

**2013 SENATE FINANCE AND TAXATION**

**SB 2273**

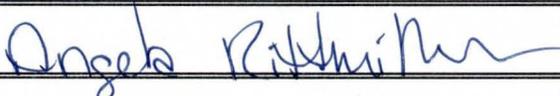
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2273  
2/4/2013  
Job Number 18223

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institutions tax credit for investments in an angel fund; to amend and reenact subsection 1 of section 57-38-01.26 of the North Dakota Century Code, relating to a financial institutions tax credit for investments in an angel fund and elimination of the lifetime limit on angel fund investment tax credits for individuals; and to provide an effective date.

### Minutes:

Attachments

**Chairman Cook** opened the hearing on SB 2273.

**Senator Grindberg** introduced SB 2273 and handed out proposed amendment 1.

**Donnita Wald, Tax Department**, explained the proposed amendment.

**Brenda Wyland, NDSU Research and Technology Park** - Part of what we do at the research park is we have a 55,000 square foot technology incubator. So we provide value added programs and services to entrepreneurs who are doing either startups or fast growth companies. A number of programs and services are provided to them to help them be successful. One of the things we do is help our clients leverage programs like through the ND Development Fund and the Angel Fund network. The work we do with the investors is really to help them have a more systematic approach to investing. These are not bankable deals. These are very high risk deals in new and emerging markets. What they really need access to is capital, for them to be able to get their team in place if they haven't already, then also to be able to get to market. At the same time these investors are getting a 45% state tax credit but it is to take the risk that they need to, to get these companies fully up and running. (10:05)

**Senator Dotzenrod** - We still have in this bill even after the amendment there is a limit on annual credits. We've taken the lifetime cap off but there is still a limit of annual credits of \$45,000. Also the question of, once a taxpayer has these credits if they can sell them. I think we've had proposals in the past that would allow people to get the credits and then sell them. Is that affected by this bill?

**Brenda Wyland** - Transferability is no longer included in the bill.

**Julie Kuennen, Idea Center** is here to show her support on SB 2273.

**Joel Gilbertson, Bioscience Association of North Dakota** - See attachment 2.

**Jon Godfread, Greater North Dakota Chamber of Commerce** - See attached testimony 3.

**Kalvin Hullit, Bismarck/Mandan Chamber** - We too would lend out support to this initiative.

**Chairman Cook** closed the hearing on SB 2273.

# 2013 SENATE STANDING COMMITTEE MINUTES

**Senate Finance and Taxation Committee**  
Lewis and Clark Room, State Capitol

SB 2273  
2/12/2013  
Job Number 18799

Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

A BILL for an Act to create and enact a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institutions tax credit for investments in an angel fund; to amend and reenact subsection 1 of section 57-38-01.26 of the North Dakota Century Code, relating to a financial institutions tax credit for investments in an angel fund and elimination of the lifetime limit on angel fund investment tax credits for individuals; and to provide an effective date.

## **Minutes:**

Committee Work

**Chairman Cook** opened discussion on SB 2273.

**Senator Triplett** - I'll move a **Do Not Pass**.

Seconded by **Senator Oehlke**.

**Roll Call Vote 7-0-0**

Carried by **Vice Chairman Campbell**.

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/21/2013**

Bill/Resolution No.: SB 2273

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2273 will allow the angel fund investment tax credit currently allowed under North Dakota income tax law to be claimed by a bank or other entity subject to North Dakota's financial institution tax.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill adds a new provision to North Dakota's financial institution tax law that will allow a bank or other financial institution to claim the angel fund investment tax credit currently allowed under North Dakota income tax law. The credit is allowed for making an investment in a North Dakota certified angel fund. The credit is equal to 45% of the investment, up to a maximum credit of \$45,000 per tax year. It is presumed for purposes of this fiscal note that the credit is intended to offset only the state general fund portion of the total financial institution tax; however, this intent is not clear from the language in the bill because no change is being made to the financial institution tax law provision governing this matter. If enacted, Section 1 of SB 2273 may reduce state general fund revenues for the 2013-15 biennium. The amount of the reduction cannot be determined because the number of financial institutions and their investments in angel funds cannot be predicted. Section 2 of the bill amends the angel fund investment tax credit provisions under North Dakota income tax law to allow the credit against the financial institution tax. It also changes the provision that sets a lifetime limit of \$150,000 on the amount of total angel fund tax credits allowed to a taxpayer to remove the limitation in the case of individuals. The lifetime limit will still apply to a regular ("C") corporation, a financial institution, or a passthrough entity (such as a partnership or S corporation). If enacted, Section 2 of SB 2273 may result in a reduction to state general fund revenues for the 2013-15 biennium because of the removal of the lifetime ceiling on individuals. The amount of that reduction cannot be determined because the amount of future investment in angel funds and the extent to which the resulting credits will exceed any individual's lifetime limit cannot be predicted.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 02/01/2013

