10169.0200

FIRST DRAFT:
Prepared by the Legislative Council staff for the Workforce Committee
September 2010

Sixty-second Legislative Assembly of North Dakota

Introduced by

A BILL for an Act to create and enact two new sections to chapter 57-38 and two new subdivisions to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to income tax credits for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes and for qualified expenditures for lean manufacturing; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subdivisions to subsection 7 of section 57-38-30.3 of the North Dakota Century Code are created and enacted as follows:

<u>Automating manufacturing processes tax credit under section 2 of this Act.</u>

<u>Lean manufacturing tax credit under section 3 of this Act.</u>

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

<u>Income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes.</u>

1. <u>A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes in this state. The amount of the credit under this section is twenty percent of expenses for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes.</u>
2. <u>For purposes of this section:</u>

a. "Manufacturing machinery and equipment for the purpose of automating manufacturing processes" means new or used automation and robotic equipment.

b. "Primary sector business" means a business certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.

3. The taxpayer shall claim the total credit amount for the taxable year in which the manufacturing machinery and equipment are purchased. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.

4. If the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 3, the unused credit may be used as an automation credit carryover to each of the five succeeding taxable years. The entire amount of the unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried.

5. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.

6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.

7. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the

partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-29 or 57-38-30.3.

SECTION 3. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for qualified expenditures necessary for implementing lean manufacturing.

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for qualified expenditures necessary for implementing lean manufacturing in this state. The amount of the credit under this section is twenty percent of expenses for qualified expenditures necessary for implementing lean manufacturing.
2. For purposes of this section:
   a. "Lean manufacturing" means a manufacturing improvement approach based on using the minimum amount of manpower, materials, money, machines, and space.
   b. "Primary sector business" means a business certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.
   c. "Qualified expenditures" means expenditures for training programs, materials, tools, technology, software, or consultant services used to implement lean manufacturing which have been qualified by the department of commerce, or an entity designated by the department of commerce, as necessary for implementing lean manufacturing.
3. The taxpayer shall claim the total credit amount for the taxable year in which the qualified expenditures were incurred. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.
4. If the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 3, the unused credit may be used as a lean manufacturing credit carryover to each of the five succeeding taxable years.

The entire amount of the unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried.

5. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.

6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.

7. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-29 or 57-38-30.3.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.