

**SECOND ENGROSSMENT
with House Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2032

Introduced by

Legislative Council

(Economic Development Committee)

1 A BILL for an Act to create and enact a new chapter to title 15, a new section to chapter
2 54-44.4, and a new section to chapter 57-38.5 of the North Dakota Century Code, relating to a
3 centers of excellence program, an office of management and budget procurement information
4 program, and seed capital investment tax credit treatment of investments in excess of caps on
5 credits; to amend and reenact sections 6-09-15, 10-04-05, 10-30.5-04, and 54-16-01,
6 subsection 1 of section 57-38-01.2, subsection 1 of section 57-38-71, and sections 57-38.5-01,
7 57-38.5-02, 57-38.5-03, 57-38.5-04, and 57-38.5-05 of the North Dakota Century Code, relating
8 to the authority of the Bank of North Dakota to invest funds, cross-references affected by the
9 repeal of the venture capital corporation law, the authority of the North Dakota development
10 fund to invest and manage funds, emergency commission membership, and the seed capital
11 investment tax credit; to repeal chapters 10-30.1 and 10-30.2 and section 15-10-41 of the North
12 Dakota Century Code, relating to venture capital corporations, the Myron G. Nelson Fund,
13 Incorporated, and the centers of excellence program; to provide for state agency studies,
14 reports to the legislative council, and legislative council studies; to provide an effective date;
15 and to provide an expiration date.

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

17 **SECTION 1. AMENDMENT.** Section 6-09-15 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **6-09-15. (Effective through July 31, ~~2007~~ 2009) Powers.** The Bank of North Dakota
20 may:

- 21 1. Make, purchase, guarantee, or hold loans:
 - 22 a. To state or federally chartered lending agencies or institutions, or any other
23 financial institutions.

- 1 b. To holders of Bank of North Dakota certificates of deposit and savings
- 2 accounts up to ninety percent of the value of the certificates and savings
- 3 accounts offered as security.
- 4 c. To actual farmers who are residents of this state, if the loans are secured by
- 5 recorded mortgages giving the Bank of North Dakota a first lien on real estate
- 6 in North Dakota in amounts not to exceed eighty percent of the value of the
- 7 security.
- 8 d. That are insured or guaranteed in whole or in part by the United States, its
- 9 agencies, or instrumentalities.
- 10 e. That are eligible to be guaranteed under chapter 15-62.1. Loans made
- 11 pursuant to this subdivision may provide for interest that remains unpaid at
- 12 the end of any period specified in the loan to be added to the principal amount
- 13 of the debt and thereafter accumulate interest.
- 14 f. To individuals or bank holding companies for the purpose of purchasing or
- 15 refinancing the purchase of bank stock of a bank located in the state.
- 16 g. To nonprofit organizations that are exempt from federal taxation under section
- 17 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of
- 18 the loans to be used for construction, reconstruction, repair, renovation,
- 19 maintenance, and associated costs on property under the control of the parks
- 20 and recreation department.
- 21 h. Under Public Law No. 99-198 [99 Stat. 1534; 7 U.S.C. 1932 et seq.], as
- 22 amended through December 31, 1996, to nonprofit corporations for the
- 23 purpose of relending loan funds to rural businesses.
- 24 i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951,
- 25 subparts F and R; and part 1955, subparts A, B, and C, as amended through
- 26 December 31, 1996, to finance businesses and community development
- 27 projects in rural areas.
- 28 j. Obtained as security pledged for or originated in the restructuring of any other
- 29 loan properly originated or participated in by the Bank.
- 30 k. To instrumentalities of this state.
- 31 l. As otherwise provided by this chapter or other statutes.

- 1 m. If the Bank is participating in the loan and the Bank deems it is in the best
2 interests of the Bank to do so, it may purchase the remaining portion of the
3 loan from a participating lender that is closed by regulatory action, or from the
4 receiver of the participating lender's assets.
- 5 n. To an investment company created for completing a trust preferred securities
6 transaction for the benefit of a financial institution located in this state.
- 7 2. Make agricultural real estate loans in order to participate in the agricultural
8 mortgage secondary market program established pursuant to the Agricultural
9 Credit Act [Pub. L. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as
10 amended through December 31, 1996.
- 11 3. Purchase participation interests in loans made or held by banks, bank holding
12 companies, state or federally chartered lending agencies or institutions, any other
13 financial institutions, or any other entity that provides financial services and that
14 meets underwriting standards that are generally accepted by state or federal
15 financial regulatory agencies.
- 16 4. Invest its funds:
- 17 a. In conformity with policies of the industrial commission.
- 18 b. In a public venture capital corporation organized and doing business in this
19 state through the purchase of shares of stock.
- 20 c. In North Dakota alternative and venture capital investments and early-stage
21 capital funds including the North Dakota development fund, incorporated, not
22 to exceed ~~five~~ ten million dollars, for the purpose of providing funds for
23 investment in North Dakota alternative and venture capital investments and
24 early-stage capital funds. The Bank may allow for third-party management of
25 the funds invested under this subdivision if the management is provided by
26 North Dakota development fund, incorporated, or a third party that is located
27 in the state and that has demonstrated fund management experience.
- 28 5. Buy and sell federal funds.
- 29 6. Lease, assign, exchange, transfer, convey, grant, pledge, or mortgage all real and
30 personal property, title to which has been acquired in any manner.

- 1 7. Acquire real or personal property or property rights by purchase, lease, or the
- 2 exercise of the right of eminent domain and may construct, remodel, and repair
- 3 buildings.
- 4 8. Receive deposits from any source and deposit its funds in any bank or other
- 5 financial institution.
- 6 9. Perform all acts and do all things necessary, convenient, advisable, or desirable to
- 7 carry out the powers expressly granted or necessarily implied in this chapter
- 8 through or by means of its president, officers, agents, or employees or by contracts
- 9 with any person, firm, or corporation.
- 10 10. Purchase mortgage loans on residential real property originated by financial
- 11 institutions.

12 **(Effective after July 31, 2007 2009) Powers.** The Bank of North Dakota may:

- 13 1. Make, purchase, or hold loans:
 - 14 a. To state or federally chartered lending agencies or institutions, or any other
 - 15 financial institutions.
 - 16 b. To holders of Bank of North Dakota certificates of deposit and savings
 - 17 accounts up to ninety percent of the value of the certificates and savings
 - 18 accounts offered as security.
 - 19 c. To actual farmers who are residents of this state, if the loans are secured by
 - 20 recorded mortgages giving the Bank of North Dakota a first lien on real estate
 - 21 in North Dakota in amounts not to exceed eighty percent of the value of the
 - 22 security.
 - 23 d. That are insured or guaranteed in whole or in part by the United States, its
 - 24 agencies, or instrumentalities.
 - 25 e. That are eligible to be guaranteed under chapter 15-62.1. Loans made
 - 26 pursuant to this subdivision may provide for interest that remains unpaid at
 - 27 the end of any period specified in the loan to be added to the principal amount
 - 28 of the debt and thereafter accumulate interest.
 - 29 f. To individuals or bank holding companies for the purpose of purchasing or
 - 30 refinancing the purchase of bank stock of a bank located in the state.

