

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: SB 2137

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

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

This bill removes the requirement that matching funds for the Small Business Technology Investment Program must come from certified angel funds. This change is not expected to have a fiscal impact.

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

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

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

Name: Justin Dever

Agency: Department of Commerce

Telephone: 701-328-7258

Date Prepared: 01/02/2015

2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2137

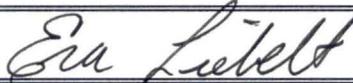
2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2137
1/12/2015
Job Number 21811

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to small business technology investment program

Minutes:

Attachments

Chairman Klein: Opened the hearing.

Justin Dever, Manager of the Office of Innovation Entrepreneurship for the North Dakota Department of Commerce: Testifying for **Paul Lucy, Director of the Economic Development & Finance Division of ND Department of Commerce.** Written Testimony Attached (1). In Support of SB 2137

Senator Miller: Asked for examples of non-state and if it could be some sort of University Foundation.

Justin Dever: Non-state sources could include family friends, private investment and could still include the Angel Fund. As far as University Foundation I am not sure if that would qualify as non-private or not.

Chairman Klein: Asked for Justin Dever to explain what an Angel Fund is.

Justin Dever: The Department of Commerce is charged with certifying Angel Funds for those Angel Funds that wish to access the tax credits that are available. North Dakota provides a relatively generous tax credit in that, forty-five percent of your investment into an Angel Fund comes back to you as a tax credit. An Angel Fund would basically be a group of accredited investors that pool their funds together and then make investments into companies.

Senator Murphy: Asked if the North Dakota Development Fund administers this program and asked how he would find that. He also asked how many employees they have.

Justin Dever: The North Dakota Development Fund is part of the Department of Commerce. It is part of the Economic Development and Finance division so it reports to Paul Lucy the Director. The Development Fund includes four employees.

Chairman Klein: If the Angel Fund doesn't want to touch the investment what would entice others to invest? Is there a lot of risk, more than in other things?

Justin Dever: Yes there is risk and that was intended when this program was put in place. North Dakota Development Fund already provides financing to companies. The difference is companies that the Development Fund traditionally invests in, are companies that would be further along. (5:00-5:55)

Senator Campbell: Asked about the forty-five percent tax credit.

Justin Dever: The forty-five percent tax credit only applies to individuals investing in an Angel Fund.

Senator Campbell: With this bill the provision says for any non-state sources, they would qualify for that tax credit as well?

Justin Dever: This bill does not address the tax credit. It would only be if the investment is made into an Angel Fund. There is also a Seed Capital Investment tax credit which is available for companies that are certified. If a business was certified as a seed capital they would qualify. (6:26-6:59)

Senator Campbell: Asked if this could help a father and son could have a startup company a spinoff of something from a different state. That would be included with this bill change?

Justin Dever: Yes it would.

Chairman Klein: The current law says it has to be from an Angel Fund and now we are saying it can be from a non-state.

Senator Sinner: Asked how many people would qualify under this new bill and what are they talking about in terms of money.

Justin Dever: A million dollars is in the fund and one person was given fifty thousand.

Senator Sinner: Commented that there are two options on the money, an equity investment in the company or a loan. Whose chose it would be?

Scot Long, Vice President of the North Dakota Development Fund: It is the state's choice. (10:41-11:24)

Chairman Klein: We are switching this because they understand that there would be other investors or sources or are we trying to figure out a way to make this work?

Scot Long: Basically trying to figure out a way to get more money out to help these companies. (11:38-11:54)

Chairman Klein: Asked if there was anyone else in support or opposition. He closed the hearing.

Senator Murphy made a motion for a do pass.

Senator Campbell seconded the motion.

Roll Call Vote: Yes-6 No-1 Absent-0

Senator Poolman will carry the bill.

REPORT OF STANDING COMMITTEE

SB 2137: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2137 was placed on the Eleventh order on the calendar.

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2137

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2137
3/4/2015
Job Number 24326

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Small business technology investment program.

Minutes:

Attachment #1

Chairman Keiser: Opens the hearing

(1:50)

**Dean Reese~Chief Executive Officer of the North Dakota Development Fund-
Department of Commerce.** (Attachment 1)

(4:04)

Representative Laning: Can you tell me what an angel fund is?

Dean Reese: Angel funds are the early stage where a group of people put money into a fund. These are individuals who have expertise in that company. It is more early stage than conventional financing from a bank.

Representative Lefor: Does this angel fund affect any other funds used for real estate development negatively?

Dean Reese: No. It will enhance the program. There is a need to get it to the next level of funding.

Representative Ruby: Wasn't the reason for this language to encourage angel funds to be developed? Will this take it away?

Dean Reese: I don't think it impedes anything from the angel funds.

Representative Ruby: If angel funds aren't interested in investing in these early companies that don't even have prototypes, who are you expecting will put in private funds?

Dean Reese: There are still individual angel investors that would be interested. They could do side-by-side investing. This fund goes up to \$50,000 and is a good start.

