

# EDUCATION

## CHAPTER 136

### HOUSE BILL NO. 1306

(Representatives Wald, Haas, N. Johnson)  
(Senators Urlacher, Wardner)

### STARK COUNTY LAND SALE

AN ACT to amend and reenact section 1 of chapter 188 of the 1987 Session Laws, relating to the sale of certain state lands by the board of university and school lands to Stark County.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 1 of chapter 188 of the 1987 Session Laws is amended and reenacted as follows:

**SECTION 1.** The board of university and school lands is authorized to sell and convey the following property to Stark County, North Dakota:

A tract of land comprising approximately one hundred seventy acres, known as the "State Second Addition", and lying in the southwest and northwest quarters of section five, township one hundred thirty-nine, range ninety-six, Stark County, North Dakota- in Section 5, Township 139 North, Range 96 West of the 5th p.m., Stark County, North Dakota, more particularly described as follows, to wit:

Beginning at the southwest corner of Section 5, an iron pin found; thence North on an azimuth of 359 degrees 59 minutes 26 seconds, 272.81 feet to a point on the northerly 120 foot right-of-way line of Old U.S. Highway No. 10, and the True Point of Beginning; thence continuing North along the west line of said Section 5 on an azimuth of 359 degrees 59 minutes 26 seconds a distance of 5020.46 feet to a point on the southerly I-94 right-of-way fence; thence easterly along said right-of-way on an azimuth of 089 degrees 55 minutes 28 seconds a distance of 503.47 feet to the westerly 100 foot right-of-way line of I-94 Business Loop [F-709 (1)]; thence southeasterly along said westerly 100 foot right-of-way line on an azimuth of 155 degrees 12 minutes 00 seconds (Base Bearing) a distance of 3134.12 feet to T.S. (Sta. 55+56.2); thence along a 400 foot spiral curve with a Sc 6 degree Long Chord Azimuth of 153 degrees 23 minutes, Long Chord distance 410.27 feet to S.C. (Sta. 59+56.2); thence continuing southeasterly along said right-of-way on the outside of 100 foot right-of-way of a 3 degree curve to the left on a Long Chord Azimuth of 127 degrees 57 minutes 26 seconds, a Long Chord distance of 1456.57 feet (Arc Length of 1490.48 feet) to the intersection of the northerly 130 foot right-of-way line of Old U.S. Highway No. 10; thence southwesterly along said 130 foot right-of-way of a 1 degree curve on a Long Chord Azimuth of 255 degrees 34 minutes 52 seconds, Long Chord distance of 403.31 feet (Arc length 403.40 feet), (P.C. Sta. of 438+20.1); thence southeasterly on an azimuth of 163 degrees 36 minutes 32 seconds, 30 feet to a point on the northerly

100 foot right-of-way; thence southwesterly along said 100 foot right-of-way on an azimuth of 253 degrees 36 minutes 32 seconds, 1420.08 feet to a point where the right-of-way jogs from 100 feet to 120 feet; thence northwesterly on an azimuth of 343 degrees 36 minutes 32 seconds a distance of 20.00 feet; thence southwesterly along said 120 foot right-of-way on an azimuth of 253 degrees 36 minutes 32 seconds a distance of 1142.30 feet to the beginning of a 1 degree curve to the right (Sta. 412+57.7); thence along a Long Chord Azimuth of 255 degrees 13 minutes 12 seconds a Long Chord distance of 315.45 feet (Arc Length 315.50 feet) to the Point of Beginning.

Tract contains 181.8 Acres.

The property must be sold at a price agreeable to both parties but not less than the fair market value thereof, based upon two independent appraisals. The state shall reserve all mineral rights in and under the premises conveyed as are now held by the state. The sale of the property to Stark County by the board of university and school lands is deemed to be the best possible return to the state of North Dakota as provided in section 2 of chapter 203 of the 1985 Session Laws of North Dakota.

Approved March 15, 2005

Filed March 16, 2005

**CHAPTER 137****SENATE BILL NO. 2097**

(Education Committee)

(At the request of the Board of University and School Lands)

**STATE MINERAL LEASING**

AN ACT to amend and reenact section 15-05-18 of the North Dakota Century Code, relating to mineral leasing activities of the board of university and school lands.

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

**SECTION 1. AMENDMENT.** Section 15-05-18 of the North Dakota Century Code is amended and reenacted as follows:

**15-05-18. Leases of gravel, scoria, sand, and gravel, construction aggregate, and other construction minerals.** Notwithstanding the provisions of chapter 38-09, the board of university and school lands may enter into mineral leasing agreements for ~~gravel, scoria, sand and gravel, road material, building stone,~~ and construction aggregate or colloidal or other clays under rules adopted by the board. No lease under this section may be issued by the board for less than fair market value, nor may any lease under this section be issued for a period of more than five years.

Approved March 8, 2005

Filed March 8, 2005

**CHAPTER 138****SENATE BILL NO. 2095**

(Political Subdivisions Committee)

(At the request of the Board of University and School Lands)

**TRUST FUND PROPERTY SALE NOTICE**

AN ACT to amend and reenact section 15-08-18.1 of the North Dakota Century Code, relating to notice to county auditors when trust fund property is sold by contract.

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

**SECTION 1. AMENDMENT.** Section 15-08-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-08-18.1. Taxation of public lands sold on contract - Cancellation.**

When real property owned by the state of North Dakota as trustee of permanent school funds for the use and benefit thereof is sold upon contract providing for a future conveyance, the department or office making such contract on the part of the vendor shall immediately notify the county auditor of the county wherein the real property is situated, of the making of the contract, the description of the real property therein described, and the name of the vendee. The real property must be put upon the tax rolls of the county and assessed and the taxes must be levied thereon, based upon its taxable value on the first day of February next succeeding the date of the contract. ~~Failure to notify the county auditor according to the provisions of this section shall make the commissioner of university and school lands personally liable in a civil action to be brought by the state's attorney of the county wherein the land lies against the commissioner for the amount of the taxes that would have been levied had the notice been given as herein provided.~~ In the event that the contract is canceled by the vendor and not redeemed, the taxes must be immediately canceled and stricken from the tax rolls by the county auditor upon notice of such expiration of the period of redemption being ~~given~~ reported to the county auditor by the vendor.

Approved March 7, 2005

Filed March 8, 2005

**CHAPTER 139****SENATE BILL NO. 2034**

(Legislative Council)  
(Higher Education Committee)

**HIGHER EDUCATION FUNDS APPROPRIATION**

AN ACT to amend and reenact section 15-10-12 of the North Dakota Century Code, relating to the appropriation of higher education institutions' special revenue funds; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-12. (Effective through June 30, 2005 2007) Board may accept gifts and bequests - Deposit and appropriation of institutional funds.** Subject to the limitations of section 15-10-12.1, the state board of higher education may receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, tuition, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution. The funds in the institution accounts are appropriated on a continuing basis to the state board of higher education. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

**(Effective after June 30, 2005 2007) Board may accept gifts and bequests - Deposit of funds.** The state board of higher education may, subject to the limitations of section 15-10-12.1, receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its

control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury and all institutional income from tuition collections must be placed in the special fund for the use of the institution for which the money was raised. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund are subject to legislative appropriations. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution, except that at the close of the biennium the balance of funds not paid from the general fund appropriation must be deposited in the special revenue funds of the institutions. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 7, 2005  
Filed March 8, 2005

**CHAPTER 140****HOUSE BILL NO. 1271**

(Representatives R. Kelsch, Carlisle, Maragos)  
(Senators Bercier, Dever, Thane)

**VETERAN'S DEPENDENT TUITION WAIVERS**

AN ACT to amend and reenact section 15-10-18.2 of the North Dakota Century Code, relating to tuition waivers for dependents of veterans.