- 1 g. To nonprofit organizations that are exempt from federal taxation under section
2 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of
3 the loans to be used for construction, reconstruction, repair, renovation,
4 maintenance, and associated costs on property under the control of the parks
5 and recreation department.
- 6 h. Under Public Law No. 99-198 [99 Stat. 1534; 7 U.S.C. 1932 et seq.], as
7 amended through December 31, 1996, to nonprofit corporations for the
8 purpose of relending loan funds to rural businesses.
- 9 i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951,
10 subparts F and R; and part 1955, subparts A, B, and C, as amended through
11 December 31, 1996, to finance businesses and community development
12 projects in rural areas.
- 13 j. Obtained as security pledged for or originated in the restructuring of any other
14 loan properly originated or participated in by the Bank.
- 15 k. To instrumentalities of this state.
- 16 l. As otherwise provided by this chapter or other statutes.
- 17 m. If the Bank is participating in the loan and the Bank deems it is in the best
18 interests of the Bank to do so, it may purchase the remaining portion of the
19 loan from a participating lender that is closed by regulatory action, or from the
20 receiver of the participating lender's assets.
- 21 n. To an investment company created for completing a trust preferred securities
22 transaction for the benefit of a financial institution located in this state.
- 23 2. Make agricultural real estate loans in order to participate in the agricultural
24 mortgage secondary market program established pursuant to the Agricultural
25 Credit Act [Pub. L. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as
26 amended through December 31, 1996.
- 27 3. Purchase participation interests in loans made or held by banks, bank holding
28 companies, state or federally chartered lending agencies or institutions, any other
29 financial institutions, or any other entity that provides financial services and that
30 meets underwriting standards that are generally accepted by state or federal
31 financial regulatory agencies.

- 1 4. Invest its funds:
 - 2 a. In conformity with policies of the industrial commission.
 - 3 b. In a public venture capital corporation organized and doing business in this
 - 4 state through the purchase of shares of stock.
- 5 5. Buy and sell federal funds.
- 6 6. Lease, assign, exchange, transfer, convey, grant, pledge, or mortgage all real and
- 7 personal property, title to which has been acquired in any manner.
- 8 7. Acquire real or personal property or property rights by purchase, lease, or the
- 9 exercise of the right of eminent domain and may construct, remodel, and repair
- 10 buildings.
- 11 8. Receive deposits from any source and deposit its funds in any bank or other
- 12 financial institution.
- 13 9. Perform all acts and do all things necessary, convenient, advisable, or desirable to
- 14 carry out the powers expressly granted or necessarily implied in this chapter
- 15 through or by means of its president, officers, agents, or employees or by contracts
- 16 with any person, firm, or corporation.
- 17 10. Purchase mortgage loans on residential real property originated by financial
- 18 institutions.

19 **SECTION 2. AMENDMENT.** Section 10-04-05 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **10-04-05. Exempt securities.** Sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08,
22 and 10-04-08.4 do not apply to any of the following securities:

- 23 1. Securities issued or guaranteed by the United States of America, or by any state,
24 territory, or insular possession thereof, or by any political subdivision of any such
25 state, territory, or insular possession, or by the District of Columbia, or by any
26 public agency or instrumentality of one or more of any of the foregoing, or payable
27 from assessments for improvements or revenues of publicly owned utilities therein;
28 or a certificate of deposit for any of the foregoing, but this exemption does not
29 include any security payable solely from revenues to be received from a
30 nongovernmental industrial or commercial enterprise unless the security is insured

- 1 or unconditionally guaranteed by, or the revenues are derived from, a person
2 whose securities are exempt from registration under this section.
- 3 2. Securities issued by and representing an interest in or a debt of, or guaranteed by,
4 a national bank or a national bank and trust company or bank or credit or loan or
5 savings association or savings and loan association or credit union organized
6 pursuant to an Act of Congress and supervised by the United States, or any
7 agency thereof, or issued or guaranteed as to both principal and interest by an
8 international bank of which the United States is a member, or issued by and
9 representing an interest in or a debt of, or guaranteed by, a state bank, trust
10 company, savings bank, savings institution, or credit union organized and
11 supervised under the laws of any state, and securities of any person subject to
12 examination by the commissioner of financial institutions of North Dakota.
- 13 3. Securities issued by a building and loan association subject to supervision by an
14 agency of the state of North Dakota, or policy contracts, including variable annuity
15 contracts, of an insurance company subject to supervision by an agency of the
16 state of North Dakota.
- 17 4. Securities issued or guaranteed as to principal, interest, or dividends by a
18 corporation or limited liability company owning or operating a railroad or other
19 public service utility, if the corporation or limited liability company is subject to
20 regulation or supervision either as to its rates and charges or as to the issue of its
21 securities by a public service commission, or by a board, body, or official having
22 like powers, of the United States or of any state, territory, or insular possession
23 thereof, or of any municipality located therein, or of the District of Columbia, or of
24 the Dominion of Canada, or any province thereof.
- 25 5. Any security issued by any person organized and operated not for private profit but
26 exclusively for religious, educational, benevolent, fraternal, charitable, social, or
27 reformatory purposes; provided that prior to any offer of such security each person
28 must meet the following conditions:
- 29 a. Apply for and obtain the written approval of the commissioner.

- 1 b. File an application, offering disclosure document, and pay a nonrefundable
2 filing fee of one hundred fifty dollars, which document and fee must
3 accompany the application.
- 4 c. File a notice identifying the basis of its qualification under this exemption with
5 such additional information as the commissioner may require.
- 6 d. Provide a copy of the offering disclosure document to each person to whom
7 an offer to sell or sale is made.

8 The approval is effective for a period of one year from the date of approval. At
9 least thirty days prior to the expiration date, there must be filed an application,
10 offering disclosure document, and a nonrefundable fee of one hundred dollars for
11 the renewal of the filing for additional periods of one year.

12 6. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a
13 current transaction or the proceeds of which have been or are to be used for
14 current transactions, is not the subject of a public offering, is prime quality
15 negotiable commercial paper which has at the time of issuance a definite maturity
16 of not exceeding nine months, is payable in cash only, and is not convertible into
17 and does not carry an option or right to receive payment or any bonus in any other
18 security.

19 7. Securities, other than common stock, providing for a fixed return, which have been
20 outstanding and in the hands of the public for not less than five years and upon
21 which no default has occurred during the five years next preceding the date of
22 sale.

23 8. Securities, including patronage dividends or refunds, issued by any cooperative
24 organized under the statutes of this state.

