

HOUSE BILL NO. 1326

Introduced by

Representatives Kading, Dockter, Kasper, Meier, Olson, Owens, Rohr

Senators Klein, O. Larsen, Schaible

1 A BILL for an Act to amend and reenact sections 40-57.1-02 and 40-57.1-03, subsection 4 of
2 section 40-58-20, sections 40-58-20.2 and 40-63-03, subsections 35, 36, and 42 of section
3 57-02-08, and section 57-02.2-03 of the North Dakota Century Code, relating to approval from
4 impacted municipalities for the grant of local property tax incentives.

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

6 **SECTION 1. AMENDMENT.** Section 40-57.1-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **40-57.1-02. Definitions.**

9 As used in this chapter, unless a different meaning clearly appears from the context:

- 10 1. "Governing body" means a board of county commissioners, city council, board of city
11 commissioners, and school board of any school district.
- 12 2. "Local development organization", as used in section 40-57.1-04.3, means a profit or
13 nonprofit corporation incorporated under the laws of this state or a limited liability
14 company organized under the laws of this state, formed for the purpose of furthering
15 the economic development of its community and environs, with authority to promote
16 and assist the growth and development of business concerns in the areas covered by
17 its operations. The operations of the corporation or limited liability company must be
18 limited to a specified area in this state. The controlling interest in the corporation or
19 limited liability company must be held by at least twenty-five persons residing or doing
20 business in the community or its environs. These persons must control not less than
21 seventy-five percent of the voting control of the corporation or limited liability company.
22 No shareholder or member of the corporation or limited liability company may own in
23 excess of twenty-five percent of the voting control in the corporation or limited liability
24 company if that shareholder or member has a direct pecuniary interest in any project

1 or business concern which will occupy the property of the corporation or limited liability
2 company. The primary objective of the corporation or limited liability company must be
3 to benefit the community through increased employment, payroll, business volume,
4 and corresponding factors rather than monetary profits to its shareholders or
5 members. Any monetary profits or other benefits going to the shareholders or
6 members must be merely incidental to the primary objective of the corporation or
7 limited liability company.

8 ~~2.3.~~ "Municipality" means ~~counties as well as municipalities of the types listed in-~~
9 ~~subsection 4 of section 40-01-01a~~ a county, city, or public school district.

10 ~~3.4.~~ "Primary sector business" means an individual, corporation, limited liability company,
11 partnership, or association which through the employment of knowledge or labor adds
12 value to a product, process, or service that results in the creation of new wealth.

13 ~~4.5.~~ "Project" means any revenue-producing enterprise, or any combination of two or more
14 of these enterprises. For the purpose of the income tax exemption, "project" means
15 both "primary sector business" and "tourism" as defined by this section and includes
16 the establishment of a new qualifying business or the expansion of a qualifying
17 existing business.

18 ~~5.6.~~ "Tourism" means all tourism-related businesses and activities, including recreation,
19 historical and cultural events, guide services, and unique lodging and food services
20 which serve as destination attractions.

21 **SECTION 2. AMENDMENT.** Section 40-57.1-03 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **40-57.1-03. Municipality's authority to grant or revoke tax exemption or payments**
24 **in lieu of taxes - Notice to competitors - Limitations.**

25 1. After negotiation with a potential project operator, a municipality may grant a partial or
26 complete exemption from ad valorem taxation on all buildings, structures, fixtures, and
27 improvements used in or necessary to the operation of a project for a period not
28 exceeding five years from the date of commencement of project operations. A
29 municipality may also grant a partial or complete exemption from ad valorem taxation
30 on buildings, structures, fixtures, and improvements used in or necessary to the
31 operation of a project that produces or manufactures a product from agricultural

1 commodities for all or part of the sixth year through the tenth year from the date of
2 commencement of project operations. Before a municipality may grant a partial or
3 complete exemption from ad valorem taxation under this section:

4 a. The governing body of the municipality must have received the certification of the
5 department of commerce division of economic development and finance that the
6 project is a primary sector business, as defined in subsection ~~34~~ of section
7 40-57.1-02; or

