

Sixty-fifth
Legislative Assembly
of North Dakota

4-26 1:00 PM

Introduced by

1 A Bill for an Act to create and enact a new subdivision to subsection 7 of section 57-38-30.3 and
2 chapter 57-38.7 of the North Dakota Century Code, relating to the angel investor tax credit; to
3 provide an appropriation; and to provide an effective date.

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

5 **SECTION 1.** A new subdivision to subsection 7 of section 57-38-30.3 North Dakota
6 Century Code is created and enacted as follows:

7 Angel investor tax credit under section 57-38.7-05.

8 **SECTION 2.** Chapter 57-38.7 of the North Dakota Century Code is created and enacted as
9 follows:

10 **57-38.7-01. Definitions.** For purposes of this chapter:

- 1 1. "Commissioner" means the tax commissioner.
- 12 2. "Director" means the director of the department of commerce division of economic
13 development and finance.
- 14 3. "Family" means a family member within the meaning of section 267(c)(4) of the Internal
15 Revenue Code.

16 4. "Intern" means

17 ~~a. A student of an accredited institution of higher education, or a former student who~~
18 ~~has graduated in the past six months from an accredited institution of higher~~
19 ~~education, who is employed by a qualified small business in a nonpermanent~~
20 ~~position for a duration of nine months or less that provides training and experience~~
21 ~~in the primary business activity of the business.~~

22 4. "Liquidation event" means a conversion of qualified investment for cash, cash and
23 other consideration, or any other form of equity or debt interest.

24 ~~MN (j) "Qualified greater Minnesota business" means a qualified small business that is also~~
25 ~~certified by the commissioner as a qualified greater Minnesota business under~~
26 ~~subdivision 2, paragraph (h).~~

27 ~~MN (k) "Minority group member" means a United States citizen who is Asian, Pacific~~

1 ~~Islander, Black, Hispanic, or Native American.~~

2 ~~MN (l) "Minority-owned business" means a business for which one or more minority group~~
3 ~~members:~~

4 ~~(1) own at least 50 percent of the business, or, in the case of a publicly owned~~
5 ~~business, own at least 51 percent of the stock; and~~

6 ~~(2) manage the business and control the daily business operations.~~

7 ~~MN (m) "Women" means persons of the female gender.~~

8 ~~MN (n) "Women-owned business" means a business for which one or more women:~~

9 ~~(1) own at least 50 percent of the business, or, in the case of a publicly owned~~
10 ~~business, own at least 51 percent of the stock; and~~

11 ~~(2) manage the business and control the daily business operations.~~

12 5. "Officer" means a person elected or appointed by the board of directors to manage the
13 daily operations of the qualified small business.

14 6. "Passthrough entity" has the same meaning as used in subsection 8 of section 57-38-
15 01.

16 7. "Principal" means a person having authority to act on behalf of the qualified small
17 business.

18 8. "Qualified fund" means a pooled angel investment network fund that has been certified
19 by the director under section 57-38.7-04.

20 9. "Qualified investment" means a cash investment in a qualified small business of a
21 minimum of:

22 a. ~~Ten thousand dollars~~ in a calendar year by a qualified investor or ~~thirty thousand~~
23 ~~dollars~~ in a calendar year by a qualified fund.

24 b. ~~A qualified investment must be made in exchange for common stock, a partnership~~
25 ~~or membership interest, preferred stock, or debt with mandatory conversion to~~
26 ~~equity, or an equivalent ownership interest as determined by the director.~~

27 10. "Qualified investor" means an investor who has been certified by the director under
28 section 57-38.7-03.

29 11. "Qualified small business" means a business that has been certified by the director
30 under section 57-38.7-02.

31 12. "Payroll in this state" means the total wages reported to North Dakota for
32 unemployment compensation purposes.