25 9. Any equipment security based on a chattel mortgage, lease, or agreement for the
26 conditional sale of cars, motive power, or other rolling stock mortgaged, leased,
27 sold to, or furnished for the use of a railroad or other public service utility
28 corporation or limited liability company, and any equipment security when the
29 ownership of or title to such equipment is pledged or retained in accordance with
30 the provisions of the laws of the United States or of any state thereof, or of the

- 1 Dominion of Canada, to secure the payments of such equipment security whether
2 it be an equipment trust certificate, bond, or note.
- 3 10. Any bond, note, or other evidence of debt issued by a holding corporation or
4 limited liability company and secured by collateral consisting of any of the
5 securities described in subsections 4 and 9, if the collateral securities equal in fair
6 value at least one hundred twenty-five percent of the par value of the bonds, notes,
7 or other evidences of debts secured thereby.
- 8 11. The execution of orders for purchase of securities by a registered dealer provided
9 such dealer acts as agent for the purchaser, has made no solicitation of the order
10 to purchase such securities, has no direct material interest in the sale or
11 distribution of the securities ordered, receives no commission, profit, or other
12 compensation other than the commissions involved in the purchase and sale of the
13 securities and delivery to the purchaser of written confirmation of the order which
14 clearly itemizes the commissions paid to the registered dealer. Clear and
15 complete records of all transactions exempted under this subsection shall be
16 maintained by the registered dealer or broker.
- 17 12. ~~Any security issued by a venture capital corporation or limited liability company~~
18 ~~organized under and operating in compliance with chapter 10-30.1; provided that~~
19 ~~prior to any offer of such security, the issuer must meet the following conditions:~~
- 20 a. ~~Apply for and obtain written approval by the commissioner.~~
- 21 b. ~~File an application, offering disclosure document, and pay a nonrefundable~~
22 ~~filing fee of one hundred fifty dollars. The document and fee must accompany~~
23 ~~the application.~~
- 24 e. ~~File such additional information as the commissioner requires by rule or order~~
25 ~~or may subsequently request.~~
- 26 d. ~~Provide a copy of the offering disclosure document to each person to whom~~
27 ~~an offer to sell or sale is made.~~
- 28 e. ~~Not use public advertising matter or general solicitation, except tombstone~~
29 ~~advertisements approved by the commissioner, in connection with any offer~~
30 ~~or sale.~~

- 1 f. ~~File a report of all offers and sales made in this state within thirty days after~~
2 ~~the completion of the offering.~~
- 3 ~~The approval is effective for a period of one year from the date of approval. There~~
4 ~~must be filed, at least thirty days prior to the expiration date, an application,~~
5 ~~disclosure document, and a nonrefundable fee of one hundred dollars for the~~
6 ~~renewal of the filing for additional periods of one year.~~
- 7 ~~13.~~ Any security issued or guaranteed by Canada, any Canadian province, any
8 political subdivision of any such province, or any agency or corporate or other
9 instrumentality of one or more of the foregoing, or any other foreign government
10 with which the United States currently maintains diplomatic relations, if the security
11 is recognized as a valid obligation by the issuer or guarantor. This exemption does
12 not include any security payable solely from revenues to be received from a
13 nongovernmental industrial or commercial enterprise.
- 14 ~~14.~~ 13. a. Any security, other than a security that is a federal covered security pursuant
15 to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to
16 any filing or registration requirements under this chapter, listed or designated,
17 or approved for listing or designation upon notice of issuance on:
- 18 (1) The New York stock exchange;
19 (2) The American stock exchange;
20 (3) The national association of securities dealers automated quotation
21 national market system;
22 (4) Tier I of the Philadelphia stock exchange;
23 (5) Tier I of the Pacific stock exchange;
24 (6) Chicago board options exchange; or
25 (7) Any other stock exchange or automated quotation system which the
26 commissioner approves by rule;
- 27 b. Any other security of the same issuer which is of senior or substantially equal
28 rank;
- 29 c. Any security called for by subscription rights or warrants so listed or
30 approved; or
- 31 d. Any warrant or right to purchase or subscribe to any of the foregoing.

1 The commissioner may withdraw this exemption by order as to any exchange or
2 system, or any particular security, if the commissioner determines that it would be
3 in the public interest.

4 ~~45.~~ 14. Securities issued by the North Dakota education association dues credit trust to
5 members of the North Dakota education association.

6 **SECTION 3. AMENDMENT.** Section 10-30.5-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **10-30.5-04. (Effective through July 31, 2007 2009) Powers.** The corporation must
9 be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the
10 corporation may:

- 11 1. Cooperate and contract with any private or public entity.
- 12 2. Receive appropriations from the legislative assembly and other public moneys as
13 well as contributions from other private or public contributors.
- 14 3. Borrow funds not to exceed ~~five~~ ten million dollars from the Bank of North Dakota
15 for the purpose of investing in North Dakota alternative and venture capital
16 investments and early-stage capital funds. The corporation may provide
17 management services for the Bank's alternative and venture capital investments
18 and early-stage capital funds.

19 **(Effective after July 31, 2007 2009) Powers.** The corporation must be organized as a
20 nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

- 21 1. Cooperate and contract with any private or public entity.
- 22 2. Receive appropriations from the legislative assembly and other public moneys as
23 well as contributions from other private or public contributors.

24 **SECTION 4.** A new chapter to title 15 of the North Dakota Century Code is created and
25 enacted as follows:

26 **Definitions.** In this chapter, unless the context otherwise requires:

- 27 1. "Board" means the state board of higher education.
- 28 2. "Center" means a center of excellence relating to economic development which
29 has been designated or named under this chapter.
- 30 3. "Commission" means the centers of excellence commission.
- 31 4. "Foundation" means the North Dakota economic development foundation.

- 1 5. "Industry cluster" means one of the following industries:
2 a. Advanced manufacturing;
3 b. Energy;
4 c. Information and technology;
5 d. Tourism;
6 e. Value-added agriculture; or
7 f. An industry, including the aerospace industry, specifically identified by the
8 department of commerce as an industry that will contribute to the gross state
9 product.

10 **Centers of excellence.**

- 11 1. The board shall establish a centers of excellence program relating to economic
12 development. Through the program the commission shall make funding award
13 recommendations for commission-approved applications to the board, the
14 foundation, and the budget section of the legislative council. A center must be an
15 institution of higher education under the control of the board or a nonprofit
16 university-related or college-related foundation of an institution of higher education
17 under the control of the board. In order to be considered for center designation,
18 the institution of higher education or nonprofit foundation must be working in
19 partnership with the private sector. In addition to any center designated under this
20 chapter, the North Dakota state university center for technology enterprise and the
21 university of North Dakota center for innovation are centers.
- 22 2. A commission funding award recommendation must be for a specified amount.
23 Designation of a center occurs upon board, foundation, and budget section
24 approval of a commission funding award recommendation. In considering whether
25 to designate a center, the board, foundation, and budget section may not modify
26 the commission recommendation. The budget section may not make a
27 determination of whether to approve or reject a commission funding award
28 recommendation until the emergency commission reviews the commission
29 recommendation and makes a recommendation to the budget section.

1 3. A center that receives funds distributed under this chapter is not qualified to
2 receive subsequent designations as a center until the biennium following the
3 center's most recent designation.

4 4. The board rules adopted under subsection 9 of section 15-10-17, relating to
5 ownership of intellectual property, inventions, and discoveries, must address
6 activities and issues unique to centers.

7 **Centers of excellence commission.** The centers of excellence commission consists
8 of six members. The foundation shall appoint three of the foundation's members to serve on
9 the commission and the board shall appoint three of the board's members to serve on the
10 commission. The commission members shall designate a chairman and a vice chairman of the
11 commission. Each member of the commission shall serve for a term of three years, beginning
12 July first; may be reappointed for additional terms; and serves at the pleasure of the appointing
13 entity. If a commission member ceases to serve as a member of the appointing entity, that
14 member's membership on the commission ceases immediately and the appointing entity shall
15 appoint a new member for the remainder of the term. Terms of initial commission members
16 begin on the effective date of this Act and must be staggered. On a meeting-by-meeting basis,
17 an appointing entity may substitute a member of that appointing entity to serve in place of one
18 of the regular members appointed by that entity. If the commission chairman and vice
19 chairman are not present at a meeting, the commission members present at that meeting shall
20 select a commission member to serve as chairman for that meeting. A commission member
21 may receive compensation and travel and expense reimbursement from the appointing entity.
22 The board shall provide the commission with appropriate staff services as may be requested by
23 the commission.

