### FISCAL NOTE Requested by Legislative Council 04/07/2017

#### Amendment to: HB 1045

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Reengrossed HB 1045 (Third Engrossment), with Conference Committee Amendments, replaces the existing angel fund income tax credit program with a new angel investor income tax credit program.

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

Current law allows an income tax credit for making an investment into an angel fund that the North Dakota Commerce Department certifies as meeting certain qualifying criteria. The credit is 45% of the investment, not to exceed \$45,000 per year. A number of other limitations on the amount of allowable credits apply to both the investor and the angel fund.

Section 1 of the bill places a sunset date of July 1, 2017, on current law, and provides that current law will continue to apply to investments made before July 1, 2017, in angel funds organized before July 1, 2017. This section also removes obsolete language pertaining to a transfer of the credit to another taxpayer, which only applied to the 2011 and 2012 tax years.

Section 2 of the bill replaces the current angel fund tax credit program with a new angel investor tax credit program. Under the new program, an angel investor places monies into a qualified angel fund that, in turn, invests the monies into a qualified business. In general, a qualified business is one that the North Dakota Commerce Department certifies as being a for-profit entity engaged in research or the development of new products and processes and is not engaged in real estate activity. (An angel fund is not precluded from investing in a nonqualified business for which no credit is allowed.) To maintain credit eligibility, a minimum of 50% of the monies that an angel fund invests in qualified businesses during a prescribed 2-calendar year period must be invested into in-state qualified business is one created under North Dakota law that either performs the majority of its business activity (except sales activity) in North Dakota. To participate in the program, both the angel fund and the qualified business must be certified by the North Dakota Commerce Department as meeting the program's qualification requirements.

An angel investor is allowed a credit for making an investment in exchange for an ownership interest in a qualified business. If the investment is in an in-state qualified business, the credit rate is 35%. If the investment is in an out-

of-state qualified business, the credit rate is 25%. The maximum credit an angel investor is allowed in a tax year is \$45,000. A lifetime limit of \$500,000 in credits applies to each angel investor, and a lifetime time limit of \$5 million in credits applies to each angel fund. The new program applies to a qualified angel fund organized under North Dakota law on or after July 1, 2017, and to qualified investments made in qualified businesses on or after July 1, 2017.

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

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The bill replaces an existing income tax credit program with a new income tax program. Compared to the existing program, the requirements under the new program are considerably more restrictive: (1) Instead of allowing the credit when an angel investor place monies in an angel fund, the credit will be allowed only when the angel fund invests the monies received into a qualified businesse. (2) To maintain credit eligibility, a minimum of 50% of the monies an angel fund invests in qualified businesses during a prescribed 2-calendar year period must be in in-state qualified businesses. (3) To be an eligible qualified business, a business must apply to the North Dakota Commerce Department for certification. (4) The credit rate is reduced from 45% to 35% for in-state qualified businesses or to 25% for an out-of-state qualified business. Of the restrictions, those requiring the investments to be made in qualified businesses, with a minimum of 50% of those investments made in in-state qualified businesses, will have the most impact.

Based on past years' activity under the current angel fund tax credit program, it is reasonably expected that, if left unchanged, there will be continued use of the program. Credits claimed in previous years under the current program have ranged from \$2 million to \$7 million per year. The more restrictive requirements under the proposed new program will slow and/or reduce the amount of investment activity for which the credit is allowed. Even if qualifying investment activity were to remain consistent with past years' activity, the lower credit rates of 35% and 25% will reduce the number of credits allowed.

If enacted, Reengrossed HB 1045 (Third Engrossment), with Conference Committee Amendments, is expected to have a positive fiscal impact on state general fund revenues for the 2017-19 biennium. The amount of that impact cannot be determined because it is dependent on future investment behavior.

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

Name: Kathryn L. Strombeck Agency: Office of Tax Commissioner Telephone: 701.328.3402

Date Prepared: 04/09/2017

### FISCAL NOTE Requested by Legislative Council 03/24/2017

#### Amendment to: HB 1045

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Reengrossed HB 1045 (Third Engrossment), with Senate Amendments, replaces the existing angel fund income tax credit program with a new angel investor income tax credit program.

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

Current law allows an income tax credit for making an investment into an angel fund that the North Dakota Commerce Department certifies as meeting certain qualifying criteria. The credit is 45% of the investment, not to exceed \$45,000 per year. A number of other limitations on the amount of allowable credits apply to both the investor and the angel fund.

Section 1 of the bill places a sunset date of June 30, 2017, on current law, and provides that current law will continue to apply to investments made before July 1, 2017, in angel funds organized before July 1, 2017. This section also removes obsolete language pertaining to a transfer of the credit to another taxpayer, which only applied to the 2011 and 2012 tax years.

Section 2 of the bill replaces the current angel fund tax credit program with a new angel investor tax credit program. Under the new program, an angel investor places monies into a qualified angel fund that, in turn, invests the monies into a qualified business. To maintain credit eligibility, a minimum of 75% of the monies that an angel fund receives from its angel investors during a prescribed 2-calendar year period must be invested into North Dakota qualified businesses. A North Dakota qualified business is a qualified business created under North Dakota law that either performs the majority of its business activity in North Dakota or has a significant operation in North Dakota that has (or projects to have) more than 10 employees in North Dakota. To participate in the program, both the angel fund and the qualified business must be certified by the North Dakota Commerce Department as meeting the program's qualification requirements.

An angel investor is allowed a credit equal to 35% of an investment made in exchange for an ownership interest in a qualified business, up to a maximum credit per year of \$45,000. A lifetime limit of \$500,000 in credits applies to each angel investor, and a lifetime time limit of \$5 million in credits applies to each angel fund. The new program applies to a qualified angel fund organized under North Dakota law on or after July 1, 2017, and to qualified investments made in qualified businesses on or after July 1, 2017.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The bill replaces an existing income tax credit program with a new income tax program. Compared to the existing program, the requirements under the new program are considerably more restrictive: (1) Instead of allowing the credit when an angel investor place monies in an angel fund, the credit will be allowed only when the angel fund invests the monies received into a qualified business. (2) To maintain credit eligibility, an angel fund must invest a minimum of 75% of the monies received from its angel investors in a prescribed 2-calendar year period into North Dakota qualified businesses. (3) A business that an angel fund wants to invest in must apply for certification as a qualified business. (4) The credit rate is reduced from 45% to 35%. Of the restrictions, the two pertaining to investments having to be made in qualified and North Dakota qualified businesses will have the most impact.

Based on past years' activity under the current angel fund tax credit program, it is reasonably expected that, if left unchanged, there will be continued use of the program. Credits claimed in previous years under the current program have ranged from \$2 million to \$7 million per year. The more restrictive requirements under the proposed new program will slow and/or reduce the amount of investment activity for which the credit is allowed. Even if qualifying investment activity were to remain consistent with past years' activity, the lower credit rate of 35% will reduce the number of credits allowed.

If enacted, Reengrossed HB 1045, with Senate Amendments, is expected to have a positive fiscal impact on state general fund revenues for the 2017-19 biennium. The amount of that impact cannot be determined because it is dependent on future investment behavior.

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

Name: Kathryn L. Strombeck Agency: Office of Tax Commissioner Telephone: 701.328.3402 Date Prepared: 03/26/2017

#### 17.0158.04000

#### FISCAL NOTE Requested by Legislative Council 02/09/2017

Revised Bill/Resolution No.: HB 1045

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Reengrossed HB 1045 changes the law governing the angel fund and seed capital income tax credit programs. The changes will discontinue the angel fund credit program, expand and rename the seed capital credit program, and repeal both programs after 2019.

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

Section 1 of the bill pertains to the angel fund income tax credit. Current law allows an income tax credit for making an investment in an angel fund that the North Dakota Commerce Department certifies as meeting certain qualifying criteria. The credit is 45% of the investment, not to exceed \$45,000 per year. A number of other limitations on the amount of allowable credits apply to both the investor and the angel fund.

The bill places a sunset date of April 1, 2017, on the credit, which means the credit will no longer be allowed for investments made on or after this date.

Sections 3 through 8 of the bill pertain to the seed capital income tax credit. Current law allows an income tax credit for making an investment in a qualified business in North Dakota. A qualified business is one that the North Dakota Commerce Department certifies as meeting certain conditions, which include being primary sector and having its principal office or a significant operation in North Dakota. The credit is 45% of the investment. A number of other limitations apply to both the investor and the business.

The bill reduces the credit rate from 45% to 25% of the qualifying investment and increases the unused credit carryover period from 4 to 5 years. In addition, it increases the maximum number of credits allowed under the program from \$3.5 million to \$10 million, and provides that the seed capital credit is not allowed to an angel fund certified before 4/1/2017.

Section 9 of the bill repeals both the angel fund and seed capital tax credit programs, effective for tax years after 2019.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Based on past activity, it is reasonably expected that, if left unchanged, there will be continued use of the angel fund tax credit program. Therefore, discontinuance of the program is expected to have a positive impact on state general fund revenues for the second year of the 2017-19 biennium. The amount of that impact cannot be determined because it is dependent on future investment behavior, but based on previous years' investment activity could potentially range from \$2 million to \$7 million.

The use of the seed capital tax credit program has significantly decreased since 2004, with earned credits ranging from \$5.6 million credits in 2004 to \$267,000 credits in 2015. Assuming there is investment activity under the program, the reduced credit rate will have a positive fiscal effect. The increase in the credit ceiling will not have a fiscal effect unless investments under the program increase to the point of generating credits in excess of \$3.5 million per year. Credits earned each year since 2005 have not exceeded \$890,000. Certain limitations in current law will remain in place, one of which limits the credit to the first \$500,000 of eligible investments received by a qualified business. This lifetime \$500,000 investment limit per qualified business means that it would require \$500,000 to be invested in each of 28 qualified businesses for total credits to reach \$3.5 million. The number of qualified businesses certified under the seed capital tax credit program has averaged about four per year.

If enacted, Reengrossed HB 1045 could have a net positive or negative fiscal impact on state general fund revenues for the 2017-19 biennium; however, historical data suggest that there would need to be a significant increase in the level of activity under the seed capital tax credit program to offset the expected positive fiscal impact of discontinuing the angel fund tax credit program. Therefore, the enactment of Reengrossed HB 1045 is expected to have an overall net positive fiscal impact on state general fund revenues for the second year of the 2017-19 biennium, the amount of which cannot be estimated because it is dependent on future investment behavior.

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

Name: Kathryn L. Strombeck Agency: Office of Tax Commissioner Telephone: 701.328.3402 Date Prepared: 02/10/2017

#### 17.0158.03000

#### FISCAL NOTE Requested by Legislative Council 02/09/2017

Revised Amendment to: HB 1045

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Reengrossed HB 1045 changes the law governing the angel fund and seed capital income tax credit programs. The changes will discontinue the angel fund credit program, expand and rename the seed capital credit program, and repeal both programs after 2019.

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

Section 1 of the bill pertains to the angel fund income tax credit. Current law allows an income tax credit for making an investment in an angel fund that the North Dakota Commerce Department certifies as meeting certain qualifying criteria. The credit is 45% of the investment, not to exceed \$45,000 per year. A number of other limitations on the amount of allowable credits apply to both the investor and the angel fund.

The bill places a sunset date of April 1, 2017, on the credit, which means the credit will no longer be allowed for investments made on or after this date.

Sections 3 through 8 of the bill pertain to the seed capital income tax credit. Current law allows an income tax credit for making an investment in a qualified business in North Dakota. A qualified business is one that the North Dakota Commerce Department certifies as meeting certain conditions, which include being primary sector and having its principal office or a significant operation in North Dakota. The credit is 45% of the investment. A number of other limitations apply to both the investor and the business.

The bill reduces the credit rate from 45% to 25% of the qualifying investment and increases the unused credit carryover period from 4 to 5 years. In addition, it increases the maximum number of credits allowed under the program from \$3.5 million to \$10 million, and provides that the seed capital credit is not allowed to an angel fund certified before 4/1/2017.

Section 9 of the bill repeals both the angel fund and seed capital tax credit programs, effective for tax years after 2019.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Based on past activity, it is reasonably expected that, if left unchanged, there will be continued use of the angel fund tax credit program. Therefore, discontinuance of the program is expected to have a positive impact on state general fund revenues for the second year of the 2017-19 biennium. The amount of that impact cannot be determined because it is dependent on future investment behavior, but based on previous years' investment activity could potentially range from \$2 million to \$7 million.

The use of the seed capital tax credit program has significantly decreased since 2004, with earned credits ranging from \$5.6 million credits in 2004 to \$267,000 credits in 2015. Assuming there is investment activity under the program, the reduced credit rate will have a positive fiscal effect. The increase in the credit ceiling will not have a fiscal effect unless investments under the program increase to the point of generating credits in excess of \$3.5 million per year. Credits earned each year since 2005 have not exceeded \$890,000. Certain limitations in current law will remain in place, one of which limits the credit to the first \$500,000 of eligible investments received by a qualified business. This lifetime \$500,000 investment limit per qualified business means that it would require \$500,000 to be invested in each of 28 qualified businesses for total credits to reach \$3.5 million. The number of qualified businesses certified under the seed capital tax credit program has averaged about four per year.

If enacted, Reengrossed HB 1045 could have a net positive or negative fiscal impact on state general fund revenues for the 2017-19 biennium; however, historical data suggest that there would need to be a significant increase in the level of activity under the seed capital tax credit program to offset the expected positive fiscal impact of discontinuing the angel fund tax credit program. Therefore, the enactment of Reengrossed HB 1045 is expected to have an overall net positive fiscal impact on state general fund revenues for the second year of the 2017-19 biennium, the amount of which cannot be estimated because it is dependent on future investment behavior.

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

Name: Kathryn L. Strombeck Agency: Office of Tax Commissioner Telephone: 701.328.3402 Date Prepared: 02/10/2017 17.0158.02000

### FISCAL NOTE Requested by Legislative Council 02/02/2017

Amendment to: Engrossed HB 1045

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Engrossed HB 1045 changes the law governing the angel fund and seed capital income tax credit programs. The changes will discontinue the angel fund credit program, expand and rename the seed capital credit program, and repeal both programs after 2019.

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

Section 1 of the bill pertains to the angel fund income tax credit. Current law allows an income tax credit for making an investment in an angel fund that the North Dakota Commerce Department certifies as meeting certain qualifying criteria. The credit is 45% of the investment, not to exceed \$45,000 per year. A number of other limitations on the amount of allowable credits apply to both the investor and the angel fund.

The bill places a sunset date of January 1, 2018, on the credit, which means the credit will no longer be allowed for investments made on or after this date, and it requires an angel fund to pay back to the state a portion of the credits allowed to its angel investors in the form of a surcharge on a certain portion of the monies it has not invested in business enterprises.

Sections 3 through 8 of the bill pertain to the seed capital income tax credit. Current law allows an income tax credit for making an investment in a qualified business in North Dakota. A qualified business is one that the North Dakota Commerce Department certifies as meeting certain conditions, which include being primary sector and having its principal or a significant operation in North Dakota. The credit is 45% of the investment. A number of other limitations apply to both the investor and the business.

The bill reduces the credit rate from 45% to 25% of the qualifying investment and increases the unused credit carryover period from 4 to 5 years. In addition, it increases the maximum number of credits allowed under the program from \$3.5 million to \$10 million, and provides that the seed capital credit is not allowed to an angel fund certified before 4/1/2017.

Section 9 of the bill repeals both the angel fund and seed capital tax credit programs, effective for tax years after 2019.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Based on past activity, it is reasonably expected that, if left unchanged, there will be continued use of the angel fund tax credit program. Therefore, discontinuance of the program along with the surcharge on uninvested dollars are expected to have a positive impact on state general fund revenues for the second year of the 2017-19 biennium. The amount of that impact is cannot be determined because it is dependent on future investment behavior, but based on previous years' investment activity could potentially range from \$2 million to \$7 million, excluding the effect of the surcharge.

The use of the seed capital tax credit program has significantly decreased since 2004, with earned credits ranging from \$5.6 million credits in 2004 to \$267,000 credits in 2015. Assuming there is investment activity under the program, the reduced credit rate will have a positive fiscal effect. The increase in the credit ceiling will not have a fiscal effect unless investments under the program increase to the point of generating credits in excess of \$3.5 million per year. Credits earned each year since 2005 have not exceeded \$890,000. Certain limitations in current law will remain in place, one of which limits the credit to the first \$500,000 of eligible investments received by a qualified business. This lifetime \$500,000 investment limit per qualified business means that it would require \$500,000 to be invested in each of 28 qualified businesses for total credits to reach \$3.5 million. The number of qualified businesses certified under the seed capital tax credit program has averaged about four per year.

If enacted, Engrossed HB 1045 could have a net positive or negative fiscal impact on state general fund revenues for the 2017-19 biennium; however, historical data suggest that there would need to be a significant increase in the level of activity under the seed capital tax credit program to offset the expected positive fiscal impact of discontinuing the angel fund tax credit program. Therefore, the enactment of Engrossed HB 1045 is expected to have an overall net positive fiscal impact on state general fund revenues for the second year of the 2017-19 biennium, the amount of which cannot be estimated because it is dependent on future investment behavior.

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

Name: Kathryn L. Strombeck Agency: Office of Tax Commissioner Telephone: 701.328.3402 Date Prepared: 02/03/2017

### FISCAL NOTE Requested by Legislative Council 12/20/2016

Bill/Resolution No.: HB 1045

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1045 changes the laws governing the angel fund and seed capital income tax credit programs. The purposes of the changes are to discontinue the angel fund credit and to expand the seed capital credit.

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

Section 1 of the bill pertains to the angel fund income tax credit program. Current law allows an income tax credit for making an investment in an angel fund that the North Dakota Commerce Department certifies as meeting certain criteria. The credit is 45% of the investment, not to exceed \$45,000 per year. A number of other limitations on the credit amount apply to the investor and the angel fund.

The bill makes two changes to the angel fund credit program. One change places a sunset date on the program, providing that the credit will no longer be allowed for investments made on or after January 1, 2018. The other change removes obsolete language in the law relating to the sale or other transfer of the angel fund credit to another taxpayer.

Sections 2 through 4 of the bill pertain to the seed capital income tax credit program. Current law allows an income tax credit for making an investment in a business that the North Dakota Commerce certifies as meeting certain criteria. The credit is 45% of the investment. A number of other limitations apply to the investor and the business.

The bill makes the following changes to the seed capital credit program: (1) It increases the amount of investments in a qualified business for which the credit is allowed from \$500,000 to \$4 million. (2) It increases the credit amount that an investor may use per tax year from \$112,500 to \$225,000. (3) It increases the ceiling on the total credits allowed under the program from \$3.5 million to \$15 million. (4) It increases the unused credit carryover period from 4 to 7 tax years. (5) It requires a qualified business to file an annual report with the North Dakota Tax Department in each of the five years following the receipt of an investment to show that the business continues to meet the certification requirements.

Section 5 of the bill provides that the changes to the two programs apply to tax years 2018 and after.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

If enacted, HB 1045 may have net positive or negative fiscal impact on state general fund revenues for the 2017-19 biennium depending primarily on whether the changes increase the level of participation and investment activity under the seed capital tax credit program.

There has been significant use of the angel fund credit program since its creation in 2007. Based on prior years' activity, there is a reasonable expectation that, absent the placement of the sunset date on the program, there would be continued investment activity resulting in additional credits being claimed. Therefore, the placement of the sunset on the program, which would not allow any new credits to be claimed after 2017, would have a positive fiscal impact on state general fund revenues. The amount of that impact is uncertain because it is dependent on what the future investment activity might be without the sunset. Assuming future investment activity is similar to that during the 2011 through 2016 period, the amount of the positive fiscal impact on state general revenues attributable to ending the angel fund credit program could range from \$2 million to \$7 million for the second year of the 2017-19 biennium.

While the seed capital credit program has also seen significant use since its first use in 2002, the level of activity under the program has steadily decreased since 2005. Credits claimed under the program have decreased from a high of \$5.6 million in 2004 to just under \$267,000 in 2015 (with an average of approximately \$540,000 for the years 2006 through 2015). The decrease in activity under the seed capital program could be attributable to any number of factors, but the creation of the angel fund credit program in 2007 with its less restrictive requirements may be one of them. It is uncertain if the ending of the angel fund credit program and the expansion of the credit limits under the seed capital program would result in more use of the seed capital program. An increase in the use of the seed capital program would result in a decrease in state general fund revenues for the second year of the 2017-19 biennium; however, the amount of the decrease, if any, is uncertain.

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

Name: Kathryn L. Strombeck Agency: Office of Tax Commissioner Telephone: 701.328.3402 Date Prepared: 01/07/2017

## **2017 HOUSE FINANCE AND TAXATION**

HB 1045

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

1045 1/9/2017 26664

SubcommitteeConference Committee

# Committee Clerk Signature Mary Brucker

# Explanation or reason for introduction of bill/resolution:

A Bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

# Minutes:

Attachment #1, 2

Chairman Headland: Opened hearing on HB 1045.

Vice Chairman Dockter: Introduced bill. The angel fund was enacted in 2007. It was described as an extension of the seed capital investment tax credit and was intended to stimulate private investment and grow start-up or early-stage companies in this state. Companies targeted by the credit were smaller companies that carried high-risk but also high-growth potential. The credit was viewed as a tool to create and maintain quality jobs and diversify a community's economic base. The committee received testimony from the Tax Department and the Department of Commerce and learned that 21 angel funds have been certified by the Department of Commerce since 2011, individuals investing in these angel funds have earned \$16,680,982 in income tax credits since 2011, the 21 angels funds have invested in 116 companies, 61 of which are North Dakota based and 55 of which are out-of-state companies, reporting requirements associated with angel funds do not require funds to provide the amount invested in each company, and limited information on out-ofstate investments made it difficult to ascertain the amount of the credit's benefit that flowed to out-of-state concerns. The committee reviewed Minnesota's credit, which is limited to The committee received testimony from several investments in in-state businesses. interested parties and hosted a panel discussion consisting of representative of the Tax Department, Department of Commerce, and an angel fund representative. Testimony in favor of the credit indicated the credit is an important tool for supporting entrepreneurship, innovation, and start-up companies, and for creating an equity capital industry in this state. The committee learned some angel funds may be investing in real estate, which is prohibited.