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

**SECTION 1. AMENDMENT.** Section 15-10-18.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-18.2. Definitions.**

1. "Dependent" for purposes of section 15-10-18.3 means ~~any~~:
  - a. A child, stepchild, spouse, widow, or widower of a resident veteran, as "veteran" is defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action; or
  - b. A child or a stepchild of a veteran, as defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the child's other parent has been a resident of this state and was a resident of this state at the time of death or determination of total disability of the veteran.
2. "Resident veteran" means a veteran who:
  - a. Was born in and lived in this state until entrance into the armed forces of the United States;
  - b. Was born in, but was temporarily living outside this state, not having abandoned residence therein prior to entrance into the armed forces of the United States;
  - c. Was born elsewhere but had resided within this state for at least six months prior to entrance into military service and had prior to or during such six-month period:
    - (1) Registered for voting, or voted in this state;
    - (2) Being an unemancipated minor during such period of residence, had lived with a parent or person standing in loco

- parentis who had acquired a residence as set forth in this section; or
- (3) If not registered for voting in this state, not registered for voting in another state; or
  - d. Has been a resident of this state for the ten years prior to the request for tuition waiver.

Approved March 31, 2005  
Filed March 31, 2005



**CHAPTER 141****SENATE BILL NO. 2079**

(Education Committee)

(At the request of the State Board of Higher Education)

**PUBLIC SAFETY PERSONNEL DEPENDENT TUITION**

AN ACT to amend and reenact sections 15-10-18.3 and 15-10-18.5 of the North Dakota Century Code, relating to free higher education tuition and fees for dependents of veterans and survivors of firefighters, emergency medical services personnel, and peace officers.

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

**SECTION 1. AMENDMENT.** Section 15-10-18.3 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-18.3. Free tuition in North Dakota institutions of higher education.**

Any dependent, as defined in section 15-10-18.2 upon being duly accepted for enrollment into any undergraduate degree or certificate program of a North Dakota state-supported state institution of higher education or state-supported career and technical education school, must be allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, ~~except those charged to retire outstanding bonds~~; provided, however, that the bachelor's degree or certificate of completion is earned within a ~~thirty-six-month~~ forty-five-month or ~~eight-semester~~ ten-semester period or its equivalent; and further provided that tuition and fee charges shall not include costs for aviation flight charges or expenses. Once a person qualifies as a dependent under sections 15-10-18.2 and 15-10-18.3, ~~there shall be no removal~~ the dependent may not be disqualified from the benefits of this section due to such an occurrence as the return of the prisoner of war or person missing in action.

**SECTION 2. AMENDMENT.** Section 15-10-18.5 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-18.5. Free tuition in North Dakota institutions of higher education for survivor of firefighter, emergency medical services personnel, or peace officer.** ~~Should~~ If a firefighter, an emergency medical services personnel as defined under section 23-27-04.3, or a peace officer ~~die~~ dies as a direct result of injuries received while engaged in the performance of official duties under circumstances dangerous to human life, the survivor, upon being duly accepted for enrollment into any undergraduate degree or certificate program of a North Dakota state-supported state institution of higher education or state-supported career and technical education school, must be allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, ~~except those charged to retire outstanding bonds~~; provided, however, that the bachelor's degree or certificate of completion is earned within a ~~thirty-six-month~~ forty-five-month or ~~eight-semester~~ ten-semester period or its equivalent; and further provided that tuition and fee charges may not include costs for aviation flight charges or expenses.

Approved March 21, 2005

Filed March 21, 2005

**CHAPTER 142****SENATE BILL NO. 2076**

(Education Committee)

(At the request of the State Board of Higher Education)

**RESIDENT STUDENT FOR TUITION PURPOSES**

AN ACT to amend and reenact subsection 2 of section 15-10-19.1 of the North Dakota Century Code, relating to the definition of resident student for tuition purposes.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 15-10-19.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A "resident student" for tuition purposes means:
  - a. A person whose guardian, custodial parent, or parents are legal residents of this state and have resided in this state for twelve months, or a dependent child whose custodial parent moved into the state with the intent to establish legal residency for a period of years within the last twelve months immediately prior to the beginning of the academic term;
  - b. A person of age eighteen or over who is a legal resident of this state and has resided in this state after reaching age eighteen for twelve months immediately prior to the beginning of the academic term;
  - c. A person who graduated from a North Dakota high school;
  - d. A full-time active duty member of the armed forces ~~assigned to a military installation in this state~~ or a member of a North Dakota national guard unit;
  - e. A spouse or dependent of a full-time active duty member of the armed forces ~~assigned to a military installation in this state~~ or a member of a North Dakota national guard unit or of an employee of any institution of higher education in this state, and a spouse of any other resident for tuition purposes; ~~and~~
  - f. A person who was a legal resident of this state for at least three consecutive years within six years of the beginning of the academic term; or

- g. A child, spouse, widow, or widower of a veteran as defined in section 37-01-40 who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action.

Approved March 25, 2005  
Filed March 25, 2005

**CHAPTER 143****SENATE BILL NO. 2078**

(Education Committee)

(At the request of the State Board of Higher Education)

**TECHNOLOGY AND TEACHER LOAN PROGRAMS**

AN ACT to amend and reenact sections 15-10-37 and 15-10-38 of the North Dakota Century Code, relating to eligibility for loans under the technology occupations student loan program and eligibility for loan forgiveness under the teacher shortages loan forgiveness program.

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

**SECTION 1. AMENDMENT.** Section 15-10-37 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-37. Technology occupations student loan program.**

1. The state board of higher education shall administer a technology occupations student loan program that encourages college students to pursue technology-based studies, to participate in technology internship programs, and to remain in the state after graduation. The board shall adopt rules to implement the program, including internship requirements, guidelines to determine which technology-related courses of study are eligible under the program, and standards for eligibility.
2. ~~Students~~ Graduates of board-approved colleges may apply for the technology occupations student loan program. To be eligible to receive student loan grants under the program, the applicant:
  - a. Must have graduated from a board-approved college;
  - b. Must have successfully completed the board-approved technology-related courses;
  - c. Must have maintained at least a ~~3.0~~ 2.5 grade point average, based on a 4.0 grading system, at a board-approved college;
  - d. ~~Must have actively participated in a board-approved technology internship with a business in the state;~~
  - e. Must have a student loan with the Bank of North Dakota or other participating lender;
  - f. e. Following graduation must be employed in the state in a board-approved technology occupation; and
  - g. f. Must have met and shall continue to meet any requirements established by rule.
3. The state board of higher education shall distribute student loan grants directly to the Bank of North Dakota to repay outstanding student loan

principal balances for eligible applicants. The maximum student loan grant amount for which an applicant may qualify is one thousand dollars per ~~twelve months of employment for a maximum of five years year and~~ a total of five thousand dollars, or a lesser amount established by rule adopted by the state board of higher education.

**SECTION 2. AMENDMENT.** Section 15-10-38 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-38. Loans - Teacher shortages - Loan forgiveness.**

1. The state board of higher education shall administer a student loan forgiveness program for individuals teaching at grade levels or in content areas identified as having a teacher shortage. The board shall adopt rules to implement the program.
2. The superintendent of public instruction shall annually identify the grade levels and content areas in which a teacher shortage exists.
3. To be eligible for loan forgiveness under this section, an individual:
  - a. Must have been admitted as a full-time student in a teacher preparation program, with the declared intention to teach at a grade level or in a content area identified by the superintendent of public instruction as one in which a teacher shortage exists; and
  - b. Must have obtained a student loan.
4. An individual may receive up to one thousand dollars per year and a maximum of five thousand dollars, or a lesser amount established by rule adopted by the state board of higher education under this section.
5. The board shall consider all applications under this section in chronological order.
6. Upon notification that the individual has completed a full year of teaching in a school district or nonpublic school in this state at a grade level or in a content area identified by the superintendent of public instruction as one in which a teacher shortage exists, the board shall distribute funds directly to the Bank of North Dakota to repay outstanding loan principal balances for eligible applicants.

Approved April 18, 2005  
Filed April 20, 2005

**CHAPTER 144****HOUSE BILL NO. 1364**

(Representatives Grande, Iverson, Sitte)  
(Senators Freborg, Hacker)

**HIGHER EDUCATION INSTRUCTOR ENGLISH  
PROFICIENCY**

AN ACT relating to English pronunciation by faculty and teaching assistants.

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

**SECTION 1. FACULTY - ENGLISH PRONUNCIATION - POLICY - REPORT.** The state board of higher education shall create a policy for all institutions under its control, relating to the assessment of faculty and teaching assistant communication skills, including the ability to speak English clearly and with good pronunciation, the notification to students of opportunities to file complaints, the process for responding to student complaints, and the resolution of reported communication problems. Before July 1, 2006, the state board of higher education shall report to the legislative council regarding implementation of the policy.

