

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED 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 create and enact a new subsection to section 54-60.1-07 of the North
2 Dakota Century Code, relating to transparency of state grants; and to amend and reenact
3 section 54-60.1-01, subdivision g of subsection 3 of section 54-60.1-03, and section 54-60.1-05
4 of the North Dakota Century Code, relating to transparency of state grants.

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

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

8 **54-60.1-01. Definitions.**

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

- 10 1. "Benefit date" means the date on which the recipient receives the business incentive.
11 If the business incentive involves the purchase, lease, or donation of physical
12 equipment, the benefit date is the date when the recipient puts the equipment into
13 service. If the business incentive is for improvements to property, the benefit date is
14 the earlier of either when the improvements are finished for the entire project or when
15 a business occupies the property. If a business occupies the property and the
16 business incentive grantor expects that other businesses will also occupy the same
17 property, the grantor may assign a separate benefit date for each subsequent
18 business when that subsequent business first occupies the property.
- 19 2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or
20 equity investment; contribution of property or infrastructure; reduction or deferral of
21 any tax or any fee; guarantee of any payment under any loan, lease, or other
22 obligation; or preferential use of government facilities given to a business. To be
23 considered a business incentive, the total assistance in all forms must be valued at

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

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- 1 o. Federal assistance provided through the state or a political subdivision until the
2 assistance has been repaid to, and reinvested by, the state or political
3 subdivision.
- 4 p. Federal or state assistance for the lignite research, development, and marketing
5 program under chapter 54-17.5.
- 6 q. Federal or state assistance for the oil and gas research, development, and
7 marketing program under chapter 54-17.6.
- 8 r. Federal or state assistance for the renewable energy program under chapter
9 54-63.
- 10 3. "Compensation" means the value of an employee's:
- 11 a. Earnings, including wages, salary, bonus, and commissions; and
- 12 b. Benefits, including:
- 13 (1) Health, disability, life, and retirement benefits or insurance premium paid by
14 the employer;
- 15 (2) An employee's share of payroll taxes paid by the employer; and
- 16 (3) Other fringe benefits such as housing allowance and transportation
17 expenses.
- 18 4. "Department" means the department of commerce.
- 19 5. "Grant" means a business incentive payment obligation awarded by the state and
20 which is funded directly by state revenues.
- 21 6. "Grantor" means the state or any political subdivision that directly or indirectly grants a
22 business incentive to a recipient.
- 23 6-7. "Political subdivision" means a unit of local government in this state which has direct
24 or indirect authority to grant a business incentive. The term includes any authority,
25 agency, special district, or entity created by, authorized by, under the jurisdiction of, or
26 contracting with a political subdivision.
- 27 7-8. "Public purpose" includes assisting community development, increasing the tax base,
28 directly creating employment opportunities, or indirectly creating employment
29 opportunities through increased economic activity. Job retention is only a public
30 purpose in cases in which job loss is specific and demonstrable.
- 31 8-9. "Recipient" means any individual or business entity that receives a business incentive.

1 ~~9.10.~~ "State" means any North Dakota state government agency that has the authority to
2 directly or indirectly award business incentives.

3 **SECTION 2. AMENDMENT.** Subdivision g of subsection 3 of section 54-60.1-03 of the
4 North Dakota Century Code is amended and reenacted as follows:

5 g. A list of all financial assistance by all grantors for the project. A business incentive
6 agreement for a grant must include a list of financial assistance provided by
7 federal government sources, state government sources, local government
8 sources, and any matching funds.

9 **SECTION 3. AMENDMENT.** Section 54-60.1-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **54-60.1-05. State grantor recipient reports.**

- 12 1. The department shall create state grantor recipient report forms that include:
- 13 a. The name ~~and~~, address, and website uniform resource locator of the recipient;
 - 14 b. The type, public purpose, and value of the business incentive;
 - 15 c. The number of new jobs to be created or retained in association with the
16 business incentive;
 - 17 d. The average compensation of all jobs to be created or retained in association
18 with the business incentive, including identification of the average benefits and
19 the average earnings provided by the employer on all jobs created or retained in
20 association with the business incentive;
 - 21 e. The date the job and average compensation goals are expected to be reached;
 - 22 f. A statement of goals identified in the business incentive agreement and an
23 update on achievement of these goals, including the actual number of jobs
24 created or retained and the average compensation of jobs created or retained at
25 that point, including identification of the average benefits actually provided and
26 the average earnings actually provided by the employer on all jobs created or
27 retained;
 - 28 g. The location of the recipient prior to receiving the business incentive;
 - 29 h. The name and address of the parent corporation of the recipient, if any;
 - 30 i. A list of business incentives by all grantors for the project; ~~and~~

1 j. For grants, an updated list of financial assistance provided by federal government
2 sources, state government sources, local government sources, and any matching
3 funds; and

4 k. Other information the department and grantor may request.

5 2. Each state grantor shall use recipient report forms created by the department to
6 monitor the progress by each state grantor recipient in achieving business incentive
7 agreement goals. At a minimum, each of these recipients shall provide the state
8 grantor with an annual recipient report for two years following the benefit date or until
9 the goals are met, whichever is later. If the business incentive agreement goals are not
10 met, the state grantor recipient shall continue to provide recipient reports to the state
11 grantor until the incentive is repaid. A state grantor shall file with the department a
12 copy of each completed recipient report.

13 3. In addition to the report provided under subsection 2, grant recipients shall provide the
14 state grantor with a table of expenditures made with grant funds by the recipient since
15 the date the grant was awarded or the date the previous report was filed by the
16 recipient.

17 ~~3.4.~~ Before sixty days after the anniversary of the benefit date, a state grantor recipient
18 shall file with the state grantor the recipient report for the previous twelve months. If a
19 state grantor recipient fails to file a recipient report before the sixtieth day after the
20 anniversary of the benefit date, the state grantor shall mail the recipient a warning
21 letter. If a noncompliant state grantor recipient fails to file the recipient report within
22 fourteen days of the postmarked date of the warning letter, the recipient shall pay to
23 the state grantor a penalty of one hundred dollars for each subsequent day until the
24 report is filed. The maximum penalty under this section may not exceed one thousand
25 dollars.

26 **SECTION 4.** A new subsection to section 54-60.1-07 of the North Dakota Century Code is
27 created and enacted as follows:

28 The department shall provide information regarding state grantor reports on its
29 website, including the compilation and summary, the state grantor recipient report on
30 grant expenditures, and a report listing noncompliant state grantor recipients.