**Chairman Headland:** Are there any questions? Emily, would you come up and explain the bill to us?

**Emily Thompson, Counsel, Legislative Council:** Distributed information on the angel fund investment tax credit. See attachment #1. This bill eliminates the ability of the taxpayer to

claim the angel fund investment tax credit for any investments that are in the angel fund after December 31, 2017. Angel funds can still exist; they would just be receiving a credit as a result of any investments made under the seed capital investment program. The reporting requirements for angel funds are expanded to require angel funds to report the amount of its investments in each enterprise. That was a large discussion in the interim committee. There is also the requirement that they invest in at least three primary sector in-state businesses. The draft funnels credits now through the seed capital investment credit. There are some increases in the bill. There is an increase in the amounts of credit allowed for all claimants from \$3.5 million up to \$15 million per calendar year. The maximum amount that can be claimed per taxpaver is also increased from \$112,500 to \$225,000 per taxpaver per year. The care for period for any unused credits was also expanded from four years to seven years. The maximum amount of the qualified investment that may be received by a qualified business for all tax years was increased from a maximum of \$500,000 up to \$4 million. Additional reporting requirements were imposed on a gualified business to ensure that business continued to meet certification requirements in that five-year period following the time during which it received an investment. The amounts you see here are associated with Minnesota's angel fund credit but they were adjusted because the credit available in each state and Minnesota's angel fund credit is a refundable credit; it's not a dollar for dollar similarity. You can invest through the end of this year but after that time any investments will have to go to the seed capital credit program which has a few more checks. Credit isn't received for seed capital until the money is actually placed with the business, whereas with the angel fund the credit is received at the time the money goes into the angel fund.

**Chairman Headland:** Under current law an angel fund is a group of investors, does it work that way with the seed capital tax credit as well? Is that a group or is that individuals?

**Emily Thompson, Counsel, Legislative Council:** Currently an angel fund has to have at least six accredited investors as a group. Seed capital can be an individual investor.

Chairman Headland: Can it also be a group?

**Emily Thompson, Counsel, Legislative Council:** Yes, it would just be passed through to the members.

**Representative B. Koppelman:** If a person put in x amount of dollars what percentage of that was eligible for tax credit under the current angel fund? What is it going to be under the seed capital for those same type of investors?

**Emily Thompson, Counsel, Legislative Council:** The credit under the seed capital is a 45% credit so if you invest \$100,000 in a qualified business your credit would be \$45,000 against your tax bill. It would be the same for an angel fund. The reason the committee looked at this was because it is one of our heftier credits as far as percentages.

**Representative B. Koppelman:** The amount of credit percentagewise is not going to change with this bill.

Emily Thompson, Counsel, Legislative Council: That is correct.



Chairman Headland: Are there any other questions for Emily? Is there support to HB 1045?

**Tommy Kenville, Chairman of Valley Angel Investment Fund:** Distributed testimony in support of HB 1045. See attachment #2. (Ended testimony at 15:14)

**Chairman Headland:** You mentioned there are currently 34 angel fund investors from outside the state and they are not able to take advantage of the tax credit. Can you detail for the committee how this works when you invest in an angel fund and invest out of state, I'm assuming your investment is going to be administered under the laws of that state? As an investor in an angel fund are you able to take advantage of other state incentives?

**Tommy Kenville:** The entrepreneur takes advantages in those other states but our investors didn't receive any additional benefit. Eight to ten out of the 16 investors in North Dakota said the credit was a big part of them getting into our fund. Many of our funds are out of state and without disorganized risk-taking they wouldn't be coming back here for quarterly meetings, reviewing investments, and working with startups.

**Chairman Headland:** The only investor that can take advantage of the credit is likely a North Dakota investor. How does that help encourage outside of the state investment in a North Dakota fund?



**Tommy Kenville:** The difference between a seed tax credit and an angel fund is that an angel fund is a group of people putting in to minimize risk where the seed tax is someone putting in money. If someone likes my business and puts in \$100,000 you would get whatever the seed tax credit rules are but if you're an angel fund like my business 28 people would put in \$100,000 total so your risk goes down. Angel funds allow investors to double down at the same terms. If it's a North Dakota person doubling down and you put in \$250,000 in this one deal you have a cap on your tax credit. When your tax credit is over then... An angel fund has a rule that you can't put more than 10% of the total fund in any one deal because they are very high risk.

Chairman Headland: Are there any questions for Mr. Kenville?

**Representative B. Koppelman:** I understand your request for amendments but it seemed you also talked about not favoring the sunset of the angel funds. It seems from a tax benefit it's virtually the same, one way or the other. Are you suggesting that you couldn't operate the way you do now once this bill, as it is, wouldn't work for you to get a pool of investors and then get your credit under the seed capital credit?

**Tommy Kenville:** Even with the tax credit it is hard to raise money for this. Without it then it will be more difficult. We've started a good thing here with a couple of bad players. I think we need maximum programs everywhere. This helps get players to the table in a very high risk environment.

**Representative Hogan:** The whole question of the timing of the credit was a major issue in the interim. Would you comment on this because I think it's a major concern among committee members?

**Tommy Kenville:** In all the funds I'm associated with we can't deploy the money fast enough. We can't control how good and how fast the deal flow is and that's why I put the 50% in there. Over the course of investment my fund took 22 months to invest. I know funds that have taken six months. I think you could work on that so the money doesn't get credited for doing nothing. It could be tightened up so you get the credit as the funds are deployed into an investment.

**Representative Hogan:** I think this was a major issue during the interim committee.

**Representative Mitskog:** What is the equity for these startups and potential projects of companies?

**Tommy Kenville:** Everyone needs a few million dollars; it doesn't matter what they're doing. Most of these companies are pre-revenue. They come to NDSU or UND or the angel funds and we usually help them get their presentation going then they need to raise the money to get going. These angel funds are critical to get them walking before they can run. Many of them manufacture different things in our state and create jobs so it's been very beneficial to date without a lot of financial return to the investors.

**Representative Mitskog:** How much activity is going on in these startups in North Dakota?

**Tommy Kenville:** My fund isn't actually investing today but I advise to the Dakota Venture Group and a couple other funds. We look at 30-40 deals a year, 12-15 angel funds called due diligence, which means we like the concept to invest but we're just not sure how much so we need to dig deeper to make sure they are honest and their product is good. None of these deals are so great that you want in just by yourself so we spread the risk.

**Representative Howe:** Can you compare North Dakota's transparency and oversight of angel funds to other states?

**Tommy Kenville:** I know the most about Minnesota. We have great departments here but I think you could really help them put teeth in to making sure the rules are being followed. We need some sticker rules; we didn't have troubles the first six or eight years. We need to tighten up the rules but keep all the programs going.

**Vice Chairman Dockter:** With the seed capital, don't we have the teeth for transparency? In the interim we had a couple options; we could restructure the current angel funds or we could just repeal and make some adjustments to the seed capital. The committee decided it would be simpler to do the seed capital. The current seed capital has what we're looking for in transparency. Why isn't your industry for this seed capital if you want transparency?

**Tommy Kenville:** I am for the seed capital program but that is different. Seed capital is built in Minnesota for wealthy individuals to invest. Angel funds here are hold funds. We need both in the state. We should work with security, tax, and Department of Commerce to put some teeth in it so the next tier doesn't misuse funds or invest incorrectly. We really need both because they are different.

**Chairman Headland:** Any further questions? Is there any further testimony in support? Is there any testimony in opposition? Hearing closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB 1045 1/9/2017 26697

SubcommitteeConference Committee

# Committee Clerk Signature Mary

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A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

## Minutes:

Attachment #1

Brucker

**Chairman Headland:** Distributed angel fund information to committee. See attachment #1. Vice Chairman Dockter is having an amendment prepared. This information I passed out is a good example as to why we want to tighten up this law. Would anyone have any interest in looking over this? These funds were set up to invest in property. They lay it out pretty well for those interested investors. They have their projected return on investment. At the very end of it they say if you are interested in investing in a fund we'll hold your investment and if we don't find anything to invest in then you can take advantage of the tax credit and you'll have a return so essentially you'll get your money back. I think we all felt that was a bit of a stretch of how to do things. We should look over this and see what we want to do with it.

**Vice Chairman Dockter:** Tommy Kenville is about the only one who came to our interim process. He listed three bullet points in his handout this morning. We are trying to have some transparency in this bill. My biggest issue is that you could park your money for three years without it being invested and you get your 45% income tax credit on day one without it going to any designated project. We could put on amendments. We felt we could raise the limits to help out the angel funds. Essentially it does the same thing. He said you can only invest seed capital of one person but you can set up a pass-through entity just like you can for angel funds. They say they want transparency but they really don't. We asked them what they ultimately wanted during the interim committee and they just really want legislation to stay the same. The state of Minnesota is similar to our seed capital and they max out all the time with their investment. They have no problem finding people to invest. I don't see what the problem is to have some safeguards with them still getting what they want which is to get money for these different projects. That is the goal. In the end it goes on the taxpayer's backs when we give these credits out.

**Chairman Headland:** I somewhat agree. I think we have to provide the ability to invest outside the state. If we're going to invest in any out of state capital to these particular funds I don't know how you do it when they are not eligible for the tax credit; they don't have

anything to gain. I would guess these outside investors are people from Minnesota who are investing in North Dakota angel funds who then turn around and invest in Minnesota operated companies. I think we should take a look at maybe allowing a portion of it to be invested out of state.

Representative Hatlestad: Does a Minnesota investor in an angel fund get our tax credit?

**Chairman Headland:** If they don't have any tax liability in the state of North Dakota they can't take advantage of the tax credit. They mentioned that if they have an investment in Minnesota they will give you a refund where we don't allow for sending a check back from our state, nor would we want to.

**Representative B. Koppelman:** Do you think it makes some sense if we put something in the section of the seed capital that makes it clear that it can be a pass-through entity or some sort of organization. Maybe there is a way to phrase that so it's obvious.

**Vice Chairman Dockter:** I talked to Emily in Legislative Counsel and pass-through entity is in the bill. I'll be working on an amendment to address that out of state can still invest in angel funds. We would just be blending this in and it would be called seed capital instead of angel funds. This would have the transparency we're looking for and it will be run the same way with one person that can set up a pass-through entity.

**Representative Olson:** Mr. Kenville seemed to understand that you can pool the money. I think he was saying that it's typically wealthy individuals who took advantage of the seed capital. He said there was nothing to prevent pooling of funds to some type of entity.

**Chairman Headland:** I think when we first passed angel funds in 2007 that's the way the use of the seed capital went because they found a way to pool money without any of this transparency so they invested in angel funds. If we move this direction, I feel we will accomplish both things.

**Representative Mitskog:** From the interim I think we exposed one of the big abuses; the real estate investments. What didn't they have that they couldn't enforce this and investigate these? How could this continue to go on for several years?

**Chairman Headland:** Because the law was so poorly written there weren't any available mechanisms for them to use. Once the credit was given they don't have any requirements for reporting; they were getting nothing.

**Representative Mitskog:** How can we be assured the Tax Department has enough ammunition to review these incentives from the applicants?

**Chairman Headland:** We'll review what is available under the seed capital and where it goes from there. We're talking about angel funds going away.

**Representative Hogan:** The thing that was real shocking during the interim was the difference between the Minnesota model in terms of how they had to spend the money within time frames. It may be helpful for the committee if you could see how Minnesota was





structured. The seed capital is better but I don't know if we would have enough accountability and transparency because we haven't been using it.

**Vice Chairman Dockter:** During the interim the seed capital language satisfied most of the committee. It didn't go as far as Minnesota with refunding checks and things. They have no repercussions; once they are certified as a primary sector business under the current law they get the 45% credit without going to any project. The Tax Department really couldn't do anything because there are no safeguards under our current legislation. Once it gets certified then it's free for that three years so they have three years to put it in or before they get recertified or they can let the money sit there while they still get the credit. They get the credit on day one once you put your money into an angel fund under current legislation.

**Representative Howe:** Vice Chairman Dockter, you mentioned that you can apply for this tax credit and you get the money up front on day one without proof of investing any money. With the lack of oversight, we don't know how many companies are actually doing this. We have the Legendary Fund Angel Fund Real Estate which is a clear violation of the real estate. I don't want this to be an overreaction of our committee and punish other angel funds.

Vice Chairman Dockter: We sent out a survey to all angel funds and only five responded. Most of the responses were snarky saying we can get the information from the Tax Department and from other government entities. They didn't reveal what they are in. They said they are already reporting to the Tax Department and the Commerce Department. We went back to these departments but under current law we cannot get this information. In my eyes if someone would ask me to do a survey I would respond and let them know but from a lack of response that gave the committee the direction we're going in to; if the law doesn't require us to report then we're not going to report. We've tried several times to get information but received no responses, except from Mr. Kenville.

**Representative Mitskog:** Vice Chairman Dockter, during the interim we asked the Tax Department for the language to do audits and to ensure there were no abuses.

Vice Chairman Dockter: Yes we did. The Tax Department and the Commerce Department were fine with the seed capital because it gave them some more teeth in the legislation to find out if these were being properly used.

**Chairman Headland:** There is new language in section 2 of the bill, subsection 5, that gives the Tax Commissioner some authority as to what they want and need to move forward with existing angel funds when reporting requirements. We can get Emily down here to explain more of what we need to do.

**Representative Olson:** Is there anything to prevent the fund from dispersing any of the invested funds back to the investors? If you make \$100,000 investment you get your 45% tax credit, then three years go by and you get your \$100,000 back. I would think you'd declare that as income so you'd pay some income tax on it but it's going to be a net gain. Is there anything to prevent the investors from just pooling their money for three years then everybody pulls it back out? That's what I would do.

**Chairman Headland:** If you look at the last page in this handout, that is exactly what they are proposing.

**Representative Olson:** I'm looking at this last page and it says, "The funds will sit in the general fund for three years and you can elect to move such funds to a series that opens when it is convenient for you. No return will be given until the series has been selected and then the return will be based upon the covenants of such series." The return would be based on whatever those covenants are. I'm not clear on what law would govern how those funds need to be invested by the angel funds if there is any regulation. There should be regulation if there isn't otherwise I don't know what would prevent somebody from withdrawing those funds at par.

**Vice Chairman Dockter:** As a committee we didn't just make all these new rules; it's already in place in the seed capital. Prior to 2007 this seed capital vehicle was used extensively. Once angel fund legislation was put into law and then everyone saw the lack of regulations they went into angel funds and stopped putting in seed capital. We're not punishing angel funds; we're just putting some teeth in the legislation. We already have it in code in the seed capital and that's why we're looking at repealing the angel funds by raising the caps and give them more opportunity to put more money into the seed capital.

**Chairman Headland:** One of the provisions of qualifying for an angel fund tax credit is that you have to have that money at risk in the angel fund for up to three years. Once your three years is up they can choose to elect to grab that money out if they want. I think that's exactly what they're doing here. They've disguised it pretty well with nice words but invest in a fund and it sits there for three years, is that just a coincidence? We could have that addressed by the Securities Commissioner. The problem is the Tax or Commerce Department didn't really have any ability to answer to anything like this.

**Matt Peyerl, Office of State Tax Commissioner:** Any compliance or audit work that the Tax Department undertakes is confidential. I'm not sure as to what extent the enforcement is that the Department of Commerce or the Securities Commissioner can take. There was discussion in the last interim so that might be an inquiry worth asking. The Department of Commerce, under current law, is in charge of certifying an angel fund.

**Chairman Headland:** Let's say certification was pulled because they weren't following the provisions of law but they've already received the credit up front. What ability does the Tax Department have at that time to go back and get their credit back?

**Matt PeyerI:** That question has been posed because I think there's been some consideration for revoking and whether that goes back to day one which voids all investments and credits or whether it's prospective only. I don't believe this question has even been resolved yet.

**Representative Olson:** Do you know what the requirements are for the angel fund to be certified as such?

**Matt Peyerl:** In current law an angel fund just has to be organized for the purpose of investing in three potential startups and so forth. This is where the current law leaves a big opening in that you just have to have an intended purpose and not a requirement to invest



**Representative Trottier:** About two or three sessions ago I remember we asked for more information but we were told it was sort of secret. If you put your money into it you can keep it in there for three years and get your tax credit then get out, is that true?

**Matt Peyerl:** One of the comments made was that if you put your money in an angel fund there is not a requirement that it be invested in an enterprise and be used. You can request it back and it would be considered a return on capital so there would be no income tax on that. I believe it was back in the earlier part of the interim when there was a report provided to the committee that indicates which enterprises they invest in, how many in state and out of state, and so forth. That is an annual reporting requirement they have. The last report was through 2015 activity. That information is probably available if anyone is interested in it. It probably doesn't relate to the main concern that this bill is addressing that it doesn't have anything to do with time invested dollars to be put in a qualified enterprise.

**Representative Olson:** We have a listing of the amount of credits claimed, increasing exponentially at the beginning but continuing to increase throughout 2014. Beyond that we don't actually know what amount of the funds that went into these angel funds wound up being invested in any type of enterprise; we just know they went into the fund.

**Matt Peyerl:** I believe that is the case. The reporting requirement in current law requires that the angel fund at the end of the year tell us which qualified enterprises they invested in but it doesn't have a dollar amount for us to determine how much idle dollars have earned credits that's never been invested in an enterprise or never will be. What's to prevent dollars that have already earned credits from just getting pulled back out and getting put back into the seed capital in a couple years because there is no restriction on that as long as they've earned the credit. There's nothing in current law that would void that credit or decertify that fund.

**Representative Grueneich:** By making this switch will we eliminate what we're talking about right now? Will we clean this up with new legislation?

**Chairman Headland:** Existing angel funds will exist and they will have this year to start any new funds under the current laws. After that the venture capital investment tool would be seed capital.

**Representative Grueneich:** So anything up to this timeline, January 1, 2018, would be under the angel fund laws or would they have to make the switch?

**Vice Chairman Dockter:** The angel fund will stay in tack but anything after January 1, 2018 will no longer will receive the credit if you put in new money.

**Representative Grueneich:** So anything that is currently invested would still be somewhat not accountable?

Vice Chairman Dockter: Correct.

**Representative Grueneich:** But anything moving forward would fall under the new guidelines?

**Vice Chairman Dockter:** Correct. If they wanted to put money into that current angel fund they could do that but they would not receive the credit after January 1, 2018.

Representative Grueneich: After that the tax credits go away.

Vice Chairman Dockter: Yes and they have to go under the new requirements.

**Chairman Headland:** There are new requirements in the certification of investing in a qualified business that give the Tax Commissioner the ability. Are these new forms that would be drawn up after that from the Tax Department?

Matt PeyerI: They haven't yet but I anticipate they would be.

**Chairman Headland:** All angel funds existing today are going to have to comply with if this bill would pass.

**Matt PeyerI:** It would be any new dollars going into a seed capital program in which a credit is being earned.

**Chairman Headland:** It wouldn't be part of the existing angel funds or the angel fund that was started between now and the passage of this bill in 2018?

**Matt PeyerI:** I believe that subsection 5 only relates to the seed capital program and isn't looking back to try to fix anything with the existing angel fund program.

Chairman Headland: Okay, I missed that.

**Vice Chairman Dockter:** They are grandfathered in. If they put any new money in after January 1, 2018 they have to fulfill the requirements under the new legislation, otherwise they are grandfathered in.

**Matt Peyerl:** That is one way to put it. There is nothing that reaches back to try and fix any of the dollars. The credit is earned when a dollar is put in the angel fund and retroactivity would be another realm of action.

**Representative Olson:** Would there be a way for us to put in requirements that would go into effect immediately for the various angel funds even those that have money in them or that would have money put into them prior to January 1, 2018 that would require these funds to report their investment activities. In the case where the funds have not been invested, those funds when withdrawn from the fund would have to reimburse that tax credit. This would allow us to put some teeth in that and see if there were abuses. The funds have to be organized with the purpose of investing in these particular areas and if they are simply organizing and claiming that's their purpose but not investing in anything then we should have something to say about that. If we are allowing this to continue until January 2018 that





is very lenient of us but we will need some provisions in here to prevent the abuses, we are describing right now.

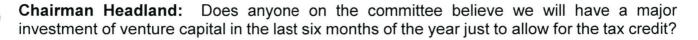
**Chairman Headland:** I believe we had discussions on this in the interim. I'm sure there were concerns with putting this language in this bill.

**Vice Chairman Dockter:** There were issues but I can't recall the reasons it was January 1, 2018. We could have Emily come down to explain this.

**Matt PeyerI:** I think the effective date of January 1, 2018 wouldn't cause any constitutional concerns with moving that effective date back until July 1 or some earlier date that is after passage of the bill. I think there is some concern about constitutionality of retroactively changing something where the requirements were met then later you'll change those. All laws are constitutional until someone says they're not.

**Chairman Headland:** Do you think if we went with the date January 1, 2018 to allow everybody to use the year?

**Matt Peyerl:** I think it was just a date that was a clean cut off and a date that would less likely to get pushed back as opposed to July 1 or April 30, or whatever the earliest legally acceptable date could be.

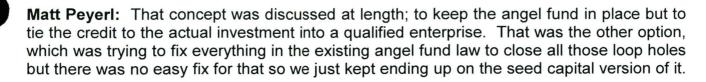


Committee states absolutely.