Approved March 22, 2005  
Filed March 22, 2005

**CHAPTER 145****HOUSE BILL NO. 1397**

(Representatives Iverson, Headland, Mueller, Thoreson)  
(Senators Flakoll, Klein)

**VETERINARY MEDICAL EDUCATION PROGRAM**

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to opportunities for the enrollment of students in a veterinary medical education program; to provide an appropriation; and to provide for continuation of program funding.

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

**SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Veterinary medical education program - Kansas state university - Contract.**

1. In addition to any contracts under section 15-10-28.2, the state board of higher education may contract with Kansas state university to provide an opportunity for up to five eligible students to enroll in the veterinary medical education program at Kansas state university.
2. Eligible students must be residents of this state and must have been selected for enrollment by an admissions committee consisting of one faculty member from the department of veterinary and microbiological sciences at North Dakota state university, one veterinarian practicing in this state, one member of the legislative assembly, and one livestock producer, all of whom must be appointed by the legislative council, and the chairman of the admissions committee at the Kansas state university school of veterinary medicine.
3. The admissions committee shall determine the criteria to be used in the selection of eligible students, with eligible students interested in large animal veterinary medicine receiving a priority.
4. As a condition of selection under this program, an eligible student shall agree to practice veterinary medicine in this state for a period of three years upon graduation. If a student fails to fulfill the commitment for practice in this state, the student shall repay to the state board of higher education all moneys forwarded to or for the student under this Act, on a proportionate basis.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the student loan trust fund, not otherwise appropriated, the sum of \$262,500, or so much of the sum as may be necessary, to the state board of higher education for the purpose of reducing the amount of tuition and other costs payable by or on behalf of eligible students enrolled in the veterinary medical education program at Kansas state university under this Act, for the biennium beginning July 1, 2005, and ending June 30, 2007.

**SECTION 3. STATE BOARD OF HIGHER EDUCATION PLAN FOR CONTINUATION OF PROGRAM.** The state board of higher education shall develop a plan for the continuation of funding for the program established by this Act to be included in its 2007-09 biennium budget request from a funding source other than the student loan trust fund.

Approved April 25, 2005  
Filed April 26, 2005



**CHAPTER 146****SENATE BILL NO. 2120**

(Education Committee)

(At the request of the State Board for Career and Technical Education)

**PRIVATE POSTSECONDARY INSTITUTIONS**

AN ACT to create and enact section 15-20.4-03.1 of the North Dakota Century Code, relating to fees provided to the state board for career and technical education for authorizations to operate private postsecondary institutions; and to amend and reenact sections 15-20.4-04 and 15-20.4-06 and subsection 2 of section 15-20.4-15 of the North Dakota Century Code, relating to authorizations to operate private postsecondary institutions and use of false academic degrees.

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

**SECTION 1.** Section 15-20.4-03.1 of the North Dakota Century Code is created and enacted as follows:

**15-20.4-03.1. Authorization fee fund.** There is created an authorization fee fund into which fees provided to the board upon application for authorization to operate a postsecondary educational institution under section 15-20.4-03 must be deposited. The fund and interest earned on the fund may be spent by the board pursuant to legislative appropriation exclusively to carry out the intent and purpose of this chapter. This fund is not subject to section 54-44.1-11.

**SECTION 2. AMENDMENT.** Section 15-20.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.4-04. Minimum standards - Exceptions.**

1. All postsecondary educational institutions must be accredited by national or regional accrediting agencies recognized by the United States department of education. The board may additionally require such further evidence and make such further investigation as in its judgment may be necessary. Any postsecondary educational institution operating in this state seeking its first authorization to operate may be issued a provisional authorization to operate on an annual basis until the institution becomes eligible for accreditation by a recognized accrediting agency. Upon completion of the accreditation process, the institution shall submit evidence of accreditation, or a substantial good-faith showing of progress toward such status. Only upon accreditation shall an institution become eligible for a regular authorization to operate.
2. This section does not apply to postsecondary educational institutions operating in this state and enrolling ten or fewer students that do not grant degrees and that offer mainly hands-on training in low census occupations, as determined by the board. "Degree" as used in this subsection means a document that provides evidence or demonstrates

completion of a course of instruction that results in the attainment of a rank or level of associate or higher.

**SECTION 3. AMENDMENT.** Section 15-20.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.4-06. Refund of tuition fees.** Postsecondary educational institutions shall refund tuition and other charges, other than a reasonable application fee, when written notice of cancellation is given by the student in accordance with the following schedule:

1. When notice is received prior to, or within seven days after completion of the first day of instruction, or after receipt of the first correspondence lesson by the institution, all tuition and other charges ~~except twenty-five dollars thereof~~ must be refunded to the student.
2. When notice is received prior to, or within thirty days after completion of the first day of instruction, or prior to the completion of one-fourth of the educational services, all tuition and other charges except twenty-five percent thereof must be refunded to the student.
3. When notice is received upon or after completion of one-fourth of the educational services, but prior to the completion of one-half of the educational services, all tuition and other charges except fifty percent thereof must be refunded to the student.
4. When notice is received upon or after the completion of fifty percent of the educational services, no tuition or other charges may be refunded to the student.

The provisions of this section do not prejudice the right of any student to recovery in an action against any postsecondary educational institution for breach of contract or fraud.

**SECTION 4. AMENDMENT.** Subsection 2 of section 15-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

2. a. It is unlawful for an individual to knowingly use or claim to have a false academic degree:
  - (1) To obtain employment;
  - (2) To obtain a promotion ~~of~~ or higher compensation in employment;
  - (3) To obtain admission to an institution of higher learning; or
  - (4) In connection with any business, trade, profession, or occupation.
- b. An individual who violates this subsection is guilty of a class A misdemeanor.

Approved April 11, 2005  
Filed April 12, 2005

## CHAPTER 147

### HOUSE BILL NO. 1068

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

#### TFFR ADMINISTRATION

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to teachers' fund for retirement compliance with the Internal Revenue Code; and to amend and reenact subsection 9 of section 15-39.1-04, subsection 4 of section 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-19.2, and 15-39.1-20 of the North Dakota Century Code, relating to incorporation of Internal Revenue Code changes since the last enactment of those provisions into state law, retired teachers returning to work, and teachers' fund for retirement compliance with the Internal Revenue Code.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 9 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, 2005. "Salary" includes bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2005, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1, 2005. A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include:
  - a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a member's employment, including insurance programs, annuities, transportation allowances, housing allowances, meals, lodging, or expense allowances, or other benefits provided by a member's employer.
  - b. Insurance programs, including medical, dental, vision, disability, life, long-term care, workforce safety and insurance, or other insurance premiums or benefits.
  - c. Payments for unused sick leave, personal leave, vacation leave, or other unused leave.
  - d. Early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination.

- e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.
- g. Recruitment bonuses.
- h. Other benefits or payments not defined in subdivisions a through g which the board determines to be ineligible teachers' fund for retirement salary.

**SECTION 2. AMENDMENT.** Subsection 4 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment in accordance with section 401(a)(9) of the Internal Revenue Code in effect on August 1, 2005, and the regulations issued under that section, as applicable to governmental plans.

**SECTION 3. AMENDMENT.** Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on August 1, ~~2003~~ 2005, for governmental plans. This section does not constitute an election under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] in effect on August 1, ~~2003~~ 2005.

**SECTION 4. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.2. (Effective through July 31, 2005) Retired teachers return to active service - Critical shortage areas and disciplines - Rules.**

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher must:
  - a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule; and
  - b. If retired after January 1, 2001, have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in

full-time or part-time teaching duties during the one-year separation from service.

2. A retired teacher who returns to teaching under this section is not required to pay the employee assessment required by section 15-39.1-09. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.

**SECTION 5. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter. The accumulated assessments of a member who ceases to be eligible to participate in the fund before becoming vested must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned in the fiscal year following the date of termination. The automatic refund must be waived provided the member presents the board with a statement of intent to return to teach in North Dakota within thirty-six months after eligibility to participate in the fund ceases. The board may waive the automatic refund for members who present to the board a statement of intent to return to teach in North Dakota within a period exceeding thirty-six months after eligibility to participate in the fund ceases. A member may elect, at the time and under rules adopted by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member as allowed under section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2003~~ 2005.