Date: 2-17-13  
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2273**

Senate Finance & Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Triplett Seconded By Senator Oehlke

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett	X	
Senator Joe Miller	X				
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Campbell

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2273: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2273 was placed on the Eleventh order on the calendar.**

**2013 TESTIMONY**

**SB 2273**

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 3, after “reenact” insert “section 57-35.3-07 and”

Page 1, line 3, replace “subsection” with “subsections”

Page 1, line 3, after “1” insert “and 3”

Page 1, line 4, replace “and” with a comma

Page 1, line 5, replace “for individuals” with “and the ability of an angel fund to invest in real estate or real estate holding companies”

Page 1, after line 14, insert:

**“SECTION 2. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**(Effective after the first two taxable years beginning after December 31, 2010)**

**Payment of tax.** Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, and 4 of section 57-35.3-05, and section 1 of this Act, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner.”

Page 1, line 15, replace “Subsection” with “Subsections”

Page 1, line 15, after “1” insert “and 3”

Page 1, line 16, replace “is” with “are”

Page 1, line 23, overstrike “The aggregate lifetime credits”

Page 1, line 24, overstrike “under this section that may be obtained by”

Page 1, line 24, remove “a corporation.”

Page 2, line 1, remove “financial institution, or”

Page 2, line 1, overstrike "passthrough entity and its affiliates"

Page 2, line 1, overstrike "is one"

Page 2, line 2, overstrike "hundred fifty thousand dollars."

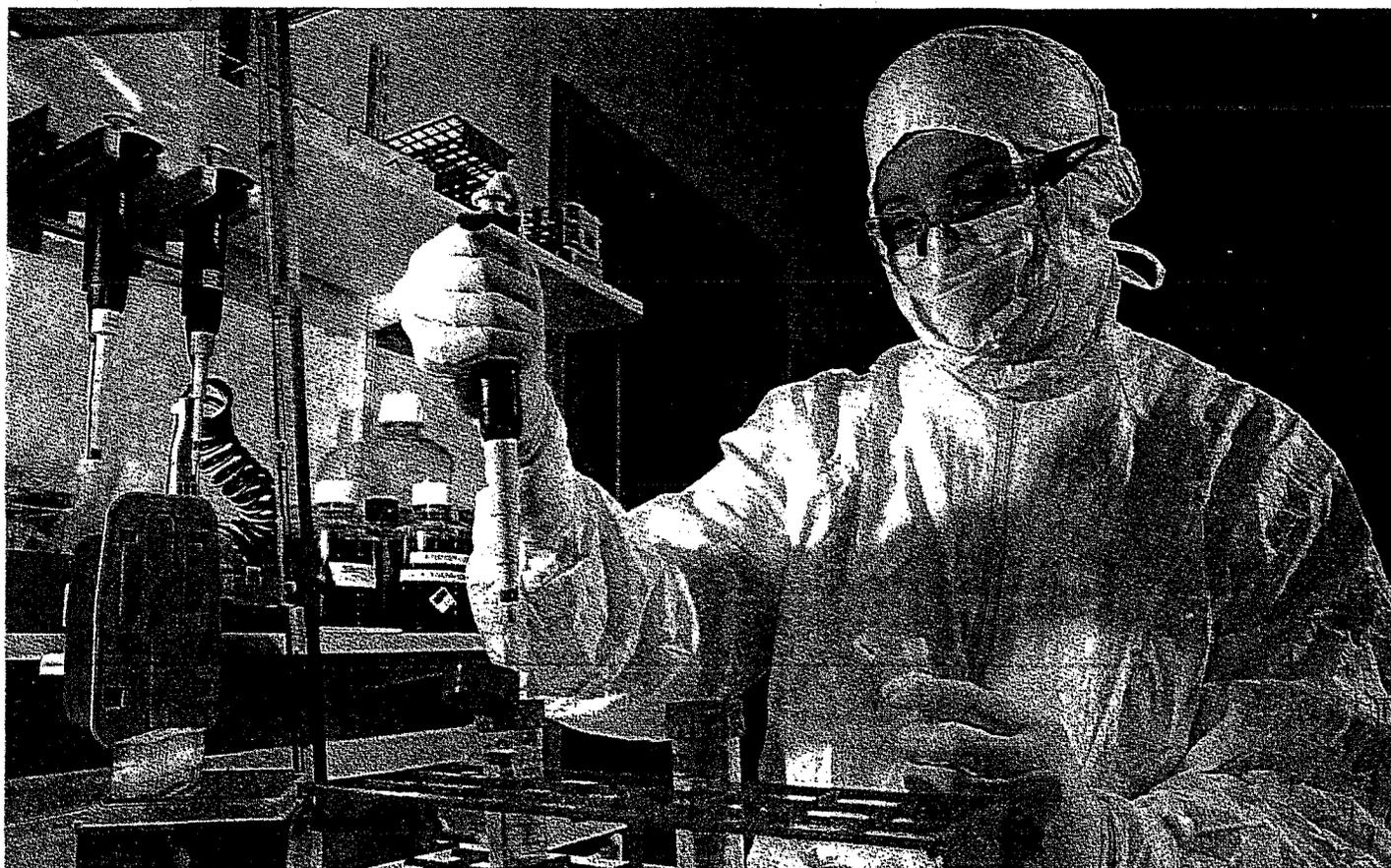
Page 2, after line 4, insert:

"3. An angel fund must:

- a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
- b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. ~~Early stage and mid stage entities do not include those that have more than twenty five percent of their revenue from income producing real estate~~ Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified prior to January 1, 2013 that has invested in real estate or a real estate holding company is not eligible for recertification.
- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
- d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
- e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
- f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
- g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
- h. Be in compliance with the securities laws of this state.
- i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
  - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
  - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
  - (3) The date the payment was received by the angel fund for the investment.

- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.”

Renumber accordingly



## Building a Biomed Hub

Collaboration leads to expansion in the region's biomed sector

BY KRIS BEVILL

Drive along Interstate 29 from the North Dakota border to Sioux Falls, S.D., and the nearly continuous view of fields and pastureland make it easy to see why agriculture science would have an important role in the region's biotechnology sector. But there are also a diverse number of biotechnology laboratories in the area where scientists and researchers are valiantly working to develop medical treatments and methodologies that could contribute to curing diabetes, preventing the risk for some forms of cancer and stopping the spread of dangerous diseases. The number of biomed companies in the region is growing quickly as more companies realize the benefits of basing their research activities in a region with a strong business climate and plenty of nearby collaborators.

Fargo, N.D.-based DNA manufacturer Aldevron was one of the earliest of these kinds of biotech companies to set up shop in the area, opening its facility in 1998. Company co-founders Michael Chambers, a North Dakota native, and John Ballantyne, originally from New Zealand, met while attending North Dakota State University. While he was still in college, Chambers developed a method to manufacture DNA and together with Ballantyne and Ron Robson, founded Aldevron as a small lab. Since then, the company has grown steadily, using its proprietary technology to make DNA for a variety of applications, including new medicines and DNA-based vaccines, for companies small and large. Aldevron currently employs nearly 60 people in Fargo and will soon expand to a larger space with room for hundreds of employees. The company has also expanded its footprint internationally with the addition of an antibody manufacturing division in Germany in 2004 and a recombinant protein production lab in Madison, Wis., in 2009.

Because the complexities in medical biotechnology are so great, collaboration is common among those involved, even between competing companies — a scenario which Chambers refers to as “co-opetition.” Oftentimes collaboration in the biotechnology sector leads to pockets of expansion in communities where companies are located. Such is the case for Fargo, thanks in part to Aldevron's presence. Early this year, Boston-based CureLab

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Fargo, N.D.-based Aldevron manufactures DNA for a variety of applications. Here, an employee begins the process of manufacturing an invitro diagnostic product. PHOTO: ALDEVRON

Oncology announced plans to open an office in North Dakota where it will continue to develop anti-cancer vaccines for breast and lung cancers. The decision to open a North Dakota location was the result of a combination of Aldevron's ability to manufacture the plasmids CureLab Oncology needs as well as the general positive business climate of the state, according to CureLab founder and CEO Alex Shneider. "We have conducted a worldwide search looking for the best plasmid manufacturing and found no company better than Aldevron," he says.

Shneider says he knew nothing about North Dakota before he met Aldevron CEO Chambers, but after visiting Aldevron's Fargo location, he decided to relocate CureLab's central office to North Dakota and will open an office in either Fargo or Grand Forks sometime this year. "Today, North Dakota is America which we are at risk of losing; America which established itself as the world's greatest country," he says.

Shneider plans to transfer a few key staff from Boston but will otherwise recruit local talent to meet his company's needs. "We are coming to complement and develop local talent, not to substitute it," he says. "We also believe that if the state government would be attentive to the needs and ideas of the biotech industry, each job [created] would translate into several jobs in industries other than biotech."