**Representative Olson:** If we're going to continue this to January 1 then we need something immediately to go into effect that would govern the way these funds were used so we close this loop hole. This is a loop hole you could drive a Mack truck through. If we don't close it then it's going to be used until January 1, 2018 so we either have to move the date back and get rid of it now or we're going to have to invest some time into coming up with the right type of language to clean this up. I don't know if it's worth it if this thing is just going to go away anyway.

**Representative Grueneich:** I wonder if any funds invested that weren't put to work couldn't claim the tax credit. Maybe any funds that haven't been used that have been invested in the last 12-24 months and just lying there have to be redistributed to the investors.

**Chairman Headland:** Matt, do you think we could write up something for any new fund that is created no credit wouldn't be allowed to be given until the investment was made. They could still have their three years; they just wouldn't get the credit up front; they would get it at the end.



The Department of Commerce certifies a qualified enterprise and the credit is earned when the dollars go into that qualified known enterprise.

**Chairman Headland:** I don't know if I would be speaking at a place to believe most of this committee agrees it is going to be abused if we allow it to stand as is for another year.

**Matt PeyerI:** Maybe I didn't understand the question. Are you talking about the dollars that are in the angel funds right now for which credits are earned but will never be invested in a qualified enterprise that just might be sent back out?

**Chairman Headland:** No, I was asking if anyone was to create a new angel fund their credit wouldn't be allowed until the investment was made. They have three years to make that investment.

**Matt PeyerI:** That concept was entertained. We ended up on the Minnesota version of it that had a lot of different reporting requirements. In order to get that concept and tie the credit to the investment in the enterprise, the seed capital version is the one that prevailed in the interim.

**Chairman Headland:** Without this bill the current angel fund practice goes on or was there a sunset at some point?

**Matt PeyerI:** There is no sunset on the current angel fund law. If this bill would not prevail and become law, I would assume the interim committee would want all of the problems fixed anyway. This is the preferred method that came from the interim committee.

**Representative Olson:** I think we need to move this date as early as possible and tie an emergency clause to this to get this through immediately. We need to put a stop to this. I don't see how that would inconvenience anyone.

Chairman Headland: I'm open to whatever the committee wants to do.

Representative Olson: What is the earliest date that we could use?

Chairman Headland: Can the Tax Department help us with that?

**Matt Peyerl:** I would direct you to Ms. Thompson to look at that. April 30 was a date we used several years ago with one change because the bill passed and was signed by the Governor in a certain time frame. There is a lifetime limit for investing into angel funds. The change in 2014 for the investments in real estate there was a problem with the language being loose. If you have a hotel enterprise a large part of it is the real estate that might mean to me, it is real estate and is intended to be prohibited but there might other enterprises for which the building is a part of that so there is a spectrum of who would view that as a violation differently and that is part of the problem.

**Representative Hatlestad:** My concern is if you don't plug the loopholes and don't move the date far enough then you defeat the purpose for moving the date.



Chairman Headland: Do you have something in mind?

**Representative Hatlestad:** I would take the rules out of the seed capital fund and put it in the angel fund.

**Chairman Headland:** Matt may have said there are some constitutional reasons why you maybe can't do that. They've already received the credit. I don't know if we have the ability to get that credit back if they don't respond.

**Representative Olson:** I think the claw back idea is a good idea but is probably very difficult to work. I think at this point it is water under the bridge. If you don't close the loophole they are going to abuse it until the effective date potentially. I don't see why the effective date of the end of the program couldn't be the same date as the effective date of the law. The day that law goes into effect you don't need to close the loophole because the program ends the same day the law becomes law. I'm going to talk to council about this and find out what type of lag time there would be. At the same time everybody who understands the loophole is taking advantage of it as we speak.

**Representative Hatlestad:** The effective date of the law would be August 1 so that's a lot of time to invest in an angel fund if it sits there until August 1 without any restrictions.

**Representative Olson:** I'll get the answer of that from council and see what we can do with an emergency clause.

**Matt PeyerI:** The emergency clause will indicate the effective date of the bill but if there's an earlier date written in the bill that will pass constitutional muster there is room to write that in the law. Emily will help you with the options there.

Chairman Headland: I think if we can we should move it to January 1, 2017.

**Representative Hogan:** There's some political pressure to support angel funds. Have we considered applying all the seed capital rules and just calling it an angel fund? We want transparency and accountability and that's what seed capital provides.

**Chairman Headland:** That has been discussed during the interim as well. We could call it angel funds if that makes them feel better.

**Matt Peyerl:** Renaming the seed capital program was a topic that came up based on this being the preferred bill for the fixes. Now it's kind of a combination program so what you call it isn't so relevant anymore. Years ago when they passed the first angel fund laws they described to you why they needed to exist anyway. There was some sort of gap in financing so they tried to tell you why the angel fund would fill this hole for raising money for risky ventures and so forth. They all had a place in the financing spectrum. The seed capital had a place and now that it's multifunctional you could call it something else but it's just a name.

**Representative Mitskog:** Thank you for saying that. The Southern Valley Angel Fund has done great work in our community with a particular company, ComDel, which after Imation shut their doors ComDel was a startup of some of the employees and they've taken great

risk in conceptual companies. ComDel is doing contract manufacturing for some of these conceptual companies that came up with these ideas that were really not bankable in the beginning. Southern Valley Angel Fund was the start of it because of ComDel. We've seen successes in our local area of one particular fund.

**Representative Schobinger:** In order to be eligible for the credit; if I put new money in today I can't take that credit until that money is in there for three years in the angel fund, correct?

Matt PeyerI: No, the credit is earned for the tax year in which you make the investment.

**Representative Schobinger:** In number two where it says to be eligible for the credit the investment must be at risk in the angel fund for at least three years.

**Matt PeyerI:** It's kind of a contingent requirement in that it needs to be met going forward but the credit is earned up front. This is how the law was written.

**Representative Schobinger:** If I put money in today then I can take that credit immediately and not as I'm reading it in the law that I'm supposed to wait three years to be able to be eligible for it?

**Matt PeyerI:** I'm not sure if there is other language that says the investment is earned on the date it's invested.

**Representative Olson:** Line 1, page two. How is the tax department ensuring that the funds put in angel funds actually remain in there for three years? Do you do some type of audit on books to match investors' deposits versus withdraws to ensure that three-year period has been met?

**Matt Peyerl:** That's probably quite a way down on the compliance concern because that is the easiest one to meet. An angel fund will invest in another angel fund, which is a prohibited act, or an angel fund might invest in a seed capital or a ag processing facility, which is prohibited, so those are the kinds of double dipping investments we are concerned with so far. When the fund comes up for recertification with the Department of Commerce they will inquire how they've used their money. It doesn't take much to start a new fund so if you're not going to be recertified as an existing fund starting a new fund isn't all that complex.

**Chairman Headland:** Would it be true today that without this bill they don't even have to report the amount of the investment; they only have to report the enterprise in which they invested?

Matt Peyerl: Is that for the new seed capital?

Chairman Headland: That would still be under an existing angel fund, wouldn't it?

Matt Peyerl: I'm not sure of your question, I'm sorry.

Chairman Headland: On page 3 of the bill, lines 12-16, it talks about angel fund.

**Matt Peyerl:** That insertion would apply to tax year 2017 for any funds invested in 2017 based on the effective date of the bill. With the change we would probably only have one year where that would be a requirement. That is my quick interpretation.

Representative Olson: But at the same time they are not required to make the investment.

Chairman Headland: I think this bill needs some work. We'll adjourn for the day.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB 1045 1/10/2017 26753

□ Subcommittee □ Conference Committee

# Committee Clerk Signature Mary Brucher

# Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

## Minutes:

No attachments

Chairman Headland: Yesterday Vice Chairman Dockter and myself met with the Securities We went through some of the problems she has with the current Commissioner. implementation of the bill. We talked about one of the funds that severely abused the fund. She works with securities and investment and she doesn't think we should be taking a step backwards in aggregating venture capital in this state. Her fear is that the seed capital credit and moving venture fund capital as a tool maybe misses some opportunity. I had a discussion with our leader and he believes that if there is a way we can shore up the angel funds, look at the tax credit we're allowing, as 45% is extremely generous so maybe we should consider something less than that, change the time frame the credit is applied, and some other things. I'd like input from the committee on how we should work towards this goal if the committee thinks this is something we should do. I've heard different things from the committee members on how to proceed. Mr. Kenville suggested 50% should be made in the state today but many of us agreed it should probably be larger than that. At the same time, I don't know if we could have 100% of it solely in North Dakota because that limits the opportunity for out of state investment into North Dakota angel funds. I would like input from the committee. I don't want the committee to do a lot of work and then everyone decides to kill it anyway. Do we have a majority of us that believes there is something we need to salvage?

**Representative Olson:** The number of claimants in tax year 2012 was up to \$6.3 million, \$6.6 million in 2013, and \$7.8 million in 2014. This is state investment. When you look at these taxes being exempted it is state dollars being invested into private industry at the direction of private citizens. I have no problem with private citizens investing their monies into enterprises they want to invest in but we're basically giving them state money without gaining any equity in any of these industries. We have plenty of the risk. Essentially selling them a free put on the value of these stocks to the tune of 45% per dollar. How long does it take for us to earn a return on that investment if we're putting in \$45,000 per \$100,000? The whole concept to me is suspect especially when they are inherently risky industries. Mr.



Kenville said that close to half of their investments failed because they are high risk. Most of these are never going to generate a return for the state. I don't know why we would want to be a silent partner with no equity. We're investing into high risk areas where we have no say in how the money is invested. It seems Ludacris to me actually. If we're going to try and keep it around, which I wouldn't support, 45% is far too high. I don't see how we generate any return for the state if we give an income tax credit to a citizen in the state who puts it into an angel fund then invests it out of state. I don't understand that at all.

**Chairman Headland:** An out of state investor in a North Dakota fund doesn't receive a credit because they likely wouldn't have a tax liability to the state of North Dakota. I can't imagine why somebody out of state would want to invest in a North Dakota angel fund unless they saw the possibility of profits some time later down the road.

**Representative Mitskog:** The Southern Valley angel fund in Wahpeton made an investment in a Florida company related to the aviation industry and they wanted it manufactured in ComDel in Wahpeton. That link tied it back to a North Dakota company.

**Representative Olson:** That's a good result but it's not a guaranteed result. It's not required by law if we're to allow the angle funds to direct investments to entities out of state and come back to North Dakota.

**Representative Mitskog:** That was the discussion in the interim to have a tie back to the state of North Dakota. That language wasn't captured in this bill.

**Chairman Headland:** Representative Olson, it would be fair to say that no matter what we do you wouldn't likely support moving forward with the fund?

**Representative Steiner:** After the interim committee met and the newspaper reported the problems of the angel funds, I had no response from my constituents at all; they didn't care. If this went away, then we are not risking our money anymore. With lack of transparency we wouldn't know how well it did for us. I don't know what happens with the existing angel funds, how long they spend themselves out, or how it moves forward from there but I don't have a problem ending the program.

**Representative Grueneich:** When he spoke he said four or five of these companies were basically dead in the water. He said they invested in 21 angel funds so because of their shady past 50% of the 75% of the money was just laying around. When that company in Wahpeton closed down there wasn't anybody else to step up to take that over. I don't necessarily agree how they're doing business and I'm not in favor of the 45% tax. I don't think there are a lot of people out there who are going to make that commitment at that level of risk. I think we need to clean it up. I think we need to narrow it down as to how much they have to spend in North Dakota. I also see the benefit in giving an outside investor some credit.

**Chairman Headland:** You make a key point because we can't kill this bill. If we kill this bill, then nothing changes; the angel fund remains in effect as it is. We have to do something with this piece of legislation.



**Representative Olson:** Not many are willing to put investment into these high risk areas. Why should the state be a silent partner? We are reducing them to make decisions that they wouldn't normally make on their own by providing them other people's money to make it less painful and less risky. That is promoting their own investment and a moral hazard. It is promoting malinvestment in something that in a normal free market an individual would not normally see the value in it. By nature, it is high risk so I don't think it's wise policy to put the people's money up for grabs and be silent partners in high risk ventures.

**Representative Toman:** I sat on the interim committee and this is all the things we discussed on that committee. This is the fix that we asked for in the seed capital investment because it had those controls similar to Minnesota. Do we want to fix it this way or do we not want to fix it this way? Both of those are risky investment opportunities so as much as I may not like this, it still provides opportunity for angel funds to receive a tax credit with constraints and investors see those same tax credits. Are we in a debate about the constraints or about the amount of the credit because that's what we asked council for in the interim.

**Representative Grueneich:** If we did a do pass as it is the angel fund would cease January 1, 2018 and move over to the seed capital?

**Chairman Headland:** The existing angel funds would remain angel funds. They wouldn't be able to start a new angel fund. If they wanted to start a new group, they would have to organize within the parameters of the seed capital which they claim will be much more challenging for them.

Representative Grueneich: That would all become effective January 1, 2018?

Chairman Headland: Yes.

**Representative Hatlestad:** In North Dakota, I would like to see opportunity for investment capital. I think the angel fund could potentially do that. I would like to see percentage tiered. You could invest in North Dakota 40% and you invest outside North Dakota at 20 percent.

**Vice Chairman Dockter:** Our goal in the interim had two options; fix the angel funds in the current state or repeal the angel funds and move to the seed capital that had the transparency and the safeguard we wanted. That is what is before us. The bill before us still does what we want; it helps out entrepreneurs but they'll just have to go through more hoops and have more regulations. That's really the only difference. We went through this for 18 months and we finally came up with this bill. We felt it was going to take too much to try and fix angel funds when we already have seed capital sitting over here. Seed capital was used frequently before 2007 but once the angel funds legislation came into effect it had a lack of transparency so then everybody just went over to the angel funds. Let's say you put \$100,000 in and you lose all your money, you get to deduct that off your tax liability. Or if the company keeps losing \$20,000 you take it by 40 and \$8,000 would be off your tax liability on your federal income tax. So even with these struggles they still get tax benefits every year because it's pass through and you get a K1 if it's a negative amount and you get to deduct that on you 1040. The committee has to decide. If we pass this bill we have a safeguard. They can still form a pass through entity but they just have more restrictions. If we kill this bill the angel



funds remain the same as it is now. The current system in angel funds is too loose so we do need some restrictions.

**Representative B. Koppelman:** I think we have to fix this bill; we don't have a choice. It doesn't sound like many people on this committee want to pass it exactly how it is for obvious reasons we identified before. This needs to be transitioned into something with more restrictions and it might be that the seed capital could do that. We could look at lowering the credit amount from 45% to 25% or we could look at changing the investment so it is required to be in state.

**Chairman Headland:** Currently in the seed capital the investment is limited to the state. If we keep this bill as written there is no out of state.

**Representative B. Koppelman:** I understand his point to use one angel fund to traverse state lines between Minnesota and North Dakota and those investors. The incentive that Minnesota investors have is the fact that they still get the credit on their side even if it's out of state. I think we could fix this bill and put in a sunset clause for two years from now. We could keep the seed capital credit and could have a sunset then at that point evaluate if the fix worked. However, we fix this bill with the existing angel funds, and any that may want to invest, we need to put in an emergency clause or something that takes care of us until the time this bill has full force.

**Representative Hatlestad:** A constituent said if you take away a bill when we need to invest outside of North Dakota you're going to lose investors because you restrict your investment. Your seed capital does that. I would like to reduce percentages.

**Representative Mitskog:** Going back to the reason we went down this route, I'm struggling with why in 2013 state agencies allowed that when a change was made then you could not invest in real estate. Do you know what happens if the certification was revoked and if there is some ability for the state to recoup those tax credits? What's being done about the abuses going on?

**Chairman Headland:** There really isn't any ability from any agency to do anything other than securities had some questions on what that particular fund was doing because they were offering securities when they sold the investment but they were doing it without a license to do so. They've since fixed that problem. Does the Tax Department currently have any ability to claw back any tax credit?

**Dee Wald, General Counsel for the Tax Commissioner's Office:** There is some question as to whether our statute allows us to go in an audit and assess in this situation when they are a certified company. When they recertify the company then that would come into play. It would be a stretch to say we would have absolute power to claw that back.

**Chairman Headland:** Could you briefly explain the January 1, 2018 date and why the bill was drafted that way?

**Dee Wald:** The date was put in there to give some additional time before the angel fund tax credit program stopped. We were not involved in adding that date to the bill.

**Representative Ertelt:** Why don't we have an enforcement provision in this bill? Maybe that is something we could add to fix this. I understand seed capital is supposed to be invested in the state under that program and the angel fund was supposed to attract investment to the state so if it's not doing that then there is a problem. Is it the whole fund under seed capital that is required to be invested into the state or only the amount of funds that are credited to it by the state?

**Dee Wald:** One of the things we have to keep in mind is that these two credits act differently. The angel fund tax credit is earned when the investor puts money in the fund. The fund has to have the intent of investing in North Dakota but once those dollars are in the fund we really don't have control over where those dollars go. With the seed capital investment credit, you have to have significant operations in the state so the angel fund could invest directly in that business and that's when the credit is earned. The angel fund would have to make sure it's a primary sector business, has significant operations in the state with 10 or more employees, and projected \$150,000 in sales. It's really when you get the credit and what the qualified business is, but in the angel fund there is no qualified business so you just get the dollars. They are flipping this program over into invest credits for investing into an angel fund to angel fund investing in the business.

**Vice Chairman Dockter:** There are no angel funds after January 1, 2018 so how far back can we go to put in the bill? Could we make an emergency clause?

**Dee Wald:** You can make it effective when you want. There are no constitutional issues with it that I see with it. It's just a matter of when you want to stop investments straight into the angel fund.

**Representative Steiner:** Can we put on the existing angel funds because they are already set up and doing their thing, can we force more transparency and change the rules to the game midstream on them?

**Dee Wald:** Yes you can do that. We looked at a number of options during the interim. The one thing that is unique about North Dakota's is that we do allow the credit when it goes into the fund. Most other states allow the credit when it goes into the business and it's their angel fund tax credit. Transparency and reporting are always easy to put into statute.

**Representative Ertelt:** This is increasing the limit of the seed capital from \$3 million to \$15 million. The angel fund last year was almost \$8 million so we're giving a little buffer room for any increased claimed credits. Do you think that would be expected in that time frame up to that sunset clause?

Chairman Headland: I think that's what the committee decided.

**Vice Chairman Dockter:** We came up with that number because the state of Minnesota has that amount. Because of the restrictions it takes to put in the seed capital to obtain that would be difficult. Minnesota maxes out every time; they don't have a problem finding investors.

**Chairman Headland:** One thing to keep in mind is that if the total of \$15 million was achieved that would all be investment in North Dakota businesses. I'm going to put a subcommittee together to discuss some solutions and come up with an amendment to bring back to the committee.

**Representative Trottier:** Can the money from the angel fund flow into the seed capital investment fund? Can they duplicate the tax credit?

**Matt Peyerl, Office of State Tax Commissioner:** The angel fund can't invest into the qualified business into the seed capital program and get a credit for that but after the three years the angel fund investors can pull their money out then those investors can invest into a seed capital qualified business.

**Chairman Headland:** We're going to put together a subcommittee of Representative Olson, Representative B. Koppelman, and Vice Chairman Dockter (chair of the committee).

Representative Steiner: Is it possible to get a couple alternatives?

**Chairman Headland:** You always have the opportunity to get any amendments you want. We will try to give the subcommittee time in the afternoons to meet and get some amendments together. We will adjourn for now.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB 1045 1/11/2017 26800

☐ Subcommittee ☐ Conference Committee

# Committee Clerk Signature Mary Bruche

# Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

# Minutes:

No attachments

Subcommittee consists of Vice Chairman Dockter, Representative Olson, and Representative B. Koppelman. Attendance was taken.

**Vice Chairman Dockter:** Opened the subcommittee meeting. The chairman has directed us to come up with a solution to fix this bill.

**Representative B. Koppelman:** I'm having amendments prepared. The goal of the amendments on the entire angel fund section of the statute is to create a short as possible time frame so we don't have any abuse between now and for the remainder of the year. We are looking to change the date to either April 1 or at the signing of the bill. The angel funds would cease to be used and the seed capital tax credit could then be used starting at that time. There would be a sunset on the end of the seed capital tax credit for two years from now so we could have a chance to review it and see if it worked out. We would be changing the percentage allowable which is currently 45% in both credits but the seed capital tax credit would have 25 percent. All the investments will be required to be in North Dakota whether the business be based in North Dakota or if some of its activity is based in North Dakota. There was a question as to whether or not we should be raising the limits as high as we were because we were increasing the limits on the seed capital tax credit fivefold.

**Vice Chairman Dockter:** That was also brought to my attention. If we raised those and pass this that would count against the budget. We take what the maximum potential would be and for this bill it would be \$15 million and that would count against the overall budget even though only \$5 million might be used. I think we should allow 25% to be from out of state. I don't think we should close the door completely.

**Representative B. Koppelman:** I tend to disagree with that. I talked with Mr. Kenville again. I think he is in favor of keeping some of it out of the state. His justification was more along the lines of when you have an angel fund on a border city and you want to have investors

from both sides going back and forth then it makes some sense but from the standpoint of if the state has any net gain from having that opening. I don't find any justification to show that they do.

**Representative Olson:** Apparently, yesterday the House passed a bill called HR79 helping angels lead our startups. I don't know if it pertains to angel funds in North Dakota but we may need to take a look at it.

Vice Chairman Dockter: We can look at it. It is just protecting angel funds.

**Representative Olson:** It looks like it is just updating some SCC regulations to take into account angel funds.

Vice Chairman Dockter: To make sure it's not in a gray area.

Representative Olson: I don't have anything prepared yet.

