

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2390

Introduced by

Senators Schneider, Grindberg

Representatives Glassheim, Thoreson

1 A BILL for an Act to create and enact chapter 40-64 of the North Dakota Century Code, relating
2 to the establishment and development of certified technology parks.

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

4 **SECTION 1.** Chapter 40-64 of the North Dakota Century Code is created and enacted
5 as follows:

6 **40-64-01. Definitions.** As used in this chapter:

- 7 1. "Base taxable value" means the taxable value of all the taxable property located in
8 a certified technology park as finally determined for the assessment date
9 immediately preceding the effective date of the allocation area designation
10 resolution adopted under section 40-64-07.
- 11 2. "Business incubator" means property that:
12 a. Is located in a certified technology park;
13 b. Is subject to an agreement under section 40-64-04; and
14 c. Is developed for the primary purpose of attracting one or more owners or
15 tenants who will engage in high technology activities.
- 16 3. "Gross retail base period amount" means the aggregate amount of state sales,
17 use, and gross receipts taxes remitted by the businesses operating in the territory
18 comprising a certified technology park during the full state fiscal year that precedes
19 the date on which the certified technology park was designated under section
20 40-64-03.
- 21 4. "Gross retail incremental amount" means the remainder of:
22 a. The aggregate amount of state sales, use, and gross receipts taxes that are
23 remitted by the businesses operating in the territory comprising a certified
24 technology park during a state fiscal year; minus

b. The gross retail base period amount.

5. "High technology activity" includes the following:

a. Advanced computing, which is any technology used in the design and development of any of the following:

(1) Computer hardware and software.

(2) Data communications.

(3) Information technologies.

b. Advanced materials, which are materials with engineered properties created through the development of specialized process and synthesis technology.

c. Biotechnology, which is any technology that uses living organisms, cells, macromolecules, micro-organisms, or substances from living organisms to make or modify a product, improve plants or animals, or develop micro-organisms for useful purposes. Biotechnology does not include human cloning or stem cell research with embryonic tissue.

d. Electronic device technology, which is any technology that involves:

(1) Microelectronics, semiconductors, or electronic equipment;

(2) Instrumentation, radio frequency, microwave, and millimeter electronics;

(3) Optical and optic-electrical devices; or

(4) Data and digital communications and imaging devices.

e. Engineering or laboratory testing related to the development of a product.

f. Technology that assists in the assessment or prevention of threats or damage to human health or the environment, including environmental cleanup technology, pollution prevention technology, or development of alternative energy sources.

g. Medical device technology, which is any technology that involves medical equipment or products.

h. Product research and development.

i. Advanced vehicles technology, which is any technology that involves:

(1) Electric vehicles, hybrid vehicles, or alternative fuel vehicles; or

(2) Components used in the construction of electric vehicles, hybrid vehicles, or alternative fuel vehicles.

6. "Income tax base period amount" means the aggregate amount of the North Dakota state income taxes paid by employees employed in the territory comprising a certified technology park with respect to wages and salaries earned for work in the certified technology park for the taxable year that precedes the date on which the certified technology park was designated under section 40-64-03.

7. "Income tax incremental amount" means the remainder of:

a. The total amount of North Dakota income taxes paid by employees employed in the territory comprising the certified technology park with respect to wages and salaries earned for work in the territory comprising the certified technology park for a particular state fiscal year; minus

b. The income tax base period amount.

8. "Public facilities" includes:

a. A street; road; bridge; storm water or sanitary sewer; sewage treatment facility; facility designed to reduce, eliminate, or prevent the spread of identified soil or ground water contamination; drainage system; retention basin; pretreatment facility; waterway; waterline; water storage facility; rail line; electric, gas, or any other type of utility line or pipeline, excluding telephone or other communications lines; or other similar or related structure or improvement and necessary easements for the structure or improvement. Except for rail lines, utility lines, or pipelines, the structures or improvements described in this subdivision must be either owned or used by a public agency; functionally connected to similar or supporting facilities owned or used by a public agency; or designed and dedicated to use by, for the benefit of, or for the protection of the health, welfare, or safety of the public generally, whether or not used by a single business entity. Any road, street, or bridge must be continuously open to public access. A public facility must be located on public property or in a public utility or transportation easement or right of way.

