

HOUSE BILL NO. 1165

Introduced by

Representatives Toman, Rick C. Becker, Jones, K. Koppelman, Louser, Olson, Schatz,
Simons

Senators Casper, Poolman

1 A BILL for an Act to amend and reenact sections 54-60.1-01 and 54-60.1-05 of the North
2 Dakota Century Code, relating to transparency of state grants; and to declare an emergency.

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

4 **SECTION 1. AMENDMENT.** Section 54-60.1-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-60.1-01. Definitions.**

7 As used in this chapter, unless the context otherwise requires:

- 8 1. "Benefit date" means the date on which the recipient receives the business incentive.
9 If the business incentive involves the purchase, lease, or donation of physical
10 equipment, the benefit date is the date when the recipient puts the equipment into
11 service. If the business incentive is for improvements to property, the benefit date is
12 the earlier of either when the improvements are finished for the entire project or when
13 a business occupies the property. If a business occupies the property and the
14 business incentive grantor expects that other businesses will also occupy the same
15 property, the grantor may assign a separate benefit date for each subsequent
16 business when that subsequent business first occupies the property.
- 17 2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or
18 equity investment; contribution of property or infrastructure; reduction or deferral of
19 any tax or any fee; guarantee of any payment under any loan, lease, or other
20 obligation; or preferential use of government facilities given to a business. To be
21 considered a business incentive, the total assistance in all forms must be valued at
22 twenty-five thousand dollars or more committed within a year. Unless specifically
23 provided otherwise, the term does not include:

- 1 a. Assistance that is generally available to all businesses or to a general class of
- 2 similar businesses, such as a line of business, size, or similar criteria.
- 3 b. Incentives resulting from Bank of North Dakota programs unless the incentive is
- 4 a direct interest rate buydown or is an investment made pursuant to the North
- 5 Dakota alternative and venture capital investments and early-stage capital funds
- 6 program.
- 7 c. Public improvements to buildings or lands owned by the state or political
- 8 subdivision which serve a public purpose and do not principally benefit a single
- 9 business or defined group of businesses at the time the improvements are made.
- 10 d. Assistance provided for the sole purpose of renovating old or decaying building
- 11 stock or bringing such building stock up to code and assistance provided for
- 12 designated historic preservation districts, provided that the assistance does not
- 13 exceed seventy-five percent of the total cost.
- 14 e. Assistance to provide job-readiness and training services if the sole purpose of
- 15 the assistance is to provide those services.
- 16 f. Assistance for housing.
- 17 g. Assistance for pollution control or abatement.
- 18 h. Assistance for energy conservation.
- 19 i. Tax reductions resulting from conformity with federal tax law.
- 20 j. Benefits derived from regulation.
- 21 k. Indirect benefits derived from assistance to educational institutions.
- 22 l. Assistance for a collaboration between a North Dakota institution of higher
- 23 education and a business.
- 24 m. Redevelopment if the recipient's investment in the purchase of the site and in site
- 25 preparation is seventy percent or more of the assessor's current year's estimated
- 26 market value.
- 27 n. General changes in tax increment financing law and other general tax law
- 28 changes of a principally technical nature.
- 29 o. Federal assistance provided through the state or a political subdivision until the
- 30 assistance has been repaid to, and reinvested by, the state or political
- 31 subdivision.

- 1 p. Federal or state assistance for the lignite research, development, and marketing
2 program under chapter 54-17.5.
- 3 q. Federal or state assistance for the oil and gas research, development, and
4 marketing program under chapter 54-17.6.
- 5 r. Federal or state assistance for the renewable energy program under chapter
6 54-63.
- 7 3. "Compensation" means the value of an employee's:
- 8 a. Earnings, including wages, salary, bonus, and commissions; and
- 9 b. Benefits, including:
- 10 (1) Health, disability, life, and retirement benefits or insurance premium paid by
11 the employer;
- 12 (2) An employee's share of payroll taxes paid by the employer; and
- 13 (3) Other fringe benefits such as housing allowance and transportation
14 expenses.
- 15 4. "Department" means the department of commerce.
- 16 5. "Grant" means a business incentive payment obligation awarded by the state and
17 which is funded directly by state revenues.
- 18 6. "Grantor" means the state or any political subdivision that directly or indirectly grants a
19 business incentive to a recipient.
- 20 6-7. "Political subdivision" means a unit of local government in this state which has direct
21 or indirect authority to grant a business incentive. The term includes any authority,
22 agency, special district, or entity created by, authorized by, under the jurisdiction of, or
23 contracting with a political subdivision.
- 24 7-8. "Public purpose" includes assisting community development, increasing the tax base,
25 directly creating employment opportunities, or indirectly creating employment
26 opportunities through increased economic activity. Job retention is only a public
27 purpose in cases in which job loss is specific and demonstrable.
- 28 8-9. "Recipient" means any individual or business entity that receives a business incentive.
- 29 9-10. "State" means any North Dakota state government agency that has the authority to
30 directly or indirectly award business incentives.

