement action.

3           **SECTION 7. Job quality standards.** A granting body may not grant development  
4 assistance to an applicant unless the wages paid to employees at the specific project site are at  
5 least equal to the average wage as specified in subdivisions j and k of subsection 1 of section 4  
6 of this Act. However, for a small business, the average wage must be at least seventy-five  
7 percent of the amounts specified in subdivisions j and k of subsection 1 of section 4 of this Act.  
8 The computation of wages under this section applies only to a recipient that provides the health  
9 care coverage as approved by the granting body in its application.

10          **SECTION 8. Accountability standards.**

- 11          1. A recipient shall fulfill its job creation, wage, health care, and other benefit  
12 requirements for the project site within two years of the date of development  
13 assistance. The recipient shall maintain its wage and benefit goals as long as the  
14 development assistance is in effect, or five years, whichever is longer.
- 15          2. The corporate parent of a recipient shall maintain at least ninety percent of its  
16 employment in this state as long as the development assistance is in effect, or five  
17 years, whichever is longer.
- 18          3. If the requirements under subsections 1 and 2 are not fulfilled, the granting body  
19 shall recapture the development assistance from the recipient as follows:
- 20           a. Upon a failure by the recipient to create the required number of jobs or to pay  
21 the required wages or benefits, the amount recaptured must be based on the  
22 pro rata amount by which the unfulfilled jobs, wages, or benefits bears to the  
23 total amount of the development assistance.
- 24           b. Upon a failure of the corporate parent to maintain ninety percent of its  
25 employment in this state, the rate of recapture must equal twice the  
26 percentage by which the employment is less than ninety percent.
- 27          4. The granting body shall provide notice to the recipient of its intent to recapture the  
28 development assistance and state the reasons and amount to be recaptured. The  
29 recipient shall remit to the granting body the amount within sixty calendar days of  
30 the date of the notice.

1           5. If a recipient defaults on any development assistance in three consecutive calendar  
2           years, the granting body shall declare the development assistance void and shall  
3           notify the department of commerce and the recipient. The recipient shall pay to the  
4           granting body any remaining value of the development assistance that it has not  
5           previously repaid within one hundred eighty calendar days of the date of the notice  
6           of the default.

7           **SECTION 9. Collective bargaining agreement.** Sections 1 through 9 of this Act do  
8 not require or authorize a recipient to reduce wages established by a collective bargaining  
9 agreement or a state or federal prevailing wage law.

10           **SECTION 10. AMENDMENT.** Subdivision www of subsection 1 of section 41-09-02 of  
11 the North Dakota Century Code is amended and reenacted as follows:

12           www. "Secured party" means:

- 13           (1) A person in whose favor a security interest is created or provided for  
14           under a security agreement, regardless of whether any obligation to be  
15           secured is outstanding;
- 16           (2) A person that holds an agricultural lien;
- 17           (3) A consignor;
- 18           (4) A person to which accounts, chattel paper, payment intangibles, or  
19           promissory notes have been sold;
- 20           (5) A trustee, indenture trustee, agent, collateral agent, or other  
21           representative in whose favor a security interest or agricultural lien is  
22           created or provided for; ~~or~~
- 23           (6) A person that holds a security interest arising under section 41-02-46,  
24           section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of  
25           section 41-02.1-56, section 41-04-22, or section 41-05-18; or
- 26           (7) A person that has a claim for wages against a person receiving  
27           development assistance.