b. Land and other assets that are or may become eligible for depreciation for federal income tax purposes for a business incubator located in a certified technology park.

c. Land and other assets that, if privately owned, would be eligible for depreciation for federal income tax purposes for laboratory facilities, research and development facilities, conference facilities, testing facilities, training facilities, or quality control facilities:

(1) That are or that support property whose primary purpose and use is or will be for a high technology activity;

(2) That are owned by a public entity; and

(3) That are located within a certified technology park.

d. Land and other assets, including laboratory, research and development, conference, testing, training, or quality control facilities:

(1) That are or that support property the primary purpose and use of which is or will be for a high technology activity; and

(2) That are located within a certified technology park.

40-64-02. Designation of area as certified technology park. The governing body of a political subdivision may apply to the department of commerce for designation of all or part of the territory within the political subdivision as a certified technology park and to enter into an agreement governing the terms and conditions of the designation. The application must be in a form specified by the department of commerce and must include information the department determines necessary to make the determinations required under this chapter.

40-64-03. Designation - Criteria.

1. After receipt of an application under section 40-64-02, and subject to subsection 2, the department of commerce may designate a certified technology park if the department determines that the application demonstrates a firm commitment from at least one business engaged in a high technology activity creating a significant number of jobs and satisfies one or more of the following additional criteria:

a. A demonstration of significant support from an institution of higher education, as evidenced by any of the following criteria:

- (1) Access to laboratory and other facilities owned by or under the control of the institution.
 - (2) Donations of services.
 - (3) Financial commitments.
 - (4) Access to faculty, staff, and students.
 - (5) Opportunities for adjunct faculty and other types of staff.
 - (6) Other criteria considered as appropriate by the department of commerce in consultation with the North Dakota university system and the respective institution of higher education.
- b. A demonstration of a significant commitment by the institution of higher education to the commercialization of research produced at the certified technology park.
- c. A demonstration that the proposed certified technology park will be developed to take advantage of the unique characteristics and specialties offered by the public and private resources available in the area in which the proposed certified technology park will be located.
- d. The existence of or proposed development of an economic development organization within the political subdivision which exhibits the following types of resources and organization:
- (1) Significant financial and other types of support from the public or private resources in the area in which the proposed certified technology park will be located.
 - (2) A business plan exhibiting the economic utilization and availability of resources and a likelihood of successful development of technologies and research into viable business enterprises.
 - (3) A commitment to the employment of a qualified full-time manager to supervise the operation of the economic development organization.
- e. The existence of a business plan for the proposed certified technology park that identifies its objectives in a clearly focused and measurable fashion and that addresses all of the following:
- (1) A commitment to new business formation.

(2) The clustering of businesses, technology, and research.

(3) The opportunity for and costs of development of properties under common ownership or control.

(4) The availability of and method proposed for development of infrastructure and other improvements, including telecommunications technology, necessary for the development of the proposed certified technology park.

(5) Assumptions of costs and revenues related to the development of the proposed certified technology park.

f. A demonstrable and satisfactory assurance that the proposed certified technology park can be developed to principally contain property that is primarily used for, or will be primarily used for, a high technology activity.

2. The department of commerce may not approve an application that would result in a reduction or cessation of substantial operations of a business in another location in this state in order to relocate that business within the certified technology park.

3. A certified technology park designated under this section must be recertified every four years. The department shall develop procedures and the criteria to be used in the review required by this subsection. A certified technology park shall furnish to the department all of the following information to be used in the course of the review:

a. Total employment and payroll levels for businesses operating within the certified technology park.

b. The nature and extent of any technology transfer activity occurring within the certified technology park.

c. The nature and extent of any nontechnology businesses operating within the certified technology park.

d. The use and outcomes of any state money made available to the certified technology park.

e. An analysis of the certified technology park's overall contributions to the technology-based economy in this state.

4. The department of commerce shall maintain the confidentiality of any information that is:

a. Submitted as part of the review process under subsection 3; and

b. Marked as confidential by the certified technology park.