**Vice Chairman Dockter:** We'll wait for any amendments from Representative B. Koppelman.

Representative B. Koppelman: I will let you know as soon as those amendments are ready.

Vice Chairman Dockter: Meeting adjourned.

# **Finance and Taxation Committee**

Fort Totten Room, State Capitol

HB 1045 1/16/2017 26939

☐ Subcommittee ☐ Conference Committee

Committee Clerk Signature achmeier

## Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

### Minutes:

Attachments 1a, 1b,



Chairman Dockter: Opened subcommittee meeting. Roll taken.

**Representative B. Koppelman:** Distributed Christmas tree version of the bill and an amended bill. (See attachments 1a and 1b.) (Amendment 004) (0.01:42 - 0:03:43) was to change the dollar figures in the seed capital tax credit to remain the same. On (Amendment 003) (0.03.43 - 0.04.18) We were going to have all the same rules on the angel fund but have them be two separate banks, to use the one of your choice. I am not sure that these amendments are what we are looking for. (0.04:57)

**Chairman Dockter**: Rep. Koppelman, If these amendments don't have what you want, what amendments do you want to see?

**Representative B. Koppelman:** We on the committee have been looking to see seed capital tax credit the vehicle for everybody. We have had lots of comments from people who have been angel fund investors and the seed capital credit prior to angel funds having been created. This is what I disagree with: the dollar limits wouldn't be higher; we can get the tax credit amount we can get in either credit: both will change to 25% from 45% with a repeal around there for two years so we would review both of those tax credits. We may not get in a 1 to 1 replacement but for the angel fund credit program but at least something substantial that those who have been using it or wish to use it will still be able to resort to that. It will obviously be used by some but not all. I disagree with its policy in general but I am happy that something positive did come out of this...to reform it, to sunset it, to change that the rates from 45% to 25%. We need to work on these amendments so they all square up.

**Representative Olson:** The primary thing we want to accomplish is to eliminate the loop hole that we properly identified. You are getting the credit as soon as you make the investment into the fund. It allows people to be completely out of state if they generate so

much money. We don't have to employ any people in this state at all. Is this the right way to do that?

**Chairman Dockter:** I agree with you. We have to eliminate the loophole. My biggest concern was getting a credit without even investing in a business. We made the recommendation that we would sunset the angel fund program and make modification to the seed fund program and basically replace it.

**Representative B. Koppelman:** There is some interest in keeping angel fund on the books. We are keeping it intact. We are not sun setting it so you will continue to have two programs each with their own maximums and limits for contributions. Am I characterizing this properly?

**Chairman Dockter:** We have to remember that in the interim that when we raised the limits Appropriations takes the highest number possible when we are looking at making cuts to be raising any limits for any incentives. I think we can preserve angel funds and some incentives not.

**Representative Olson:** You're discussing copying the statutory language from the seed capital investment credit and making a second parallel program and calling it angel fund. The bill came out of committee was sun setting the angel fund program and slightly modifying the C Capital. In the case of making these amendments, it has completely changed. If that's the direction we want to go, then will discuss it. That is what we dealing with is a rewrite of the bill. If we are redrawing the Angel Fund Tax Credit Program from the template of the C Capital we are keeping it in tact...we are not sun setting it. We will continue to have two programs each with their own maximums and limits for contributions etc. Is this what you are thinking?

**Representative B. Koppelman:** That is what I'm proposing. I don't think there has been an issue with people's investments with both programs if they were illegible. Part of this was to get us out of the old rules of angel fund as soon as possible so it would not be abused. Both funds would have a sun set of two years from now so the legislature would have to come back in two years and look at these again. If we are going to fundamentally change these, in which we are, and require with wording, what good will this do if we are not going to come back and take another look at these. If still not working, seeing fit for North Dakota, they ought not continue beyond two years. If they are working very well, then consideration can be made to extend them. Then limits may be adjusted by an appropriate number.

**Chairman Dockter:** People went to the angel funds knowing they don't have to go through as many hopes going the seed capital.

**Representative Olson:** I want to make sure we enact the reform to close the loopholes. In addition to our revenue situation in the state the amendments we come up are reducing exposure of the state to its amount of investment that as a silent partner to these other investors, I think that right now it is not the time for the state not to be making high risk investments that are lowering maximum grants that are revenue short fall. Why would we give tax credits from the State of ND on behalf of investments not even made in our state?

Representative Olson: Maybe then we can.



Chairman Dockter: They would have to have tax liability to get a tax credit.

Representative Olson: My objection is to not give people from out of state tax credits/

**Representative B. Koppelman:** We are reducing our exposure; we are merely cutting that fiscal not in half.

**Representative Olson:** Under the current law, are we keeping the maximum allowable credits in both programs? I think it was \$100.000 and it is being changed to \$250.000. Unless there are more investors. I want to make sure maximal allowable credits in both programs do not increase or are reduced.

**Chairman Dockter:** We have brought available credit from 45% to 25%. Emily, would you come up to the podium and we will go through the bill once again.

**Representative B. Koppelman:** I'm not sure these amendments are what we talked about. We were going to take the angel fund credit and paste the rules from the seed credit to the angel credit. We were going to change the limits both the new angel fund as Capital C Credit to a 25% credit instead of the current 45% credit. \$112,000 would be the maximum amount of both credits. It was not to increase in the proposed bill. The changed language was to be somewhere around April 1<sup>st</sup>, or an emergency clause. Sun set was going to be in around two years, reviewed the end of the biennium again next session.

**Emily Thompson, Counsel, Legislative Council:** I sent that request out to Commerce to see what they thought about it. (1a, page 6) I don't think there is any scenario where we had to have employees in the state. I believe that you wanted to extend the angel fund to the end of the year.

Chairman Dockter: Does anyone have any other questions for Emily?

**Representative Olson:** We basically need to reform the entire Angel Fund program rather than just sun setting it. We were going to make some modifications to seek capital. But now, we are bringing over C Capital and just calling it angel fund.

**Representative B. Koppelman:** Yes. The biggest issue I've heard from people is that nationally investors who may be or out of our state. If they do invest in our state, we don't have to pay them with tax credits.

Representative Olson: I'm worried about the complexity for that type of amendment.

**Chairman Dockter:** In the interim we were at these crossroads. We are now here because there are people who want the C Capital Investment program; not the mechanics of it.

**Representative Olson:** So there are a couple people who had an issue with calling it a C Capital Investment Program?

**Chairman Dockter:** They want to use this as angel funds out of the regulations of the seed capital.

Representative Olson: So we're not addressing the issue.

Chairman Dockter: Who will work on the Charities Commission on transparency?

**Representative Olson:** It seems like a wasted effort on behalf of Representative Koppelman to go and draw up those amendments to do that if we're just going to shoot it down because of the complexity of trying to move out the entire angel fund.

**Representative B. Koppelman:** I think if you don't want the duplicate of nature of recreating the angel fund with a different face, I think in the Amendments it will not be difficult to just strike that portion. All the fixes that we're after, the 25%, the sun set, all these other things that we want to happen with the C Capital Credit as well, those will all be in the C Capital language. If we as a sub-committee decided to draw a big red X through the part that reforms the angel fund, I think the rest of them could stand on their own merit and fix the C Capital the way we want it. If that is where the sub-committee wants to go, that will be easy to do with my Amendments, I believe.

Chairman Dockter: We shall impact these amendments whichever way we go.

**Representative Olson:** I have questions for anyone from the audience if anyone has any knowledge of these seed capital programs available credits were actually used in the last recordable time period. Is it being maxed out? Or is there lots of money left over? Prior to 2007, was it being maxed out? Five to 10 years, preceding 2007, was that program seeing a lot of update and usage from the investors.

**Emily Thompson, Counsel, Legislative Council:** I will have to check with the Tax Department on this information.

**Representative Olson:** I think we will need that information on the drop off of investments in the C Capital fund based on prior to 2006. We have to be able to see if the Angel Fund came out and was just that much more attractive?

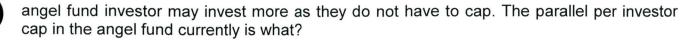
Chairman Dockter: Matt, do you have that information with you?

Matt Peyerl: I don't have that with me but I could get it for you rather quickly.

Representative Olson: Do we have caps in the current angel fund program?

**Matt Peyerl:** Investors have 30 days to provide the form to show that they are investing. And so if someone is acquiring about how much this \$3.5 million cap is left, they are 3 weeks behind on showing if there is any available cap left. That is correct. The caps exist on the funds themselves so they always know how much they have left. They can always tell the investor what credit he is entitled to. But, in total, there is no gross cap to the program.

**Chairman Dockter:** In the capital seed tax credit the taxpayer maximum is \$112,500. The life-time maximum for an angel fund investor is \$500,000. Over a long period of time, an



**Matt Peyerl:** It is \$500,000 which was increased from \$150,000 to \$500,000 in 2013 or 2915, per investor lifetime cap. (page 5, subsection D - it has to be a principal office in the state.) 0.49.00

**Representative B. Koppelman:** Per investor or per fund? (page 8 – line 24). Over a period of time, an investor has to revert back to the current law which says \$112,500 and then do (on page 28) we want to sneak the credit good for seven years. By raising that cap, you have been giving them more money to do what they can do.

**Matt Peyerl:** Yes, we have been lowering the income tax credit. On the last page, the date would have to be changed March 31<sup>st</sup>.

**Representative B. Koppelman**: On the last page, the only change is on line 12 that should be changed to March 31. The only other is totally locking out of state investment, if that is what we want to do.

**Chairman Dockter:** Page 8 line 28 where it says 4-7. In other code it is a 5 year carry forward. I think 5 years is reasonable.

Emily Thompson, Counsel, Legislative Council: Yes 3-5 years is pretty common.

**Representative Olson:** If I was an investor I would be worried about my income tax credits because the trend in this state is towards elimination entirely. We had a report that showed the total tax credits that had been used. In 2014 a total of \$7.8 million was claimed on 348 returns not including corporate. But seed capital limit is going from \$3- \$15 million, I think that may be swinging the pendulum too far. Y

**Chairman Dockter:** Yes. We did that because the original thought was to repeal the Angel funds and raising the limits on the seed capital. We came up with that number from Minnesota. I have no problem going back to the \$3 million.

Representative Olson: Maybe changing it to \$10 million. 53:47

**Representative B. Koppelman:** What is the sub committees wishes as far as the Angel fund? Do you want me to go back to ending the Angel fund or to prepare the amendments under the Angel Fund heading?

**Representative Olson:** That is probably the most logical thing to do or we are just trying to put the same thing under a different heading.

**Representative Koppelman:** Then I will put the amendments on the capital seed credit and the only thing I will do to the Angel fund is making the sunset earlier. If there are other small changes we need to make we can.

Chairman Dockter: Meeting adjourned.

Finance and Taxation Committee

Fort Totten Room, State Capitol

HB 1045 1/17/2017 27012

⊠ Subcommittee □ Conference Committee

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Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

Minutes:

Attachment #1

Chairman Dockter: Opened subcommittee meeting.

**Rep. B. Koppelman:** Distributed proposed amendments Christmas tree version 17.0158.01006. See attachment #1. Explained proposed amendments.

**Rep.Olson:** Seed capital was used quite extensively but then in 2007 it declined I feel that before 2007 we had a loose subscription, people were still putting money in it declined because the Angel funds had a lot less restrictions.

**Chairman Dockter:** Any questions? Matt sent us an email that seed capital was used quite extensively then in 2007.

**Rep. B. Koppelman**: I agree. Whatever changes we make not only is there abuse but you also have some unintended uses for the angel fund that weren't intended when they were drafted by the legislation. There will probably be some reduction in the activity, not all of the activity will transfer over to the capital Seed credit because we are not allowing the abuses any more.

Chairman Dockter: We gave some concessions?

**Rep. B. Koppelman**: The angel fund ceases to allow for new investments on April 1<sup>st</sup> that would be according to the way this is and that would account to the emergency clause passing. We may not be able to count on that. There is a good likelihood that won't be repealed.



**Rep. B. Koppelman:** The timing is at the point of investment. Seed capital was originally with the investor in mind. As complicated as it seems it is intended for simplicity sake in the long term because this all right there shouldn't be all this confusion in future sessions.

Chairman Dockter: In looking at the amendments is there anything that we missed?

**Matt Peyer:** Tax Department: There is one item you want to be aware of and that's on page 8, line 9 where it talks about the \$500,000 and that is the existing seed credit capital program it that is an existing minute that is allowed on a qualified business. I am not sure if that was the intent there.

**Rep. B. Koppelman:** That was the intent to do that. Maybe you can share with us the Angel fund verses the capital seed fund what the typical business investment?

**Matt Peyerl:** That's one of the gaps is that what is we get reported is which qualified enterprises that they have invested in so we get the name and address of that recipient qualified enterprise but we don't know how much has been invested in it. A lot Angel fund credit dollar that have been earned aren't yet invested in anything so it is unaccounted for.

**Rep. B. Koppelman:** I'm well aware of the road this bill has ahead of it. For all those who are doing angel fund investing or other investing I am open for suggestions unless someone has suggestions I would say leave it the way it is in this program and see what it does in the senate conference committee.

**Chairman Dockter:** I agree. This number will get changed anyway. Is there anything else that could be an issue? The number that we put in is not the number that it will be in the end.

**Matt PeyerI:** When the tax credit is repealed and that credit has a carry-over provision so in the Angel fund program when it is being repealed I believe it is a seven-year carryover provision and that is the intent to turn off that carry forward or to let that continue to let that run its course.

**Chairman Dockter:** I think we would carry it out. You're saying anything prior to April 1 would be under the seven years and anything newer would be under the five?

**Matt PeyerI:** Absent any other changes to the bill or the law, that would be our administration of it as well?

Chairman Dockter: Yes

**Rep. B. Koppelman:** Everyone is well aware of any investments before April 1<sup>st</sup>. Neither one of these credits had a rule or provision on any yearly caps or anything did they?

Matt Peyerl: No, there was no program cap.

Rep. B. Koppelman: I think we're good.

Chairman Dockter: Do we have a motion?

## Rep. B. Koppelman: I move the amendments on 17.0158.1006 amendment to HB 1045.

Rep. Olson: I second.

Rep. B. Koppelman: Is there any discussion: Roll Call Yes 3 No 0

Finance and Taxation Committee

Fort Totten Room, State Capitol

HB 1045
1/18/2017
27075

□ Subcommittee □ Conference Committee

**Committee Clerk Signature** 

Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

### Minutes:

Attachment #1a, b, c

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**Rep. B. Koppelman:** Distributed proposed amendments from the subcommittee. Explained the amendments 17.0158.01006. See attachments #1a, b, and c. We changed the date from January 1<sup>st</sup> 2018 to April 1<sup>st</sup> 2017 the purpose of this change is to make it so that we stop the abuse as early as possible with the current language as seems to be open ended. On page 6 there are a couple of small changes one is the name of the seed credit funds to be the Angel investor seed capital investment credit. More explanations of page 6, 7, 9, 4, 10, 11. There was some discussion where we want to do a study on this bill but because we have 3 million is study on all tax credits we decided in the subcommittee that we did not need to do that.

**Rep. Ertelt:** In section 7 you changed the language from 15 to 10. I also was present but not fully focused on the subcommittee when you met. I recall hearing the gentlemen from the tax department state the Angel form credit currently has a limit of 2 million dollars per year is that correct?

**Rep. B. Koppelman:** You're probably referring to page 8, line 9 where it says \$500,000 and they had proposed for it to go to 4 million there was some discussion as to whether that should go to 2 million.

**Matt Peyerl**: Office of State Tax Commissioner: If you have a cap of 10 million dollars of credit and it's a 25% rate you will need 40 million of investment dollars to max it out so \$500,000 is a max free qualified business project so you would need 80 projects for it to max out.

Rep. Ertelt: Is there a current limit to Angel Seed Capital? What is the liability to the state?

**Matt PeyerI:** There is not a state wide limit, the limit applies at the Angel fund level but the Angel fund can only raise 5 million dollars for which it can get out credits to it investors. There is no state wide cap on Angel fund dollars. In the existing seed program, the caps that exit are 3.5 million dollars of credits per calendar year and then there is also no individual investor limit.

Rep. Ertelt: Since there isn't a cap currently, could you let us know what that value is?

**Matt PeyerI:** I believe the stats were presented during one of the last political subdivisions committees and I don't have that handout.

**Rep. B. Koppelman:** It would take 80 projects to max it out which may be quite a bit. I don't think we want to start off too high on this program I think we should start a little conservative on this.

**Chairman Headland**: What types of businesses are set up for angel funds? Are Angel funds LLC's?

**Matt PeyerI:** I think most of them are pass-through entities. LLC's that elect to be taxed as a tax-through as an elected partnership so all of the owners claim portion ship, income expense and credit as well.

**Chairman Headland:** Do Angel fund the presence? Or does the person who is in charge of doing the investing? Is that capability going to be there?

**Matt PeyerI:** In the large sense yes the difference they pull money and then invest with investments in mind and with LLC in mind they do pay someone to do the administrative work and to raise money and find and find investments and then under the seed program it's a qualified business that is trying to raise the money and so if they have to pay somebody a portion to help them raise in the end it will cost them the same to do it.

Rep. Hatlestad: Will this combined group be able to invest in real estate?

**Matt PeyerI:** The requirements are that it be a primary sector business. That would be a discussion that congress makes when they certify someone from the primary sector.

Rep. Mitskog: The format changed on the structure where that angel fund?

**Vice Chairman Dockter**: We are going under the seed capital rules rather than how the angel funds were written prior and that is the way that they do it.

**Matt PeyerI:** I would agree. The angel fund can still pool money, there will just be no credit until either they find a qualified enterprise or a qualified fund finds that Angel fund.

**Dee Wald:** Legal Counsel. Do you want the Legal Counsel to share her...? Look on page 10 that's where they talk about the Angel fund and the qualified business.

**Mattt Peyerl:** An Angel fund can still invest into a qualified enterprise whether it is through effective dates or which effective funds can do that there could some interest in restricting that existing Angel fund that have already had investments for which 45% credits have been earned shouldn't get another credit when they invest into the future into a qualified enterprise because they have already earned their credits.

Rep. Trottier: Do we know how many of these have been successful?

**Matt PeyerI:** I don't know what an unsuccessful one would be they raise money some invest in money some loan it out. I don't know what kinds of returns on their investments they had.

**Vice Chairman Dockter**: Seven of his Angel funds have failed of the eleven or twelve. Three of them have positive cash flow.

**Rep. Toman:** The Angel fund can still invest in that concept but there will be no tax credit until they are a qualified business.

Rep. Mitskog: I can't comment on it.

**Matt Peyerl**: I think the gate for that qualified business is mostly in that primarily sector designation and the people in the department of commerce they are the ones that make that determination.

**Rep. Toman:** I don't think it's the state's obligation to be involved in these high risk investments.

Rep. Mitskog: Could we get Commerce here to answer a few more questions?

**Chairman Headland:** I also have some questions? We will try and get Commerce down here to answer some questions.

**Rep. Ertelt:** We were provided with the total claims for the Angel fund credit from 2007-2014 could we also have that the seed capital?

Chairman Headland: Rep. B. Koppelman, didn't you site that figure?

Rep. B. Koppelman: I don't know if I have that in writing.

**Vice Chairman Dockter:** Matt sent the subcommittee an email with those figures I will forward this information to the committee.

Matt Peyerl: you said you had an Angel fund for 2007-2014 I think the political subdivision interim committee had more up to date stats than that.

Vice Chairman Dockter: Meeting adjourned.

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB 1045 1/31/2017 27681

SubcommitteeConference Committee



Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

### Minutes:

Attachments 1, 2

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**Representative B. Koppelman:** Distributed proposed amendments 17.0158.01008. See attachment #1. Explained the proposed amendments. Any funds that are currently in an angel fund but have not been invested by the date that we're ending the old angel funds, April 1, 2017, would have a clawback provision or a provision to where half the amount they received in a tax credit when they invested, if it hasn't been invested in a company by the April 1 deadline happens, they will have to repay half the tax credit.

**Vice Chairman Dockter:** We are trying to give back the 45% credit that we gave them up front.

**Representative Hogan:** With the April 1 deadline assuming we pass it, it's an interesting timing issue. Can we really pass a law that has two days or a week before it gets resolved?

**Representative B. Koppelman:** That is two months away. Supposedly, anybody who is an angel fund and has money sitting in the bank is looking for projects to invest in. They are going to have the better of two months to put that money into an investment. They could buy that money down to make it not susceptible to this clawback. This is trying to get after the bad actors.

**Representative Hogan:** Are you going to have reporting requirements? Under the current angel fund reporting requirements we don't really get much of that data. How do we know what they invested in and how that would work?

Representative B. Koppelman: Maybe Dee Wald could explain that for us.

Representative Mitskog: Why is there the April 1 date?

**Vice Chairman Dockter:** We'll just go through the entire thing then ask the questions as they come up.

Dee Wald, General Counsel, Office of State Tax Commissioner: Distributed proposed amendment explanation. See attachment #2. Dee walked through the attachments. We're taking their uninvested capital and multiplying that times 50% because we're giving them some credit for excess capital and operating expenses that they still might have. The product of that is what we apply to the 45 percent. For reporting requirements, you need to find out how much the angel fund invested into enterprises.

**Chairman Headland:** In the case of an angel fund that has been set up and there hasn't been any investment in, is their cleansing only going to be 50% as well?

Dee Wald: No investment into the fund?

**Chairman Headland:** No investment into a fund that's already been created that hasn't made one investment.

**Dee Wald:** If that report comes back and they haven't invested in anything that number will be reflected so their amount of net uninvested capital would be higher. It would be the dollar amount that is sitting in there minus the 50 percent.

Chairman Headland: They will only be penalized 50 percent?

Dee Wald: Yes.

