

SENATE BILL NO. 2339

Introduced by

Senators Tomac, Kroeplin

Representatives Fairfield, Lundgren, Warner

1 A BILL for an Act to create and enact a new subsection to section 57-38-30.3 and chapter
2 57-38.6 of the North Dakota Century Code, relating to agricultural cooperatives; to amend and
3 reenact sections 4-14.1-03 and 4-14.1-03.1 of the North Dakota Century Code, relating to the
4 agricultural products utilization; to provide an appropriation; to provide for the transfer of
5 appropriations; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Section 4-14.1-03 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **4-14.1-03. Agricultural products utilization commission - Composition -**
10 **Appointment.** The agricultural fuel tax fund must be administered by the agricultural products
11 utilization commission. The commission consists of nine members, five of whom must be
12 appointed by the governor for terms of two years each, arranged so that two terms expire in
13 odd-numbered years and three terms expire in even-numbered years. Three members
14 appointed by the governor must be actively engaged in farming in this state and two members
15 appointed by the governor must be actively engaged in business in this state. The agriculture
16 commissioner of agriculture shall appoint one member for a term of two years which expires in
17 odd-numbered years. The member appointed by the commissioner must be actively engaged
18 in farming in this state. Appointments must be made from names submitted by agricultural
19 organizations. Commission members may be reappointed to the commission. Terms of
20 commissioners shall run from the first day of July. The director of the department of economic
21 development and finance, the president of North Dakota state university, and the agriculture
22 commissioner of agriculture, or their designees, are members of the commission. The
23 commission shall elect one of its members as chairman.

1 **SECTION 2. AMENDMENT.** Section 4-14.1-03.1 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **4-14.1-03.1. Agricultural products utilization commission - Authority.** The North
4 Dakota agricultural products utilization commission may apply for, accept, and expend any
5 appropriation, grant, gift, or service made available from public or private sources consistent
6 with the purpose of this chapter. The commission may negotiate the repayment of grants
7 through preferred stock, intellectual property, and other methods. The commission may
8 administer grant programs consistent with the purpose of this chapter including a basic and
9 applied research grant program, utilization and marketing grant program, cooperative marketing
10 grant program, farm diversification grant program, agricultural prototype development grant
11 program, and a North American marketing grant program.

12 **SECTION 3.** A new subsection to section 57-38-30.3 of the 1997 Supplement to the
13 North Dakota Century Code is created and enacted as follows:

14 An individual, estate, or trust is entitled to a credit against the tax determined under
15 this section as calculated under section 57-38.6-03.

16 **SECTION 4.** Chapter 57-38.6 of the North Dakota Century Code is created and
17 enacted as follows:

18 **57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise
19 requires:

- 20 1. "Agricultural commodity processing facility" means a facility that through
21 processing involving the employment of knowledge and labor adds value to an
22 agricultural commodity capable of being raised in this state.
- 23 2. "Director" means the director of the department of economic development and
24 finance.
- 25 3. "Qualified cooperative" means a cooperative that:
 - 26 a. Is incorporated in this state for the primary purpose of processing and
27 marketing agricultural commodities capable of being raised in this state;
 - 28 b. Is in compliance with the requirements for filings with the securities
29 commissioner under the securities laws of this state;
 - 30 c. Has an agricultural commodity processing facility in this state; and

1 d. Has a majority of its ownership interests owned by producers of unprocessed
2 agricultural commodities.

3 4. "Taxpayer" means an individual, estate, or trust.

4 **57-38.6-02. Certification - Investment reporting by qualified cooperatives.** The
5 director shall certify whether a cooperative that has requested to become a qualified
6 cooperative meets the requirements of subsection 3 of section 57-38.6-01. The director shall
7 establish the necessary forms and procedures for certifying qualified cooperatives.

8 **57-38.6-03. Agricultural cooperative investment tax credit.** If a taxpayer makes a
9 qualified investment in a qualified cooperative, the taxpayer is entitled to a credit against state
10 income tax liability as determined under section 57-38-29 or 57-38-30.3. The amount of the
11 credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in
12 qualified cooperatives during the taxable year, subject to the following:

13 1. The aggregate annual investment for which a taxpayer may obtain a tax credit
14 under this section is not more than twenty thousand dollars. This subsection does
15 not limit additional investment by a taxpayer for which that taxpayer is not applying
16 for a credit.

17 2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit
18 under this section which is attributable to qualified investments in a single taxable
19 year. The amount of the credit allowed under this section for any taxable year may
20 not exceed fifty percent of the taxpayer's tax liability as otherwise determined
21 under chapter 57-38.