8 b. ~~The city council or commission, if the project is proposed to be located within the~~
9 ~~boundaries of a city of fewer than forty thousand population, or the board of~~
10 ~~county commissioners, of a county of fewer than forty thousand population and if~~
11 ~~the project is proposed to be located in the county but outside the corporate limits~~
12 ~~of any city, governing body of the municipality~~ may grant a partial or complete
13 exemption from ad valorem taxation for a project operating in the retail sector if
14 that governing body has obtained the approval of exemption of property under
15 this subdivision from a majority of the qualified electors of the ~~city or~~
16 ~~county~~ municipality voting on the question at a ~~city or county~~ an election held in
17 conjunction with a statewide general election and if that governing body has
18 established by resolution or ordinance the criteria that will be applied by the
19 governing body to determine whether it is appropriate to grant a partial or
20 complete exemption from ad valorem taxation under this section for a project
21 operating in the retail sector. The ballot for elector approval of exemption of
22 property under this subdivision must present the question at the election for a yes
23 or no vote on the question:

24 Shall the governing body of [name of ~~county or city~~ municipality] be
25 empowered to grant property tax exemptions upon application of new or
26 expanding retail sector businesses?

27 Only a governing body of a ~~city or county~~ municipality that meets the
28 requirements of this subdivision may grant a partial or complete exemption from
29 ad valorem taxation under this section for a project operating in the retail sector.
30 Criteria established by the governing body under this subdivision, at a minimum,
31 must be intended to require:

- 1 (1) Evaluation of the potential positive or adverse consequences for existing
2 retail sector businesses in the municipality from granting the exemption;
 - 3 (2) Evaluation of the short-term and long-term effects for other property
4 taxpayers in the municipality from granting the exemption;
 - 5 (3) A written agreement with the project operator, including performance
6 requirements for which the exemption may be terminated by the governing
7 body of the municipality if those requirements are not met; and
 - 8 (4) Evaluation of whether the project operator would locate the project within
9 the municipality without the exemption.
- 10 2. In addition to, or in lieu of, a property tax exemption granted under this section, a
11 municipality may establish an amount due as payments in lieu of ad valorem taxes on
12 buildings, structures, fixtures, and improvements used in the operation of a project.
13 The governing body of the municipality shall designate the amount of the payments for
14 each year and the beginning year and the concluding year for payments in lieu of
15 taxes, but the option to make payments in lieu of taxes under this section may not
16 extend beyond the twentieth year from the date of commencement of project
17 operations. To establish the amount of payments in lieu of taxes, the governing body
18 of the municipality may use actual or estimated levels of assessment and taxation or
19 may establish payment amounts based on other factors. The governing body of the
20 municipality may designate different amounts of payments in lieu of taxes in different
21 years to recognize future project expansion plans or other considerations.
- 22 3. Before a governing body may grant a partial or complete exemption from ad valorem
23 taxation or the option to make payments in lieu of ad valorem taxes under this chapter,
24 the governing body shall consult with the department of commerce. If the department
25 of commerce determines that the total project costs are estimated to exceed one
26 billion dollars, the department of commerce shall conduct a public hearing and notice
27 of that hearing must be provided to each affected taxing district and any existing
28 business within the municipality for which the potential project would be a competitor.
- 29 4. By November first of each year, the municipality that granted the option to make
30 payments in lieu of taxes shall certify to the county auditor the amount of payments
31 in lieu of taxes due under this section in the following year. After receiving the