**Representative B. Koppelman:** These amendments suggest that the angel fund would be sending that money back to the state, not the taxpayer who got the tax credit originally, correct?

**Dee Wald:** Correct. The liability is on the angel fund. We are trying to cleanse those dollars so the current angel fund could invest in the seed capital qualified business but now they aren't getting that double dip of the 45% and the other 30 percent.

**Representative Olson:** If the angel fund makes straight dispersement to all its members and cashes out without paying the clawback, is it possible for them to disperse all their cash, draw their bank accounts down to zero, and move the funds out?

**Dee Wald:** It could conceivably happen before that but I think they would probably create another angel fund.

Chairman Headland: They would have had to have been created before April 1.

Representative Olson: Couldn't they cash it out and declare bankruptcy?

**Dee Wald:** That's possible but I'm not sure a mutual fund can file a normal bankruptcy.



Vice Chairman Dockter: The reason why we did that was because the individual investors were giving this money to invest in a business so we didn't want to penalize them for the actions of the angel fund that they did not invest the money into a company.

**Chairman Headland:** What about the one fund that set up a specific fund to be used as a savings account and the fund charged them a fee then the documentation showed how the credit was going to be used as a return on investment? That fund was established back in 2014?

Dee Wald: 2015.

**Chairman Headland:** Aren't there current angel fund provisions that says that investment has to be held within that fund or invested for three years before they can get that back?

**Dee Wald:** If they pull it out they would have that three-year risk issue and they'd become uncertified and we could clawback that credit.

**Representative Olson:** If the money in one of these funds has been in for less than three years and we want to give them an avenue to put it into the seed capital program, then that's going to be allowed. On April 1, 2017 you're looking to get a report of everything that is left in all of the funds that haven't been put anywhere and assess a fee against 50% of those funds at 45% and hopefully they'll pay that up instead of drawing that down.

**Vice Chairman Dockter:** That is the general idea. After April 1, they have to create a new angel fund under the new law and under the new restrictions and not receive the credit until it is invested into a business.

**Representative Hatlestad:** I agree that something needs to be done with the angel fund but I think we're changing the rules midstream. I believe we are punishing the investor when we take back that money.

**Chairman Headland:** I think your misreading how this is going to work. If there's an investor that has invested into an angel fund that hasn't made any investment they've received the credit. They received the 45% credit when they invested. If that fund chooses to invest in a business under the new rules they are going to receive another credit of 25 percent. The fund will be cleansed and will have to bring back 50% of that investment to the Tax Department. The amount of money that is going to be there to invest will be diminished but that would be it. The investor still got his benefit so he's not really losing.

**Representative Hatlestad:** I disagree because I have money invested in that angel fund. If we don't invest it in anything 50% of that, then they're going to take 45% back. I'm going to lose money.

**Chairman Headland:** You've already received the 45% benefit that you've been able to take advantage of.

**Representative B. Koppelman:** If you invested \$100 in an angel fund and a tax liability of \$45 then you'd have \$145; the \$100 is in the fund and the \$45 is theoretically in your pocket.

Then assuming the fund had been in existence for three years or even if it hasn't, the calculation in this amendment would say you take the \$100 times 50% then take 45% on that which is \$21 or \$22 that the investor wouldn't get back. If you started out with that net \$145 less your \$21 you're still \$20 some ahead and you've had zero risk. This is not pick pocketing anybody. The person that managed to pull that off is still coming out ahead.

**Representative Hogan:** That's the presumption that they are using the whole credit. There is a question of carryover and how much angel fund donations don't use the whole credit. That might be a variable. Do angel funds go out and make massive investments in the last two weeks in March? Is that good planning?

**Representative B. Koppelman:** I hope they do because the whole point was to get this in the hands of business owners who could do something with it and hopefully create new primary sector businesses. I hope they spend every dime investing in businesses or transition it over to a seed capital credit at which point it won't be on a short time frame. This should encourage people to do the right thing.

**Representative Olson:** Is the money coming out of the angel fund and able to go to another vehicle pending investment into a business?

Chairman Headland: I think we need to ask the Tax Department.

**Matt Peyerl, Office of State Tax Commissioner:** Assuming this angel fund is subject to this clawback and pays that they would be able to invest it into a seed capital enterprise in which case the angel fund will earn the 25% credit. But angel funds as passthrough entities where the credit passes through to the owners, the owners are obtaining the seed credit once the investment is made by that angel fund that still has their pooled capital.

**Representative B. Koppelman:** With my \$100 example, after paying the clawback it is probably yielding around \$78 so at that point it could be moved over to capital seed credit. Because you've taken that clawback it's now eligible as new money to receive a 25% credit. If you take 25% of \$80 some that is \$20 some so it just about sets them back at the \$100 level when you factor what's in the fund and what the taxpayer is benefiting.

**Matt PeyerI:** I believe that is what I was trying to say without using the numbers. The 50% number is used to accommodate things like the imperfections of trying to claw it back.

**Representative Trottier:** If I put \$100 in there and leave it there for three years after that I would get 15 percent?

Matt Peyerl: It would be 45% on day one.

**Representative B. Koppelman:** If you don't use the tax liability then you could carry it over.

Chairman Headland: I think there is more to the amendment than what this does.

**Representative B. Koppelman:** In amendment 006 I think the only difference between version 06 and 08 is the clawback provision. Explained proposed amendment 006. Ended explanation at 34:49.

**Representative Steiner:** I understood seed capital was at 5.3, angel at 7.8, and it was 13.1 so we are actually reducing it to ten.

**Representative B. Koppelman:** By the numbers you're suggesting we would be reducing. What was the amount invested in the seed capital?

**Matt Peyerl:** The amount invested in 2015 was around \$500,000; roughly \$1 million per year. In 2005 it was \$5 million.

**Representative B. Koppelman:** It was meant to be a zero ending per what the subcommittee was saying. It wasn't allowing growth in either one of the credits. We were theoretically allowing roughly the same amount of tax credits per year.

Representative Steiner: I was thinking that was biennium numbers.

**Representative Olson:** In the data provided to the political subdivision taxation committee that paperwork showed in tax year 2014 a total of \$7.8 million claimed and over 348 returns for the angel tax credit. In 2014 \$1.3 million claimed with 74 returns for the seed capital investment tax credit. That's where the \$10 million number came from.

**Representative B. Koppelman:** It was \$9 million and some change.

**Matt Peyerl:** When arriving at the \$10 million total the \$7 million of it was accomplished using a 45% tax credit but now that you're having a 25% tax credit going forward it will take more investment dollars to hit that cap. The existing \$500,000 per qualified business cap that exists so there are two different caps. You'd have to have 80 qualified businesses that get investment at the max in order to hit the statewide program cap per year.

**Representative Hogan:** This is the tax credit. How much investment would the seed fund need to have to invest?

**Matt PeyerI:** \$40 million and at 25% that gets you to that max cap. If you had that \$40 million at \$500,000 per qualified business project it takes 80 of them to get you to that so there are a couple different caps that come into play there.

**Representative B. Koppelman:** Continued explaining the proposed amendment 006. Ended explanation at 40:53.

**Dee Wald:** On page 10 of the amendment line 25, do you have language that would certify after chapter...?

**Representative B. Koppelman:** This is in the new set of amendments on page four subsection 10 it is the underlined section.

**Dee Wald:** Yes. I realized if you have an angel fund that was certified before April 1 and they paid a surcharge you want them to be able to invest. I suggest that after the chapter at the end of the sentence insert after the chapter 57-at unless the angel fund pays the surcharge under subsection eight of 57-38.01.26. They can invest but they need to pay their surcharge if they were certified before April 1, otherwise no credit.

**Chairman Headland:** Can we get a current Christmas tree version of this? If we can agree to the concept we can put off the vote until tomorrow if we have to.

Representative B. Koppelman: I will get a Christmas tree version prepared.

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB 1045
2/1/2017
27756

SubcommitteeConference Committee

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# Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

### Minutes:

Attachments 1, 2, 3

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**Representative B. Koppelman:** Distributed Christmas tree version and proposed amendments 17.0158.01009. See attachments #1 and 2. On page 11 of the Christmas tree copy, lines 9-11, that is the change Dee Wald from the Tax Department requested based on a drafting error. Everything else is the same from what we discussed prior.

Representative Hogan: Are we going to go through this note from the Tax Department?

Chairman Headland: Yes, we sure can.

Joe Becker, Tax Department: Distributed memorandum. See attachment #3. Explained memorandum. What happens when the angel fund is discontinued? Data shows that the program is significantly used. Credits claimed are anywhere from \$2-7 million per year over its existence. Assuming you made no change, the program would continue and there would be continued significant investment in credits claimed under that program. To sunset that program would have a positive impact on the state for the second year of the biennium. You would probably be looking at \$7 million. The second element of the fiscal analysis relates to the changes made to the seed capital program. The most significant one is probably the reduction in the rate from 45% to 25 percent. The limitations on the seed capital program are still going to be in place. It has to be a primary sector business which has to be certified by the Commerce Department. Over the history of the seed capital program there have been 69 businesses that have been certified. Currently, they can be certified up to four years with one opportunity to ask for another four years. The biggest limitation we've run in to, for each business that has been certified, only the first \$500,000 of investments in that business would qualify for the credit. Most businesses will hit that ceiling. The current \$3.5 million ceiling per year on total credits allowed under the program has not been threatened. We are looking at having to certify and having up to 80 businesses on board before it would even threaten the current ceiling that you're proposing in the amendments. The business must be located and have its principle operation in the state or it can be an out of state business but it has to



have a significant operation here and have at least two employees working in the state per the amendment here. The seed capital program is already in place and there is already credit allowed. Reduction in the rate will reduce the credit amount which has a positive impact. The overall consideration is where these changes cause an increase in the use of the seed capital program. We believe that it will require a significant increase in use of the seed capital program to even offset the positive impact of discontinuing the angel fund credit. We think you will have a positive impact but we don't know as to the extent.

Chairman Headland: Representative Hogan, does that answer your questions?

**Representative Hogan:** I think it does. Currently, angel fund investments are not required to be primary sector?

Joe Becker: That is true.

**Representative Hogan:** Because we don't know what the investments are in many angel funds we don't know what percentage are primary sector?

Joe Becker: That's right.

Representative Hogan: That's the unknown.

Joe Becker: The proposed amendments will bring that data.

Chairman Headland: Anything else? We have amendment .1009 before us.

Representative B. Koppelman: MADE A MOTION TO ADOPT THE AMENDMENT

Representative Ertelt: SECONDED

Chairman Headland: Any discussion?

ROLL CALL VOTE: 13 YES 1 NO 0 ABSENT

**MOTION CARRIED** 

Chairman Headland: We have amended HB 1045 before us.

Vice Chairman Dockter: MADE A MOTION FOR A DO PASS AS AMENDED

**Representative Ertelt: SECONDED** 

Chairman Headland: Discussion?

ROLL CALL VOTE: 14 YES 0 NO 0 ABSENT

Representative B. Koppelman will carry this bill.

Finance and Taxation Committee

Fort Totten Room, State Capitol

HΒ	1045
2/7/	2017
28	011

SubcommitteeConference Committee

Committee Clerk Signature

### Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

#### Minutes:

No attachments

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Vice Chairman Dockter: This bill has been re-referred back to our committee. There are some concerns with the bill.

**Representative Olson:** It was brought to my attention that there may be a serious unintended consequence with regards to the claw back on the 50% of the uninvested funds and taking 45% back out of those or 22.5% of all funds that are pulled out. They may be under our funds invested for individuals from out of state who did not necessarily receive an income tax credit or exemption on those invested funds. The unintended consequences of that really can't be quantified and it's an issue we need to address. I propose removing that provision entirely. It's not ideal. This system has been abused and this was an attempt to rectify some of that.

**Representative B. Koppelman:** If we're going to debate this I believe we should reconsider it. **MADE A MOTION TO RECONSIDER OUR ACTIONS** 

Representative Olson: SECONDED

Vice Chairman Dockter: Is there any discussion?

### VOICE VOTE: MOTION CARRIED

**Vice Chairman Dockter:** Let's take a look at the version .1009. Does anyone have any amendments for HB 1045?

**Representative Olson:** We'll go back to version .1006 of this bill to get back to the simpler version.

**Representative B. Koppelman:** Version .1006 and .1009 is the same but without the claw back provision. Take a look at the Christmas tree version. The language in green in version .1009 on page 6 was primarily the language that created the claw back provision so that would no longer be in there if we go back to version .1006.

Vice Chairman Dockter: So subsections a, b, c, and d would be removed?

**Representative B. Koppelman:** Yes, on page 6 of the .1009 amendment. On page 11 of that same amendment there is language on lines 9-11 would have to come off because it is referencing that other piece where we created the claw back. Version .1006 is changed back so I think we should work off that version.

**Representative Steiner:** We had an open sentence on page 10 line 25, "under this chapter" in the .1006 version. Were we trying to correct that in the next one? Dee, do you want that chapter named?

**Dee Wald, General Counsel, Office of State Tax Commissioner:** This chapter means the new investor seed capital credit. On version .1006 line 24 we need to insert after 57-38 "of which was certified before April 1, 2017" to avoid the double dipping. In the .1009 version page 11, line 10 remove "unless the angel fund pays the surcharge under subsection 8 of section 57-38-01.26."

Representative Steiner: But you're leaving "which was certified"?

Dee Wald: That is correct. That is not in the .1006 version.

**Representative Ertelt:** On page 6 starting with line 12 of the .1009 version I think we need to retain subsection b of section 8 because I think there is still some benefit in understanding what the uninvested dollars are and that's simply calling for a report of uninvested dollars.

Vice Chairman Dockter: I would agree that it should stay in the bill.

**Representative Hogan:** Do we need to look at the effective dates with the changes we've made in the very ending sections at all? If we don't get the emergency clause passed on the floor and passed to the senate then what happens to the April 16 date?

**Representative B. Koppelman:** If the emergency clause didn't pass the April 1 date would change to the effective date of the bill, which would be August 1 because this isn't an appropriations bill. For ease of the amendment I would move the .1006 version then we can further amend.

**Vice Chairman Dockter:** Would you be willing to make the changes and get the .1010 version instead of going back to the .1006 version?

**Representative B. Koppelman:** That would be fine. Also, in talking with commerce and with Representative Olson, there is concern that the language we put in for at least two employees has the unintended consequence of reducing the amount of people who receive money from the current seed capital program from qualifying. If we were to remove that and



say it is projected to have 10 or more employees after that three-year period of time when they have to recertify, if they don't have 10 or are on their way to 10, they likely wouldn't get recertified anyway.

Vice Chairman Dockter: That's a good idea. You can put that in the .1010 version.

**Representative Olson:** I don't think the emergency clause not carrying would change the text of the legislation so it would not go into effect as quickly as it would but it would still state in century code that the eligibility for the credit against state income tax would only apply for an investment made prior to April 1, 2017. Credits made for investments after April 1, 2017 wouldn't be eligible regardless of when the law went into effect.

**Vice Chairman Dockter:** Would you check with legislative council and go with Representative B. Koppelman to redraft that?

Representative Olson: Yes.

Representative Trottier: We are taking the claw back phrase out of it, correct?

Vice Chairman Dockter: Correct.

**Representative Trottier:** So some people will get the 45% plus the 25% when they put the money in? If they got the 45% then they get zero?

**Vice Chairman Dockter:** Yes. That's part of the revision Dee had to put in so they couldn't double dip.

Meeting adjourned.

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB	1045
2/8/	2017
28	050

SubcommitteeConference Committee

Committee Clerk Signature - Mary B

### Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

#### Minutes:

Attachments 1, 2

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**Representative B. Koppelman:** Distributed proposed amendments in Christmas tree version of the bill and amendment form. See attachments #1 and 2. Explained the amendments. On page 7 line 15, we used to have a provision that said they had to have two employees and project 10 or more. We heard from Commerce that it was problematic and undermined the existing seed program. Fifty percent of the people would not have been eligible because when they apply for it they're just starting and haven't hired all their people yet. We took that language out. This will be recertified every four years for the seed program. On page 9 is where we go from 45% to 25% and from four years to five years so that the credit can be used or spread over. On page 10 of the bill lines 24-25, is the language the Tax Department caught and said they needed it to make it all work. I believe this takes care of the concerns we had when we were trying to remove the claw back section but still takes care of the drafting errors that the Tax Department was concerned about. **MADE A MOTION TO ADOPT THE AMENDMENT 17.0158.01010.** 

#### **Representative Olson: SECONDED**

**Chairman Headland:** Any discussion? This is going to allow an existing fund who hasn't made any investment to get 125% credit, there is just no way around it.

Representative B. Koppelman: I believe the way the language is they can't double dip.

Representative Toman: It's on page 10, lines 24 and 25.

**Vice Chairman Dockter:** That section says anything after April 1, 2017 they would have to start a new angel fund and they could invest new money and receive 25%, anything prior to April 1 would be under previous law.

**Representative B. Koppelman:** The reason why we had such an early date of April 1 is because anyone who puts the money in an angel fund before April 1 gets the full 45% credit that we currently have then that money from there on out, forget about it. After the money has been pulled back out the investor could reinvest it into a new angel fund in the new program or they could take their money and be a seed capital investor. It still has to get through that cycle of three years and that's no different than how the old funds were.

#### Representative Steiner: What was the emergency clause?

**Representative Olson:** It doesn't affect the date whether the emergency clause passes or not. That date will still be effective for April 1, 2017.

### Chairman Headland: Anything else?

### ROLL CALL VOTE: 14 YES 0 NO 0 ABSENT

#### MOTION CARRIED TO ADOPT AMENDMENT .01010.

**Vice Chairman Dockter:** Distributed proposed amendment .01011. **MADE A MOTION TO ADOPT THE AMENDMENT.** This is what Representative Ertelt wanted back in the bill, "they shall file a report with the Tax Commissioner." It comes with total dollars invested by the angel fund from January 13<sup>th</sup> through March 31, 2017. The angel fund report has to be filed on or before July 1, 2017.

**Representative Toman:** Now that we have an amended bill before us we already have a section five.

Chairman Headland: That's right. This version doesn't account for it.

**Representative B. Koppelman:** I asked council about that when preparing these and they said the numbering of the sections didn't matter; they can renumber accordingly to make them work together.

**Representative Olson:** The report deadline is July 1, 2017, if the law doesn't go into effect until June 30, if the emergency clause doesn't carry, the law will go into effect and require a report be filed the day after. Is this too soon of a date?

Chairman Headland: I agree that it doesn't quite fit.

**Vice Chairman Dockter:** Do you want to further amend? We could put whatever date the committee wants. **WITHDREW PRIOR MOTION TO ADOPT AMENDMENT .01011.** 

Vice Chairman Dockter: MADE A MOTION TO FURTHER AMEND .01011 AND TAKE OUT JULY AND REPLACE WITH OCTOBER.

**Representative Steiner: SECONDED** 

Chairman Headland: Discussion?

**Representative B. Koppelman:** I would like to ask the committee what the value of this data is going to be? The reason we put the data in there was to know what people had to pay for the claw back purpose.

Chairman Headland: Let's ask the sponsor.

**Vice Chairman Dockter:** We have two more interim committees that meet on incentives. We can then ask the Tax Department if this law goes into effect to see if it is valuable information and what information they got from this report. If we find that it really doesn't provide us any new information we can always change it next time and not have this report.

**Representative B. Koppelman:** This information could not be valuable but it also could be valuable then we could go forward with a new program. I don't know if that would be a productive meeting for the interim committee and it's a way to second guess ourselves.

**Chairman Headland:** Vice Chairman Dockter, is it your thoughts that with REMI software, if we were to find out that the investment isn't being made into the angel investor tax credit, we would still have data going back to 13 that may help us?

**Vice Chairman Dockter:** That's my rationale. Anything we can get from the angel funds or any of the incentives will help us going forward. I believe with the REMI software we could figure out as a state if these incentives are working and if the state is getting any benefit giving away tax dollars to these entities.

**Representative Hatlestad:** HB 1354 allows the Tax Commissioner or the chairman of the committee to ask for this information. Can't we get this information without this provision?

**Chairman Headland:** No, we couldn't because they wouldn't have to provide it. We get that information from the Tax Department.

**Representative Hogan:** I think this is really important to get. If we don't have this data, we will continue the process of not being able to judge if these policies help or hurt.

**Representative Ertelt:** This isn't completely new; we're kind of melding the two ideas. Your judgement is only as good as your information. I think we should go further and require reporting on the angel seed fund.

**Representative B. Koppelman:** What tells me that if I'm an angel fund I have to do this? At best this is going to be partial information. I don't think it's worth requiring something we can't truly require.

**Representative Olson:** I'm also wary of the motion. The investors who put the money into the angel funds and the angel funds themselves, under current law, were not anticipating any requirement to provide reports. That was a flaw in the way we designed it from the beginning but that is the way it was designed. To retroactively require reporting I think that would be a bit invasive. You may be reviewing trade secrets or proprietary investments made by the angel fund. They may have good reason to not want to share that information with the public.

I think this language would be problematic if we insert it there. The reason we didn't insert it there in the first place was so we could calculate the fee charged for uninvested funds. I don't think there is a good cost to benefit ratio to this language. On the existing bill, we are requiring that the fund file with the Tax Commissioner, report showing the investment, and the amount of the investment going forward.

**Representative Ertelt:** I'd like to jog your memory as to why we have this bill before us. This body passed it out with a much more onerous requirement on the angel fund with the claw back provision and now all we're asking them to do is to do some reporting. I'm not buying the argument.

**Vice Chairman Dockter:** If you receive public tax dollars we should find out the information. I think we should have the reporting. When you're given public money you should have to disclose this information.