24 **Application - Eligibility requirements.**

25 1. The board shall provide center application forms, accept applications, review
26 applications for completeness and compliance with board policy, and forward
27 complete applications to the commission in accordance with guidelines established
28 by the commission.

29 2. The commission shall meet as necessary to review all complete applications;
30 approve or disapprove complete applications; make funding award
31 recommendations for commission-approved proposed centers; distribute funds to

- 1 the centers; monitor centers for compliance with award requirements; and review
2 changes in assertions made in center applications.
- 3 3. In considering whether to approve or disapprove an application, the commission
4 shall consider whether the center will:
- 5 a. Use university or college research to promote private sector job growth and
6 expansion of knowledge-based industries or use university or college
7 research to promote the development of new products, high-tech companies,
8 or skilled jobs in this state;
- 9 b. Create high-value private sector employment opportunities in this state;
- 10 c. Provide for public-private sector involvement and partnerships;
- 11 d. Leverage other funding;
- 12 e. Increase research and development activities that may involve federal funding
13 from the national science foundation experimental program to stimulate
14 competitive research;
- 15 f. Foster and practice entrepreneurship;
- 16 g. Promote the commercialization of new products and services in industry
17 clusters;
- 18 h. Become financially self-sustaining; and
- 19 i. Establish and meet a deadline for acquiring and expending all public and
20 private funds specified in the application.

21 **Use of funds - Terms of funds - Distribution of funds.**

- 22 1. A center shall use funds awarded under this chapter to enhance capacity; enhance
23 infrastructure; and leverage state, federal, and private sources of funding. A
24 center awarded funds under this chapter may not use the funds to supplant
25 funding for current operations or academic instructions or to pay indirect costs.
- 26 2. As a condition for receipt of funds under this chapter, a center shall agree to
27 provide the board, foundation, and budget section of the legislative council with
28 annual audits on all funds distributed to the center under this chapter. The annual
29 audits must be provided until the completion of four years following the final
30 distribution of funds under this chapter.

- 1 3. Before the commission distributes funds awarded under this chapter, the center
2 shall provide the commission with detailed documentation of private sector
3 participation and the availability of two dollars of matching funds for each dollar of
4 state funds to be distributed under this chapter. The matching funds may include
5 funds facilitated through the collaboration of the private sector participants with
6 other funding entities. The matching funds may include a combination of cash and
7 in-kind assets with itemized value. Private sector participation may be established
8 through equity investments or through contracts for services with private sector
9 entities. In making funding recommendations and designation determinations, the
10 commission, board, foundation, and budget section shall give major consideration
11 to the portion of the matching funds provided in cash by the private sector.
- 12 4. If, before funds are distributed by the commission, a center undergoes a change in
13 the terms of or assertions made in its application, the commission may withhold all
14 or a portion of any undistributed funds pending commission review of the changes.

15 **SECTION 5. AMENDMENT.** Section 54-16-01 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **54-16-01. Emergency commission - Members - Organization - Quorum - Meetings.**

18 The emergency commission consists of the governor, the ~~chairman~~ majority leaders of the
19 senate and house of representatives of the legislative ~~council~~ assembly, the secretary of state,
20 and the chairmen of the senate and house of representatives appropriations committees. If the
21 chairman of an appropriations committee ceases to be a member of the legislative assembly,
22 the vice chairman of that committee succeeds to that position on the commission. An
23 appropriations committee vice chairman may serve in the place of the appropriations committee
24 chairman as a member of the commission at the request of the appropriate appropriations
25 committee chairman, if the appropriations committee chairman is unable to attend a
26 commission meeting. ~~The vice chairman of the legislative council~~ If a majority leader ceases
27 to be a member of the legislative assembly, the respective house's assistant majority leader
28 succeeds to that position on the commission. A majority leader's assistant majority leader may
29 serve as a member of the commission in the place of the ~~chairman of the legislative council~~
30 majority leader at the request of the ~~chairman of the legislative council~~ majority leader if that
31 ~~individual~~ majority leader is serving on the commission in another capacity or is unable to

1 attend a commission meeting. Four members of the commission constitute a quorum. The
2 governor is the chairman and the secretary of state is the secretary of the commission. The
3 commission shall meet at the call of the chairman.

4 **SECTION 6.** A new section to chapter 54-44.4 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Procurement information - Web site.**

- 7 1. The office of management and budget shall establish and maintain a procurement
8 information web site on the internet. This procurement information web site must
9 provide current information regarding North Dakota government procurement
10 opportunities in order to inform potential vendors of the commodities and services
11 sought by state agencies and institutions. Notwithstanding section 54-44.4-09, for
12 each purchase of services or commodities over the amount established for small
13 purchases, the office of management and budget and every purchasing agency
14 shall provide procurement information on the web site. The time period and
15 manner of providing procurement information on the web site must be in
16 accordance with rules adopted by the office of management and budget. The
17 office of management and budget may contract with a third party to assist in
18 providing or maintaining the procurement information web site.
- 19 2. A state agency or institution may elect to use the procurement information web site
20 for the purchase of services and commodities that are not subject to the
21 procurement requirements of this chapter, including:
- 22 a. Commodities and services exempted under section 54-44.4-02;
 - 23 b. Public improvements under title 48;
 - 24 c. Architect, engineer, construction management, and land surveying services
25 under chapter 54-44.7; and
 - 26 d. Concessions under chapter 48-09.

27 **SECTION 7. AMENDMENT.** Subsection 1 of section 57-38-01.2 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 1. The taxable income of an individual, estate, or trust as computed pursuant to the
30 provisions of the United States Internal Revenue Code of 1954, as amended, shall
31 be:

- 1 a. Reduced by any interest received from obligations of the United States that is
2 included in taxable income or in the computation thereof on the federal return.
- 3 b. Reduced by any other income included in the taxable income, or in the
4 computation thereof, on the federal return which is exempt from taxation by
5 this state because of the provisions of the Constitution of North Dakota or the
6 Constitution of the United States.
- 7 c. Reduced by the amount of federal income tax liability, but not social security
8 and self-employment taxes, as computed under chapter 1 of the Internal
9 Revenue Code of 1954, as amended, for the same taxable year for which the
10 North Dakota return is being filed, to the extent that such taxes are computed
11 upon income which becomes a part of the North Dakota taxable income.
12 Provided, that no adjustment to federal income taxes, paid or accrued, is
13 required because of allowable deductions to federal taxable income made
14 under the cost recovery provisions of subdivision b of subsection 5 of section
15 57-38-01. However, such federal income tax liability must be reduced by all
16 credits thereon except credits for federal income tax withholding payments,
17 estimates of federal income tax, and income taxes of foreign countries.
18 Federal income taxes for prior periods assessed against the taxpayer by
19 reason of audit or other adjustment by the internal revenue service, or
20 voluntary disclosure by the taxpayer, are not deductible except in the period
21 in which income so taxed was reported or reportable or in which an
22 adjustment was required but only after an adjustment is made by or with the
23 office of the state tax commissioner. A refund of federal income tax must be
24 reported and included in North Dakota taxable income in the year in which the
25 tax was originally deducted.
- 26 d. (1) Reduced by three hundred dollars if the return filed is a joint return by
27 husband and wife. If separate returns are filed by husband and wife,
28 no deduction can be taken under this subdivision. This subdivision
29 shall not be applicable to estates or trusts.
- 30 (2) Reduced by three hundred dollars if the return filed is the return of a
31 "head of household" as defined by the United States Internal Revenue