Chairman Keiser: This opens it up to "love money" such as relatives.

Dean Reese: Yes.

Representative Beadle: Can you run through the Small Business Technology Investment Program and how those funds are dispersed. I know there is a \$50,000 cap. Does the development fund foundation take an equity portion ownership? What is the structure?

Dean Reese: They have to give us an idea what they want to achieve. There is an application with projections. We have the ability to do either a loan or equity investments into the company. It is not a grant.

Representative Beadle: Would the development fund be interested in the "love money"? Would this be riskier? Is that something you take into consideration as far as who is providing the match?

Dean Reese: Yes we do. When the legislature created the development fund back in 1991, we were a risk fund. We balanced it. We are probably 75% loans and 25% equity.

Representative Beadle: You don't envision that since we are no longer requiring an angel fund investment to be a prerequisite for this investment program, rather than be a partner with the angel funds groups across the state, you will be competing with other angel funds groups?

Dean Reese: I would rather partner with them. That would bring in more ideas.

Representative Becker: What manner would you give these funds, loan or equity? How are you able to determine what equity is required or if not equity how do you determine the loan structure?

Dean Reese: A meeting with the investor would see if they did their homework, their background, and experience in that area.

Representative Becker: Do you have a formula or protocol by which you determine what equity you require in the business for a given loan?

Dean Reese: No we do not. I base it on my experience.

(19:26)

Representative Becker: Do you have a set formula for loan repayments?

Dean Reese: We base it on their cash flow. If it is a loan, we try to fit the needs of the company because we are not regulated by the FDIC or the CCC. It might take four years based on their cash flow.

Representative Becker: It seems it would be extremely hard to determine the cash flow. Tell me about the one company that was an angel investor? What were the terms with your contribution?

Dean Reese: If it is in the proof of concept, it is more of an equity investment rather than a loan. We set up our equity to do it cumulative. If the company cannot make that dividend payment after one year, we move it to the next year. We meet with our companies on a regular basis. In the early stage ones it is more of an equity type of investment than it is a loan.

Representative Becker: What took place with the one company that took advantage of the program? There was only one who participated. What were the terms?

Dean Reese: It was called convertible debt. It is set up based on a rate of return. Interest was due quarterly. The principal was due within the third, fourth, and fifth year pay back. They did have access to angel funds.

Vice Chairman Sukut: When does the primary sector part of the valuation come into play? When you have proof of concept, does it include a marketing plan?

Dean Reese: That is the first question we ask when they call the development fund. We ask for a marketing plan and to give a description of the product to produce.

Vice Chairman Sukut: Do you have any wiggle room with the primary sector?

Dean Reese: We do look at that but there still has to be some value.

Representative Lefor: In the four years since this was passed, what is the practical effect of this bill if it passed in terms of numbers of companies that would now be open to apply for this.

Dean Reese: We have received numerous inquiries over the past four years. If we did 50%, we could have 8 to 10 companies that would have access to this fund if we expanded it to the degree that we are asking for today.

Representative Ruby: Is the company that accessed the funds still in operation? Are they still making payments?

Dean Reese: Yes they are.

Representative Ruby: On line 23, it relieves the program of a lot of requirements such as public purpose, setting goals, reporting requirements, evaluation of the goals, etc. Aren't you concerned that if we open this up, that we are also keeping that exemption in?

Dean Reese: We still ask for that information such as how many jobs they will create, etc. We still track it.

Representative Beadle: How do you classify mobile app developers, software engineering developers? Do they count toward primary sector companies?

Dean Reese: We have done a lot with IT companies; but if there is a gray area they would apply to be certified as primary sector. We do look at those.

Representative Devlin: I have a concern over how broad the terminology "non-state funds" is? Would that reach as far as city or county economic development type money? So there could be no private money involved?

Dean Reese: They have to have some skin in the game. There has to be some private money invested.

Representative Devlin: There is nothing in this bill to prevent this from happening. Is there better terminology for "non-state"?

Dean Reese: I agree. You have to have other dollars beside public funds to do the match.

Chairman Keiser: When we are using state dollars, we want to be careful. In the PACE buy-down program we require a local bank to sign off and take risk. The real reason for the angel fund, if it said this is a worthwhile project puts it on a different level than if a relative says it is a worthwhile project.

(35:30)

Dean Reese: I agree. From the development standpoint we would not give them the money.

Chairman Keiser: What is the barrier? Before, we had the angel fund that we could rely on.

Dean Reese: We are not taking that out of the bill. We want to work with the angel fund. It is not taking them out of the bill. It just gives us the ability that if some companies are not at that stage to add on to it.

Chairman Keiser: I understand that but you are adding the new part.

Dean Reese: We have been around since 1991. You enhanced us based on appropriations of about \$27 million. We went over \$100 million in investments. So we have turned the money four times. We have helped 555 companies since 1991 to get funding. Our loss rate is within reason. We have created more dollars than what we were appropriated. We are a truly revolving fund.