**Representative B. Koppelman:** One of the advantages to this conversion we're making is shedding off the sins of the past and moving on knowing all the problems we had with reporting and keeping people honest. I think we fixed all that. I changed my tune on the claw back to make people pay for what they did wrong but as I prepared to carry this to the floor of the house I looked at the emails that didn't want us to make changes. I'm going to oppose this amendment.

Chairman Headland: I'm asking the Tax Commissioner right now to see if this is reasonable.

**Representative Olson:** We have to get this bill passed. If we don't, the angel funds are going to continue to do exactly what they're doing. If we want this to go through, we need to avoid every angle of attack and this is one of those stumbling blocks on the bill. It's water under the bridge at this point. What benefit do we get from getting this information? We know there wasn't money being invested, that's why we're fixing it. We would probably expose a lot of people and that's why there will be a lot of opposition on this.

Representative Ertelt: Have we added reporting requirements?

**Representative B. Koppelman:** The only way you can get a tax credit is by demonstrating that you have not only invested, and short of the approval Commerce verifies, you get no tax credit. It's a front end reporting requirement.

**Chairman Headland:** After further investigation I'm going to side with Representative B. Koppelman and Representative Olson. We can put it in and tell them to do it but there's no requirement for them to do it so it's kind of water under the bridge.

Vice Chairman Dockter: I get the point. MADE A MOTION TO WITHDRAW THE AMENDMENT.

Representative Steiner: WITHDREW THE SECOND

Chairman Headland: We have the amended bill before us.

Representative B. Koppelman: MADE A MOTION FOR A DO PASS AS AMENDED WITH .01010.

Representative Schobinger: SECONDED

Chairman Headland: Is there any discussion?

ROLL CALL VOTE: 12 YES 2 NO 0 ABSENT

**MOTION CARRIED** 

Representative B. Koppelman will carry this bill.

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB 1045 2/8/2017 28070

□ Subcommittee □ Conference Committee

Committee Clerk Signature Mary Brucher

### Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

#### Minutes:

No attachments

**Representative B. Koppelman:** I made the motion to move the amendments as well as the final version. For the record, it was my intent to amend the engrossed version. The .02001 amendment results is the same language in the new version of the bill as appears in the Christmas tree copy of .01010.

17.0158.01006 Title.

#### PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

Page 1, line 1, replace "sections" with "section"

- Page 1, line 1, replace the second "and" with ", subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, sections"
- Page 1, line 1, remove "subsections 2"
- Page 1, line 2, remove "and 3 of section"

Page 1, line 2, replace "and section" with "57-38.5-04,"

Page 1, line 2, after "57-38.5-05" insert ", and 57-38.5-06"

Page 1, line 3, replace the second "and" with "to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 1, line 10, replace "January 1, 2018" with "April 1, 2017"

Page 6, after line 3, insert:

"**SECTION 2. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- 7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. <u>SeedAngel investor seed</u> capital investment tax credit under section 57-38.5-03 (effective for the first three taxable years beginning after December 31, 2016).
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first three taxable years beginning after December 31, 2016).
  - j. Microbusiness tax credit under section 57-38-01.27.

- k. Marriage penalty credit under section 57-38-01.28.
- I. Homestead income tax credit under section 57-38-01.29.
- m. Commercial property income tax credit under section 57-38-01.30.
- n. Research and experimental expenditures under section 57-38-30.5.
- o.m. Geothermal energy device installation credit under section 57-38-01.8.
- p.n. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- q.o. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- r.p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s.<u>q.</u> Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

**SECTION 3. AMENDMENT.** Subsection 5 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;
  - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
  - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
  - d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has <del>or</del><u>at least two</u> <u>employees and</u> is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
  - e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability."

Page 6, line 22, remove the overstrike over "five hundred thousand"

Page 6, line 22, remove "four million"

#### Page 7, replace lines 1 through 9 with:

"SECTION 5. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

#### 57-38.5-03. SeedAngel investor seed capital investment tax credit.

If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

- 1. The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
- 2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to <u>fourfive</u> taxable years after the taxable year in which the investment was made.
- 4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
- 6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for

17.0158.01006

certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 6. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-04. Taxable year for <u>angel investor</u> seed capital investment tax credit.

The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business."

Page 7, line 12, overstrike "Seed" and insert immediately thereafter "angel investor seed"

Page 7, line 13, after "of" insert "angel investor"

Page 7, line 14, replace "fifteen" with "ten"

Page 7, after line 18, insert:

"SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-06. <del>Seed</del><u>Angel investor seed</u> capital investment tax credit - Procedure - Rules.

To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.5-07.

**SECTION 9. REPEAL.** Section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code are repealed."

Page 7, line 19, replace "This" with "Section 9 of this Act is effective for taxable years beginning after December 31, 2019, and sections 2 through 8 of this"

17.0158.01006

Page 7, line 19, replace "is" with "are"

Page 7, line 20, replace "2017" with "2016"

Page 7, after line 20, insert:

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"SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

2/11/7 DA 1055

17.0158.01009 Title.02000 Prepared by the Legislative Council staff for Representative B. Koppelman February 1, 2017

#### PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

Page 1, line 1, replace "sections" with "section"

- Page 1, line 1, replace the second "and" with ", subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, and sections"
- Page 1, line 1, remove "subsections 2"
- Page 1, line 2, remove "and 3 of section"
- Page 1, line 2, replace "and section" with "57-38.5-04,"
- Page 1, line 2, after "57-38.5-05" insert ", and 57-38.5-06"
- Page 1, line 3, replace the second "and" with "to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;"

Page 1, line 4, after "date" insert "; to provide an expiration date; and to declare an emergency"

Page 1, line 10, replace "January 1, 2018" with "April 1, 2017"

Page 6, line 1, after "h-" insert "a. <u>An angel fund certified before April 1, 2017, shall pay a</u> <u>one-time surcharge of forty-five percent on the angel fund's net uninvested capital. For</u> <u>purposes of this subdivision, "net uninvested capital" means fifty percent of the angel</u> <u>fund's uninvested capital on April 1, 2017. Uninvested capital is calculated by</u> <u>subtracting the cumulative dollars invested by the angel fund as reported under</u> <u>subdivision b from the cumulative dollars invested by its investors in the fund from</u> <u>January 1, 2013, through March 31, 2017, as reported under subdivision i of</u> <u>subsection 3.</u>

- b. For each enterprise identified in the report required under subdivision j of subsection 3, the angel fund shall file a report with the tax commissioner showing the total dollars invested by the angel fund from January 1, 2013, through March 31, 2017. An angel fund may not amend the report filed under this section. The report must be filed on or before July 1, 2017.
- <u>c.</u> The net uninvested capital surcharge must be paid on or before December 31, 2017.
- <u>d.</u> <u>The provisions of this chapter relating to administration, collection,</u> <u>and enforcement apply to the net uninvested capital surcharge.</u>

#### <u>9.</u>"

Page 6, after line 3, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:

2/1/17

- a. Family care tax credit under section 57-38-01.20.
- b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
- c. Agricultural business investment tax credit under section 57-38.6-03.
- d. <u>SeedAngel investor seed</u> capital investment tax credit under section 57-38.5-03 (effective for the first three taxable years beginning after December 31, 2016).
- e. Planned gift tax credit under section 57-38-01.21.
- f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
- g. Internship employment tax credit under section 57-38-01.24.
- h. Workforce recruitment credit under section 57-38-01.25.
- i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first three taxable years beginning after December 31, 2016).
- j. Microbusiness tax credit under section 57-38-01.27.
- k. Marriage penalty credit under section 57-38-01.28.
- I. Homestead income tax credit under section 57-38-01.29.
- m. Commercial property income tax credit under section 57-38-01.30.
- n. Research and experimental expenditures under section 57-38-30.5.
- e.m. Geothermal energy device installation credit under section 57-38-01.8.
- p.n. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- q.o. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- F.p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s.g. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

**SECTION 3. AMENDMENT.** Subsection 5 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;
  - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;

- c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation; 3 of 5
- d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has <del>or</del><u>at least two</u> <u>employees and</u> is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
- e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability."
- Page 6, line 22, remove the overstrike over "five hundred thousand"
- Page 6, line 22, remove "four million"

Page 7, replace lines 1 through 9 with:

"SECTION 5. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

## 57-38.5-03. SeedAngel investor seed capital investment tax credit.

If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

- The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
- 2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four<u>five</u> taxable years after the taxable year in which the investment was made.
- 4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.





- The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not gualify for the credit.
- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
- 10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 or which was certified under section 57-38-01.26 before April 1, 2017, unless the angel fund pays the surcharge under subsection 8 of section 57-38-01.26, is not eligible for the investment tax credit under this chapter.

**SECTION 6. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

# 57-38.5-04. Taxable year for <u>angel investor</u> seed capital investment tax credit.

The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business."

Page 7, line 12, overstrike "Seed" and insert immediately thereafter "Angel investor seed"

Page 7, line 13, after "of" insert "angel investor"

Page 7, line 14, replace "fifteen" with "ten"

Page 7, after line 18, insert:

"SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-06. Seed<u>Angel investor seed</u> capital investment tax credit - Procedure - Rules.

To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.5-07.

SECTION 9. REPEAL. Section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code are repealed."

- Page 7, line 19, replace "This" with "Section 9 of this Act is effective for taxable years beginning after December 31, 2019, and sections 2 through 8 of this"
- Page 7, line 19, replace "is" with "are"

Page 7, line 20, replace "2017" with "2016"

Page 7, after line 20, insert:

"SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

5086

2/8/17 777

17.0158.02003 Title.03000 Adopted by the Finance and Taxation Committee February 8, 2017

### PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1045

Page 6, line 4, remove "<u>a.</u> <u>An angel fund certified before April 1, 2017, shall pay a one-time</u> <u>surcharge of</u>"

- Page 6, remove lines 5 through 20
- Page 6, line 21, remove "9."

Page 8, line 3, remove the overstrike over "or"

- Page 8, line 3, remove "at least two employees and"
- Page 11, line 1, remove "<u>unless the angel fund pays the surcharge under subsection 8 of</u> <u>section</u>"

Page 11, line 2, remove "57-38-01.26,"

Renumber accordingly

				Date: <u>1-17-</u> Roll Call Vote #	17	
		ROLL	ALL V	G COMMITTEE OTES 1045		
House Finance	and Taxation				Comm	ittee
		Sul	ocommi	ttee		
Amendment LC# or I	Description:	17.0	)158	.01006		
Recommendation: Other Actions:	nent Do Not ent Cal		<ul> <li>☐ Without Committee Reco</li> <li>☐ Rerefer to Appropriation</li> </ul>			
Other Actions: Reconsider						
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Vice Chairman D				Representative Mitskog		
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			Date: <u></u> Roll Call Vote #		-		
2017 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. <u>1045</u>							
House Finance and Taxation				Com	nittee		
□ Subcommittee							
Amendment LC# or Description: 17.0158.01009							
Recommendation:					lation		
Motion Made By Rep. Koppelman Seconded By Rep. Ertelt							
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Representatives	Yes	No	•		No		
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Floor Assignment

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

Motion carried.

2047 1101			COMMITTEE	
	ROLL C	ALL V	G COMMITTEE OTES 1045	
House Finance and Taxation				_ Committee
	□ Sub	commi	ttee	
Amendment LC# or Description:				
Recommendation: <ul> <li>Adopt Amendment</li> <li>Do Pass</li> <li>Do Not Pass</li> <li>Without Committee Record</li> <li>As Amended</li> <li>Place on Consent Calendar</li> </ul> <ul> <li>Rerefer to Appropriations</li> <li>Place on Consent Calendar</li> </ul> <ul> <li>Reconsider</li> <li>Image: Constant Calendar</li> <li>Image: Constant Calendar</li></ul>				
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Committee		
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Motion carried

			Date: Roll Call Vote #	5-17	-
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House Finance and Taxation				_ Com	nittee
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Amendment LC# or Description:	1. 01	58.	01010		
Recommendation:       Adopt Amendation:         Do Pass       Do         As Amended       Place on Const         Other Actions:       Reconsider	l Do No sent Cal	endar	□ Rerefer to Appropriation	S	
Representatives	Yes	No	Representatives	Yes	No
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			Date: Roll Call Vote #	-17	-		
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House Finance and Taxation				_ Com	mittee		
	□ Sul	ocomm	ittee				
Amendment LC# or Description:	,010	010	and a characterized Malakanan and Andrews Malakanan and Andrews				
Recommendation:  Adopt Amendre Do Pass As Amended Place on Cons Other Actions:	Do Not		<ul> <li>☐ Without Committee Rec</li> <li>☐ Rerefer to Appropriation</li> <li>☐</li> </ul>		lation		
Motion Made By Rep. Koppelman Seconded By Rep. Schobinger							
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Vice Chairman Dockter			Representative Mitskog		$\checkmark$		
Representative Ertelt	V/						
Representative Grueneich	$\checkmark$	,					
Representative Hatlestad	1	$\checkmark$					
Representative Howe	$\sqrt{1}$						
Representative Koppelman							
Representative Olson	$\sqrt{1}$						
Representative Schobinger	VI						
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Representative Toman							
Representative Trottier	$\checkmark$			_			
Total (Yes) 12		No	2				
Absent	)						
Floor Assignment	Kop	pelm	ran				
If the vote is on an amendment, briefly	indicate	e intent:	:				

### **REPORT OF STANDING COMMITTEE**

HB 1045: Finance and Taxation Committee (Rep. Headland, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1045 was placed on the Sixth order on the calendar.

- Page 1, line 1, replace "sections" with "section"
- Page 1, line 1, replace the second "and" with ", subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, and sections"
- Page 1, line 1, remove "subsections 2"
- Page 1, line 2, remove "and 3 of section"
- Page 1, line 2, replace "and section" with "57-38.5-04,"
- Page 1, line 2, after "57-38.5-05" insert ", and 57-38.5-06"
- Page 1, line 3, replace the second "and" with "to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;"
- Page 1, line 4, after "date" insert "; to provide an expiration date; and to declare an emergency"
- Page 1, line 10, replace "January 1, 2018" with "April 1, 2017"

Page 6, line 1, after "h." insert "a. <u>An angel fund certified before April 1, 2017, shall pay</u> <u>a one-time surcharge of forty-five percent on the angel fund's net uninvested capital.</u> For purposes of this subdivision, "net uninvested capital" means fifty percent of the angel fund's uninvested capital on April 1, 2017. Uninvested capital is calculated by <u>subtracting the cumulative dollars invested by the angel fund as reported under</u> <u>subdivision b from the cumulative dollars invested by its investors in the fund from</u> <u>January 1, 2013, through March 31, 2017, as reported under subdivision i of</u> <u>subsection 3.</u>

- b. For each enterprise identified in the report required under subdivision j of subsection 3, the angel fund shall file a report with the tax commissioner showing the total dollars invested by the angel fund from January 1, 2013, through March 31, 2017. An angel fund may not amend the report filed under this section. The report must be filed on or before July 1, 2017.
- <u>c.</u> <u>The net uninvested capital surcharge must be paid on or before</u> <u>December 31, 2017.</u>
- <u>d.</u> <u>The provisions of this chapter relating to administration, collection,</u> and enforcement apply to the net uninvested capital surcharge.

9."

Page 6, after line 3, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- 7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.



- b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
- c. Agricultural business investment tax credit under section 57-38.6-03.
- d. <u>SeedAngel investor seed</u> capital investment tax credit under section 57-38.5-03 (effective for the first three taxable years beginning after December 31, 2016).
- e. Planned gift tax credit under section 57-38-01.21.
- f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
- g. Internship employment tax credit under section 57-38-01.24.
- h. Workforce recruitment credit under section 57-38-01.25.
- i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first three taxable years beginning after December 31, 2016).
- j. Microbusiness tax credit under section 57-38-01.27.
- k. Marriage penalty credit under section 57-38-01.28.
- I. Homestead income tax credit under section 57-38-01.29.
- m. Commercial property income tax credit under section 57-38-01.30.
- n. Research and experimental expenditures under section 57-38-30.5.
- e.<u>m.</u> Geothermal energy device installation credit under section 57-38-01.8.
- p.<u>n.</u> Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- **q.o.** Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- r.p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s.<u>q.</u> Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

**SECTION 3. AMENDMENT.** Subsection 5 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;
  - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
  - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;

Com Standing Committee Report February 2, 2017 7:25AM

- d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has <u>orat least two</u> <u>employees and</u> is projected to have more than ten employees <u>or one</u> hundred fifty thousand dollars of sales annually; and
- e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability."

Page 6, line 22, remove the overstrike over "five hundred thousand"

Page 6, line 22, remove "four million"

Page 7, replace lines 1 through 9 with:

"SECTION 5. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

#### 57-38.5-03. SeedAngel investor seed capital investment tax credit.

If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

- The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
- 2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four<u>five</u> taxable years after the taxable year in which the investment was made.
- 4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
- 6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant,

equipment, research and development, marketing and sales activity, or working capital for the qualified business.

- 8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
- 10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 or which was certified under section 57-38-01.26 before April 1, 2017, unless the angel fund pays the surcharge under subsection 8 of section 57-38-01.26, is not eligible for the investment tax credit under this chapter.

**SECTION 6. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

## 57-38.5-04. Taxable year for <u>angel investor</u> seed capital investment tax credit.

The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business."

Page 7, line 12, overstrike "Seed" and insert immediately thereafter "Angel investor seed"

- Page 7, line 13, after "of" insert "angel investor"
- Page 7, line 14, replace "fifteen" with "ten"
- Page 7, after line 18, insert:

"SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is amended and reenacted as follows:

## 57-38.5-06. Seed<u>Angel investor seed</u> capital investment tax credit - Procedure - Rules.

To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.5-07.

**SECTION 9. REPEAL.** Section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code are repealed."

Page 7, line 19, replace "This" with "Section 9 of this Act is effective for taxable years beginning after December 31, 2019, and sections 2 through 8 of this"

- Page 7, line 19, replace "is" with "are"
- Page 7, line 20, replace "2017" with "2016"

Page 7, after line 20, insert:

"SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

#### **REPORT OF STANDING COMMITTEE**

HB 1045, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1045 was placed on the Sixth order on the calendar.

- Page 6, line 4, remove "<u>a.</u> <u>An angel fund certified before April 1, 2017, shall pay a</u> <u>one-time surcharge of</u>"
- Page 6, remove lines 5 through 20
- Page 6, line 21, remove "9."
- Page 8, line 3, remove the overstrike over "or"
- Page 8, line 3, remove "at least two employees and"
- Page 11, line 1, remove "<u>unless the angel fund pays the surcharge under subsection 8 of section</u>"
- Page 11, line 2, remove "57-38-01.26,"

Renumber accordingly

## **2017 SENATE FINANCE AND TAXATION**

HB 1045

## 2017 SENATE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** Lewis and Clark Room, State Capitol

> House Bill 1045 3/7/2017 Job #: 28770

□ Subcommittee □ Conference Committee

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Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-38-01.26, subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03, 57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to provide an effective date; and to provide an expiration date.

Minutes:

Attachments #: 1, 2, 3, 4

All Senators present.

Chairman Cook: Opened the public hearing on HB 1045.

(0:00:40-0:03:05) Representative Jason Dockter, District 7: Introduced the bill and explained the changes from interim to the house version. Basically, combined the seed fund and the angel funds. Changed current rate tax from 45%, to 25%. Would allow businesses to have a principal office and a majority of their business within the state to be eligible to receive the capital investments. As well as allow businesses that project to have more than 10 employees to be included. It was made so that North Dakota tax payers are not funding businesses that don't have operations inside the state and do not create state jobs. Another major change would tie earning of the tax credit to the time the money is invested. Primary sector job with department of commerce, money gets put into the fund, and get the credit on day one. The bill says that you have to invest in a business before you receive the credit. Changed the reporting requirement to ensure proper use of the credit. The carry forward went to 5 taxable years. Provides a sunset to the credit to ensure its review for success and to make changes as necessary. Those are the major changes made to HB 1045. It's not that we don't want angel funds, under the current law it's pretty open ended. Wanted to make some changes to insure that we know where the money is getting invested and it's staying in North Dakota.

**Chairman Cook:** Looking at the bill, why are we repealing both the angel funds credit and capital seed investment credit. Can you explain why repealing both after December 31, 2019?

Representative Dockter: That would be the sunset.

Chairman Cook: You want to sunset them both to force a review of them?

**Representative Dockter:** Once we have the REMI software, we can review and put in the data and see if we are getting a good return. We put that in as a stipulation.

**Senator Dotzenrod:** You were objectively trying to get a combination of the angel fund and the capital seed fund. We still have them existing as separate identified entities. How the combination of the two, for different objectives? Looks like we still have two.

**Representative Dockter:** Our intent was because people like the word angel fund, we tried to combine the two. Before 2007, everyone was using the seed capital. In 2007, angel funds were passed with less restrictions and a lot of the money was moved to angel funds. The seed capital legislation had several of the accountability issues we wanted in the other fund. Our intent was to merge the two together.

(0:08:05-0:12:05) Emily Thompson, Legislative Council: The original bill was studied by the interim political subdivision taxation committee. Gave an overview of the two investment tax credits with information from **attachment #1**, seed capital investment tax credit and **attachment #2**, angel fund investment tax credit.

**Chairman Cook:** It has to be at risk in an angel fund for at least three years, that's a pretty weak statement. Is there a way to make sure it's at risk?

**Emily Thompson**: The language that requires the investment to be at risk for three years, simply means you can't withdraw or invest it in the angel fund for 3 years. There's no requirement that the dollars going in an angel fund are further invested in a qualified business. Could be deposited into the fund, remain for three years and then be pulled.

**Senator Unruh:** Requested a chart showing a side by side comparison showing the two credits.

(0:13:25-0:23:20) Emily Thompson: Gave an explanation of the bill, section by section.