40-64-04. Agreements - Governing certified technology parks. The governing body of the political subdivision that established the certified technology park may enter an agreement with the department of commerce establishing the terms and conditions governing a certified technology park designated under this chapter. Upon designation of the certified technology park under the terms of the agreement, the subsequent failure of any party to comply with the terms of the agreement may result in the termination or rescission of the designation of the area as a certified technology park. The agreement must include all of the following:

1. A description of the area to be included within the certified technology park.

2. Any covenants and restrictions upon all or part of the properties contained within the certified technology park and terms of enforcement of any covenants or restrictions.

3. The financial commitments of any party to the agreement and of any owner or developer of property within the certified technology park.

4. A letter of support from the institution of higher education indicating support of the operations and activities within the certified technology park, but only to the extent that such operations and activities do not conflict with commitments and obligations of the institution of higher education.

5. The terms of enforcement of the agreement, which may include the definition of events of default, cure periods, legal and equitable remedies and rights, and penalties and damages, actual or liquidated, upon the occurrence of an event of default.

6. The public facilities to be developed for the certified technology park and the costs of those public facilities, as approved by the department of commerce.

40-64-05. Authority - Sale price or rental value of public facilities below market value.

1 1. If the department of commerce determines that a sale price or rental value at
2 below market rate will assist in increasing employment or private investment in a
3 certified technology park, the governing body of the political subdivision may
4 determine the sale price or rental value for public facilities owned in the certified
5 technology park at below market rate.

6 2. If public facilities developed under an agreement entered into under this chapter
7 are conveyed or leased at less than fair market value or at below market rates, the
8 terms of the conveyance or lease must include legal and equitable remedies and
9 rights to assure that the public facilities are used for high technology activities.
10 Legal and equitable remedies and rights may include penalties and actual or
11 liquidated damages.

12 **40-64-06. Marketing responsibilities.** The department of commerce shall market the
13 certified technology park. The department may contract with any party for these marketing
14 services.

15 **40-64-07. Designation as allocation area - Remonstrance.**

16 1. The governing body of the political subdivision that established the certified
17 technology park may adopt a resolution designating the certified technology park
18 as an allocation area for purposes of the allocation and distribution of property
19 taxes.

20 2. After adoption of the resolution under subsection 1, the governing body shall:

21 a. Publish notice of the adoption and substance of the resolution once each
22 week for two consecutive weeks in the official newspaper of the political
23 subdivision.; and

24 b. File the following information with each taxing district that has authority to levy
25 property taxes in the geographic area where the certified technology park is
26 located:

27 (1) A copy of the notice required by subdivision a.

28 (2) A statement disclosing the impact of the certified technology park,
29 including:

- 1 (a) The estimated economic benefits and costs incurred by the
2 certified technology park, as measured by increased employment
3 and anticipated growth of real property values; and
4 (b) The anticipated impact on tax revenues of each taxing unit.
- 5 3. The notice must state the general boundaries of the certified technology park and
6 must state that written remonstrances may be filed with the governing body until
7 the time designated for the hearing. The notice must also name the place, date,
8 and time when the governing body will receive and hear remonstrances and
9 objections from persons interested in or affected by the proceedings pertaining to
10 the proposed allocation area and will determine the public utility and benefit of the
11 proposed allocation area. The governing body shall file the information required by
12 subsection 2 with the officers of the taxing district who are authorized to fix
13 budgets, tax rates, and tax levies at least ten days before the date of the public
14 hearing. All persons affected in any manner by the hearing, including all taxpayers
15 within the taxing district, shall be considered notified of the pendency of the
16 hearing and of subsequent acts, hearings, adjournments, and orders of the
17 governing body affecting the allocation area if the governing body gives the notice
18 required by this section.
- 19 4. At the hearing, which may be recessed and reconvened periodically, the governing
20 body shall hear all persons interested in the proceedings and shall consider all
21 written remonstrances and objections that have been filed. After considering the
22 evidence presented, the governing body shall take final action determining the
23 public utility and benefit of the proposed allocation area confirming, modifying and
24 confirming, or rescinding the resolution. The final action taken by the governing
25 body must be recorded and is final.
- 26 **40-64-08. Allocation and distribution of property taxes.**
- 27 1. An allocation provision adopted under section 40-64-07 must:
28 a. Apply to the entire certified technology park; and
29 b. Require that any property tax on taxable property subsequently levied by or
30 for the benefit of any public body entitled to a distribution of property taxes in

1 the certified technology park be allocated and distributed as provided in
2 subsections 2 and 3.