Vice Chairman Sukut: Closed the hearing on SB 2137.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2137
3/4/2015
24368

- Subcommittee
 Conference Committee

Ellen Helms

Explanation or reason for introduction of bill/resolution:

Small business technology investment program.

Minutes:

Chairman Keiser: Opens the work session on SB 2137.

Representative Becker: I asked if that one entity that had been given money was still in existence in paying back in a timely fashion. I would bet that the answer would be yes & the reason is that they were already vetted by the angel investors. Angel investors are not going to give their money to a group that doesn't have a solid plan. My concern is that this is a proof of concept stage & I don't think this is a stage we should be giving taxpayer's money with.

Representative Becker: Moves a Do Not Pass

Representative Ruby: Seconded.

Representative M Nelson: I think what's happening is by the time the angel funds are really interested, they don't want to give up a bite of the apple. My concern is that if it really serves a function as a program. I couldn't support the bill and my real question is whether the program should really continue.

Representative Ruby: I agree with that. Why don't they use their incentives though the development fund to help these companies get started if they so choose? I agree.

Chairman Keiser: I support the angel fund approach when it began. This bill should come back to us next session if they want it & they should have the criteria that commerce will use because you are not going to have the angel fund there making the decisions. I don't support giving money without knowing what commerce is doing relative to reviewing the applications.

Roll call was taken on SB 2137 for a Do Not Pass with 14 yes, 0 no, 1 absent and Representative Beadle will carry the bill.

Date: Mar 4, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2137

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Rick Becker Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Beadle

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

REPORT OF STANDING COMMITTEE

SB 2137: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
SB 2137 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2137

**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2137
JANUARY 12, 2015, 10:00 A.M.
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
ROOSEVELT PARK ROOM
SENATOR JERRY KLEIN, CHAIRMAN**

**PAUL LUCY – DIRECTOR OF THE ECONOMIC DEVELOPMENT & FINANCE DIVISION OF ND
DEPARTMENT OF COMMERCE**

Mr. Chairman and members of the committee, my name is Paul Lucy and I serve as the Director of the Economic Development and Finance Division of the North Dakota Department of Commerce. I am here before you today in support of Senate Bill 2137.

SB 2137 was introduced by the Department of Commerce in an attempt to help tech startups gain access to the Small Business Technology Investment Program by removing restrictions on whom can provide matching funds.

The Small Business Technology Investment Program was established by the legislature in 2011 to provide financing to startup technology-based businesses. This program is administered by the North Dakota Development Fund which received \$1 million to invest in qualified businesses. The program is intended to reach early stage companies, including those that need funding for development of a proof of concept. In order for a company to access this funding, an eligible applicant must receive a two-to-one dollar match from a certified angel fund. We believe this requirement that the match come from a certified angel fund is an impediment to early stage companies accessing the program. Over the past four years the program has been in place, there has been only one company/project that has accessed it.

From discussions with angel funds, we learned that they tend to shy away from companies that do not yet have a working prototype or proof of concept. The change we are proposing would allow the match to be gathered from any non-state sources, which could still include angel funds or any other private funds.

Mr. Chairman and members of the Industry, Business and Labor Committee, I respectfully request your favorable consideration of Senate Bill 2137. That concludes my testimony and I am happy to entertain any questions.



DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2137

MARCH 4, 2015, 10:00 A.M.

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE

REPRESENTATIVE GEORGE KEISER, CHAIRMAN

DEAN REESE – CEO OF THE NORTH DAKOTA DEVELOPMENT FUND, ND DEPARTMENT OF COMMERCE

Mr. Chairman and members of the committee, my name is Dean Reese and I serve as the Chief Executive Officer of the North Dakota Development Fund, which is part of the Department of Commerce. I am here before you today in support of Senate Bill 2137.

SB 2137 was introduced by the Department of Commerce in an attempt to help tech startups gain access to the Small Business Technology Investment Program by removing restrictions on whom can provide matching funds.

The Small Business Technology Investment Program was established by the legislature in 2011 to provide financing to startup technology-based businesses. This program is administered by the North Dakota Development Fund which received \$1 million to invest in qualified businesses. The program is intended to reach early stage companies, including those that need funding for development of a proof of concept. In order for a company to access this funding, an eligible applicant must receive a two-to-one dollar match from a certified angel fund. We believe this requirement that the match come from a certified angel fund is an impediment to early stage companies accessing the program. Over the past four years the program has been in place, there has been only one company/project that has accessed it.

From discussions with angel funds, we learned that they tend to shy away from companies that do not yet have a working prototype or proof of concept. The change we are proposing would allow the match to be gathered from any non-state sources, which could still include angel funds or any other private funds.

Mr. Chairman and members of the Industry, Business and Labor Committee, I respectfully request your favorable consideration of Senate Bill 2137. That concludes my testimony and I am happy to entertain any questions.