**Chairman Cook:** Prior to April 1, 2017, on page 3. Any amount of money invested after April 1, 2017.

**Emily Thompson:** The credit would cease April 1, 2017. The effective date for this section would be July 1. There was an emergency clause that was placed on the bill, but it didn't pass and was pulled off when engrossed. That's why the date will be statute by July 1.

**Chairman Cook:** The bill goes into effect July 1, but section 1 makes a change starting April 1. What is legal between April 1 and July 1?

**Emily Thompson:** The law will reflect that date. It's not operative until July 1, 2017. I don't know that the tax department would enforce cutting off that date if it wasn't earlier. Won't

change the language in law and it's not retroactive. Continued with the section by section overview.

Senator Dotzenrod: The change from 3.5 to 10 million angel fund, that's not the seed capital.

**Emily Thompson:** There was no yearly cap for all taxpayers for angel fund. Since it's being removed, the cap was increased under the seed capital credit.

**Chairman Cook:** Why didn't raising the cap from 3.5 to 10 million create a 6.5-million-dollar fiscal note?

Senator Laffen: Currently there is no cap on angel funds, now we do have a cap.

**Emily Thompson:** No cap on angel fund across the board, no longer be able to receive credit for investing in an angel fund. Angel funds can still exist under this bill. They're simply investing under the seed capital program. An angel fund invests in a qualified business, whatever the angel fund would receive in credits would flow through to the angel fund partners, based on what was invested. Just the seed capital programs, not getting credit when putting money into angel fund, it passes through to the partners when invested under seed capital program.

Senator Laffen: Which now has a cap of 10 million?

Emily Thompson: It's been increased.

**Senator Dotzenrod:** One page 6, the list, section a-q, is that the same list that we use when we passed 20-57. Is that the list of incentives we were going to review?

**Emily Thompson:** This is under the imposition section, where it says what kind of deductions and credits can be taken for filling income tax purposes. The actual list is under 54-35-26 and there is a lot of overlap.

**Senator Dotzenrod:** The program, where credits are, can expire, unless a future legislative body acts, these will just run out?

Emily Thompson: That is correct.

(0:27:20-0:34:00) Jay Schuler, Commerce Commissioner, North Dakota Department of Commerce: Appeared in opposition of HB 1045. Handed out testimony #3.

**Chairman Cook:** That's what we're all trying to do, is fix the problems we accidentally walked upon when we started down this road of studying various tax incentives the state has. Walked into one disappointment after another in angel funds. From the blatant abuse of the angel funds. Advertising for making loans to angel funds to get the tax credit. Looked at Minnesota's policy, had a nice section that would protect from the abuse, but created a giant bureaucracy. Ended up backed into a corner and we eliminated angel funds and put the investment back into the seed capital fund. The biggest reason is not to allow the credit to be received until it's actually put at risk.

**Jay Schuler:** The seed capital helps the bigger companies because they have the staff. In the case of the angel funds that help the smaller companies that are more at risk. Two separate programs and hate to shut out the little guys.

**Vice Chairman Bekkedahl:** The three things we heard in committee, the concerns were the 45% credit level, the jobs in North Dakota versus out of state investment, and the credit upon investing in the angel fund, not in the business entity.

(0:38:00-0:47:05) Representative Emily O'Brien, District 42, President Emeritus, Dakota Venture Group: Presented testimony #4 in opposition of HB 1045.

Chairman Cook: The Harvest Fund, \$1.4 million of capital. How much of that is at risk?

Representative O'Brien: I believe it's \$650 thousand right now.

Chairman Cook: The rest is sitting, waiting for an investment.

**Representative O'Brien:** The money doesn't sit in a bank and isn't collected until we're ready to make an investment.

Chairman Cook: So it stays with the investors and they haven't received the tax credit yet.

Vice Chairman Bekkedahl: What is your funds attitude towards full disclosure?

**Representative O'Brien:** I don't think there would be any just as long as the names are disclosed. The transparency as to where the money is at and where allocated, in our out of state, how much is doable and workable.

**Senator Dotzenrod:** A lot of the incentive we see for people to invest is the tax credit. The Harvest group is mostly students. I'm going to assume there's not a lot of pent up demand to get tax credits, maybe I'm wrong. You have 3 missions, return on investment, economic stimulus to the area, and building future entrepreneurs. From your point of view, is the tax credit important?

**Representative O'Brien:** I can't speak on behalf of our investors, that was a selling point for us to get investors into the fund. One of the biggest concerns, was the transparency of the students. You have to be a student at UND to be a part of the group. We assure our investors that we wouldn't pick students that don't uphold our standards, incentive was one of the selling points that got people invested in the fund, but transparency and getting their money back is the goal. We're currently outperforming the rest of the funds in the state.

**Chairman Cook:** It's run by students. It's not students that are making the big investment and getting the tax credit right.

**Representative O'Brien**: We do everything. Do the diligence. We have a legal counsel that work with, go to the bank and sign on.

Donnita Wald, General Counsel, Office of State Tax Commissioner

# Chairman Cook: Why when you raise a limit from \$3.5 million to \$10 million, there isn't a \$6.5 million fiscal note?

Donnita Wald: Matt Peyerl can answer that.

**Matt Peyerl, Office of State Tax Commissioner:** The charts that Senator Unruh requested will help illustrate the players in the flow of money. There are three different places the money goes to and comes from. The 2 programs are merging; they have different limitations on different points of the 3 different places. What's happening is the 2 programs are being merged into 1 and so you're taking the different limitations that existed and applying to the new program. The fiscal note language tries to walk you through how to get to the anticipated impact. The primary reason why, is because under the seed program there is a limitation that stays in law, which is the \$500,000 invested dollars into a qualified business. The seed capital program is seed money. That's one of the limitations that exists, per qualified business. Smaller businesses, so the fiscal note says you'd need 80 of them, and the likelihood of that happening is . The credit is going from 45% to 25%, so right there you've got maybe half the dollars limited that way. Probably why there's not a fiscal note. In the first paragraph, there's some anticipated positive and negative impact, overall difficult to determine.

Chairman Cook: Closed the public hearing on HB 1045.

## 2017 SENATE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** 

Lewis and Clark Room, State Capitol

House Bill 1045 3/20/2017 Job #: 29418

□ Subcommittee □ Conference Committee

**Committee Clerk Signature** 

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-38-01.26, subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03, 57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to provide an effective date; and to provide an expiration date.

## Minutes:

Attachment #1

All Senators present. Committee work on HB 1045.

(0:00:45-0:12:20) Justin Dever, Co-Deputy Director, Department of Commerce: handed out proposed amendments, attachment #1. Gave a complete walk through of all changes being proposed.

**Chairman Cook:** If you have 10 investors in an angel fund, there's a pool of money and they invest 20% of it into a business, how do they determine who gets the credit?

**Justin Dever:** It will be dependent on their ownership stake in the fund. If one investor has \$100,000 and one investor has \$50,000, it will be prorated.

(0:13:00) Continued with amendment walk through.

(0:14:45-0:15:48) Committee discussed reporting due dates and the information being collected.

(0:15:50-0:21:20) Justin Dever: Finished the amendment walkthrough.

(0:21:23-0:23:40) Chairman Cook asked about bringing in the securities commissioner? All 3 have the power to revoke a certification. Justin Dever listed the different sections where it was mentioned.

(0:25:14-0:27:40) Committee discussion about out of state investors and if they would receive benefits. A North Dakota investor with excess credits could not sell them. Carry over is 5 years. If investing out of state, wouldn't get the credit.

**Chairman Cook:** Going to digest it for a while. Hope to get it passed out into a conference committee.

**Senator Laffen:** I know how the current angel fund works, what are the problems we're trying to fix?

**Chairman Cook:** The credit was made available immediately, money could sit there and not at risk, no limit on what was out of state invested, no reporting limits, no penalties, not a lot of information, no penalties if done wrong, limiting investment in real estate, no penalties.

**Senator Laffen:** You could have set up an angel fund, held onto the money and would have gotten a 45% tax credit after 3 years, if the money wasn't at risk would have had to put the money back.

(0:30:37-0:33:13) Discussed if North Dakota domiciled business, has out of state subdivisions, if invest the angel funds in an out of state location. If their headquarters are located in North Dakota, by definition we now have, qualified business and North Dakota qualified. It's the investment of the company, not sure about the level of investment we got. If for some reason, we were to require all businesses located in North Dakota, would we need the definition for qualified business, or just the definition for North Dakota qualified. If requiring, would only need that one definition.

(0:33:15-0:35:35) Discussed the added penalties. \$1,000 per month report is not filed. Other fee is for \$10,000 penalty for lying to a department or not filling reports. If invested in real estate, the penalty would need to return the credit. The new process should catch it on the front end before the credit is received.

(0:35:37-0:37:40) The percentage rates listed in the amendments were talked about.

(0:37:42-0:38:20) Ryan Rauschenberger, Tax Commissioner: No FTE'S are needed.

Meeting adjourned.

## 2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee

Lewis and Clark Room, State Capitol

House Bill 1045 3/21/2017 Job #: 29482

□ Subcommittee □ Conference Committee

anu Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-38-01.26, subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03, 57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to provide an effective date; and to provide an expiration date.

## Minutes:

No Attachments

All Senators present. Committee work on HB 1045.

Committee discussion on percentage rates and how much of a tax to be invested in the state of North Dakota to get the credit.

No Action was taken, moved on to another bill.

## 2017 SENATE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** Lewis and Clark Room, State Capitol

> House Bill 1045 3/22/2017 Job #: 29541

□ Subcommittee □ Conference Committee

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Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-38-01.26, subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03, 57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit; to provide an effective date; and to provide an expiration date.

## Minutes:

Attachment #1

All Senators present. Committee work on HB 1045.

Chairman Cook: Handed out the Christmas tree version of proposed amendments, attachment #1.

(0:02:05-0:15:30) Emily Thompson, Attorney, Legislative Council: Explained the proposed amendments one at a time with clarification questions on placement of items from the committee.

(0:11:15) Need to add securities commissioner, on line 29, page 16 after tax commissioner.

(0:13:00) Intent to be studied, changed to shall consider study. Take the study out, can be studied if they want.

(0:15:50) Senator Dotzenrod: We do a lot of deleting on the top of page 4. Is that to get rid of things that would have occurred before dates before December 31, 2010.

**Emily Thompson**: The overstrikes on page 4, 5, and 6 is removing obsolete language that was removed when the bill was prepared in the interim. It deals with the credits could be sold or transferred for the first 3 tax years after 2010. So that's code clean up.

**Chairman Cook:** Commerce wanted a chance to save angel funds, and I think they came through and created the reporting requirements, the penalties that we wanted.

(0:17:30-0:19:10) Committee spoke about the percentage of involvement in North Dakota businesses.

**Donnita A. Wald, General Counsel, North Dakota Tax Department:** An additional provision needs to be added that says the angel investor tax credit under 57-38-01.26 if you don't do that, the angel investor tax credit will cease to exist in 2019.

Vice Chairman Bekkedahl moved to adopt the amendments for ReEngrossed House Bill 1045, numbered 17.015.04002 with the corrections noted by adding the words the securities commissioner on line 29, page 16. Making the correction in Section 3 statute as presented to the committee by tax department counsel and removing section 4 on page 22.

Senator Unruh seconded the motion.

**Chairman Cook:** Before signing off and sending the bill to the floor we will all get a chance to read through the final bill.

Roll Call Vote was taken: 6 ayes, 0 nays, 0 absent.

Amendments adopted. Changes reflected in 17.0158.04003.

Vice Chairman Bekkedahl move a do pass, as amended.

Senator Unruh seconded.

Roll Call Vote was taken: 6 ayes, 0 nays, 0 absent.

Motion passes.

Senator Cook will carry the bill.

#### 17.0158.04003 Title.05000

Adopted by the Senate Finance and Taxation Committee March 22, 2017 3-22-17 p. 1 of 10

### PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1045

Page 1, line 1, replace the comma with "and"

Page 1, line 2, remove ", subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,"

Page 1, line 3, remove "57-38.5-04, 57-38.5-05, and 57-38.5-06"

Page 1, line 4, remove "and the seed capital investment tax credit; to repeal section"

Page 1, remove line 5

Page 1, line 6, remove "investment tax credit and the seed capital investment tax credit"

- Page 1, line 6, after the first semicolon insert "to provide a penalty;"
- Page 1, line 11, after the first boldfaced period insert "<u>(Effective for investments made before</u> July 1, 2017)"
- Page 1, line 13, replace "April" with "July"
- Page 1, line 14, overstrike "created" and insert immediately thereafter "organized before July 1, 2017,"

Page 6, after line 6, insert:

"SECTION 2. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

# 57-38-01.26. (Effective for investments made after June 30, 2017) Angel fund investmentinvestor tax credit.

- 1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is five hundred thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
- 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the

17.0158.04003

taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

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- 3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, limited liability limited partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.
  - c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
  - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:

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- (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
- (2) The dollar amount remitted by the taxpayer or passthrough entity; and
- (3) The date the payment was received by the angel fund for the investment.
- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
- 4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.
- 5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.
- 6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
- 7. a. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.
  - b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of 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.
  - c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.

- 8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:
  - a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
  - b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot

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ET 3-22-17 0.40+10 be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.
- 1. For investments made after June 30, 2017, an angel investor is entitled to a credit against the income tax liability under section 57-38-30.3 for investments made by a certified angel fund into a qualified business. The credit is equal to thirty-five percent of the amount invested by the angel fund on behalf of the angel investor in a qualified business during the taxable year.
  - a. The aggregate amount of credits allowed to an angel investor in a taxable year is limited to forty-five thousand dollars. The aggregate amount of credits allowed to an angel investor for investments made in all taxable years is five hundred thousand dollars. The limitation under this subdivision does not apply to the angel fund but applies to each angel investor.
  - b. The credit must be claimed in the taxable year in which the investment is made in the qualified business. The credit allowed may not exceed the liability for tax under this chapter. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the five succeeding taxable years.
  - c. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
  - <u>d.</u> Angel investors may not receive more than five million dollars in aggregate credits under this section during the life of an angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
  - e. Investments placed in escrow do not qualify for the credit.
  - f. A 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 section against the individual's state income tax liability under section 57-38-30.3.

Page No. 5

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2-22-17 p. Sof 10 2. For purposes of this section:



- <u>a.</u> <u>"Early-stage entity" means an entity with annual revenues of up to two million dollars.</u>
- b. <u>"Investment" means a cash investment in a qualified business that is</u> made in exchange for common stock, a partnership or membership interest, preferred stock, debt with a mandatory conversion to equity, or an equivalent ownership interest as determined by the tax commissioner.
- <u>c.</u> <u>"Mid-stage entity" means an entity with annual revenues over two</u> <u>million dollars not to exceed ten million dollars.</u>
- <u>d.</u> <u>"North Dakota qualified business" means an early-stage or mid-stage</u> private, nonpublicly traded enterprise that:
  - (1) Is created, or its satellite operation is created, as a for-profit entity under the laws of this state.
  - (2) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in this state that has or is projected to have more than ten employees in this state.
  - (3) Relies on research or the development of new products and processes in its plans for growth and profitability.
  - (4) Is in compliance with state and federal securities laws.
  - (5) Is not an entity or enterprise which is engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
  - (6) Is certified as a North Dakota qualified business that meets the requirements of this section by the department of commerce.
- e. <u>"Qualified business" means an early-stage or mid-stage private,</u> <u>nonpublicly traded enterprise that:</u>
  - (1) Is created as a for-profit entity.
  - (2) Relies on research or the development of new products and processes in its plans for growth and profitability.
  - (3) Is in compliance with state and federal securities laws.
  - (4) Is not an entity or enterprise engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
  - (5) Is certified as a qualified business that meets the requirements of this section by the department of commerce.

Except as used in this subdivision, the term "qualified business" also includes a North Dakota qualified business.

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- 3. An angel fund must:
  - a. <u>Be a passthrough entity organized after June 30, 2017, as a domestic</u> for-profit entity under the laws of this state, and have its headquarters in this state.
  - b. Not have invested, or intend on investing during its certification period, in real estate or real estate activities as described under subdivision e of subsection 2.
  - c. Consist of at least six accredited investors as defined in regulation D, rule 501 of the federal Securities Act of 1933.
  - <u>d.</u> <u>Not have more than twenty-five percent of its capitalized investment</u> <u>assets owned by any one investor.</u>
  - e. <u>Have at least five hundred thousand dollars in commitments from</u> <u>accredited investors which are subject to call to be invested over an</u> <u>unspecified number of years to build a portfolio of investments in</u> <u>enterprises.</u>
  - <u>f.</u> <u>Be member-managed or a manager-managed limited liability</u> <u>company and the investor members or a designated board that</u> <u>includes investor members must make decisions as a group on which</u> <u>enterprises are worthy of investments.</u>
  - g. <u>Be certified as an angel fund that meets the requirements of this</u> subsection by the department of commerce.
  - h. Be in, and remain in, compliance with state and federal securities laws, and invest only in qualified businesses that are issuing securities in compliance with state and federal securities laws.
- <u>4.</u> On or before December 31, 2019, and every two calendar years thereafter, a minimum of seventy-five percent of an angel fund's investments, as defined under subdivision b of subsection 2, must be invested into a North Dakota qualified business.
- 5. An angel fund shall hold the investment in a qualified business for at least three years from the date of investment. The three-year period does not apply if, before the end of the three-year period:
  - a. The investment becomes worthless;
  - b. Eighty percent or more of the assets of the qualified business are sold;
  - c. The qualified business is sold;
  - <u>d.</u> <u>The common stock of the qualified business begins trading on a public</u> <u>exchange; or</u>
  - e. <u>A partner, shareholder, or member of the angel fund dies, in which</u> case the exception to the three-year holding period only applies to the deceased individual's portion of the investment and related credit.

CI

- 6. Within thirty days after the date on which an angel fund makes an investment in a qualified business, the angel fund shall report the investment to the tax commissioner on forms and in the manner prescribed by the tax commissioner. The report must contain:
  - <u>a.</u> <u>The name, address, and federal employer identification number of the angel fund;</u>
  - <u>b.</u> <u>The total amount of the investment from all angel investors investing</u> in the gualified business;
  - <u>c.</u> <u>The name, address, and social security or federal identification</u> <u>number of each angel investor investing in the qualified business;</u>
  - d. The amount invested by each angel investor in the qualified business;
  - e. The type of security received by the angel fund in exchange for the investment;
  - <u>f.</u> <u>The name, address, and federal employer identification number of the qualified business;</u>
  - g. The type of industry in which the qualified business is engaged; and
  - <u>h.</u> Any other information the tax commissioner determines is necessary for administration of this section.
- 7. An angel fund is subject to a penalty of one thousand dollars per month for each month, or fraction thereof, the report under subsection 6 is not filed. The tax commissioner, for good cause shown, may waive all or part of the penalty imposed under this subsection.
- 8. By January thirty-first of each year, the angel fund shall file with the tax commissioner a report showing:
  - <u>a.</u> <u>The name and address of each qualified business in which the angel</u> <u>fund has made an investment;</u>
  - b. The principal place of business for each qualified business reported under subdivision a;
  - c. The total amount invested in each qualified business; and
  - <u>d.</u> Any other information the tax commissioner determines is necessary for administration of this section.
- 9. For an angel fund certified before July 1, 2017, within thirty days after the end of each calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment and the amount of the investment.
- 10. Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose any information described under subsections 6, 8, and 9. This subsection does not authorize disclosure of the angel investor's name, social security number or federal

employer identification number, address, or any other information prohibited from disclosure under this chapter.

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- 11. Angel investors may be actively involved in the qualified businesses in which the angel fund invests but the angel fund may not invest in any qualified business if any one angel investor owns directly or indirectly more than forty-nine percent of the ownership interests in the qualified business. The angel fund may not invest in a qualified business if any one angel investor is a partner, shareholder, or member of another passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the qualified business.
- 12. Failure to comply with any provision of this section is cause to revoke the certification of an angel fund or qualified business, or disallow the credit attributable to the noncompliance.
  - a. Notice of the revocation of the angel fund or qualified business's certification must be provided to the angel fund or qualified business by the tax commissioner, department of commerce, or securities commissioner. Within thirty days of receipt of the notice, the angel fund shall provide a copy of the notice to each of its angel investors.
  - b. The angel fund's investors shall file an amended return for each taxable year in which the disallowed credit reduced the investor's income tax liability and pay the amount due. The amended return, if required, must be filed within ninety days after the date of the written notice given to the angel fund.
  - c. If the amended return is not timely filed, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
  - d. If an amended return is filed as required under subdivision b, the tax commissioner has two years after the amended return is filed in which to audit and assess any tax due attributable to the revocation of the credit, even though other time periods for assessment under this chapter have expired. This subdivision does not limit or restrict any other time period for assessment under this chapter that has not expired.
- 13. An angel fund or a representative of the fund that knowingly makes, or causes to be made, any material false statement or representation in any application, report, or other document required to be filed under any provision of this section, or omits to state any material statement or fact in any such application, report, or other document required to be filed under any provision of this section, or fails to file the report required in subsection 8 or 9, and after thirty days' notice to file is given by the tax commissioner, is subject to a penalty of ten thousand dollars.
- 14. Notwithstanding any other provision of law, the tax commissioner, securities commissioner, and the department of commerce may exchange any information obtained under this section to the extent necessary to administer this section."

Page 6, line 13, remove the overstrike over "Seed"

Page 6, line 13, remove "Angel investor seed"

Page 6, line 14, remove "<u>(effective for the first three taxable years beginning after</u> <u>December 31, 2016)</u>"

Page 6, line 21, replace "three taxable years" with "taxable year"

Page 7, after line 4, insert:

"r. Angel investor tax credit under section 57-38-01.26."

