



North Dakota Legislative Council

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ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING

Pursuant to North Dakota Century Code Section 54-35-26, enacted in 2015, a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee once in each 6-year review cycle. The study is aimed at ensuring economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the new jobs credit from income tax withholding and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, the outcome of past reviews of the incentive, and the data and testimony required to conduct an effective analysis of the incentive.

EXPLANATION OF THE NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING

Chapter 52-02.1 allows an employer engaged in a primary sector business to enter an agreement with Job Service North Dakota for the establishment of training and education programs directed at new jobs within the employer's business. The agreement must specify the date the program will commence; identify program costs; and provide a guarantee by the employer for payment of program costs and an assurance any deferral of payment will not exceed 10 years from the date the program commences. The agreement also must provide an assurance that every employee participating in the program will be paid at least \$10 per hour, plus benefits, by the end of the 1st year of employment and for the life of the loan; list the maximum amount of the credit from withholding or tuition and fee payments allowed for the project; and specify on-the-job training costs for employees may not exceed 50 percent of the annual gross wages and salaries for the new jobs in the 1st full year following the date the project commences. If program costs will require financing, the loan or grant must be secured and payable from a sufficient portion of future receipts of payments authorized by the agreement. Job Service North Dakota may not enter an agreement until an employer requiring financing has qualified for financing.

Once the agreement is executed, Job Service North Dakota will notify the Tax Commissioner who shall then credit the income tax withholding on wages paid by the employer to each new employee participating in the program. An amount equivalent to the credited amount must be transmitted to the State Treasurer for allocation to a special fund from which payments will be made to the lender that provided the program loan or to the employer if the program costs were self-funded. Once the program costs have been satisfied, the employer's credits must cease. A new employee participating in a program will receive full credit for the amount withheld while the cost of the program is being reimbursed.

An employer that is not a primary sector business, but contracts to provide employees to a primary sector business also may qualify for program services developed and coordinated by Job Service North Dakota if the employer and the primary sector business are parties to the same Job Service North Dakota agreement and the Job Service North Dakota agreement designates the employer as the recipient of the program services.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING

Provisions of the new jobs credit from income tax withholding were first enacted through the passage of House Bill No. 1518 (1993). The provisions of the credit, as originally enacted, were substantially similar to the provisions found in current law with the exception of the refund option for employers whose training programs are self-funded. Upon a review of the legislative history pertaining to the bill, the perceived goal of the Legislative Assembly in creating this credit was to encourage community economic development by incentivizing businesses to locate to or expand within North Dakota by providing government-assisted new jobs training. The credit was viewed as a way to reward employers for training workers for new, skilled, and higher paying jobs and as a way for North Dakota to compete with other states for new businesses. It was estimated the provisions of House Bill No. 1518 would result in a \$500,000 reduction in general fund revenues during the 1993-95 biennium. This estimate was arrived at by assuming lost tax revenue from 750 jobs with an average hourly wage of \$10 per hour and 750 jobs with an average hourly wage of \$8 per hour.

Senate Bill No. 2096 (1999) added the reimbursement option for employers that self-financed training costs. House Bill No. 1044 (2017) created a uniform definition of "primary sector business" in Title 1, which expanded the definition previously referenced in Section 52-02.1-01 to include a definition of "new wealth." Senate Bill 2325 (2019) amended Section 52-02.1-02 to allow an employer that is not a primary sector employer to qualify for program services if the employer contracts to provide employees to a primary sector business and meets other requirements.

PAST REVIEW OF THE NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING

The new jobs credit from income tax withholding was reviewed by the 2018-19 interim Taxation Committee. During the course of its study, the committee received information from a representative of the Tax Department indicating \$1,470,239 in withholding collections was allocated to the new jobs credit program in fiscal year 2016 and \$1,574,425 was allocated in fiscal year 2017. The committee received an evaluation of the credit from a representative of the Bank of North Dakota, which indicated the incentive created almost 16,000 full-time jobs from 1999 through 2013 and 630 new jobs from 2014 to 2015. Wages for new employees grew an average of 87 percent over 10 years and the incentive increased the state's population by 26,000. The evaluation noted the incentive's use over a 20-year period beginning in 1996 and ending in 2016 cost the state \$7.6 billion in direct and indirect costs but generated \$8.6 billion in revenues. State expenditures related to the program primarily related to the costs needed to maintain an increased population.

The committee also received testimony in favor of retaining the credit from representatives of the Economic Development Association of North Dakota. According to the testimony, 350 companies have used the new jobs credit program since 2005. Nearly 100 agreements were in place under the new jobs credit program and 4,332 of the 5,800 new jobs created as a result of these agreements have been filled. The committee did not receive any testimony in opposition to retaining the credit. The committee did not recommend any legislation to eliminate or modify the credit.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive; and
5. Benefits that flow to out-of-state concerns resulting from the incentive.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department;
3. The North Dakota Economic Development Foundation; and
4. Job Service North Dakota.