33 **57-38.7-02. Certification of qualified small businesses.**

4 1. A business may apply to the director for certification as a qualified small business for a

1 calendar year. The application must be in the form and manner prescribed by the
2 director, ~~accompanied by an application fee of \$150. Application fees are deposited in~~
3 ~~the small business investment tax credit administration account in the special revenue~~
4 ~~fund. The application for certification for 2010 must be made available on the~~
5 ~~department's Web site by August 1, 2010. Applications for subsequent years'~~
6 ~~certification must be made available on the department's Web site by November 1 of~~
7 ~~the preceding year.~~

8 2. Within thirty days of receiving an application for certification under this section, the
9 director shall either certify the business as satisfying the conditions required of a
10 qualified small business, request additional information from the business, or reject the
11 application for certification. If the director requests additional information from the
12 business, the director shall either certify the business or reject the application within
13 thirty days of receiving the additional information. If the director neither certifies the
14 business nor rejects the application within thirty days of receiving the original
15 application or within thirty days of receiving the additional information requested,
16 whichever is later, the application is deemed rejected, ~~and the commissioner must~~
17 ~~refund the \$150 application fee.~~ A business that is rejected for certification may
18 reapply.

19 3. To receive certification as a qualified small business, a business must:

- 20 a. Have its headquarters in North Dakota;
- 21 b. Have at least fifty-one percent of the business's employees employed in North
22 Dakota, and fifty-one percent of the business's total payroll is paid or incurred in
23 this state;

24 c. Be engaged in, or is committed to engage in, innovation in Minnesota North
25 Dakota in one of the following as its primary business activity:

26 (1) using proprietary technology to add value to a product, process, or service in
27 a qualified high-technology field;

28 (2) researching or developing a proprietary product, process, or service in a
29 qualified high-technology field;

30 (3) researching or developing a proprietary product, process, or service in the
31 fields of agriculture, tourism, forestry, mining, manufacturing, or
32 transportation; or

33 (4) researching, developing, or producing a new proprietary technology for use
4 in the fields of agriculture, tourism, forestry, mining, manufacturing, or

1 transportation;

2 [Primary Sector business definition for development 10-30.5-01]

3 d. Other than the activities specifically listed in subdivision c, ~~Not be~~

4 engaged in real estate development, insurance, banking, lending, lobbying,
5 political consulting, information technology consulting, wholesale or retail trade,
6 leisure, hospitality, transportation, construction, ~~ethanol production from corn~~
7 ~~agricultural processing facility defined in chapter 57-38.6~~, or professional services
8 provided by attorneys, accountants, ~~architects~~, business consultants, ~~engineers~~,
9 ~~physicians~~, or health care consultants;

10 e. Have fewer than 25 employees;

11 f. ~~Pay its employees annual wages of at least 175 percent of the federal poverty~~
12 ~~guideline for the year for a family of four and must pay its interns annual wages of~~
13 ~~at least 175 percent of the federal minimum wage used for federally covered~~
14 ~~employers, except that this requirement must be reduced proportionately for~~
15 ~~employees and interns who work less than full time, and does not apply to an~~
16 ~~executive, officer, or member of the board of the business, or to any employee who~~
17 ~~owns, controls, or holds power to vote more than 20 percent of the outstanding~~
18 ~~securities of the business;~~

19 f. ~~Not have been in operation for more than ten years, or in operation for more than~~
20 ~~20 years if the business is engaged in the research, development, or production of~~
21 ~~medical devices or pharmaceuticals for which United States Food and Drug~~
22 ~~Administration approval is required for use in the treatment or diagnosis of a~~
23 ~~disease or condition;~~

24 g. Not have received private equity investments of more than \$4,000,000;

25 h. ~~Not be an entity disqualified under section 80A.50, paragraph (b),~~
26 ~~clause (3) Be in compliance with the securities laws of this state;~~

27 i. Not have issued securities that are traded on a public exchange; and

28 j. Not be certified as a qualified business under chapters 57-38.5 or 57-38.6.

29 4. The employees of all members of the unitary business, as defined in North Dakota
30 Administrative Code article 81-03, must be included when applying the limit under
31 subdivision e of subsection 3 of this section.