Chambers says the partnership between Aldevron and CureLab is just one example of the world-class science that is being conducted in the Red River Valley. "This is helping to strengthen, enhance and multiply biotech activity in our region," he says. "I believe we will see one to three new biotech companies come to our area every year for the next decade. The more activity we have, the more we will recruit. It is a very positive circle."

Further proving that collaboration leads to expansion, another Aldevron collaborator, California-based SEKRIS Biomedical Inc., also recently announced plans to open a Fargo location this year. The firm, founded in 2009, is focused on developing DNA platform technology useful in treating a variety of inflammatory disorders, including autoimmune disease and asthma. Pre-clinical studies have also shown that SEKRIS' technology, known as Apoptotic DNA Immunotherapy, is effective in treating Type 1 diabetes and the prevention of organ rejection.

Alan Escher, executive vice president of technology development, says the company's immediate goal is to test its product for the treatment of Type 1 diabetes in a clinical trial setting.

SEKRIS' Fargo facility will open by the summer and will initially employ about six researchers, Escher says.

Aside from the work his own company is doing to expand the area's biomed sector, Chambers credits regional giant Sanford Health for taking a leadership role in biomed research as well as Fargo-based PRACS Institute, which recently welcomed its founder, Jim Carlson, back to the company. Sanford has invested millions of dollars into various areas of research and continues to drive the region's biotechnology industry forward across multiple areas of focus, most recently announcing a deal to acquire Sioux Falls, S.D.-based Hematech Inc., a company initially formed to produce human antibodies in cattle for use in human medicine.

The South Dakota Technology Business Center in Sioux Falls is fostering another innovative biotech firm, this one backed by Sioux Falls-based health care provider Avera. Alumend (named to represent "A"vera, "lu"minescent technology and the mending of tissues) became a wholly owned subsidiary of Avera in December 2011. Avera had been an investor in the company (formerly known as Photobiomed) for several years and became owner of the company after purchasing its intellectual property.

Ron Utecht, Alumend's chief scientific officer, describes Alumend's novel photochemical technology as being "little light-powered molecular machines," useful in linking tissue together at the molecular level. The technology is expected to be effective in treating peripheral artery disease. Alumend has developed a set of molecules and assisted in the development of a catheter system and light-delivery system for that purpose. Alumend will market the technology through a company it developed called Tetherx after the final results of yearlong clinical trials become available in August. "We're impatiently waiting for the results," Utecht says. "So far, everything looks very promising."

Tetherx will also seek out a strategic partner to help bring the



Aldevron CEO Michael Chambers developed technology to manufacture DNA while attending North Dakota State University. PHOTO: ALDEVRON



Barb Haberer of Alumend displays a custom catheter used to administer Alumend's light-activated product in preclinical trials conducted to test the technology's effectiveness in treating peripheral artery disease. PHOTO: ALUMEND

technology to the market, but the company has no intention of releasing its technology through a license agreement without continued involvement in the development. "I think that's a mistake, especially with novel technologies," Utecht says. "We want to be a research and development company."

Tetherx is the first example of Alumend's strategy to develop initial proof of concept and then form a separate company to recruit investors and further develop each specific product. Using this strategy, if a product is brought to the market successfully all parties involved will benefit, including management, investors and Alumend, Utecht says. Alumend is a small company currently consisting of five scientists and one business person, so Utecht believes the company could engage in the development and licensing of two products at a time. "Any more than that would be stretching the team too thin," he says.

Utecht says he agrees wholeheartedly that collaboration is vital to growth in the biotechnology industry and that as more collaborative opportunities become available in the region, more companies will join the mix. "It just all snowballs," he says.

Representatives of state associations affiliated with the national Biotechnology Industry Organization note that the region's biotechnology industry in general, including agricultural science and biofuels, continues to diversify and expand. The South Dakota Biotech Association currently boasts 55 members from companies within the medical science, life science, animal science, plant science and industrial biotechnology sectors, according to Joni Johnson, the group's executive director, who says she expects continued development across all areas of the industry. "Outside of the animal and plant sciences, the human health

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## Fighting hantavirus with duck eggs and DNA

An outbreak of Sin Nombre Virus, commonly known as hantavirus, in Yosemite National Park last summer led to a collaborative effort among several companies, including Fargo, N.D.-based Aldevron and Grand Forks, N.D.-based Avianax LLC, to develop antibodies to combat the disease. According to John Ballantyne, chief scientific officer at Aldevron, this work is ongoing but vaccines and antibodies developed to fight Sin Nombre Virus and Andes Virus, a related disease, will be ready for pre-clinical and clinical trials at the end of the first quarter this year.