- 1 Code of 1954, as amended; provided, that the term "head of
2 household" shall also include a "surviving spouse" as defined by said
3 code.
- 4 (3) Reduced by seven hundred fifty dollars for each adopted child who is
5 under the age of twenty-one years and who is either irreversibly
6 mentally retarded or, on the basis of the annual findings of a licensed
7 physician, is blind or disabled as determined pursuant to the provisions
8 of title XVI of the United States Social Security Act, provided the return
9 filed is the return of the parent of an adopted child and such child
10 qualifies as a dependent of such parent for federal income tax
11 purposes.
- 12 (4) Reduced, up to a maximum of one thousand dollars, by the amount of
13 filing fees, attorney's fees, and travel costs incurred in connection with
14 an adoption and by the actual costs paid to a licensed child-placing
15 agency in making the adoptive study and in supervising and evaluating
16 the adoptive placement. Provided, however, that the reduction allowed
17 under this paragraph shall apply only to such adoption expenses of a
18 child who qualifies under the provisions of paragraph 3.
- 19 (5) Reduced by one thousand seven hundred fifty dollars for each child
20 under the age of twenty-one years adopted by the taxpayer. The
21 reduction under this paragraph may be claimed only by an adoptive
22 parent of an adopted child and the child must qualify as a dependent of
23 the adoptive parent for federal income tax purposes. The reduction
24 may be claimed by only one spouse, for spouses filing separately under
25 this chapter. The reduction provided by this paragraph may be claimed
26 for the taxable year in which the adoption becomes final and any
27 unused portion of the reduction may be carried forward by the taxpayer
28 for up to five taxable years. The reduction does not apply to the
29 adoption of children of the taxpayer's spouse.

- 1 e. Reduced by the actual amount of the medical expenses that were incurred
2 but not allowed on the federal return by reason of the federal medical
3 deduction limitation.
- 4 f. Increased by the amount of any income taxes, or franchise or privilege taxes
5 measured by income, to the extent that such taxes were deducted to
6 determine federal taxable income.
- 7 g. Increased by the amount of any interest and dividends from foreign securities
8 and from securities of state and their political subdivisions exempt from
9 federal income tax; provided, that interest upon obligations of the state of
10 North Dakota or any of its political subdivisions shall not be included.
- 11 h. Except for residents, reduced by the amount of net income not allocated and
12 apportioned to this state under the provisions of chapter 57-38.1, but only to
13 the extent that the amount of net income not allocated and apportioned to this
14 state under the provisions of that chapter is not included in any adjustment
15 made pursuant to the preceding subdivisions.
- 16 i. ~~Repealed by S.L. 2003, ch. 529, § 3.~~
- 17 j. Reduced by any amount, up to a maximum of five thousand dollars, received
18 pursuant to the firefighters relief associations authorized by chapters 18-05
19 and 18-11, policemen's pension funds authorized by chapter 40-45, or the
20 highway patrolmen's retirement system authorized by chapter 39-03.1;
21 provided, however, that the adjustment provided in this subdivision shall be
22 reduced by any amount received pursuant to the federal Social Security Act.
- 23 ~~k.~~ j. Reduced by any amount, up to a maximum of one thousand dollars, received
24 by any person as payment for services performed while on active duty in the
25 armed forces of the United States or as payment for attending periodic
26 training meetings for drill and instruction as a member of the national guard or
27 of a reserve unit of the armed forces of the United States. However, persons
28 serving in the armed forces of the United States, except field grade and
29 general officers, who are stationed outside of any state of the United States or
30 the District of Columbia for not less than thirty days during the tax year shall
31 be allowed an additional reduction of up to three hundred dollars per month

1 for each month or portion of a month received as payment for services
2 performed while on active duty at such location.

3 ~~h.~~ k. Reduced by any amount, up to a maximum of five thousand dollars, received
4 by any person fifty years of age or older as retired military personnel pay for
5 service in the United States army, navy, air force, coast guard, or marine
6 corps or reserve components thereof; provided, however, that the adjustment
7 provided in this subdivision shall be reduced by any amount received
8 pursuant to the federal Social Security Act.

9 ~~m.~~ l. Reduced by the amount of interest received during that taxable year on a
10 contract for deed on the sale of eighty or more acres [32.37 or more hectares]
11 of agricultural land to a beginning farmer. The contract for deed must extend
12 for not less than ten years and have an annual interest rate equal to or less
13 than the minimum rate allowed by the internal revenue service before interest
14 is imputed. In order for an individual, estate, or trust to qualify for this
15 reduction, the taxpayer must obtain a statement from the buyer stating that
16 the buyer meets all requirements of the beginning farmer definition, together
17 with such other information as the state tax commissioner may require. The
18 value placed on any real property located in North Dakota and owned by the
19 buyer must be the amount listed as the true and full value on the most recent
20 real estate tax statement for that particular piece of property. In determining
21 the net worth of any person, including the person's dependents and spouse, if
22 any, for purposes of this subdivision, the value of their equity in their principal
23 residence, the value of one personal or family motor vehicle, and the value of
24 their household goods, including furniture, appliances, musical instruments,
25 clothing, and other personal belongings may not be included. This statement
26 must be filed along with the income tax return. For the purposes of this
27 subdivision, "beginning farmer" means any person who is:
28 (1) A resident of this state.
29 (2) Receiving more than one-half of that person's gross annual income
30 from farming, unless the person initially commences farming during the
31 tax year for which an adjustment will be claimed under this subdivision.

- 1 (3) Intending to use any farmland to be purchased or rented for agricultural
2 purposes.
- 3 (4) Except for contracts for deed entered into prior to July 1, 1985, having
4 adequate training by education in the type of farming operation which
5 the person wishes to begin through satisfactory participation in the
6 adult farm management education program of the state board for
7 career and technical education or an equivalent program approved by
8 the agriculture commissioner.
- 9 (5) Having, including the net worth of any dependents and spouse, a net
10 worth of less than one hundred thousand dollars.
- 11 ~~n.~~ m. Reduced by the amount of interest received during that taxable year on a
12 contract on the sale of any land, buildings, improvements, and equipment
13 associated with the land, buildings, or improvements, used or useful in
14 connection with a revenue-producing enterprise to a beginning businessman,
15 excluding beginning farmers as defined in subdivision ~~n~~ l. The contract must
16 extend for not less than ten years and have an annual interest rate equal to or
17 less than the minimum rate allowed by the internal revenue service before
18 interest is imputed. In order for an individual, estate, or trust to qualify for this
19 reduction, the taxpayer must obtain a statement from the buyer containing a
20 list of the buyer's assets and debts and giving the buyer's net worth, together
21 with any other information required by the state tax commissioner. The value
22 placed on any real property located in North Dakota and owned by the buyer
23 shall be the amount listed as the current market value on the most recent real
24 estate tax statement for that particular piece of property. In determining the
25 net worth of any person, including that person's dependents and spouse, if
26 any, the value of their equity in their principal residence, the value of one
27 personal or family motor vehicle, and the value of their household goods,
28 including furniture, appliances, musical instruments, clothing, and other
29 personal belongings is not to be included. This statement is to be filed along
30 with the income tax return. For the purposes of this subdivision, "beginning