32 5. For a qualified investment in a business to be eligible for tax credits:

33 a. The business must have applied for and received certification for the calendar year
4 in which the investment was made prior to the date on which the qualified

- 1 investment was made;
- 2 b. The business must not have issued securities that are traded on a public
3 exchange;
- 4 c. The business must not issue securities that are traded on a public exchange within
5 180 days after the date on which the qualified investment was made; and
- 6 d. The business must not have a liquidation event within 180 days after the date on
7 which the qualified investment was made.
- 8 6. The director shall maintain a list of qualified small businesses certified under this
9 subdivision for the calendar year and make the list accessible to the public on the
10 director's Web site.
- 11 7. For purposes of this subdivision, the following terms have the meanings given:
- 12 a. "qualified high-technology field" includes aerospace, agricultural processing,
13 renewable energy, energy efficiency and conservation, environmental engineering,
14 food technology, cellulosic ethanol, information technology, materials science
15 technology, nanotechnology, telecommunications, biotechnology, medical device
16 products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science,
17 and similar fields;
- 18 b. "proprietary technology" means the technical innovations that are unique and
19 legally owned or licensed by a business and includes, without limitation, those
20 innovations that are patented, patent pending, a subject of trade secrets, or
21 copyrighted; and
- 22 ~~8. To receive certification as a qualified greater Minnesota business, a business must~~
23 ~~satisfy all of the requirements of paragraph (c) and must satisfy the following~~
24 ~~conditions:~~
- 25 ~~a. the business has its headquarters in greater Minnesota; and~~
- 26 ~~b. at least 51 percent of the business's employees are employed in greater~~
27 ~~Minnesota, and 51 percent of the business's total payroll is paid or incurred in~~
28 ~~greater Minnesota.~~

29 **57-38.7-03. Certification of qualified investors.**

- 30 1. Investors may apply to the director for certification as a qualified investor for a taxable
31 year. The application must be in the form and manner prescribed by the director,
32 accompanied by an application fee of \$350. Application fees are deposited in the small
33 business investment tax credit administration account in the special revenue fund. The
34 application for certification for 2010 must be made available on the department's Web-

1 site by August 1, 2010. Applications for subsequent years' certification must be made-
2 available on the department's Web site by November 1 of the preceding year.

- 3 2. Within 30 days of receiving an application for certification under this section, the
4 director shall certify the investor as satisfying the conditions required of a qualified
5 investor, request additional information from the investor, or reject the application for
6 certification. If the director requests additional information from the investor, the
7 director shall either certify the investor or reject the application within 30 days of
8 receiving the additional information. If the director does not certify the investor or
9 rejects the application within 30 days of receiving the original application or within 30
10 days of receiving the additional information requested, whichever is later, then the
11 application is deemed rejected, and the commissioner must refund the \$350-
12 application fee. An investor may reapply if the application is rejected.

- 13 3. To receive certification, an investor must be a natural person and shall certify to the
14 director that the investor will only invest in:

- 15 a. Transactions exempt from the security registration requirements under subsection
16 5 of section 10-04-06 and subdivision a of subsection 9 of section 10-04-06; or
17 b. In a security registered under subdivision b of subsection 9 of section 10-04-06.

- 18 4. For a qualified investment in a qualified small business to be eligible for tax
19 credits, a qualified investor who makes the investment must have applied for and
20 received certification for the calendar year prior to making the qualified investment.
21 If the investor is not an accredited investor within the meaning of regulation D of the
22 securities and exchange commission, Rule 501, application for certification may be
23 made within 30 days after making the qualified investment.

24 **57-38.7-04. Certification of qualified funds.**

- 25 1. A passthrough entity may apply to the director for certification as a qualified fund for a
26 calendar year. The application must be in the form and manner prescribed by the
27 director, accompanied by an application fee of \$1,000. Application fees are deposited
28 in the small business investment tax credit administration account in the special
29 revenue fund. The application for certification for 2010 of qualified funds must be made-
30 available on the department's Web site by August 1, 2010. Applications for subsequent
31 years' certification must be made available by November 1 of the preceding year.
32 2. Within 30 days of receiving an application for certification under this section, the
33 director shall certify the fund as satisfying the conditions required of a qualified fund,
34 request additional information from the fund, or reject the application for certification. If

1 the director requests additional information from the fund, the director shall certify the
2 fund or reject the application within 30 days of receiving the additional information. If
3 the director does not certify the fund, rejects the application within 30 days of receiving
4 the original application or within 30 days of receiving the additional information
5 requested, whichever is later, the application is deemed rejected, and the
6 commissioner must refund the \$1,000 application fee. A fund may reapply if the
7 application is rejected.