**SECTION 6.** A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

**Internal Revenue Code compliance.** The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code and regulations adopted pursuant to those provisions as they apply to governmental plans.

Approved March 7, 2005  
Filed March 8, 2005

## CHAPTER 148

### HOUSE BILL NO. 1360

(Representatives Haas, Herbel, Horter)  
(Senators Hacker, Wardner)

### PART-TIME STUDENT LOANS

AN ACT to amend and reenact sections 15-62.1-02 and 15-62.1-05 of the North Dakota Century Code, relating to loans for part-time students and loan guarantee funds.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-62.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.1-02. Powers and duties of the agency.** The agency has the following powers and duties under this chapter:

1. To guarantee all loans which satisfy the requirements set forth in title IV, part B, of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581], as amended through December 31, 1998, upon terms, conditions, and application procedures commensurate with the federal Higher Education Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581], as amended through December 31, 1998, if federal coinsurance of student loans guaranteed by the agency is available. If at any time the agency determines that student loans made under the terms and conditions of federal coinsurance programs are no longer adequately serving the needs of North Dakota students attending postsecondary institutions, or if federal coinsurance is no longer available, the agency shall notify the industrial commission or its designee. Upon approval of the industrial commission or its designee, the agency shall guarantee student loans without federal coinsurance pursuant to rules made by the agency relating to terms for applicant eligibility in accordance with the provisions of this chapter. Students whose loans are guaranteed by the agency must be students who have been accepted for enrollment or are attending eligible postsecondary institutions located within or ~~without~~ outside this state, and whose loans are for the purpose of assisting them in meeting their expenses of postsecondary education. Students who are accepted for enrollment or are attending eligible proprietary or postsecondary institutions of higher education ~~on at least a half-time basis, as determined by the institutions,~~ are eligible to have loans guaranteed by the agency. The agency shall, by rule, establish minimum qualifications for a person to be deemed a part-time student for purposes of this chapter.
2. To take, hold, expend, and administer, on behalf of the state from any source any real property, personal property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, for any purpose of the guarantee loan program; provided, that no guarantee obligation of the agency may be a general obligation of the state of

North Dakota, nor may be payable out of any moneys except those made available to the agency under this chapter. Nothing in this chapter may be construed to authorize the agency to borrow funds for any use relating to the administration of the state guarantee loan programs.

**SECTION 2. AMENDMENT.** Section 15-62.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.1-05. Establishment and maintenance of adequate guarantee funds - Appropriation.** The agency may enter into an agreement with the federal government for the coinsurance of loans guaranteed under this program. The agency shall establish and at all times maintain from funds appropriated under this chapter adequate guarantee reserve funds in special accounts in the Bank of North Dakota unless required by title IV, part B, of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581; 20 U.S.C. 1001 et seq.], as amended through December 31, 1998, to be invested elsewhere. The fund for loans ~~which that~~ are coinsured by the federal government must be maintained at a minimum amount equal to the requirements set forth in title IV, part B, of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581; 20 U.S.C. 1001 et seq.], as amended through December 31, 1998. The fund for loans ~~which that~~ are not coinsured by the federal government ~~may not be less than one-tenth of the dollar value of the unpaid principal balance of the loans will be determined by the agency but may be no less than the Bank of North Dakota historical default rate.~~ Funds appropriated under this chapter and designated as guarantee agency reserve funds for loans that are not coinsured by the federal government must be administered separately and segregated from reserve funds for loans that are coinsured by the federal government. The securities in which the moneys in the reserve funds may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the respective guarantee loan programs and income in excess of that required to pay the cost of administering the programs must be deposited in the respective reserve fund that corresponds to the source of the initial invested funds. The proceeds of reserve funds received from federal, state, or private sources, for the purpose of guaranteeing loans made to students as provided in this chapter, are hereby appropriated as a continuing appropriation for the payment of defaulted loans guaranteed by each respective fund.

Approved March 23, 2005  
Filed March 23, 2005

**CHAPTER 149****SENATE BILL NO. 2064**

(Senators Lyson, Holmberg)

**STATE SCHOLARSHIP APPLICANTS**

AN ACT to amend and reenact sections 15-62.2-00.1 and 15-62.2-03.3 of the North Dakota Century Code, relating to applicants for state scholarships.

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

**SECTION 1. AMENDMENT.** Section 15-62.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.2-00.1. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "~~Eligible candidate Applicant~~" means a ~~graduate of an individual who has graduated from~~ a high school in this state or ~~who is~~ a resident of this state for tuition purposes, ~~and whose assessment composite scores on the test of academic achievement administered by the American college testing program ACT, Inc., place the student individual in at least the ninety-fifth percentile of all students taking the test by July first of the year preceding the year in which the student is applying for a scholarship, and who ranks in the upper twentieth percentile of the student's high school class individual is enrolled as a full-time resident student in an eligible institution.~~
2. "Eligible institution" means an accredited public or nonprofit private postsecondary institution in this state.
3. "Full-time resident student" means a ~~person who is a graduate of an individual who has graduated from~~ a high school in this state or who is a resident of this state for tuition purposes, and who is enrolled at an eligible institution carrying a course of study which is "full time" as defined by the eligible institution.
4. "~~High school class rank~~" means the position a scholarship candidate holds in the candidate's graduating class, as determined by the state board of higher education.
5. "Scholar" means a full-time resident student who is awarded a scholarship or who has previously received a scholarship.
6. ~~5.~~ "Scholarship" means a financial award granted to a state scholar as determined by this chapter.

**SECTION 2. AMENDMENT.** Section 15-62.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.2-03.3. Selection of scholars.**



1. All ~~eligible candidates~~ applicants must be ranked by their composite scores on the test of academic achievement administered by ~~the American college testing program~~ ACT, Inc.
2. If two or more ~~eligible students~~ applicants have the same composite scores, they must be ranked by the numeric sum of the four scale scores on the test of academic achievement administered by ~~the American college testing program~~ ACT, Inc.
3. If two or more ~~eligible students~~ applicants have the same composite scores and the same numeric sum of the four scale scores, they must be ranked by their high school class rank calculated on a percentile basis the numeric sum of their English and mathematics scores.
4. The state board of higher education may establish additional criteria to rank applicants who have the same numeric sum of their English and mathematics scores.
5. Scholarships must be offered to ~~students~~ applicants in descending order according to this ranking until available funds have been expended or until the pool of ~~eligible~~ applicants has been exhausted.

Approved March 14, 2005

Filed March 14, 2005

**CHAPTER 150****SENATE BILL NO. 2077**

(Education Committee)

(At the request of the State Board of Higher Education)

**STUDENT FINANCIAL ASSISTANCE PROGRAM  
GRANTS**

AN ACT to amend and reenact subsection 2 of section 15-62.2-02 of the North Dakota Century Code, relating to the maximum amount for student financial assistance program grants; and to provide for a study of state education grants.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 15-62.2-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Determine the amount of individual grants, but not to exceed ~~six hundred~~ one thousand dollars per recipient per academic year under the North Dakota student financial assistance program.

**SECTION 2. STUDY OF EDUCATION GRANTS.** The state grant advisory board and state board of higher education are urged to study and consider the feasibility of providing an increasing, incremental, dollar amount of state grant awards to students who demonstrate the most significant financial need, without negatively impacting student eligibility of funding from other financial aid sources.