- 1 businessman", excluding beginning farmers as defined in subdivision ~~m~~ l,
2 means any person who is:
- 3 (1) A resident of this state.
- 4 (2) Receiving more than one-half of that person's gross annual income
5 from a revenue-producing enterprise, unless the person initially
6 commences business during the tax year for which an adjustment will
7 be claimed under this subdivision.
- 8 (3) Intending to use any revenue-producing enterprise purchased or rented
9 for business purposes.
- 10 (4) Adequately trained, by experience or education, in the type of
11 revenue-producing enterprise which that person wishes to begin.
- 12 (5) The owner of property with a net worth, including the net worth of
13 property of that person's dependents and spouse, if any, of less than
14 one hundred thousand dollars.
- 15 ~~e~~. n. Reduced by any amount, up to a maximum of three hundred dollars received
16 by any person or six hundred dollars if a joint return is filed, as interest earned
17 from a financial institution located in this state. For purposes of this
18 subdivision, "financial institution" means any organization authorized to do
19 business under state or federal laws relating to financial institutions, including
20 banks and trust companies, savings banks, building and loan associations,
21 savings and loan companies or associations, and credit unions.
- 22 ~~p~~. ~~Repealed by S.L. 1999, ch. 487, § 3.~~
- 23 ~~q~~. ~~Reduced by the amount, up to a maximum of five thousand dollars for any~~
24 ~~person or ten thousand dollars if a joint return is filed, of investment made~~
25 ~~after January 1, 1989, in a venture capital corporation organized pursuant to~~
26 ~~chapter 10-30.1. This deduction may only be taken in the tax year in which~~
27 ~~the taxpayer qualifies for a credit pursuant to chapter 10-30.1. However, a~~
28 ~~taxpayer that makes an investment in a venture capital corporation on or after~~
29 ~~July 1, 1989, is only entitled to a deduction if the venture capital corporation~~
30 ~~uses the funds it receives from the taxpayer to invest or provide financing to~~

- 1 ~~qualified entities, which entities do not include a business or an affiliate of a~~
2 ~~business that owns tax exempt securities.~~
- 3 ~~f.~~ o. Reduced by any amount, up to a maximum of five thousand dollars, received
4 as retirement benefits paid by the United States, a territory or possession or
5 political subdivision thereof, the government of the District of Columbia, or an
6 agency or instrumentality of one or more of the foregoing, other than retired
7 military personnel pay, as exempted in subdivision ~~l~~ k; provided, however,
8 that the adjustment provided in this subdivision must be reduced by any
9 amount received pursuant to the federal Social Security Act.
- 10 ~~s.~~ p. Reduced by the portion of a distribution from a qualified investment fund
11 described in section 57-38-01 which is attributable to investments by the
12 qualified investment fund in obligations of the United States, obligations of
13 North Dakota or its political subdivisions, and any other obligation the interest
14 from which is exempt from state income tax under federal statute or United
15 States or North Dakota constitutional provisions; provided the amount of the
16 distribution excluded under this subdivision is included in federal taxable
17 income.
- 18 ~~t.~~ q. Reduced by an amount equal to the earnings that are passed through to a
19 taxpayer in connection with an allocation and apportionment to North Dakota
20 under chapter 57-35.3.
- 21 ~~u.~~ r. Reduced by the amount received by the taxpayer as payment for services
22 performed when called or ordered to title 10 United States Code federal
23 service as a member of the national guard or reserve member of the armed
24 forces of the United States. An individual claiming the reduction under this
25 subdivision may not also claim the reduction under subdivision ~~k~~ j for the time
26 the individual was under federal orders for active duty and may not claim a
27 reduction on income already excluded from federal taxation due to service in
28 a combat or hazardous duty zone. This subdivision does not apply to federal
29 service while attending annual training, basic military training, professional
30 military education, or active guard and reserve tours for which the member
31 has volunteered.

1 Provided, however, that each adjustment in the above subdivisions authorized
2 under law shall be allowed only to the extent that the adjustment is allocated and
3 apportioned to North Dakota income.

4 **SECTION 8. AMENDMENT.** Subsection 1 of section 57-38-71 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 1. "Beginning entrepreneur", excluding beginning farmers as defined in subdivision ~~m~~
7 l of subsection 1 of section 57-38-01.2, means any person who:
- 8 a. Is a resident of this state.
 - 9 b. Receives more than one-half of that person's gross annual income from a
10 revenue-producing enterprise, unless the person initially commences
11 business during the tax year for which a deduction will be claimed under
12 sections 57-38-71 through 57-38-74.
 - 13 c. Intends to use any revenue-producing enterprise purchased or rented for
14 business purposes.
 - 15 d. Has had adequate training, by experience or education, in the type of
16 revenue-producing enterprise which that person wishes to begin.
 - 17 e. Has, including the net worth of that person's dependents and spouse, if any, a
18 net worth of less than one hundred thousand dollars, not including the value
19 of their equity in their principal residence, the value of one personal or family
20 motor vehicle, and the value of their household goods, including furniture,
21 appliances, musical instruments, clothing, and other personal belongings.

22 **SECTION 9. AMENDMENT.** Section 57-38.5-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-38.5-01. Definitions.** As used in this chapter, unless the context otherwise
25 requires:

- 26 1. "Director" means the director of the department of commerce division of economic
27 development and finance.
- 28 2. "New wealth" means revenues to a North Dakota business which are generated by
29 sales of products or services to customers outside of the state. "New wealth" also
30 includes revenues to a qualified business the customers of which previously were

- 1 unable to acquire, or had limited availability of, the product or service from a North
2 Dakota provider.
- 3 3. "Passthrough entity" means a corporation that for the applicable tax year is treated
4 as an S corporation or a general partnership, limited partnership, limited liability
5 partnership, trust, or limited liability company and which for the applicable tax year
6 is not taxed as a corporation under chapter 57-38.
- 7 4. "Primary sector business" means a qualified business that through the
8 employment of knowledge or labor adds value to a product, process, or service
9 and which results in the creation of new wealth but does not include an agricultural
10 commodity processing facility as defined under section 57-38.6-01.
- 11 4. 5. "Qualified business" means:
- 12 a. ~~A a business other than a real estate investment trust which is a primary~~
13 sector business that:
- 14 (1) a. Is incorporated or its satellite operation is incorporated as a for-profit
15 corporation or is a partnership, limited partnership, limited liability company,
16 limited liability partnership, or joint venture;
- 17 (2) b. Is in compliance with the requirements for filings with the securities
18 commissioner under the securities laws of this state;
- 19 (3) c. Has North Dakota residents as a majority of its employees in the North
20 Dakota principal office or the North Dakota satellite operation; ~~and~~
- 21 (4) d. Has its principal office in this state and has the majority of its business activity
22 performed in this state, except sales activity, or has a significant operation in
23 North Dakota that has or is projected to have more than ten employees or
24 one hundred fifty thousand dollars of sales annually; ~~or~~
- 25 b. ~~An organization that:~~
- 26 (1) ~~Is in compliance with the requirements for filings with the securities~~
27 ~~commissioner under the securities laws of this state; and~~
- 28 (2) ~~Attracts investments to build and own a value-added agricultural~~
29 ~~processing facility that it leases with an option to purchase to a primary~~
30 ~~sector business that qualifies under subdivision a and~~

1 e. Relies on innovation, research, or the development of new products and
2 processes in its plans for growth and profitability.