8 3. To receive certification, a fund must:

9 a. Invest or intend to invest in qualified small businesses;

10 b. Be organized as a passthrough entity; and

11 c. Have at least three six separate investors, of whom at least three six whose
12 investments are made in a qualified small business are qualified investors under
13 subsection 3 of section 57-38.7-03 and who apply for a tax credit allocation satisfy the
14 conditions in subdivision 3, paragraph (c).

15 4. Investments in the fund may consist of equity investments, notes that pay interest or
16 other fixed amounts, or any combination of both.

17 5. For a qualified investment in a qualified small business to be eligible for tax credits, the
18 fund that makes the investment must have applied for and received certification for the
19 calendar year prior to making the qualified investment.

20 **57-38.7-05. Credit allowed.**

21 1. A qualified investor or qualified fund is eligible for a credit equal to 45 25 percent of the
22 qualified investment in a qualified small business. The aggregate amount of credits
23 available for allocation under this chapter may not exceed \$15,000,000. Any portion of
24 a taxable year's credits that is not allocated by the director does not cancel and may be
25 carried forward to subsequent taxable years until all credits have been allocated. for
26 years beginning after December 31, 2013, and before January 1, 2017; and (2) for
27 taxable years beginning after December 31, 2014, and before January 1, 2017,
28 \$7,500,000 must be allocated to credits for qualifying investments in qualified greater
29 Minnesota businesses and minority or women-owned qualified small businesses in
30 Minnesota. Any portion of a taxable year's credits that is reserved for qualifying
31 investments in greater Minnesota businesses and minority or women-owned qualified
32 small businesses in Minnesota that is not allocated by September 30 of the taxable
33 year is available for allocation to other credit applications beginning on October 1.

34 2. The maximum annual credit that can be allocated to a qualified investor or a qualified

1 ~~investment fund is \$125,000, and for married couples filing joint returns the maximum~~
2 ~~is \$250,000, and no qualified investor or qualified fund may obtain more than \$500,000~~
3 ~~in tax credit allocations over any combination of taxable years. The department may~~
4 ~~not allocate more than a total maximum amount in credits for a taxable year to a~~
5 ~~qualified investor for the investor's cumulative qualified investments as an individual~~
6 ~~qualified investor and as an investor in a qualified fund. For married couples filing joint~~
7 ~~returns the maximum is \$250,000, and for all other filers the maximum is \$125,000~~

8 3. To receive the tax credit, the qualified investor must claim the credit on the individual's
9 annual state income return for the taxable year in which the qualified small business
10 received the qualified investment, and shall file with the return a copy of the tax credit
11 certificate. The credit allowed may not exceed the liability for tax under this chapter. If
12 the amount of credit determined under this section exceeds the liability for tax under
13 this chapter, the excess may be carried forward to each of the seven succeeding
14 taxable years. [removed refundability language]

15 4. The director may not allocate more than a total of ~~\$5,000,000~~ \$1,000,000 in credits
16 over all taxable years for qualified investments in any one qualified small business.

17 5. The director may not allocate a credit to a qualified investor either as an individual
18 qualified investor or as an investor in a qualified fund if, at the time the investment is
19 proposed:

20 a. The investor is an officer or principal of the qualified small business; or
21 b. The investor, either individually or in combination with one or more members of the
22 investor's family, owns, controls, or holds the power to vote ~~20~~ [50 percent in
23 ~~current ND angel fund credit~~] percent or more of the outstanding securities of the
24 qualified small business.

25 c. A member of the family of an individual disqualified by this paragraph is not eligible
26 for a credit under this section. For a married couple filing a joint return, the
27 limitations in this paragraph apply collectively to the investor and spouse. For
28 purposes of determining the ownership interest of an investor under this
29 subsection, the rules under section 267(c) [Constructive ownership of stock] and
30 267(e) [Special rules for passthrough entities] of the Internal Revenue Code apply.