1 statement from the municipality, the county auditor shall certify the payments in lieu of
2 taxes to the county treasurer for collection at the time when, and in the manner in
3 which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the
4 amount of payments in lieu of taxes under this section, the county treasurer shall
5 apportion and distribute that amount to taxing districts ~~on the basis on which the~~
6 ~~general real estate tax levy is apportioned and distributed. The municipality may enter~~
7 ~~into a written agreement with the local school district and any other local taxing~~
8 ~~districts that wish to enter the agreement for an alternate method of apportionment~~
9 ~~and distribution. If such an agreement is entered into, the county treasurer shall~~
10 ~~apportion and distribute the money according to the written agreement~~based on the
11 amounts certified to the county auditor by each municipality. All provisions of law
12 relating to enforcement, administration, collection, penalties, and delinquency
13 proceedings for ad valorem taxes apply to payments in lieu of taxes under this section.
14 However, the discount for early payment of taxes under section 57-20-09 does not
15 apply to payments in lieu of taxes under this section. The buildings, structures,
16 fixtures, and improvements comprising a project for which payments in lieu of taxes
17 are allowed under this section must be excluded from the valuation of property in the
18 taxing district for purposes of determining the mill rate for the taxing district.

- 19 5. Negotiations with potential project operators for tax exemption or payments in lieu of
20 taxes must be carried on by the ~~city council or commission if the project is proposed to~~
21 ~~be located within the boundaries of a city, and by the board of county commissioners if~~
22 ~~the project is proposed to be located outside the corporate limits of any city~~governing
23 body of the municipality. A partial exemption must be stated as a percentage of the
24 total ad valorem taxes assessed against the property. Unless the governing body of
25 the municipality determines that there is no existing business within the municipality
26 for which the potential project would be a competitor, the potential project operator
27 shall publish two notices to competitors, the form of which must be prescribed by the
28 tax commissioner, of the application for tax exemption or payments in lieu of taxes in
29 the official newspaper of the municipality at least one week apart. The publications
30 must be completed not less than fifteen nor more than thirty days before the governing
31 body of the municipality is to consider the application. The municipality shall determine

1 whether the granting of the exemption or payments in lieu of taxes, or both, is in the
2 best interest of the municipality, and if it so determines, shall give its approval.

3 6. By motion approved by the governing body of the municipality before the beginning of
4 a taxable year for which a property tax exemption or the option to make payments
5 in lieu of taxes under this section previously has been approved by the governing
6 body, a property tax exemption may be revoked or reduced and payments in lieu of
7 taxes may be revoked or increased for that taxable year for reasons specified in a
8 negotiated agreement or if the governing body finds that:

9 a. Information provided by the project operator during the negotiation and
10 deliberation of a property tax exemption or the option to make payments in lieu of
11 taxes has proven to be inaccurate or untrue;

12 b. Use of the property by the project operator does not comply with the reasonable
13 expectations of the governing body at the time the property tax exemption or the
14 option to make payments in lieu of taxes was approved;

15 c. The property has been improved to a substantially greater extent than the
16 governing body reasonably anticipated at the time the property tax exemption or
17 the option to make payments in lieu of taxes was approved; or

18 d. There has been a change of ownership of the property since the property tax
19 exemption or the option to make payments in lieu of taxes was approved.

20 7. During the negotiation and deliberation of a property tax exemption or the option to
21 make payments in lieu of taxes under this chapter, for taxable years after
22 December 31, 2016, a municipality shall include, as nonvoting ex-officio members of
23 its governing body, a representative appointed by the school board of each school-
24 district affected by the proposed action and a representative appointed by the board of
25 township supervisors of each township affected by the proposed actionallow any other
26 taxing entity to submit a letter requesting that taxing entity be excluded from
27 participation in the district.

28 8. A city or county may not supersede or expand the provisions of this section under
29 home rule authority.

30 **SECTION 3. AMENDMENT.** Subsection 4 of section 40-58-20 of the North Dakota Century
31 Code is amended and reenacted as follows:

1 4. In any year when there is an incremental value, the auditor shall exclude it from the
2 taxable value upon which the auditor computes the mill rates of taxes levied in that
3 year by the state, the county, the municipality, the school district, and every other
4 political subdivision having power to tax the development or renewal area which did
5 not object to the development or renewal plan at the public hearing under section
6 40-58-20.2, until the cost of development or renewal of the area has been reimbursed
7 in accordance with this section. However, the auditor shall extend the aggregate mill
8 rate of those taxes against the incremental value as well as the original taxable value,
9 and the amount of taxes received from that extension against the incremental value is
10 referred to in this section as the tax increment for that year.