Approved March 16, 2005

Filed March 17, 2005

**CHAPTER 151****SENATE BILL NO. 2032**  
(Legislative Council)  
(Economic Development Committee)**BUSINESS INITIATIVES AND ECONOMIC  
DEVELOPMENT**

AN ACT to create and enact a new chapter to title 15, a new section to chapter 54-44.4, and a new section to chapter 57-38.5 of the North Dakota Century Code, relating to a centers of excellence program, an office of management and budget procurement information program, and seed capital investment tax credit treatment of investments in excess of caps on credits; to amend and reenact sections 6-09-15, 10-04-05, 10-30.5-04, and 54-16-01, subsection 1 of section 57-38-01.2, subsection 1 of section 57-38-71, and sections 57-38.5-01, 57-38.5-02, 57-38.5-03, 57-38.5-04, and 57-38.5-05 of the North Dakota Century Code, relating to the authority of the Bank of North Dakota to invest funds, cross-references affected by the repeal of the venture capital corporation law, the authority of the North Dakota development fund to invest and manage funds, emergency commission membership, and the seed capital investment tax credit; to repeal chapters 10-30.1 and 10-30.2 and section 15-10-41 of the North Dakota Century Code, relating to venture capital corporations, the Myron G. Nelson Fund, Incorporated, and the centers of excellence program; to provide for state agency studies, reports to the legislative council, and legislative council studies; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-15. (Effective through July 31, ~~2007~~ 2009) Powers.** The Bank of North Dakota may:

1. Make, purchase, guarantee, or hold loans:
  - a. To state or federally chartered lending agencies or institutions, or any other financial institutions.
  - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
  - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.
  - d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.

- e. That are eligible to be guaranteed under chapter 15-62.1. Loans made pursuant to this subdivision may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.
  - f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
  - g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.
  - h. Under Public Law No. 99-198 [99 Stat. 1534; 7 U.S.C. 1932 et seq.], as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.
  - i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.
  - j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
  - k. To instrumentalities of this state.
  - l. As otherwise provided by this chapter or other statutes.
  - m. If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action, or from the receiver of the participating lender's assets.
  - n. To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.
2. Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996.
  3. Purchase participation interests in loans made or held by banks, bank holding companies, state or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.
  4. Invest its funds:

- a. In conformity with policies of the industrial commission.
  - b. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.
  - c. In North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated, not to exceed ~~five~~ ten million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds. The Bank may allow for third-party management of the funds invested under this subdivision if the management is provided by North Dakota development fund, incorporated, or a third party that is located in the state and that has demonstrated fund management experience.
5. Buy and sell federal funds.
  6. Lease, assign, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
  7. Acquire real or personal property or property rights by purchase, lease, or the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
  8. Receive deposits from any source and deposit its funds in any bank or other financial institution.
  9. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.
  10. Purchase mortgage loans on residential real property originated by financial institutions.

**(Effective after July 31, 2007 2009) Powers.** The Bank of North Dakota may:

1. Make, purchase, or hold loans:
  - a. To state or federally chartered lending agencies or institutions, or any other financial institutions.
  - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
  - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.

- d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
  - e. That are eligible to be guaranteed under chapter 15-62.1. Loans made pursuant to this subdivision may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.
  - f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
  - g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.
  - h. Under Public Law No. 99-198 [99 Stat. 1534; 7 U.S.C. 1932 et seq.], as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.
  - i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.
  - j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
  - k. To instrumentalities of this state.
  - l. As otherwise provided by this chapter or other statutes.
  - m. If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action, or from the receiver of the participating lender's assets.
  - n. To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.
2. Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996.
  3. Purchase participation interests in loans made or held by banks, bank holding companies, state or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that

provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.

4. Invest its funds:
  - a. In conformity with policies of the industrial commission.
  - b. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.
5. Buy and sell federal funds.
6. Lease, assign, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
7. Acquire real or personal property or property rights by purchase, lease, or the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
8. Receive deposits from any source and deposit its funds in any bank or other financial institution.
9. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.
10. Purchase mortgage loans on residential real property originated by financial institutions.

<sup>97</sup> **SECTION 2. AMENDMENT.** Section 10-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-05. Exempt securities.** Sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, and 10-04-08.4 do not apply to any of the following securities:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.

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<sup>97</sup> Section 10-04-05 was also amended by section 3 of House Bill No. 1176, chapter 97.

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an Act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of financial institutions of North Dakota.
3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or other public service utility, if the corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof.
5. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes; provided that prior to any offer of such security each person must meet the following conditions:
  - a. Apply for and obtain the written approval of the commissioner.
  - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.
  - c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.
  - d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

The approval is effective for a period of one year from the date of approval. At least thirty days prior to the expiration date, there must be filed an application, offering disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

6. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is



prime quality negotiable commercial paper which has at the time of issuance a definite maturity of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.

7. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale.
8. Securities, including patronage dividends or refunds, issued by any cooperative organized under the statutes of this state.
9. Any equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security when the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note.
10. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 9, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby.
11. The execution of orders for purchase of securities by a registered dealer provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid to the registered dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker.
12. ~~Any security issued by a venture capital corporation or limited liability company organized under and operating in compliance with chapter 40-30-4; provided that prior to any offer of such security, the issuer must meet the following conditions:~~
  - a. ~~Apply for and obtain written approval by the commissioner.~~
  - b. ~~File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars. The document and fee must accompany the application.~~
  - c. ~~File such additional information as the commissioner requires by rule or order or may subsequently request.~~

- d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.
- e. Not use public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, in connection with any offer or sale.
- f. File a report of all offers and sales made in this state within thirty days after the completion of the offering.

The approval is effective for a period of one year from the date of approval. There must be filed, at least thirty days prior to the expiration date, an application, disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

- ~~43.~~ Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.
- 44. 13.
  - a. Any security, other than a security that is a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any filing or registration requirements under this chapter, listed or designated, or approved for listing or designation upon notice of issuance on:
    - (1) The New York stock exchange;
    - (2) The American stock exchange;
    - (3) The national association of securities dealers automated quotation national market system;
    - (4) Tier I of the Philadelphia stock exchange;
    - (5) Tier I of the Pacific stock exchange;
    - (6) Chicago board options exchange; or
    - (7) Any other stock exchange or automated quotation system which the commissioner approves by rule;
  - b. Any other security of the same issuer which is of senior or substantially equal rank;
  - c. Any security called for by subscription rights or warrants so listed or approved; or
  - d. Any warrant or right to purchase or subscribe to any of the foregoing.

The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that it would be in the public interest.

- 45- 14. Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

**SECTION 3. AMENDMENT.** Section 10-30.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-30.5-04. (Effective through July 31, 2007 2009) Powers.** The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

1. Cooperate and contract with any private or public entity.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.
3. Borrow funds not to exceed ~~five~~ ten million dollars from the Bank of North Dakota for the purpose of investing in North Dakota alternative and venture capital investments and early-stage capital funds. The corporation may provide management services for the Bank's alternative and venture capital investments and early-stage capital funds.

**(Effective after July 31, 2007 2009) Powers.** The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

1. Cooperate and contract with any private or public entity.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.

**SECTION 4.** A new chapter to title 15 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** In this chapter, unless the context otherwise requires:

1. "Board" means the state board of higher education.
2. "Center" means a center of excellence relating to economic development which has been designated or named under this chapter.
3. "Commission" means the centers of excellence commission.
4. "Foundation" means the North Dakota economic development foundation.
5. "Industry cluster" means one of the following industries:
  - a. Advanced manufacturing;

- b. Energy;
- c. Information and technology;
- d. Tourism;
- e. Value-added agriculture; or
- f. An industry, including the aerospace industry, specifically identified by the department of commerce as an industry that will contribute to the gross state product.

**Centers of excellence.**

1. The board shall establish a centers of excellence program relating to economic development. Through the program the commission shall make funding award recommendations for commission-approved applications to the board, the foundation, and the budget section of the legislative council. A center must be an institution of higher education under the control of the board or a nonprofit university-related or college-related foundation of an institution of higher education under the control of the board. In order to be considered for center designation, the institution of higher education or nonprofit foundation must be working in partnership with the private sector. In addition to any center designated under this chapter, the North Dakota state university center for technology enterprise and the university of North Dakota center for innovation are centers.
2. A commission funding award recommendation must be for a specified amount. Designation of a center occurs upon board, foundation, and budget section approval of a commission funding award recommendation. In considering whether to designate a center, the board, foundation, and budget section may not modify the commission recommendation. The budget section may not make a determination of whether to approve or reject a commission funding award recommendation until the emergency commission reviews the commission recommendation and makes a recommendation to the budget section.
3. A center that receives funds distributed under this chapter is not qualified to receive subsequent designations as a center until the biennium following the center's most recent designation.
4. The board rules adopted under subsection 9 of section 15-10-17, relating to ownership of intellectual property, inventions, and discoveries, must address activities and issues unique to centers.