1 **SECTION 2. AMENDMENT.** Section 54-60.1-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-60.1-05. State grantor recipient reports.**

- 4 1. The department shall create state grantor recipient report forms that include:
- 5 a. The name and address, website uniform resource locator, and tax identification
6 number of the recipient;
 - 7 b. The date the fiscal year of the recipient begins;
 - 8 c. A classification of the amount of funding received by the recipient from:
 - 9 (1) Federal government sources;
 - 10 (2) State government sources;
 - 11 (3) Local government sources; and
 - 12 (4) Any other source.
 - 13 d. The type, public purpose, and value of the business incentive;
 - 14 e-e. The number of new jobs to be created or retained in association with the
15 business incentive;
 - 16 d-f. The average compensation of all jobs to be created or retained in association
17 with the business incentive, including identification of the average benefits and
18 the average earnings provided by the employer on all jobs created or retained in
19 association with the business incentive;
 - 20 e-g. The date the job and average compensation goals are expected to be reached;
 - 21 f-h. A statement of goals identified in the business incentive agreement and an
22 update on achievement of these goals, including the actual number of jobs
23 created or retained and the average compensation of jobs created or retained at
24 that point, including identification of the average benefits actually provided and
25 the average earnings actually provided by the employer on all jobs created or
26 retained;
 - 27 g-i. The location of the recipient prior to receiving the business incentive;
 - 28 h-j. The name and address of the parent corporation of the recipient, if any;
 - 29 i-k. A list of business incentives by all grantors for the project; and
 - 30 j-l. Other information the department and grantor may request.

- 1 2. Each state grantor shall use recipient report forms created by the department to
2 monitor the progress by each state grantor recipient in achieving business incentive
3 agreement goals. At a minimum, each of these recipients shall provide the state
4 grantor with an annual recipient report for two years following the benefit date or until
5 the goals are met, whichever is later. The report must include the outcomes achieved
6 by the grant program since the date the grant was awarded or the date the previous
7 report was filed by the recipient, an assessment of the costs incurred to achieve the
8 outcomes of the grant program since the date the grant was awarded or the date the
9 previous report was filed by the recipient, and a table of expenditures made with grant
10 funds by the recipient since the date the grant was awarded or the date the previous
11 report was filed by the recipient. The table of expenditures must include expenditures
12 for:
- 13 a. Personnel;
 - 14 b. Contractual services;
 - 15 c. Office supplies and materials;
 - 16 d. Travel;
 - 17 e. Communications and postage;
 - 18 f. Utilities;
 - 19 g. Printing;
 - 20 h. Repairs and maintenance;
 - 21 i. Meeting expenses;
 - 22 j. Employee training expenses;
 - 23 k. Advertising;
 - 24 l. Space, furniture, vehicle, and equipment rentals;
 - 25 m. Subscriptions;
 - 26 n. Insurance;
 - 27 o. Books and reference materials;
 - 28 p. Mortgage principal, interest, and bank fees;
 - 29 q. Buildings and improvements;
 - 30 r. Other services;
 - 31 s. Stipends, scholarships, and bonuses;

1 t. Food; and

2 u. Other expenses.

3 3. If the business incentive agreement goals are not met, the state grantor recipient shall
4 continue to provide recipient reports to the state grantor until the incentive is repaid. A
5 state grantor shall file with the department a copy of each completed recipient report.

6 ~~3.4.~~ Before sixty days after the anniversary of the benefit date, a state grantor recipient
7 shall file with the state grantor the recipient report for the previous twelve months. If a
8 state grantor recipient fails to file a recipient report before the sixtieth day after the
9 anniversary of the benefit date, the state grantor shall mail the recipient a warning
10 letter. If a noncompliant state grantor recipient fails to file the recipient report within
11 fourteen days of the postmarked date of the warning letter, the recipient shall pay to
12 the state grantor a penalty of one hundred dollars for each subsequent day until the
13 report is filed. The maximum penalty under this section may not exceed one thousand
14 dollars. The name of the noncompliant recipient must be placed on a publicly available
15 noncompliance list included on the website of the department. If a recipient remains on
16 the list for more than sixty days, the recipient is not eligible to receive additional grant
17 funds until the recipient becomes compliant.

18 5. The department shall establish and maintain a website known as the state
19 transparency and accountability portal. The website must contain publicly accessible
20 information regarding the requirements of this section.

21 6. Each recipient shall complete a form required by subsection 1 for each grant received
22 by the recipient. The recipient shall submit a copy of the form to the department within
23 thirty days after the first disbursement of funds under the grant.

24 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.