3 2. Except as otherwise provided in this section, the proceeds of the taxes attributable
4 to the lesser of:

5 a. The taxable value of the taxable property for the assessment date with
6 respect to which the allocation and distribution is made; or

7 b. The base taxable value.

8 3. Except as provided in subsection 4, all the property tax proceeds that exceed
9 those described in subsection 2 shall be allocated to the governing body for the
10 certified technology park and, when collected, paid into the certified technology
11 park fund established under section 40-64-12.

12 4. Before July fifteenth of each year, the governing body shall:

13 a. Determine the amount, if any, by which the property tax proceeds to be
14 deposited in the certified technology park fund will exceed the amount
15 necessary for the purposes described in section 40-64-12.

16 b. Provide a written notice to the county auditor and the officers who are
17 authorized to fix budgets, tax rates, and tax levies for each of the other taxing
18 districts that is wholly or partly located within the allocation area. The notice
19 must:

20 (1) State the amount, if any, of excess tax proceeds that the governing
21 body has determined may be allocated to the respective taxing districts
22 in the manner prescribed in subdivision c; or

23 (2) State that the governing body has determined that there are no excess
24 tax proceeds that may be allocated to the respective taxing units.

25 c. The county auditor shall allocate to the respective taxing units the amount, if
26 any, of excess tax proceeds determined by the governing body. The
27 governing body may not authorize an allocation of tax proceeds under this
28 subsection if to do so would endanger the interests of the holder of bonds
29 described in section 40-64-14.

5. Notwithstanding any other law, each assessor shall, upon request of the governing body, reassess the taxable property situated upon or in, or added to, the certified technology park effective on the next assessment date after the request.

6. Notwithstanding any other law, the taxable value of all taxable property in the certified technology park, for purposes of formulation of the budget, tax rate, and tax levy for each political subdivision in which the property is located is the lesser of:

a. The taxable valuation of the taxable property valued without regard to this section; or

b. The base taxable valuation.

40-64-09. Rules and forms - Adjustment of base assessed value.

1. The tax commissioner shall make the rules and prescribe the forms and procedures that the tax commissioner considers appropriate for the implementation of an allocation area under this chapter.

2. After each reassessment of property, the tax commissioner shall adjust the base taxable value one time to neutralize any effect of the reassessment on the property tax proceeds allocated to the certified technology park fund under section 40-64-08.

40-64-10. Notification to tax commissioner - Computation of gross retail base revenue.

1. After entering an agreement under section 40-64-04, the governing body shall send to the tax commissioner:

a. A certified copy of the designation of the certified technology park;

b. A certified copy of the agreement entered under section 40-64-04; and

c. A complete list of the employers in the certified technology park and the street names and the range of street numbers of each street in the certified technology park. The governing body shall update the list before July first of each year.

2. Not later than sixty days after receiving a copy of the designation of the certified technology park, the tax commissioner shall determine the gross retail period amount and the income tax base period amount.

40-64-11. Annual computation - Income tax incremental amount - Gross retail

incremental amount. Before the first business day in October of each year, the tax commissioner shall calculate the income tax incremental amount and the gross retail incremental amount for the preceding state fiscal year for each certified technology park designated under this chapter.

40-64-12. Incremental tax financing fund - Deposits - Distributions.