**Centers of excellence commission.** The centers of excellence commission consists of six members. The foundation shall appoint three of the foundation's members to serve on the commission and the board shall appoint three of the board's members to serve on the commission. The commission members shall designate a chairman and a vice chairman of the commission. Each member of the commission shall serve for a term of three years, beginning July first; may be reappointed for additional terms; and serves at the pleasure of the appointing entity. If a commission member ceases to serve as a member of the appointing entity, that member's membership on the commission ceases immediately and the appointing

entity shall appoint a new member for the remainder of the term. Terms of initial commission members begin on the effective date of this Act and must be staggered. On a meeting-by-meeting basis, an appointing entity may substitute a member of that appointing entity to serve in place of one of the regular members appointed by that entity. If the commission chairman and vice chairman are not present at a meeting, the commission members present at that meeting shall select a commission member to serve as chairman for that meeting. A commission member may receive compensation and travel and expense reimbursement from the appointing entity. The board shall provide the commission with appropriate staff services as may be requested by the commission.

**Application - Eligibility requirements.**

1. The board shall provide center application forms, accept applications, review applications for completeness and compliance with board policy, and forward complete applications to the commission in accordance with guidelines established by the commission.
2. The commission shall meet as necessary to review all complete applications; approve or disapprove complete applications; make funding award recommendations for commission-approved proposed centers; direct the office of management and budget to distribute funds to the centers; monitor centers for compliance with award requirements; and review changes in assertions made in center applications.
3. In considering whether to approve or disapprove an application, the commission shall consider whether the center will:
  - a. Use university or college research to promote private sector job growth and expansion of knowledge-based industries or use university or college research to promote the development of new products, high-tech companies, or skilled jobs in this state;
  - b. Create high-value private sector employment opportunities in this state;
  - c. Provide for public-private sector involvement and partnerships;
  - d. Leverage other funding;
  - e. Increase research and development activities that may involve federal funding from the national science foundation experimental program to stimulate competitive research;
  - f. Foster and practice entrepreneurship;
  - g. Promote the commercialization of new products and services in industry clusters;
  - h. Become financially self-sustaining; and
  - i. Establish and meet a deadline for acquiring and expending all public and private funds specified in the application.

**Use of funds - Terms of funds - Distribution of funds.**

1. A center shall use funds awarded under this chapter to enhance capacity; enhance infrastructure; and leverage state, federal, and private sources of funding. A center awarded funds under this chapter may not use the funds to supplant funding for current operations or academic instructions or to pay indirect costs.
2. As a condition for receipt of funds under this chapter, a center shall agree to provide the board, foundation, and budget section of the legislative council with annual audits on all funds distributed to the center under this chapter. The annual audits must be provided until the completion of four years following the final distribution of funds under this chapter.
3. Before the commission directs the office of management and budget to distribute funds awarded under this chapter, the center shall provide the commission with detailed documentation of private sector participation and the availability of two dollars of matching funds for each dollar of state funds to be distributed under this chapter. The matching funds may include funds facilitated through the collaboration of the private sector participants with other funding entities. The matching funds may include a combination of cash and in-kind assets with itemized value. Private sector participation may be established through equity investments or through contracts for services with private sector entities. In making funding recommendations and designation determinations, the commission, board, foundation, and budget section shall give major consideration to the portion of the matching funds provided in cash by the private sector.
4. If, before funds are distributed by the office of management and budget, a center undergoes a change in the terms of or assertions made in its application, the commission may direct that the office of management and budget withhold all or a portion of any undistributed funds pending commission review of the changes.

**SECTION 5. AMENDMENT.** Section 54-16-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-01. Emergency commission - Members - Organization - Quorum - Meetings.** The emergency commission consists of the governor, the chairman majority leaders of the senate and house of representatives of the legislative council assembly, the secretary of state, and the chairmen of the senate and house of representatives appropriations committees. If the chairman of an appropriations committee ceases to be a member of the legislative assembly, the vice chairman of that committee succeeds to that position on the commission. An appropriations committee vice chairman may serve in the place of the appropriations committee chairman as a member of the commission at the request of the appropriate appropriations committee chairman, if the appropriations committee chairman is unable to attend a commission meeting. The vice chairman of the legislative council If a majority leader ceases to be a member of the legislative assembly, the respective house's assistant majority leader succeeds to that position on the commission. A majority leader's assistant majority leader may serve as a member of the commission in the place of the chairman of the legislative council majority leader at the request of the chairman of the legislative council majority leader if that individual majority leader is serving on the commission in another capacity or is unable to attend a commission meeting. Four members of the commission constitute a quorum. The

governor is the chairman and the secretary of state is the secretary of the commission. The commission shall meet at the call of the chairman.

**SECTION 6.** A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

**Procurement information - Web site.**

1. The office of management and budget shall establish and maintain a procurement information web site on the internet. This procurement information web site must provide current information regarding North Dakota government procurement opportunities in order to inform potential vendors of the commodities and services sought by state agencies and institutions. Notwithstanding section 54-44.4-09, for each purchase of services or commodities over the amount established for small purchases, the office of management and budget and every purchasing agency shall provide procurement information on the web site. The time period and manner of providing procurement information on the web site must be in accordance with rules adopted by the office of management and budget. The office of management and budget may contract with a third party to assist in providing or maintaining the procurement information web site.
2. A state agency or institution may elect to use the procurement information web site for the purchase of services and commodities that are not subject to the procurement requirements of this chapter, including:
  - a. Commodities and services exempted under section 54-44.4-02;
  - b. Public improvements under title 48;
  - c. Architect, engineer, construction management, and land surveying services under chapter 54-44.7; and
  - d. Concessions under chapter 48-09.

<sup>98</sup> **SECTION 7. AMENDMENT.** Subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The taxable income of an individual, estate, or trust as computed pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall be:
  - a. Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return.

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<sup>98</sup> Section 57-38-01.2 was also amended by section 1 of House Bill No. 1474, chapter 558, section 1 of Senate Bill No. 2362, chapter 557, and section 2 of Senate Bill No. 2391, chapter 560.

- b. Reduced by any other income included in the taxable income, or in the computation thereof, on the federal return which is exempt from taxation by this state because of the provisions of the Constitution of North Dakota or the Constitution of the United States.
- c. Reduced by the amount of federal income tax liability, but not social security and self-employment taxes, as computed under chapter 1 of the Internal Revenue Code of 1954, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that such taxes are computed upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 5 of section 57-38-01. However, such federal income tax liability must be reduced by all credits thereon except credits for federal income tax withholding payments, estimates of federal income tax, and income taxes of foreign countries. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.
- d.
  - (1) Reduced by three hundred dollars if the return filed is a joint return by husband and wife. If separate returns are filed by husband and wife, no deduction can be taken under this subdivision. This subdivision shall not be applicable to estates or trusts.
  - (2) Reduced by three hundred dollars if the return filed is the return of a "head of household" as defined by the United States Internal Revenue Code of 1954, as amended; provided, that the term "head of household" shall also include a "surviving spouse" as defined by said code.
  - (3) Reduced by seven hundred fifty dollars for each adopted child who is under the age of twenty-one years and who is either irreversibly mentally retarded or, on the basis of the annual findings of a licensed physician, is blind or disabled as determined pursuant to the provisions of title XVI of the United States Social Security Act, provided the return filed is the return of the parent of an adopted child and such child qualifies as a dependent of such parent for federal income tax purposes.
  - (4) Reduced, up to a maximum of one thousand dollars, by the amount of filing fees, attorney's fees, and travel costs incurred in connection with an adoption and by the actual costs paid to a licensed child-placing agency in making the adoptive study and in supervising and evaluating the adoptive placement. Provided, however, that the reduction



allowed under this paragraph shall apply only to such adoption expenses of a child who qualifies under the provisions of paragraph 3.