3 ~~5.~~ 6. "Taxpayer" means an individual, estate, or trust or a corporation or passthrough
4 entity. The term does not include a real estate investment trust.

5 **SECTION 10. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-38.5-02. Certification - Investment reporting by qualified businesses -**
8 **Maximum investments in qualified businesses.** The director shall certify whether a
9 business that has requested to become a qualified business meets the requirements of
10 subsection 4 of section 57-38.5-01 and the certification must include the period of time the
11 certification covers. The director shall establish the necessary forms and procedures for
12 certifying qualified businesses. For investments made after December 31, 2004, the maximum
13 aggregate amount of qualified investments a qualified business may receive is limited to five
14 hundred thousand dollars under this chapter. The limitation on investments under this section
15 may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not
16 applying for a credit.

17 **SECTION 11. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified
20 investment in a qualified business, the taxpayer is entitled to a credit against state income tax
21 liability under section 57-38-29, ~~57-38-30,~~ or 57-38-30.3. The amount of the credit to which a
22 taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified
23 businesses during the taxable year, subject to the following:

24 1. The aggregate annual investment for which a taxpayer may obtain a tax credit
25 under this section is not ~~less than five thousand dollars and not~~ more than two
26 hundred fifty thousand dollars. This subsection may not be interpreted to limit
27 additional investment by a taxpayer for which that taxpayer is not applying for a
28 credit.

29 2. In any taxable year, a taxpayer may claim no more than one-third of the credit
30 under this section which is attributable to investments in a single taxable year.

- 1 3. Any amount of credit under this section not allowed because of the limitations in
2 this section may be carried forward for up to four taxable years after the taxable
3 year in which the investment was made.
- 4 4. A ~~partnership~~ passthrough entity that invests in a qualified business must be
5 considered to be the taxpayer for purposes of the investment limitations in this
6 section and the amount of the credit allowed with respect to a ~~partnership's~~
7 passthrough entity's investment in a qualified business must be determined at the
8 ~~partnership~~ passthrough entity level. The amount of the total credit determined at
9 the ~~partnership~~ passthrough entity level must be allowed to the ~~partners, limited to~~
10 ~~individuals, estates, and trusts,~~ members in proportion to their respective interests
11 in the ~~partnership~~ passthrough entity.
- 12 5. The investment must be at risk in the business. An investment for which a credit is
13 received under this section must remain in the business for at least three years.
14 Investments placed in escrow do not qualify for the credit.
- 15 6. The entire amount of an investment for which a credit is claimed under this section
16 must be expended by the qualified business for plant, equipment, research and
17 development, marketing and sales activity, or working capital for the qualified
18 business.
- 19 7. A taxpayer who owns a controlling interest in the qualified business or whose
20 full-time professional activity is the operation of the business is not entitled to a
21 credit under this section. A member of the immediate family of a taxpayer
22 disqualified by this subsection is not entitled to the credit under this section. For
23 purposes of this subsection, "immediate family" means the taxpayer's spouse,
24 parent, sibling, or child or the spouse of any such person.
- 25 8. The tax commissioner may disallow any credit otherwise allowed under this
26 section if any representation by a business in the application for certification as a
27 qualified business proves to be false or if the taxpayer or qualified business fails to
28 satisfy any conditions under this section or any conditions consistent with this
29 section otherwise determined by the tax commissioner. The amount of any credit
30 disallowed by the tax commissioner that reduced the taxpayer's income tax liability

1 for any or all applicable tax years, plus penalty and interest as provided under
2 section 57-38-45, must be paid by the taxpayer.

3 **SECTION 12. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-38.5-04. Taxable year for seed capital investment tax credit.** The tax credit
6 under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the
7 taxable year in which ~~full consideration~~ for the investment in the qualified business was
8 received by the qualified business.

9 **SECTION 13. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-38.5-05. Seed capital investment tax credit limits.** The aggregate amount of
12 seed capital investment tax credit allowed for investments under this chapter ~~through calendar~~
13 ~~year 2002 is limited to one million dollars and after calendar year 2002 is limited to two million~~
14 ~~five hundred thousand dollars for each calendar year.~~ If investments in qualified businesses
15 reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for
16 investments imposed by this section, the credit must be allowed to taxpayers in the
17 chronological order of their investments in qualified businesses as determined from the forms
18 filed under section 57-38.5-07.

19 **SECTION 14.** A new section to chapter 57-38.5 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Credit for investments made before 2005.** An investment made before January 1,
22 2005, which did not qualify for the tax credit under this chapter because of the two million five
23 hundred thousand dollar credit limitation in effect before the effective date of this Act is entitled
24 to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount
25 of forty-five percent of the amount invested by the taxpayer in a qualified business subject to
26 the following:

27 1. The aggregate investment for which a taxpayer may obtain a credit under this
28 section is not less than five thousand dollars and not more than two hundred fifty
29 thousand dollars.

1 2. In any taxable year, a taxpayer may claim no more than one-fourth of the credit
2 under this section which is attributable to investments made before January 1,
3 2005.

4 3. Any amount of credit under this section not allowed because of the limitations in
5 this section may be carried forward for up to five taxable years after the taxable
6 year in which the investment was made.

7 4. This section does not apply to investments made in an agricultural processing
8 facility as defined under section 57-38.6-01.

9 **SECTION 15. REPEAL.** Chapters 10-30.1 and 10-30.2 of the North Dakota Century
10 Code are repealed.

11 **SECTION 16. REPEAL.** Section 15-10-41 of the North Dakota Century Code is
12 repealed.

13 **SECTION 17. NORTH DAKOTA BUSINESS CLIMATE INITIATIVE - LEGISLATIVE**
14 **COUNCIL STUDY.** During the 2005-06 and 2007-08 interims, the legislative council shall
15 study the state's business climate through a business climate initiative. The business climate
16 initiative must include receipt of agency reports regarding economic development legislation
17 introduced by the legislative council during previous legislative sessions, active participation in
18 business climate focus groups across the state, and active participation in biennial business
19 congresses. The focus groups shall discuss ways to enhance the state's business climate to
20 stimulate job growth and enhance economic prosperity for employers and employees by
21 encouraging the growth of existing businesses in the state, creating new businesses in the
22 state, and encouraging expansion or relocation of businesses to this state. Each business
23 congress must receive a report on the activities of the focus group discussions, shall identify
24 methods to enhance the state's business climate to stimulate job growth and enhance
25 economic prosperity, shall identify methods to prepare the state for the high-growth and
26 high-demand jobs of the future, and shall evaluate the impact of existing state economic
27 development programs. The department of commerce shall organize the business climate
28 focus groups and the business congresses. Before each business congress, which must be
29 held before June 1, 2006, and before June 1, 2008, the department shall hold a minimum of six
30 focus group discussions, two of which specifically focus on local economic developers and four
31 of which specifically focus on private business needs. The department shall consult with the

1 legislative council in compiling focus group and business congress participant invitation lists
2 and drafting and distributing invitations, establishing focus group and business congress dates
3 and locations, and preparing agendas for focus groups and business congresses. The
4 legislative council shall contract with a third party to provide professional services to plan,
5 facilitate, report on, and coordinate followup for the focus groups and business congresses.
6 The legislative council shall report its findings and recommendations, together with any
7 legislation required to implement the recommendations, to the sixtieth and sixty-first legislative
8 assemblies.