"There are no current preventative or therapeutic treatments against this virus, which has a fatality rate of over 40 percent," Ballantyne says. "The Andes in particular is person-to-person transmissible and this makes it a significant threat to family members and medical personnel. Towards those ends we have been using the Andes DNA vaccine to make antibodies capable of neutralizing the virus from sources including duck and geese eggs. The development of this technology, wherein it is an extension of the vaccines we develop, applies to other high-threat diseases and we are exploring many of them where it can be utilized."

care research and development will continue to grow in South Dakota," she says. "With three regional healthcare systems located in South Dakota, R&D will continue to be an integral part of the biotech growth."

Bruce Gjovig, president of the Bioscience Association of North Dakota, notes that North Dakota is the newest member of BIO, but the state already has a diverse group of members representing agriculture, life sciences and biofuels. He expects high growth in all sectors of biotechnology in North Dakota as the innovative young industry works to solve the world's largest problems. "There is no shortage of problems to solve with bioscience and the opportunities are ever increasing," he says.

Gjovig and Johnson both say the pro-business attitude of their states is a significant factor in the growth of the region's biotechnology industries. Additionally, the proximity of research facilities, private and public, offers the opportunity to engage in collaboration and to recruit well-trained local talent. A willingness to adopt new technologies, both in agriculture and medicine, also makes the region attractive to potential new biotech community members, says Gjovig, who sums up the advantages of doing biotech business in the Dakotas simply. "Entrepreneurs like to locate and grow where they will be embraced." PB

Kris Beville

Editor, Prairie Business

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## HEALTH CARE

continued from page 23

new location with no previously existing employees, so the organization needed to be aggressive in recruiting new staff. He doesn't anticipate the organization will offer similar incentives for nurses at its facilities currently under construction because most are replacement facilities, he says. Sanford's massive new hospital currently being built in Fargo and scheduled to open in 2016 will likely require additional nurses, but Burkett did not indicate whether the organization is anticipating difficulty in filling those positions.

Sanford also utilizes local colleges to recruit new nurses, Burkett says. "We engage and introduce ourselves to nursing students early on in their nursing education process and select a fair number of those nurses and provide them with scholarship assistance and tuition assistance," he says.

The recent addition of Bismarck, N.D.'s Medcenter One to Sanford's network has provided the organization with its own nursing school. Burkett says Sanford is currently evaluating how best to maximize the school's potential to assist the organization in a nursing shortage situation. The nursing school has averaged about 40 RN graduates each year since 2010. In January 2012, 65 students were enrolled at the college.

Aside from nurses, Sanford is also in short supply of physical therapists, according to Burkett. Additionally, as the organization builds out its presence in western North Dakota, it anticipates employee shortages in all areas of operations. "There's no doubt that that's putting more pressure on us in Bismarck on our entry-level positions," he says.

Generally, health care providers in the region believe they offer competitive salaries compared to other organizations, so attracting new nursing staff relies heavily on the organization's likeability. "We believe that if we continue to work to be a great employer, people are going to want to work for us," says Altru's Gessler, noting that the organization recently received an "Employer of Choice" designation from Employer of Choice Inc., a process which includes a survey taken by current employees to validate the organization's qualifications. Sanford Health designated 2012 as the "Year of the Nurse," and held events at facilities throughout its network meant to recognize and celebrate its nurses. "Those are the kinds of things that Sanford brings to the table that gets to the issue of: Why would somebody want to work for Sanford," Burkett says. "It's the way we treat and honor and recognize our people." Essentia's Vang says it's a series of "the little things" that can make the difference for prospective new hires, including simply providing a professional and respectful work environment. "We want people to be here because they want to, both professionally and personally," he says. "And that's what we work hard to do every day." PB

Kris Bevill

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Testimony of Jon Godfread  
Greater North Dakota Chamber of Commerce  
SB 2273  
February 4, 2013

Mr. Chairman and members of the committee, my name is Jon Godfread and I am here today representing the Greater North Dakota Chamber of Commerce, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of SB 2273.

The attraction of out-of-state investment in North Dakota ventures is critical to the growth of the state's economy. These investments in ND will help our state advance its mission of diversifying our economy, while continuing to build on the successes we are experiencing.

The Greater North Dakota Chamber supports strategic modifications to the Angel Fund Investment Tax Credit that will increase the availability of critical funding for rapidly growing and early- to mid-stage companies in North Dakota.

We urge a Do Pass recommendation on SB 2273. I would happily stand for any questions.