31 ~~5. Applications for tax credits for 2010 must be made available on the department's Web~~
32 ~~site by September 1, 2010, and the department must begin accepting applications by~~
33 ~~September 1, 2010. Applications for subsequent years must be made available by~~
34 ~~November 1 of the preceding year.~~

- 1 6. Qualified investors and qualified funds shall apply to the director for tax credits. Tax
2 credits must be allocated to qualified investors or qualified funds in the order that the
3 tax credit request applications are filed with the director. The director shall approve or
4 reject tax credit request applications within 15 days of receiving the application.
- 5 a. The investment in the qualified small business specified in the application must be
6 made within 60 days after the director allocates the credits. If the investment is not
7 made within 60 days, the credit allocation is canceled and available for
8 reallocation.
- 9 b. A qualified investor or qualified fund that fails to invest as specified in the
10 application within 60 days of allocation of the credits, shall notify the director of the
11 failure to invest within five business days after the expiration of the 60-day
12 investment period.
- 13 7. If two or more qualified investors or qualified funds file tax credit request applications
14 on the same day, and the aggregate amount of credit allocation claims exceed the
15 statewide tax credit allocation limit ~~of credits~~ under subsections 1 or 3, or the lesser
16 amount of credits that remain unallocated on that day, then the credits must be
17 allocated among the qualified investors or qualified funds who filed tax credit request
18 applications on that day on a pro rata basis with respect to the amounts claimed. All
19 tax credit request applications filed with the director on the same day must be treated
20 as having been filed contemporaneously. The pro rata allocation for any one qualified
21 investor or qualified fund is the product obtained by multiplying a fraction, the
22 numerator of which is the amount of the credit allocation claim filed on behalf of a
23 qualified investor and the denominator of which is the total of all credit allocation claims
24 filed on behalf of all applicants on that day, by the amount of credits that remain
25 unallocated on that day.
- 26 8. a. A qualified investor or qualified fund, or a qualified small business acting on its
27 behalf, shall notify the director when an investment for which credits were
28 allocated has been made, and the taxable year in which the investment was made.
29 A qualified fund shall also provide the director with a statement indicating the
30 amount invested by each investor in the qualified fund based on each investor's
31 share of the assets of the qualified fund at the time of the qualified investment.
- 32 b. After receiving notification that the investment was made, the director shall issue
33 credit certificates for the taxable year in which the investment was made to the
34 qualified investor or, for an investment made by a qualified fund, to each qualified

1 investor who is an investor in the fund. The certificate must state that the credit is
2 subject to revocation if the qualified investor or qualified fund does not hold the
3 investment in the qualified small business for at least three years, beginning with
4 the calendar year in which the investment was made and the two subsequent
5 years. The three-year holding period does not apply if, before the end of the three
6 years:

- 7 (1) The investment by the qualified investor or qualified fund becomes worthless;
- 8 (2) 80 percent or more of the assets of the qualified small business are sold;
- 9 (3) The qualified small business is sold;
- 10 (4) The qualified small business's common stock begins trading on a public
11 exchange; or
- 12 (5) The qualified investor dies.

13 ~~MN Subd. 5a. Promotion of credit in greater Minnesota. (a) By July 1, 2014, the commissioner~~
14 ~~shall develop a plan to increase awareness of and use of the credit for investments in qualified~~
15 ~~greater Minnesota businesses and minority-owned and women-owned qualified small~~
16 ~~businesses with the goal that the portion of the credit reserved for investments in qualified~~
17 ~~greater Minnesota businesses and minority-owned and women-owned qualified small~~
18 ~~businesses is allocated in full to those investments.~~

19 ~~(b) Beginning with the legislative report due on March 15, 2015, under subdivision 9, the~~
20 ~~commissioner shall report on its plan under this subdivision and the results achieved.~~

21
22 **57-38.7-06. Annual reports.**

- 23 1. By February 1 of each year, each qualified small business that received an investment
24 that qualified for a credit, and each qualified investor and qualified fund that made an
25 investment that qualified for a credit, shall submit an annual report to the director ~~and~~
26 ~~pay a filing fee of \$100 as required under this subdivision.~~ Each qualified investor and
27 qualified fund shall submit reports for three years following each year in which it made
28 an investment that qualified for a credit. Each qualified small business shall submit
29 reports for five years following the year in which it received an investment qualifying for
30 a credit. Reports must be made in the form and manner prescribed by the director. ~~All~~
31 ~~filing fees collected are deposited in the small business investment tax credit~~
32 ~~administration account in the special revenue fund.~~
- 33 2. A report from a qualified small business must certify that the business satisfies the
34 following requirements:

- a. The business has its headquarters in North Dakota;
 - b. At least 51 percent of the business's employees are employed in North Dakota, and 51 percent of the business's total payroll is paid in the state; and
 - c. That the business is engaged in, or is committed to engage in innovation in North Dakota.
 - ~~d. the business meets the payroll requirements in subdivision 2, paragraph (c), clause (6).~~
3. Reports from qualified investors and qualified funds shall certify that the investor or qualified fund remains invested in the qualified small business as required by subsection 7 of section 57-38.7-05.
 - ~~4. Reports from qualified funds shall certify that the fund remains invested in the qualified small business as required by subsection 7 of section 57-38.7-05.~~
 4. A qualified small business that ceases all operations and becomes insolvent shall file a final annual report providing information as required by the director regarding its insolvency. In subsequent years, the business is exempt from the annual reporting requirement, the report filing fee, and the fine for failure to file a report.
 5. A qualified small business, qualified investor, or qualified fund that fails to file an annual report as required under this subdivision is subject to a \$500 penalty.

57-38.7-07. Revocation of credits.

1. If the director determines that a qualified investor or qualified fund did not meet the three-year holding period required in subsection 7 of section 57-38.7-05, any credit allocated and certified to the investor or fund is revoked and must be repaid by the investor.
2. If the director determines that a qualified small business did not meet the ~~employment and payroll~~ requirements in subdivisions a and b of subsection 3 of section 57-38.7-02, as applicable, in any of the five calendar years following the year in which qualifying investment in the business that qualified for a tax credit under this chapter was made, the business shall repay the following percentage of the credits allowed for qualified investments in the business as follows:

<u>Year following the year in which the investment was made:</u>	<u>Percentage of credit required to be repaid:</u>
--	--

1	First	100%
2	Second	80%
3	Third	60%
4	Fourth	40%
5	Fifth	20%
6	Sixth and later	0

7 3. The director shall notify the commissioner of every credit revoked and subject to full or
8 partial repayment under this section.

9 4. For the repayment of credits allowed under this section, a qualified small business,
10 qualified investor, or investor in a qualified fund shall file an amended return with the
11 commissioner and pay any amounts required to be repaid within 30 days after
12 becoming subject to repayment under this section.

13 a. The commissioner has two years after the amended state income tax return is
14 filed to audit the return and assess any additional state income tax required to
15 be repaid under this section. The provisions of this subsection do not limit or
16 restrict any other time period for the assessment of tax that has not expired as
17 of the end of the two-year period prescribed in this subdivision.

18 b. If a qualified small business, qualified investor, or investor in a qualified fund
19 fails to file the amended return required under subdivision a, the commissioner
20 may assess any additional state income tax required to be repaid under this
21 section at any time, even though other time periods in section 57-38-38 may
22 have expired.

23
24 **57-38.7-08. Data privacy.**

25 1. Information contained in an application submitted to the director under sections 57-
26 38.7-02, 57-38.7-03, and 57-38.7-04 is confidential. After approval of the application
27 and certification under 57-38.7-02, 57-38.7-03, and 57-38.7-04, the following
28 information may be disclosed to the public:

- 29 a. The name, mailing address, telephone number, e-mail address, contact person's
30 name, and industry type of a qualified small business;
- 31 b. The name of a qualified investor;
- 32 c. The name of a qualified fund;
- 33 d. For credit certificates issued under section 57-38.7-05, the amount of the credit
34 certificate issued, amount of the qualifying investment, the name of the qualifying

- 1 investor or qualifying fund that received the certificate, and the name of the
2 qualifying small business in which the qualifying investment was made; and
- 3 e. For credits revoked under section 57-38.7-07, the amount revoked and the name
4 of the qualified investor, qualified fund, and qualified small business; and
- 5 ~~f. For credits revoked under subdivision 7, paragraphs (b) and (c), the amount
6 revoked and the name of the qualified small business.~~
- 7 2. The following information, including confidential tax information, must be provided to
8 the consultant for use in conducting the program evaluation under section 57-38.7-11:
- 9 a. The director shall provide data contained in an application for certification received
10 from a qualified small business, qualified investor, or qualified fund, and any
11 annual reporting information received on a qualified small business, qualified
12 investor, or qualified fund; and
- 13 b. The commissioner shall provide information contained in any applicable tax returns
14 of a qualified small business, qualified investor, or qualified fund.
- 15

16 **57-38.7-09. Administration and rules.** The director is charged with administration of this
17 chapter and may adopt rules for that purpose. The commissioner is charged with the
18 administration of this chapter as it relates to an income tax credit. The commissioner has the
19 same powers for purposes of this chapter as provided under section 57-38-56 and may adopt
20 rules for that purpose.