11 **SECTION 4. AMENDMENT.** Section 40-58-20.2 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **40-58-20.2. Tax increment financing proposal - Public hearing - Invitation to**
14 **representatives of affected taxing districts.**

- 15 1. Before approval of a development or renewal plan for any development or renewal
16 area under section 40-58-20, the governing body of the municipality shall conduct a
17 public hearing on the proposal and must receive a letter of support from each county
18 and school district having power to tax the development or renewal area. The
19 governing body shall provide invitations to participate in the public hearing to the
20 governing body of each county, school district, ~~and park district within the development~~
21 ~~or renewal area~~ and every other political subdivision having power to tax the
22 development or renewal area. At a minimum, the governing body of the municipality
23 shall provide the following information at the public hearing:
- 24 ~~1.~~ a. The anticipated costs of development of property to be reimbursed by tax
25 incentives.
- 26 ~~2.~~ b. The anticipated annual revenue from tax increments which will be received to
27 complete the development or renewal plan.
- 28 ~~3.~~ c. The anticipated date when the plan will be completed, the costs will be fully paid,
29 and the tax increments will be released.
- 30 ~~4.~~ d. The estimate of the dollars annually attributable to the levies from each taxing
31 entity which will be credited to the tax increment fund.

- 1 2. The governing body of a park district or any other political subdivision having power to
2 tax the development or renewal area may submit a written objection at the public
3 hearing to preclude any portion of the taxing entity's levy from being credited to the
4 proposed tax increment fund.

5 **SECTION 5. AMENDMENT.** Section 40-63-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **40-63-03. Renaissance zones.**

- 8 1. A city may apply to the department of commerce division of community services to
9 designate a portion of that city as a renaissance zone if the following criteria are met:
- 10 a. The geographic area proposed for the renaissance zone is located wholly within
11 the boundaries of the city submitting the application.
- 12 b. ~~The~~For applications submitted after December 31, 2016, the application includes
13 a development plan and letters of support from the governing body of each
14 county and school district that has taxable property located within the boundaries
15 of the proposed renaissance zone.
- 16 c. The proposed renaissance zone is not more than thirty-four square blocks,
17 except in a city with a population of greater than five thousand the renaissance
18 zone may exceed thirty-four square blocks at the rate of one additional block for
19 each additional five thousand population to a maximum size of forty-nine blocks.
20 Population is based upon the most recent federal decennial census or federal
21 census estimate.
- 22 If a city finds that renaissance zone projects have satisfactorily completed
23 one or more blocks within the renaissance zone, the city may apply for and the
24 department of commerce division of community services may approve withdrawal
25 of those blocks from the renaissance zone and replacement of those blocks with
26 other blocks that otherwise meet the requirements of this chapter.
- 27 d. Except as provided under subdivision g, the proposed renaissance zone has a
28 continuous boundary and all blocks are contiguous.
- 29 e. The proposed land usage includes both commercial and residential property.
- 30 f. The application includes the proposed duration of renaissance zone status, not to
31 exceed ~~fifteen~~five years. Upon application by the city and submission of the

1 documents required under subdivision b, the department of commerce division of
2 community services may extend the duration of renaissance zone status in
3 increments of up to five years.

4 g. The proposed renaissance zone may have a single exception to the continuous
5 boundary and contiguous block requirements under subdivision d if the area of
6 the excepted noncontiguous blocks does not exceed three square blocks.

7 2. The department of commerce division of community services shall:

8 a. Review all applications for renaissance zone designation against the criteria
9 established in this section and designate zones.

10 b. Approve or reject the duration of renaissance zone status as submitted in an
11 application.

12 c. Approve or reject the geographic boundaries and total area of the renaissance
13 zone as submitted in an application.

14 d. Promote the renaissance zone program.

15 e. Monitor the progress of the designated renaissance zones against submitted
16 plans in an annual plan review.

17 f. Report on renaissance zone progress to the governor and the legislative
18 management on an annual basis until all designated zones expire.

19 3. The department of commerce division of community services shall consider the
20 following criteria in designating a renaissance zone:

21 a. The viability of the development plan.