1. The state treasurer shall establish an incremental tax financing fund for each certified technology park designated under this chapter. The fund must be administered by the state treasurer. Money in the fund does not revert to the state general fund at the end of a state fiscal year.
2. Subject to subsection 3, the following amounts must be deposited during each state fiscal year in the incremental tax financing fund established for a certified technology park under subsection 1:

 - a. The aggregate amount of state sales and use taxes that are remitted by businesses operating in the certified technology park, until the amount of state sales and use taxes deposited equals the gross retail incremental amount for the certified technology park.
 - b. The aggregate amount of state income taxes paid by employees employed in the certified technology park with respect to wages earned for work in the certified technology park, until the amount deposited equals the income tax incremental amount.
3. Not more than a total of five million dollars may be deposited in a particular incremental tax financing fund for a certified technology park over the life of the certified technology park.
4. Before the twentieth day of each month, all amounts held in the incremental tax financing fund established for a certified technology park must be distributed to the governing body of the political subdivision for deposit in the certified technology park fund established under section 40-64-13.

40-64-13. Certified technology park fund - Deposit of funds - Uses.

- 1 1. Each governing body of a political subdivision that establishes a certified
2 technology park under this chapter shall establish a certified technology park fund
3 to receive:
 - 4 a. Property tax proceeds allocated under section 40-64-08; and
5 b. Money distributed to the governing body of the political subdivision under
6 section 40-64-12.
- 7 2. Money deposited in the certified technology park fund may be used by the
8 governing body only for one or more of the following purposes:
 - 9 a. Acquisition, improvement, preparation, demolition, disposal, construction,
10 reconstruction, remediation, rehabilitation, restoration, preservation,
11 maintenance, repair, furnishing, and equipping of public facilities.
 - 12 b. Operation of public facilities.
 - 13 c. Payment of the principal of and interest on any obligations that are payable
14 solely or in part from money deposited in the fund and that are incurred by the
15 governing body for the purpose of financing or refinancing the development of
16 public facilities in the certified technology park.
 - 17 d. Establishment, augmentation, or restoration of the debt service reserve for
18 obligations described in subdivision c.
 - 19 e. Payment of the principal of and interest on bonds issued by the governing
20 body to pay for public facilities in or serving the certified technology park.
 - 21 f. Payment of premiums on the redemption before maturity of bonds described
22 in subdivision c.
 - 23 g. Payment of amounts due under leases payable from money deposited in the
24 fund.
 - 25 h. Reimbursement to the political subdivision for expenditures made by it for
26 public facilities in or serving the certified technology park.
 - 27 i. Payment of expenses incurred by the political subdivision for public facilities
28 that are in the certified technology park or serving the certified technology
29 park.
- 30 3. The certified technology park fund may not be used for operating expenses of the
31 governing body of the political subdivision.

40-64-14. Bonds.

1. A governing body of a political subdivision may issue bonds for the purpose of providing public facilities under this chapter.
2. The bonds are payable solely from:
 - a. Property tax proceeds allocated to the certified technology park fund;
 - b. Money distributed to the governing body under section 40-64-12;
 - c. Other funds available to the governing body; or
 - d. A combination of the methods in this subsection.
3. The bonds must be authorized by a resolution of the governing body.
4. The terms and form of the bonds must be set out either in the resolution or in a form of trust indenture approved by the resolution.
5. The bonds must mature within fifty years.
6. The governing body shall sell the bonds at public or private sale upon such terms as determined by the governing body.
7. All money received from any bonds issued under this chapter must be applied solely to the payment of the cost of providing public facilities within a certified technology park or the cost of refunding or refinancing outstanding bonds for which the bonds are issued. The cost may include:
 - a. Planning and development of the public facilities and all related buildings, facilities, structures, and improvements;
 - b. Acquisition of a site and clearing and preparing the site for construction;
 - c. Equipment, facilities, structures, and improvements that are necessary or desirable to make the public facilities suitable for use and operation;
 - d. Architectural, engineering, consultant, and attorney's fees;
 - e. Incidental expenses in connection with the issuance and sale of bonds;
 - f. Reserves for principal and interest;
 - g. Interest during construction and for a period thereafter determined by the governing body, but not to exceed five years;
 - h. Financial advisory fees;
 - i. Insurance during construction;

- 1 j. Municipal bond insurance, debt service reserve insurance, letters of credit, or
2 other credit enhancement; and
3 k. In the case of refunding or refinancing, payment of the principal of,
4 redemption premiums, if any, for, and interest on, the bonds being refunded
5 or refinanced.