- (5) Reduced by one thousand seven hundred fifty dollars for each child under the age of twenty-one years adopted by the taxpayer. The reduction under this paragraph may be claimed only by an adoptive parent of an adopted child and the child must qualify as a dependent of the adoptive parent for federal income tax purposes. The reduction may be claimed by only one spouse, for spouses filing separately under this chapter. The reduction provided by this paragraph may be claimed for the taxable year in which the adoption becomes final and any unused portion of the reduction may be carried forward by the taxpayer for up to five taxable years. The reduction does not apply to the adoption of children of the taxpayer's spouse.
- e. Reduced by the actual amount of the medical expenses that were incurred but not allowed on the federal return by reason of the federal medical deduction limitation.
  - f. Increased by the amount of any income taxes, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income.
  - g. Increased by the amount of any interest and dividends from foreign securities and from securities of state and their political subdivisions exempt from federal income tax; provided, that interest upon obligations of the state of North Dakota or any of its political subdivisions shall not be included.
  - h. Except for residents, reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.
  - i. ~~Repealed by S.L. 2003, ch. 529, § 3.~~
  - ~~j.~~ Reduced by any amount, up to a maximum of five thousand dollars, received pursuant to the firefighters relief associations authorized by chapters 18-05 and 18-11, policemen's pension funds authorized by chapter 40-45, or the highway patrolmen's retirement system authorized by chapter 39-03.1; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.
  - ~~k.~~ j. Reduced by any amount, up to a maximum of one thousand dollars, received by any person as payment for services performed while on active duty in the armed forces of the United States or as payment for attending periodic training meetings for drill and instruction as a member of the national guard or of a reserve unit of the armed forces of the United States. However, persons serving

in the armed forces of the United States, except field grade and general officers, who are stationed outside of any state of the United States or the District of Columbia for not less than thirty days during the tax year shall be allowed an additional reduction of up to three hundred dollars per month for each month or portion of a month received as payment for services performed while on active duty at such location.

- † k. Reduced by any amount, up to a maximum of five thousand dollars, received by any person fifty years of age or older as retired military personnel pay for service in the United States army, navy, air force, coast guard, or marine corps or reserve components thereof; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.
- ‡ l. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer stating that the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer must be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings may not be included. This statement must be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who is:
- (1) A resident of this state.
  - (2) Receiving more than one-half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision.
  - (3) Intending to use any farmland to be purchased or rented for agricultural purposes.
  - (4) Except for contracts for deed entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin through satisfactory participation in the adult farm management education program of the state board for career and

technical education or an equivalent program approved by the agriculture commissioner.

- (5) Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars.

~~¶~~ m. Reduced by the amount of interest received during that taxable year on a contract on the sale of any land, buildings, improvements, and equipment associated with the land, buildings, or improvements, used or useful in connection with a revenue-producing enterprise to a beginning businessman, excluding beginning farmers as defined in subdivision ~~¶~~ l. The contract must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer containing a list of the buyer's assets and debts and giving the buyer's net worth, together with any other information required by the state tax commissioner. The value placed on any real property located in North Dakota and owned by the buyer shall be the amount listed as the current market value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including that person's dependents and spouse, if any, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings is not to be included. This statement is to be filed along with the income tax return. For the purposes of this subdivision, "beginning businessman", excluding beginning farmers as defined in subdivision ~~¶~~ l, means any person who is:

- (1) A resident of this state.
- (2) Receiving more than one-half of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which an adjustment will be claimed under this subdivision.
- (3) Intending to use any revenue-producing enterprise purchased or rented for business purposes.
- (4) Adequately trained, by experience or education, in the type of revenue-producing enterprise which that person wishes to begin.
- (5) The owner of property with a net worth, including the net worth of property of that person's dependents and spouse, if any, of less than one hundred thousand dollars.

~~e.~~ n. Reduced by any amount, up to a maximum of three hundred dollars received by any person or six hundred dollars if a joint return is filed, as interest earned from a financial institution located in this state. For purposes of this subdivision, "financial institution"

means any organization authorized to do business under state or federal laws relating to financial institutions, including banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

- ~~p.~~ ~~Repealed by S.L. 1999, ch. 487, § 3.~~
- ~~q.~~ ~~Reduced by the amount, up to a maximum of five thousand dollars for any person or ten thousand dollars if a joint return is filed, of investment made after January 1, 1989, in a venture capital corporation organized pursuant to chapter 10-30.1. This deduction may only be taken in the tax year in which the taxpayer qualifies for a credit pursuant to chapter 10-30.1. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a deduction if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities.~~
- ~~r.~~ ~~o. Reduced by any amount, up to a maximum of five thousand dollars, received as retirement benefits paid by the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, other than retired military personnel pay, as exempted in subdivision ~~k~~ k; provided, however, that the adjustment provided in this subdivision must be reduced by any amount received pursuant to the federal Social Security Act.~~
- ~~s.~~ ~~p. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions; provided the amount of the distribution excluded under this subdivision is included in federal taxable income.~~
- ~~t.~~ ~~q. Reduced by an amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.~~
- ~~u.~~ ~~r. Reduced by the amount received by the taxpayer as payment for services performed when called or ordered to title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. An individual claiming the reduction under this subdivision may not also claim the reduction under subdivision ~~k~~ j for the time the individual was under federal orders for active duty and may not claim a reduction on income already excluded from federal taxation due to service in a combat or hazardous duty zone. This subdivision does not apply to federal service while attending annual training, basic military training, professional military education, or active guard and reserve tours for which the member has volunteered.~~

Provided, however, that each adjustment in the above subdivisions authorized under law shall be allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

**SECTION 8. AMENDMENT.** Subsection 1 of section 57-38-71 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning entrepreneur", excluding beginning farmers as defined in subdivision ~~¶~~ 1 of subsection 1 of section 57-38-01.2, means any person who:
  - a. Is a resident of this state.
  - b. Receives more than one-half of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which a deduction will be claimed under sections 57-38-71 through 57-38-74.
  - c. Intends to use any revenue-producing enterprise purchased or rented for business purposes.
  - d. Has had adequate training, by experience or education, in the type of revenue-producing enterprise which that person wishes to begin.
  - e. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

**SECTION 9. AMENDMENT.** Section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the department of commerce division of economic development and finance.
2. "New wealth" means revenues to a North Dakota business which are generated by sales of products or services to customers outside of the state. "New wealth" also includes revenues to a qualified business the customers of which previously were unable to acquire, or had limited availability of, the product or service from a North Dakota provider.
3. "Passthrough entity" means a corporation that for the applicable tax year is treated as an S corporation or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company and which for the applicable tax year is not taxed as a corporation under chapter 57-38.
4. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth but does not

include an agricultural commodity processing facility as defined under section 57-38.6-01.

4- 5. "Qualified business" means:

a- A a business other than a real estate investment trust which is a primary sector business that:

(1) a. Is incorporated or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, or joint venture;

(2) b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;

(3) c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation; ~~and~~

(4) d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; ~~or~~

b- An organization that:

(1) Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state; and

(2) Attracts investments to build and own a value-added agricultural processing facility that it leases with an option to purchase to a primary sector business that qualifies under subdivision a and

e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability.

5- 6. "Taxpayer" means an individual, estate, or trust or a corporation or passthrough entity. The term does not include a real estate investment trust.

**SECTION 10. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum investments in qualified businesses.** The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 4 of section 57-38.5-01 and the certification must include the period of time the certification covers. The director shall establish the necessary forms and procedures for certifying qualified businesses. For investments made after December 31, 2004, the maximum aggregate amount of qualified investments a qualified business may receive is limited to five hundred thousand dollars under this chapter. The limitation on investments under this section may not be interpreted to

limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

**SECTION 11. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not ~~less than five thousand dollars and not more than two hundred fifty thousand dollars~~. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than one-third of the credit under this section which is attributable to investments in a single taxable year.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A partnership passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's passthrough entity's investment in a qualified business must be determined at the partnership passthrough entity level. The amount of the total credit determined at the partnership passthrough entity level must be allowed to the partners, limited to individuals, estates, and trusts, members in proportion to their respective interests in the partnership passthrough entity.
5. The investment must be at risk in the business. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
7. A taxpayer who owns a controlling interest in the qualified business or whose full-time professional activity is the operation of the business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.

8. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 12. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-04. Taxable year for seed capital investment tax credit.** The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which ~~full consideration for~~ the investment in the qualified business was received by the qualified business.