22 b. The incorporation and enhancement of unique natural and historic features into
23 the development plan.

24 c. Whether the development plan is creative and innovative in comparison to other
25 applications.

26 d. Public and private commitment to and other resources available for the proposed
27 renaissance zone, including the provisions for a renaissance fund organization.

28 e. How renaissance zone designation would relate to a broader plan for the
29 community as a whole.

- 1 f. How the local regulatory burden, in particular that burden associated with the
2 renovation of historic properties and that burden associated with mixed use
3 development, will be eased for developers and investors in the renaissance zone.
- 4 g. The strategies for the promotion, development, and management of the zone,
5 including the use of a local zone authority if designated.
- 6 h. Any other information required by the office.
- 7 4. The department of commerce division of community services may not designate a
8 portion of a city as a renaissance zone unless, as a part of the application, the city
9 provides a resolution from the governing body of the city that states if the renaissance
10 zone designation is granted, persons and property within the renaissance zone are
11 exempt from taxes as provided in sections 40-63-04 through 40-63-07. The exemption
12 provided in section 40-63-05 does not apply to the taxing authority of any county or
13 school district that did not provide the letter of support required under subsection 1 or
14 to the taxing authority of any other taxing district that provided a letter requesting to be
15 excluded from the renaissance zone.
- 16 5. A city may not propose or be part of more than one renaissance zone.
- 17 6. A parcel of property may be exempted from property taxes under section 40-63-05
18 only once, but during the five taxable years of eligibility for that exemption, the
19 property tax exemption transfers with the transfer of the property to a qualifying user.
20 The ownership or lease of, or investment in, a parcel of property may qualify for
21 exemption or credit under section 40-63-04 only once, but during the five taxable
22 years of eligibility for that exemption or credit, the exemption or credit under section
23 40-63-04 transfers with the transfer of the property to a qualified user and with respect
24 to the year in which the transfer is made must be prorated for use of the property
25 during that year.
- 26 7. A city may apply to the department of commerce division of community services at any
27 time during the duration of a zone to expand a previously approved renaissance zone
28 that is less than the maximum size allowed under subdivision c of subsection 1. If the
29 expansion is approved by the department of commerce division of community
30 services, the blocks in the expansion are eligible for up to ~~fifteen~~five years of
31 renaissance zone status.

- 1 8. The use of grant funds as the sole source of investment in the purchase of a building
2 or space in a building does not qualify a taxpayer for any tax exemption or credit
3 available under the chapter, and grant funds may not be counted in determining if the
4 cost of rehabilitation meets or exceeds the current true and full value of the building.
- 5 9. If a portion of an approved renaissance zone is not progressing, the city may request
6 the department of commerce division of community services to permit deleting that
7 portion and to make an adjustment of the boundaries to add another equal, contiguous
8 area to the original zone.
- 9 10. If within a renaissance zone there is property that is included in a tax increment
10 financing district, the city in which the property is located shall provide the department
11 of commerce an annual report regarding ~~any such~~the property at the time requested
12 by the department of commerce. The report required under this subsection must
13 identify the property, provide the expected duration of inclusion of the property in the
14 tax increment financing district and the renaissance zone, and identify any property
15 and income tax benefits of the property and the expected duration of those benefits.
16 The department of commerce shall deliver an annual report compiling the information
17 required under this subsection to the legislative management interim committee on
18 taxation issues or upon request of any other interim committee of the legislative
19 management.

20 **SECTION 6. AMENDMENT.** Subsections 35, 36, and 42 of section 57-02-08 of the North
21 Dakota Century Code are amended and reenacted as follows:

- 22 35. Up to one hundred fifty thousand dollars of the true and full value of all new
23 single-family and condominium and townhouse residential property, exclusive of the
24 land on which it is situated, is exempt from taxation for the first two taxable years after
25 the taxable year in which construction is completed and the residence is owned and
26 occupied for the first time if all of the following conditions are met:
- 27 a. The governing body of the city, for property within city limits, or the governing
28 body of the county, for property outside city limits, has approved the exemption of
29 the property by resolution. A resolution adopted under this subsection may be
30 rescinded or amended at any time. The governing body of the city or county may

1 limit or impose conditions upon exemptions under this subsection, including
2 limitations on the time during which an exemption is allowed.