9 **SECTION 18. VENTURE AND RISK CAPITAL - LEGISLATIVE COUNCIL STUDY.**

10 During the 2005-06 interim, the legislative council shall study issues relating to venture and risk
11 capital and whether and how some of these issues may be negatively impacting business
12 development in the state. The study must address how to define venture and risk capital for
13 purposes of the study; real and perceived issues regarding gaps in the availability of venture
14 and risk capital in the state; whether state programs adequately address the venture and risk
15 capital needs of businesses in the state and whether these programs should be changed to
16 increase availability to venture and risk capital, including whether the partnership in assisting
17 community expansion program might be used as a model to address possible venture and risk
18 capital availability issues and whether the state could effectively play a role as facilitator in
19 improving access to venture and risk capital; how the state could assist in creating an
20 environment more conducive to attracting private venture and risk capital in the state; and how
21 other states have attempted to address venture and risk capital concerns of businesses. The
22 legislative council shall report its findings and recommendations, together with any legislation
23 required to implement the recommendations, to the sixtieth legislative assembly.

24 **SECTION 19. ALTERNATIVE AND VENTURE CAPITAL INVESTMENTS -**

25 **EARLY-STAGE CAPITAL FUNDS - REPORT TO LEGISLATIVE COUNCIL.** During the
26 2005-06 interim, the president of the Bank of North Dakota shall report to the legislative council
27 on the status of the Bank's investments in alternative and venture capital investments and
28 early-stage capital funds under subdivision c of subsection 4 of section 6-09-15. The president
29 shall inform the legislative council whether this investment program should continue and
30 whether there are potential changes that could be made to improve the state's venture capital
31 and early-stage capital investment structure.

1 **SECTION 20. CENTERS OF EXCELLENCE - REPORT TO LEGISLATIVE COUNCIL.**

2 During the 2005-06 interim, the state board of higher education and the centers of excellence
3 commission shall report to the legislative council on the status of the centers of excellence
4 program under section 4 of this Act. The report must include information regarding approved
5 and rejected applications; funding; private sector participation; accomplishments of each center
6 of excellence, including information regarding how each center of excellence is meeting, or will
7 meet, the criteria under section 4 of this Act; and whether there are potential changes that
8 could be made to improve the centers of excellence program.

9 **SECTION 21. INSURANCE AND LIABILITY DATA - REPORT TO LEGISLATIVE**

10 **COUNCIL.** During the 2005-06 interim, the insurance commissioner shall compile existing data
11 regarding the state's liability insurance marketplace. The data must include information
12 regarding issues that may result in barriers for businesses seeking to obtain affordable liability
13 insurance coverage, with specific focus on the travel and tourism industry, and must include
14 information regarding successful actions taken by other states to improve the availability and
15 affordability of liability insurance. Before July 1, 2006, the insurance commissioner shall report
16 to the legislative council the data compiled and identify proposed legislative changes necessary
17 to implement any recommendations to make the state's laws and availability of liability
18 insurance more attractive to businesses in this state.

19 **SECTION 22. TECHNOLOGY COMMERCIALIZATION STUDY - REPORT TO**

20 **LEGISLATIVE COUNCIL.** During the 2005-06 interim, the state board of higher education
21 shall conduct a study of incentives the state could adopt to serve as catalysts for stimulating
22 more efficient commercialization of new technologies. The study must include roundtable
23 discussions; include consideration of leveraging research, capital, and entrepreneurs; include
24 consideration of successful actions taken by other states to increase technology
25 commercialization; and focus on approaches that are specifically tailored to the state's unique
26 circumstances. The board may contract with a third party to conduct the study. Before July 1,
27 2006, the chancellor of the North Dakota university system shall report to the legislative council
28 the outcome of the study and identify proposed legislative changes necessary to implement any
29 recommendations to stimulate technology commercialization in this state.

30 **SECTION 23. TRANSPORTATION STUDY - REPORT TO LEGISLATIVE COUNCIL.**

31 During the 2005-06 interim, the upper great plains transportation institute shall conduct a study

1 of how improvements to the transportation infrastructure of this state might enhance the
2 business climate and the state's competitive position in economic development, with a focus on
3 the potential to expand the sale of goods to markets outside the state by strengthening the
4 state's transportation infrastructure. In conducting this study, the upper great plains
5 transportation institute shall consult with the department of transportation and the department
6 shall cooperate in the study. The study must include consideration of how to improve the
7 load-carrying limits of the state's highways and associated costs and benefits; consideration of
8 what enhancements must be made to the state's highways to allow load limits to be raised to
9 more efficiently move goods to market and associated costs and benefits; exploration of the
10 phenomenon of the decline of freight service by rail, including the prospects for offering
11 incentives to rail providers to expand the availability of rail for transportation of goods to market
12 and the associated costs and benefits; recommendations on how to enhance the state's
13 transportation infrastructure; whether it is feasible to identify and assist airports that are
14 specially situated in order to assist in economic development; and an analysis of the projected
15 economic development impacts associated with the recommended infrastructure
16 improvements. Before July 1, 2006, the upper great plains transportation institute shall report
17 to the legislative council the outcome of the study and identify proposed legislative changes
18 necessary to implement any recommended changes to the state's transportation infrastructure.

19 **SECTION 24. PROCUREMENT ASSISTANCE STUDY - REPORT TO LEGISLATIVE**
20 **COUNCIL.** During the 2005-06 interim, the director of the office of management and budget
21 shall report to the legislative council on the status of providing procurement information through
22 the internet under section 6 of this Act; perform a study on the most effective manner in which
23 to provide for a procurement assistance center; and report to the legislative council on the
24 outcome of the procurement assistance center study, including what services might be
25 provided by such a center, how services might be provided by such a center, and what
26 legislative changes would be required to implement such a center.

27 **SECTION 25. TAX STUDY - REPORT TO LEGISLATIVE COUNCIL.** During the
28 2005-06 interim, the tax commissioner shall conduct a study of the corporate taxing system and
29 tax incentives to stimulate business. The study must include consideration of gaps in tax
30 incentives, include consideration of successful actions taken by other states to improve their tax
31 environment for doing business, and focus on approaches that are specifically tailored to the

1 state's unique circumstances. The tax commissioner may contract with a third party to conduct
2 the study. Before July 1, 2006, the tax commissioner shall report to the legislative council the
3 outcome of the study and identify proposed legislative changes necessary to implement any
4 recommendations to stimulate the state's business climate.

5 **SECTION 26. EFFECTIVE DATE - EXPIRATION DATE.** Sections 9 through 13 of this
6 Act are effective for taxable years beginning after December 31, 2004. Section 15 of this Act
7 becomes effective on August 1, 2007. Sections 2, 7, and 8 of this Act are effective for taxable
8 years beginning after December 31, 2008. Section 10 of this Act is effective for a business
9 certified as a qualified business after December 31, 2004. Section 14 of this Act is effective for
10 taxable year 2004 and is thereafter ineffective, except any unused credit may be carried
11 forward as provided in section 13 of this Act. Section 4 of this Act is effective through July 31,
12 2011, and after that date is ineffective.