**SECTION 13. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-05. Seed capital investment tax credit limits.** The aggregate amount of seed capital investment tax credit allowed for investments under this chapter ~~through calendar year 2002 is limited to one million dollars and after calendar year 2002 is limited to two million five hundred thousand dollars for each calendar year.~~ If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

**SECTION 14.** A new section to chapter 57-38.5 of the North Dakota Century Code is created and enacted as follows:

**Credit for investments made before 2005.** An investment made before January 1, 2005, which did not qualify for the tax credit under this chapter because of the two million five hundred thousand dollar credit limitation in effect before the effective date of this Act is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount of forty-five percent of the amount invested by the taxpayer in a qualified business subject to the following:

1. The aggregate investment for which a taxpayer may obtain a credit under this section is not less than five thousand dollars and not more than two hundred fifty thousand dollars.
2. In any taxable year, a taxpayer may claim no more than one-fourth of the credit under this section which is attributable to investments made before January 1, 2005.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to five taxable years after the taxable year in which the investment was made.
4. This section does not apply to investments made in an agricultural processing facility as defined under section 57-38.6-01.



**SECTION 15. REPEAL.** Chapters 10-30.1 and 10-30.2 of the North Dakota Century Code are repealed.

**SECTION 16. REPEAL.** Section 15-10-41 of the North Dakota Century Code is repealed.

**SECTION 17. NORTH DAKOTA BUSINESS CLIMATE INITIATIVE - LEGISLATIVE COUNCIL STUDY.** During the 2005-06 and 2007-08 interims, the legislative council shall study the state's business climate through a business climate initiative. The business climate initiative must include receipt of agency reports regarding economic development legislation introduced by the legislative council during previous legislative sessions, active participation in business climate focus groups across the state, and active participation in biennial business congresses. The focus groups shall discuss ways to enhance the state's business climate to stimulate job growth and enhance economic prosperity for employers and employees by encouraging the growth of existing businesses in the state, creating new businesses in the state, and encouraging expansion or relocation of businesses to this state. Each business congress must receive a report on the activities of the focus group discussions, shall identify methods to enhance the state's business climate to stimulate job growth and enhance economic prosperity, shall identify methods to prepare the state for the high-growth and high-demand jobs of the future, and shall evaluate the impact of existing state economic development programs. The department of commerce shall organize the business climate focus groups and the business congresses. Before each business congress, which must be held before June 1, 2006, and before June 1, 2008, the department shall hold a minimum of six focus group discussions, two of which specifically focus on local economic developers and four of which specifically focus on private business needs. The department shall consult with the legislative council in compiling focus group and business congress participant invitation lists and drafting and distributing invitations, establishing focus group and business congress dates and locations, and preparing agendas for focus groups and business congresses. The legislative council shall contract with a third party to provide professional services to plan, facilitate, report on, and coordinate followup for the focus groups and business congresses. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth and sixty-first legislative assemblies.

**SECTION 18. VENTURE AND RISK CAPITAL - LEGISLATIVE COUNCIL STUDY.** During the 2005-06 interim, the legislative council shall study issues relating to venture and risk capital and whether and how some of these issues may be negatively impacting business development in the state. The study must address how to define venture and risk capital for purposes of the study; real and perceived issues regarding gaps in the availability of venture and risk capital in the state; whether state programs adequately address the venture and risk capital needs of businesses in the state and whether these programs should be changed to increase availability to venture and risk capital, including whether the partnership in assisting community expansion program might be used as a model to address possible venture and risk capital availability issues and whether the state could effectively play a role as facilitator in improving access to venture and risk capital; how the state could assist in creating an environment more conducive to attracting private venture and risk capital in the state; and how other states have attempted to address venture and risk capital concerns of businesses. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

**SECTION 19. ALTERNATIVE AND VENTURE CAPITAL INVESTMENTS - EARLY-STAGE CAPITAL FUNDS - REPORT TO LEGISLATIVE COUNCIL.** During the 2005-06 interim, the president of the Bank of North Dakota shall report to the legislative council on the status of the Bank's investments in alternative and venture capital investments and early-stage capital funds under subdivision c of subsection 4 of section 6-09-15. The president shall inform the legislative council whether this investment program should continue and whether there are potential changes that could be made to improve the state's venture capital and early-stage capital investment structure.

**SECTION 20. CENTERS OF EXCELLENCE - REPORT TO LEGISLATIVE COUNCIL.** During the 2005-06 interim, the state board of higher education and the centers of excellence commission shall report to the legislative council on the status of the centers of excellence program under section 4 of this Act. The report must include information regarding approved and rejected applications; funding; private sector participation; accomplishments of each center of excellence, including information regarding how each center of excellence is meeting, or will meet, the criteria under section 4 of this Act; and whether there are potential changes that could be made to improve the centers of excellence program.

**SECTION 21. INSURANCE AND LIABILITY DATA - REPORT TO LEGISLATIVE COUNCIL.** During the 2005-06 interim, the insurance commissioner shall compile existing data regarding the state's liability insurance marketplace. The data must include information regarding issues that may result in barriers for businesses seeking to obtain affordable liability insurance coverage, with specific focus on the travel and tourism industry, and must include information regarding successful actions taken by other states to improve the availability and affordability of liability insurance. Before July 1, 2006, the insurance commissioner shall report to the legislative council the data compiled and identify proposed legislative changes necessary to implement any recommendations to make the state's laws and availability of liability insurance more attractive to businesses in this state.

**SECTION 22. TECHNOLOGY COMMERCIALIZATION STUDY - REPORT TO LEGISLATIVE COUNCIL.** During the 2005-06 interim, the state board of higher education shall conduct a study of incentives the state could adopt to serve as catalysts for stimulating more efficient commercialization of new technologies. The study must include roundtable discussions; include consideration of leveraging research, capital, and entrepreneurs; include consideration of successful actions taken by other states to increase technology commercialization; and focus on approaches that are specifically tailored to the state's unique circumstances. The board may contract with a third party to conduct the study. Before July 1, 2006, the chancellor of the North Dakota university system shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommendations to stimulate technology commercialization in this state.

**SECTION 23. TRANSPORTATION STUDY - REPORT TO LEGISLATIVE COUNCIL.** During the 2005-06 interim, the upper great plains transportation institute shall conduct a study of how improvements to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development, with a focus on the potential to expand the sale of goods to markets outside the state by strengthening the state's transportation infrastructure. In conducting this study, the upper great plains transportation institute shall consult with the department of transportation and the department shall cooperate in the study. The study must include consideration of how to improve the load-carrying limits of the state's highways and associated costs and benefits; consideration of

what enhancements must be made to the state's highways to allow load limits to be raised to more efficiently move goods to market and associated costs and benefits; exploration of the phenomenon of the decline of freight service by rail, including the prospects for offering incentives to rail providers to expand the availability of rail for transportation of goods to market and the associated costs and benefits; recommendations on how to enhance the state's transportation infrastructure; whether it is feasible to identify and assist airports that are specially situated in order to assist in economic development; and an analysis of the projected economic development impacts associated with the recommended infrastructure improvements. Before July 1, 2006, the upper great plains transportation institute shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommended changes to the state's transportation infrastructure.

**SECTION 24. PROCUREMENT ASSISTANCE STUDY - REPORT TO LEGISLATIVE COUNCIL.** During the 2005-06 interim, the director of the office of management and budget shall report to the legislative council on the status of providing procurement information through the internet under section 6 of this Act; perform a study on the most effective manner in which to provide for a procurement assistance center; and report to the legislative council on the outcome of the procurement assistance center study, including what services might be provided by such a center, how services might be provided by such a center, and what legislative changes would be required to implement such a center.

**SECTION 25. EFFECTIVE DATE - EXPIRATION DATE.** Sections 9 through 13 of this Act are effective for taxable years beginning after December 31, 2004. Section 15 of this Act becomes effective on August 1, 2007. Sections 2, 7, and 8 of this Act are effective for taxable years beginning after December 31, 2008. Section 10 of this Act is effective for a business certified as a qualified business after December 31, 2004. Section 14 of this Act is effective for taxable year 2004 and is thereafter ineffective, except any unused credit may be carried forward as provided in section 13 of this Act. Section 4 of this Act is effective through July 31, 2011, and after that date is ineffective.

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