3 b. Special assessments and taxes on the property upon which the residence is
4 situated are not delinquent.

5 c. The governing body of the city or county has received approval from the
6 governing body of each city, county, or school district that would be impacted by
7 the grant of the exemption.

8 36. The governing body of the city, for property within city limits, or of the county, for
9 property outside city limits, may grant a property tax exemption for the portion of
10 fixtures, buildings, and improvements, used primarily to provide early childhood
11 services by a corporation, limited liability company, or organization licensed under
12 chapter 50-11.1 or used primarily as an adult day care center after receiving approval
13 from the governing body of each city, county, or school district that would be impacted
14 by the grant of the exemption. However, this exemption is not available for property
15 used as a residence.

16 42. a. New single-family residential property, exclusive of the land on which it is
17 situated, is exempt from assessment for the taxable year in which construction
18 began and the next two taxable years, if the property remains owned by the
19 builder, remains unoccupied, and all of the following conditions are met:

20 (1) The governing body of the city, for property within city limits, or the
21 governing body of the county, for property outside city limits, has approved
22 the exemption of property under this subsection by resolution. A resolution
23 adopted under this subsection may be rescinded or amended at any time.

24 The governing body of the city or county may limit or impose conditions
25 upon exemptions under this subsection, including limitations on the time
26 during which an exemption is allowed.

27 (2) Special assessments and taxes on the property upon which the residence is
28 situated are not delinquent.

29 (3) The governing body of the city or county has received approval from the
30 governing body of each city, county, or school district that would be
31 impacted by the grant of the exemption.

- 1 b. A builder is eligible for exemption of no more than ten properties under this
2 subsection in a taxable year within each jurisdiction that has approved the
3 exemption under this subsection. For purposes of this subsection, "builder"
4 includes an individual who builds that individual's own residence.

5 **SECTION 7. AMENDMENT.** Section 57-02.2-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-02.2-03. Tax exemption for improvements to commercial and residential buildings**
8 **and structures - Property owner's certificate.**

9 Improvements

10 1. An improvement to a commercial and/or residential buildings and structures as defined
11 in this chapter building or structure may be exempt from assessment and taxation for
12 up to five years from the date of commencement of making the
13 improvementsimprovement, if the exemption is approved by theall the following
14 conditions are met:

15 a. The governing body of the city, for property within city limits, or the governing
16 body of the county, for property outside city limits has approved the exemption.
17 The governing body of the city or county may limit or impose conditions upon
18 exemptions under this section, including limitations on the time during which an
19 exemption is allowed.

20 b. The governing body of the city or county has received approval from the
21 governing body of each city, county, or school district that would be impacted by
22 the grant of the exemption.

23 2. A resolution adopted by the governing body of the city or county under this section
24 may be rescinded or amended at any time. The exemption provided by this chapter
25 shall applyapplies only to that part of the valuation resulting from the improvementsan
26 improvement which is over and above the assessed valuation, exclusive of the land,
27 placed upon the building or structure for the last assessment period immediately
28 preceding the date of commencement of the improvementsimprovement.

29 3. Any person, corporation, limited liability company, association, or organization owning
30 real property and seeking an exemption under this chapter shall file with the assessor
31 a certificate setting out the facts upon which the claim for exemption is based. The

1 assessor shall determine whether the ~~improvements qualify~~improvement qualifies for
2 the exemption based on the resolution of the governing body of the city or county, and
3 if the assessor determines ~~that~~ the exemption should apply, upon approval of the
4 governing body, the exemption is valid for the prescribed period and ~~shall~~does not
5 terminate upon the sale or exchange of the property ~~but shall be transferable~~and may
6 be transferred to subsequent owners. If the certificate is not filed as herein provided,
7 the assessor shall regard the ~~improvements~~improvement as nonexempt and ~~shall~~
8 ~~assess them as such~~the improvement.