21

22 **57-38.7-10. Report to legislature.** The director shall produce and deliver to the chairpersons
23 of the appropriations and taxation committees of the house and senate by March fifteenth of
24 each year a report on the tax credits issued under this section. The report must include:

- 25 1. The number and amount of the credits issued;
- 26 2. The recipients of the credits;
- 27 3. For each qualified small business, its location, line of business, and if it received an
28 investment resulting in certification of tax credits;
- 29 4. The total amount of investment in each qualified small business resulting in certification
30 of tax credits;
- 31 5. For each qualified small business that received investments resulting in tax credits, the
32 total amount of additional investment that did not qualify for the tax credit;
- 33 6. The number and amount of credits revoked under section 57-38.7-07;
- 34 7. The number and amount of credits that are no longer subject to the three-year holding

1 period because of the exceptions under subdivisions a through d of subsection 7 of
2 section 57-38.7-05; and

- 3 8. Any other information relevant to evaluating the effect of these credits.
4

5 **57-38.7-11. Program evaluation.**

- 6 1. No later than December 31, 2017, the director, ~~after consultation with the~~
7 ~~commissioner and the office of management and budget~~ shall contract with a qualified
8 outside entity or individual to evaluate the effects of the ~~small-business investment~~
9 angel investor tax credit on the North Dakota economy. The contractor shall not be
10 associated with, employed by, or have contracts with the entities involved in or
11 associated with the venture capital, or angel investment industries. The program
12 evaluation must be completed by January 1, 2019, and provided to the chairs of the
13 appropriations and taxation committees in the senate and the house of representatives.
14 The program evaluation must include, in addition to any other matters the director
15 considers relevant to evaluating the effectiveness of the credit, analysis of:
- 16 a. The effect of the credit on the level of equity investment in qualified small
17 businesses in North Dakota, including investments by angel investors, venture
18 capital firms, and other sources of equity capital for startup businesses;
 - 19 b. The effect of the credit, if any, on investment in firms other than qualified small
20 businesses;
 - 21 c. The amount of economic activity, including the number of jobs and the wages of
22 those jobs, generated by qualified small businesses that received investments that
23 qualified for the credit;
 - 24 d. The incremental change in North Dakota state and local taxes paid as a result of
25 the allowance of the credit; and
 - 26 e. The net benefit to the North Dakota economy of allowance of the credit relative to
27 alternative uses of the resources, such as increasing the research and
28 development credit or reducing the corporate income tax rate.
- 29 2. To the extent necessary to complete the program evaluation, and as provided in
30 section 57-38.7-08, the consultant or consultants may request from the commissioner
31 tax return information of taxpayers who are qualified small businesses, qualified
32 investors, or qualified funds.
- 33 3. To the extent necessary to complete the program evaluation, the consultant or
34 consultants may request from the director applications for certification and annual

1 reports made by qualified small businesses, qualified investors, and qualified funds.

- 2 5. The consultant or consultants may not disclose or release any taxpayer specific
3 information under this section and is subject to the penalties and remedies provided in
4 sections 57-01-14 and 57-38-57.

5
6 **SECTION 3. APPROPRIATION.** ~~Amounts in the small business investment tax credit~~
7 ~~administration account in the special revenue fund are appropriated to the commissioner of~~
8 ~~employment and economic development for costs associated with certifying applications and~~
9 ~~refunding application fees as provided in subdivisions 2, 3, and 4, and for personnel and~~
10 ~~administrative expenses related to administering the small business investment tax credit in this~~
11 ~~section. There is appropriated out of any moneys in the general fund in the state treasury, not~~
12 ~~otherwise appropriated, the sum of \$[_____], or so much of the sum as may be~~
13 ~~necessary, to the department of commerce for costs associated with certifying applications as~~
14 ~~provided in sections 2 through 4 of this chapter and for personnel and administrative expenses~~
15 ~~related to administering the angel investor tax credit in this chapter consultant fees under~~
16 ~~section 57-38.7-11.~~

7
8 **SECTION 4. EFFECTIVE DATE.**