22 3. Any amount of credit under this section not allowed because of the limitations in
23 this section may be carried forward for up to fifteen taxable years after the taxable
24 year in which the investment was made.

25 4. A partnership that invests in a qualified cooperative must be considered to be the
26 taxpayer for purposes of the investment limitations in this section and the amount
27 of the credit allowed with respect to a partnership's investment in a qualified
28 cooperative must be determined at the partnership level. The amount of the total
29 credit determined at the partnership level must be allowed to the partners, limited
30 to individuals, estates, and trusts, in proportion to their respective interests in the
31 partnership.

- 1 5. The investment must be at risk in the cooperative. A qualified investment must be
2 in the form of a purchase of stock or the right to receive payment of dividends from
3 the cooperative. An investment for which a credit is received under this section
4 must remain in the cooperative for at least three years.
- 5 6. The entire amount of an investment for which a credit is claimed under this section
6 must be expended by the qualified cooperative for plant, equipment, research and
7 development, marketing and sales activity, or working capital for the qualified
8 cooperative.
- 9 7. The tax commissioner may disallow any credit otherwise allowed under this section
10 if any representation by a cooperative in the application for certification as a
11 qualified cooperative proves to be false or if the taxpayer or qualified cooperative
12 fails to satisfy any conditions under this section or any conditions consistent with
13 this section otherwise determined by the tax commissioner. The amount of any
14 credit disallowed by the tax commissioner that reduced the taxpayer's income tax
15 liability for any or all applicable tax years, plus penalty and interest provided under
16 section 57-38-45, must be paid by the taxpayer.

17 **57-38.6-04. Taxable year for agricultural cooperative investment tax credit.** The
18 tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which full
19 consideration for the investment in the qualified cooperative was received by the qualified
20 cooperative.

21 **57-38.6-05. Agricultural cooperative investment tax credit - Procedure - Rules.** To
22 receive the tax credit provided by section 57-38.6-03, a taxpayer must claim the credit on the
23 taxpayer's annual state income tax return in the manner prescribed by the tax commissioner
24 and file with the return a copy of the form issued by the qualified cooperative as to the
25 taxpayer's investment in the qualified cooperative under section 57-38.6-06.

26 **57-38.6-06. Investment reporting forms.** Within thirty days after the date on which an
27 investment in a qualified cooperative is purchased, the qualified cooperative shall file with the
28 tax commissioner and the director and provide to the investor completed forms prescribed by
29 the tax commissioner which show as to each investment in the qualified cooperative:

- 30 1. The name, address, and social security number or taxpayer identification number
31 of the taxpayer who made the investment.

- 1 2. The dollar amount paid for the investment by the taxpayer.
- 2 3. The date on which full consideration was received by the qualified cooperative for
- 3 the investment.

4 **57-38.6-07. Rules and administration.** The tax commissioner is charged with
5 administration of this chapter as it relates to an income tax credit and has the same powers as
6 provided under section 57-38-56 for purposes of this chapter. The director is charged with
7 administration of this chapter as it relates to certification of qualified cooperatives and the
8 director may adopt rules for that purpose.

9 **SECTION 5. TRANSFER.** The industrial commission shall transfer to the agricultural
10 fuel tax fund in the state treasury the sum of \$500,000 from the North Dakota mill and elevator
11 association to defray the expenses of the agricultural products utilization commission in
12 implementing chapter 4-14.1.

13 **SECTION 6. BANK OF NORTH DAKOTA - VALUE-ADDED AGRICULTURE**
14 **INVESTMENTS.** The Bank of North Dakota shall allocate \$2,000,000 for the purpose of
15 making equity investments in value-added agricultural ventures.

16 **SECTION 7. APPROPRIATION.** There is hereby appropriated out of any moneys in
17 the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so
18 much of the sum as may be necessary, to the department of economic development and
19 finance for the purpose of developing, in conjunction with the agricultural products utilization
20 commission, a mutual fund capital pool to attract farm and nonfarm investments in value-added
21 processing projects, for the biennium beginning July 1, 1999, and ending June 30, 2001.

22 **SECTION 8. BANK OF NORTH DAKOTA - VALUE-ADDED PROCESS PROJECTS**
23 **MATCHING FUNDS.** It is the intent of the legislative assembly that the Bank of North Dakota
24 set aside \$1,000,000 for the purpose of providing reduced matching requirements for
25 value-added process projects through the partnership in assisting community expansion
26 program.

27 **SECTION 9. EFFECTIVE DATE.** Section 4 of this Act is effective for taxable years
28 beginning after December 31, 1999, and for investments in qualified cooperatives made after
29 December 31, 1999.