Page 7, remove lines 5 through 30

Page 8, remove lines 1 through 29

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 10

Page 11, line 11, replace "Section 9 of this" with "This"

Page 11, line 12, remove "2019, and sections 2 through 8 of this Act are effective for taxable"

Page 11, line 13, remove "years beginning after December 31,"

Renumber accordingly

ET 3-22-17 p. 10 of 10

Date: 3-22-2017 Roll Call Vote #: 1

				G COMMITTEE DTES		
	BILL/RES	OLUTIC	ON NO.	1045		
Senate Finance and Taxation Committee						
□ Subcommittee						
Amendment LC# or Description:7,0158,04003						
Recommendation:	Adopt Amendm			<ul> <li>□ Without Committee Rec</li> <li>□ Rerefer to Appropriation</li> </ul>		ation
Other Actions:	□ Reconsider			□		
Motion Made By <u>Bekkedahl</u> Seconded By <u>Unruh</u>						
Son	atore	Vac	No	Sonators	Vac	No

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chair Brad Bekkedahl	X			1	
Senator Lonnie J. Laffen	X				
Senator Jessica Unruh	X				
Senator Scott Meyer	X				
				_	
Total (Yes)		N	o 🖸		
Absent	Ð				
Floor Assignment	M	otie	m passed		
			P		

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

Date: 3-22-2017 Roll Call Vote #:

### 2017 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1045

Senate Finance and Taxation Committee

□ Subcommittee

Amendment LC# or Description: 17.0158.04003 Title.05000 Recommendation: □ Adopt Amendment 💋 Do Pass 🛛 🗆 Do Not Pass □ Without Committee Recommendation As Amended □ Rerefer to Appropriations □ Place on Consent Calendar □ Reconsider Other Actions: Motion Made By Belledahl Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chair Brad Bekkedahl	2				
Senator Lonnie J. Laffen	8				
Senator Jessica Unruh	X				
Senator Scott Meyer	X				
Total (Yes)		No	Ð		
Absent					

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

Floor Assignment

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#### **REPORT OF STANDING COMMITTEE**

HB 1045, as reengrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1045 was placed on the Sixth order on the calendar.

- Page 1, line 1, replace the comma with "and"
- Page 1, line 2, remove ", subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,"
- Page 1, line 3, remove "57-38.5-04, 57-38.5-05, and 57-38.5-06"
- Page 1, line 4, remove "and the seed capital investment tax credit; to repeal section"
- Page 1, remove line 5
- Page 1, line 6, remove "investment tax credit and the seed capital investment tax credit"
- Page 1, line 6, after the first semicolon insert "to provide a penalty;"
- Page 1, line 11, after the first boldfaced period insert "<u>(Effective for investments made before July 1, 2017)</u>"
- Page 1, line 13, replace "April" with "July"
- Page 1, line 14, overstrike "created" and insert immediately thereafter "<u>organized before July</u> <u>1, 2017.</u>"

Page 6, after line 6, insert:

"SECTION 2. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

# 57-38-01.26. (Effective for investments made after June 30, 2017) Angel fund investmentinvestor tax credit.

- 1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is five hundred thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
- 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried

forward to each of the seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

- 3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, limited liability limited partnership, trust, or estate organized on a for profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.
  - c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
  - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
    - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
    - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
    - (3) The date the payment was received by the angel fund for the investment.

- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
- 4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.
- 5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.
- 6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
- 7. a. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.
  - b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of 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.
  - c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.
- 8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:
  - a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
  - b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase

agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.

- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.
- 1. For investments made after June 30, 2017, an angel investor is entitled to a credit against the income tax liability under section 57-38-30.3 for investments made by a certified angel fund into a qualified business. The credit is equal to thirty-five percent of the amount invested by the angel fund on behalf of the angel investor in a qualified business during the taxable year.

- a. The aggregate amount of credits allowed to an angel investor in a taxable year is limited to forty-five thousand dollars. The aggregate amount of credits allowed to an angel investor for investments made in all taxable years is five hundred thousand dollars. The limitation under this subdivision does not apply to the angel fund but applies to each angel investor.
- b. The credit must be claimed in the taxable year in which the investment is made in the qualified business. The credit allowed may not exceed the liability for tax under this chapter. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the five succeeding taxable years.
- c. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
- <u>d.</u> Angel investors may not receive more than five million dollars in aggregate credits under this section during the life of an angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
- e. Investments placed in escrow do not qualify for the credit.
- <u>f.</u> A 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 section against the individual's state income tax liability under section 57-38-30.3.
- 2. For purposes of this section:
  - <u>a.</u> <u>"Early-stage entity" means an entity with annual revenues of up to</u> <u>two million dollars.</u>
  - b. "Investment" means a cash investment in a qualified business that is made in exchange for common stock, a partnership or membership interest, preferred stock, debt with a mandatory conversion to equity, or an equivalent ownership interest as determined by the tax commissioner.
  - c. "Mid-stage entity" means an entity with annual revenues over two million dollars not to exceed ten million dollars.
  - <u>d.</u> <u>"North Dakota qualified business" means an early-stage or</u> <u>mid-stage private, nonpublicly traded enterprise that:</u>
    - (1) Is created, or its satellite operation is created, as a for-profit entity under the laws of this state.
    - (2) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in this state that has or is projected to have more than ten employees in this state.

- (3) <u>Relies on research or the development of new products and processes in its plans for growth and profitability.</u>
- (4) Is in compliance with state and federal securities laws.
- (5) Is not an entity or enterprise which is engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
- (6) Is certified as a North Dakota qualified business that meets the requirements of this section by the department of commerce.
- e. "Qualified business" means an early-stage or mid-stage private, nonpublicly traded enterprise that:
  - (1) Is created as a for-profit entity.
  - (2) Relies on research or the development of new products and processes in its plans for growth and profitability.
  - (3) Is in compliance with state and federal securities laws.
  - (4) Is not an entity or enterprise engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
  - (5) Is certified as a qualified business that meets the requirements of this section by the department of commerce.

Except as used in this subdivision, the term "qualified business" also includes a North Dakota qualified business.

- 3. An angel fund must:
  - a. Be a passthrough entity organized after June 30, 2017, as a domestic for-profit entity under the laws of this state, and have its headquarters in this state.
  - b. Not have invested, or intend on investing during its certification period, in real estate or real estate activities as described under subdivision e of subsection 2.
  - c. Consist of at least six accredited investors as defined in regulation D, rule 501 of the federal Securities Act of 1933.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by any one investor.
  - e. <u>Have at least five hundred thousand dollars in commitments from</u> <u>accredited investors which are subject to call to be invested over an</u> <u>unspecified number of years to build a portfolio of investments in</u> <u>enterprises.</u>
  - <u>f.</u> <u>Be member-managed or a manager-managed limited liability</u> <u>company and the investor members or a designated board that</u>

includes investor members must make decisions as a group on which enterprises are worthy of investments.

- g. <u>Be certified as an angel fund that meets the requirements of this</u> subsection by the department of commerce.
- h. Be in, and remain in, compliance with state and federal securities laws, and invest only in qualified businesses that are issuing securities in compliance with state and federal securities laws.
- <u>4.</u> On or before December 31, 2019, and every two calendar years thereafter, a minimum of seventy-five percent of an angel fund's investments, as defined under subdivision b of subsection 2, must be invested into a North Dakota qualified business.
- 5. An angel fund shall hold the investment in a qualified business for at least three years from the date of investment. The three-year period does not apply if, before the end of the three-year period:
  - a. The investment becomes worthless;
  - b. Eighty percent or more of the assets of the qualified business are sold;
  - c. The qualified business is sold;
  - <u>d.</u> <u>The common stock of the qualified business begins trading on a public exchange; or</u>
  - e. A partner, shareholder, or member of the angel fund dies, in which case the exception to the three-year holding period only applies to the deceased individual's portion of the investment and related credit.
- 6. Within thirty days after the date on which an angel fund makes an investment in a qualified business, the angel fund shall report the investment to the tax commissioner on forms and in the manner prescribed by the tax commissioner. The report must contain:
  - <u>a.</u> <u>The name, address, and federal employer identification number of the angel fund;</u>
  - b. The total amount of the investment from all angel investors investing in the qualified business;
  - c. <u>The name, address, and social security or federal identification</u> <u>number of each angel investor investing in the qualified business;</u>
  - <u>d.</u> <u>The amount invested by each angel investor in the qualified business;</u>
  - <u>e.</u> <u>The type of security received by the angel fund in exchange for the investment;</u>
  - <u>f.</u> <u>The name, address, and federal employer identification number of the qualified business;</u>
  - g. The type of industry in which the qualified business is engaged; and
  - <u>h.</u> <u>Any other information the tax commissioner determines is necessary</u> for administration of this section.</u>

- 7. An angel fund is subject to a penalty of one thousand dollars per month for each month, or fraction thereof, the report under subsection 6 is not filed. The tax commissioner, for good cause shown, may waive all or part of the penalty imposed under this subsection.
- 8. By January thirty-first of each year, the angel fund shall file with the tax commissioner a report showing:
  - <u>a.</u> <u>The name and address of each qualified business in which the angel</u> <u>fund has made an investment;</u>
  - b. <u>The principal place of business for each qualified business reported</u> <u>under subdivision a;</u>
  - c. The total amount invested in each qualified business; and
  - <u>d.</u> <u>Any other information the tax commissioner determines is necessary</u> <u>for administration of this section.</u>
- 9. For an angel fund certified before July 1, 2017, within thirty days after the end of each calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment and the amount of the investment.
- 10. Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose any information described under subsections 6, 8, and 9. This subsection does not authorize disclosure of the angel investor's name, social security number or federal employer identification number, address, or any other information prohibited from disclosure under this chapter.
- 11. Angel investors may be actively involved in the qualified businesses in which the angel fund invests but the angel fund may not invest in any qualified business if any one angel investor owns directly or indirectly more than forty-nine percent of the ownership interests in the qualified business. The angel fund may not invest in a qualified business if any one angel investor is a partner, shareholder, or member of another passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests.
- 12. Failure to comply with any provision of this section is cause to revoke the certification of an angel fund or qualified business, or disallow the credit attributable to the noncompliance.
  - a. Notice of the revocation of the angel fund or qualified business's certification must be provided to the angel fund or qualified business by the tax commissioner, department of commerce, or securities commissioner. Within thirty days of receipt of the notice, the angel fund shall provide a copy of the notice to each of its angel investors.
  - b. The angel fund's investors shall file an amended return for each taxable year in which the disallowed credit reduced the investor's income tax liability and pay the amount due. The amended return, if required, must be filed within ninety days after the date of the written notice given to the angel fund.
  - c. If the amended return is not timely filed, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.

- <u>d.</u> If an amended return is filed as required under subdivision b, the tax commissioner has two years after the amended return is filed in which to audit and assess any tax due attributable to the revocation of the credit, even though other time periods for assessment under this chapter have expired. This subdivision does not limit or restrict any other time period for assessment under this chapter that has not expired.
- 13. An angel fund or a representative of the fund that knowingly makes, or causes to be made, any material false statement or representation in any application, report, or other document required to be filed under any provision of this section, or omits to state any material statement or fact in any such application, report, or other document required to be filed under any provision of this section, or fails to file the report required in subsection 8 or 9, and after thirty days' notice to file is given by the tax commissioner, is subject to a penalty of ten thousand dollars.
- 14. Notwithstanding any other provision of law, the tax commissioner, securities commissioner, and the department of commerce may exchange any information obtained under this section to the extent necessary to administer this section."

Page 6, line 13, remove the overstrike over "Seed"

- Page 6, line 13, remove "Angel investor seed"
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- Page 11, line 12, remove "2019, and sections 2 through 8 of this Act are effective for taxable"
- Page 11, line 13, remove "years beginning after December 31,"

#### Renumber accordingly

#### **2017 CONFERENCE COMMITTEE**

HB 1045

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB	1045
4/3/	2017
29	894

□ Subcommittee ⊠ Conference Committee

an Brucker

Committee Clerk Signature

# Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

### Minutes:

No attachments

Chairman Headland: Would someone like to explain the bill as it came out of the Senate?

Senator Cook: Senator Cook reviewed the changes starting with page 1 of the bill. Page 1 deals with the current existing renaissance zones. Page 3 says they have to report the amount of the investment which will tell us how much money is not invested also. There is a requirement for existing renaissance zones to make a report. The next pages take out all obsolete language until you get to page 10 where the new language starts, bottom of page 10 subsection 1, where it talks about the credit. We passed the credit out at 35% and you were 25 percent. The top of page 11 is also about the credit and has pretty much the same language that exists with today's renaissance zone which is limited to \$45,000 in a taxable year, \$5 million in aggregate. Subsection 2 on the bottom of page 11 starts with definitions. On page 12 is the definition of a North Dakota qualified business. Line 23 subsection e is a qualified business. Subsection 3 is regarding the angel fund itself and the rules that surround that. No more than 25% owned by any one investor. It brings in the securities commissioner. The rules for investment starts on 6 subsection 4; we have 75% that must be invested in the state of North Dakota in a North Dakota gualified business. Subsection 6 is the reporting requirement. Subsection 7 is the penalty of \$1,000 a month every month the report is not made. The top of page 15 is all end of the year reporting. Subsection 9 deals with existing angel funds. At the bottom of page 15 we added language that wasn't in there before regarding revocation. Anybody; the commissioner, the tax commissioner, or the securities commissioner will have the right to revocate. At the top of page 16 are the claw back Subsection 13 is another penalty for false statements and a \$10,000 fine. requirements. Subsection 3 is adding an angel fund investor tax credit to a list of those credits we have. The Commerce Department, the Tax Department, and Securities were involved in drafting this legislation to save angel funds. This gave instructions that if you can give us the information that Minnesota gets without the bureaucracy we'll consider it and that's what they accomplished. We're getting all the identified information we needed and I think it's a pretty good bill so I urge you to concur.

**Chairman Headland:** The \$10,000 penalty would apply to all angel funds moving forward, even the ones that existed prior to the date of July 1, 2017?

Senator Cook: I don't think it will apply to those prior.

**Vice Chairman Dockter:** It would just be for the ones July 1, 2017 going forward? The current angel funds are grandfathered in to what we had previously in statute?

**Senator Cook:** There are two exceptions; page 15 line 12 an angel fund certified before July 1, 2017 will have to file an end of the year report and on page 3 subsection j starting on line 13 will show the existing angel funds and they'll have to file a report on the amount of the investment.

**Chairman Headland:** They will not be subject to any penalty if they refuse to file a report. There's no way to accomplish that requirement.

**Representative Mitskog:** That was our biggest concern in both the interim and the committee was the abuse and the ability to go after those funds.

**Senator Cook:** Commerce and Tax Department are here so maybe we could ask them if there's something we could do.

Vice Chairman Dockter: What was the reasoning to put the credit back up to 35%?

**Senator Cook:** I would have welcomed 25% but the majority of the Senate Finance and Tax Committee had the strongest support for more than that so we compromised at 35 percent.

**Chairman Headland:** The group that established angel funds has a lot of concerns on the 75% required investment in the state. Is there room for negotiation? From my perspective, if we were to allow for a 50% investment requirement in exchange for the 25% credit, I think that would satisfy the House on our desire for a lower credit but it would also satisfy industry as well.

**Senator Cook:** 25% credit for North Dakota investment and out of state investments or just out of state investments? I think there was strong support for 35% in the Senate but maybe 25% out of state would be acceptable.

**Chairman Headland:** Would that be easy to identify? With every report they would get 25% on whatever they invested outside. It would be a better incentive to incentivize that investment in North Dakota if it's possible.

**Senator Cook:** I would move that the Senate Recede from Senate Amendments and Further Amend with the only change to the existing amendments changing the 75% investment in state to 50% in state and change the credit from 35% to 35% on credit on investments made to a North Dakota qualified business and 25% to an out of state qualified business.

**Representative Mitskog:** Could we ask the Tax Department if that would be difficult to track?

**Dee Wald, General Counsel for the Office of State Tax Commissioner:** With the reporting we're getting, the investment reporting forms and such, we'll be able to track that and what credit amount is available.

**Senator Dotzenrod:** I see a lot of the activity on the eastern part of the state. There's going to be some sort of radius around those cities where they have some activity in Minnesota and North Dakota. I would like to see us get off the 75% and get us up to 50% because there's going to be a lot of opportunities on both sides of the border. If you have companies that are located in one of those border towns, is there any issue with separating which companies are Minnesota companies and which ones are North Dakota companies, is it fairly easy to do?

### Dee Wald: Yes.

Vice Chairman Dockter: I think the reports will make it a lot clearer of who's doing what and that's part of the reason we're here because before we never had what we needed in order for the Tax Department and us to figure out what's going on with the angel funds. I like the changes, I think it's a good compromise.

**Representative Mitskog:** Is there anything we can amend to include the ability to go back to those funds that have been abused?

**Dee Wald:** A claw back for the old funds or in position of a penalty? I don't think we can claw back the current programs' credits unless they were somehow put in this bill for those bad actors that were out there. That does not contain this, it is just moving forward. The penalty for those old angel funds, \$10,000, can be changed if you wanted to impose \$10,000 on the old angel fund who doesn't file those annual reports moving forward.

**Chairman Headland:** Would the Senate be amiable to that change? We need the data and I don't think it's an excessive requirement.

**Senator Laffen:** I would like to see both the claw backs for previous and angel funds that invested outside of where they were supposed to put the money. I would like to see that language go in the bill.

**Chairman Headland:** Senate, you receded from your amendments so all we would need is a motion to further amend to include that?

**Senator Cook:** I did not get a second on the motion I made so I assumed it died for lack of a second. I would like to see any penalties that we could be put in. I don't know why we couldn't have a claw back for anything that is done going forward with an old angel fund. In other words, if there is an angel fund that's invested in real estate then somehow that has to stop going forward.

**Chairman Headland:** Dee, in one of the amendment drafts early in the session, didn't we have some claw back language?

**Dee Wald:** We did the sur charge for the claw back instead of clawing back those old credits. That way you could start that new program and that's what this is trying to do. At the time they invested in the credit they were certified so the investor really didn't do anything wrong, it was the fund itself.

Vice Chairman Dockter: I agree with claw backs but I think it's very difficult to go back. I'm in support with the safeguards going forward and I think it will be a good bill.

**Senator Laffen:** We have the bad actor who invested all of their money into real estate and that was not allowed in the original language of the angel funds. I'm having a hard time going back to the public and telling them we have no way to recover any of that, therefore, we should keep doing angel funds. I have to have something that says we have some repercussions for breaking the laws that would save face with our angel funds.

**Chairman Headland:** I agree but the burden of proof that they actually broke the law might be an issue. We spoke at length about this in the House.

**Dee Wald:** We talked a lot about that. There was an issue whether a real estate development corporation was truly real estate. The fund thought they could do that. In our minds it was clear.

**Senator Cook:** We have the Commerce, Tax, and Securities Commissioners in the room. Maybe we should have another conversation to see what could be done yet to put anything else in this bill to allow claw backs or penalties to existing renaissance zones that are outside the law.

**Chairman Headland:** I agree. It appears to me we are all in agreement with everything we discussed so far so just one more opportunity and next time we might come back with an amendment.

**Representative Mitskog:** A few of us spent a lot of time in the interim discussing angel funds because of a bad player. We need to assure the public this won't happen again.

Chairman Headland: We will stand adjourned.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB 1045 4/5/2017 29939

□ Subcommittee ⊠ Conference Committee

# Committee Clerk Signature Mary Brucker

# Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

# Minutes:

No attachments

**Chairman Headland:** In previous discussions we were talking about an amendment with a possible penalty. It's come to our attention that we really don't need language regarding a penalty. Dee can visit with you if you want to know the reasons why. I would like to talk about the amount of available credit. If you average out the credit that's been occurring, it's amounted to about \$4.6 million annually. Does the committee want to look at some type of growth limiter? I don't understand exactly how it would work or what the ramifications of putting a cap on the amount of available credits but I'd like to have the discussion.

**Vice Chairman Dockter:** The House kicked around the idea of a \$4 million cap. We didn't renew a lot of other incentives and we are still keeping this one. I don't know what the ramifications would be on a cap.

Chairman Headland: The bill we passed to the Senate had a \$10 million in aggregate.

Vice Chairman Dockter: That was based on 25% credit.

**Senator Laffen:** Was that an aggregate total of all the exemptions industry for it or was that just a yearly aggregate cap?

Chairman Headland: I don't remember if that was annual or biannual.

**Senator Laffen:** If I remember right I remember seeing the numbers on how that's been used and it's been growing every year. I remember there were four to six years of angel fund credits that went from \$1 million to \$4 million, if I remember right.

Chairman Headland: I know there are other limiters annually.

**Senator Cook:** Is the purpose of the cap to create a positive fiscal note and to help balance the budget?

Chairman Headland: Yes.

Senator Cook: There hasn't been a fiscal note on any of these bills all the way through.

Chairman Headland: No, not that's showed anything.

**Senator Cook:** I'm not too sure how a cap would work; is it first come, first serve, or is it once you hit the cap there's no longer a credit available?

**Chairman Headland:** That would stop investment because you're not going to get the credit until you're in it.

**Vice Chairman Dockter:** It would work similar to automation tax credit that we had. I can't remember if it was \$3 million and once you hit that then you couldn't get the credit anymore.

**Senator Cook:** Whatever the history has been I assume that history is going to be a smaller number because we're lowering the credit percentage from 45% to 35% and I assume 25%, so that will certainly reduce the amount of credit.

**Chairman Headland:** Commissioner, do you think we could get a fiscal note as to what our changing of the credits and how it would reflect on what the current practice is?

**Ryan Rauschenberger, Tax Commissioner:** One of the reasons we don't have an actual number quantified is because there are just so many unknowns since it's a new program and a new way of administering it. It's been difficult to put an actual number on it so we've left it that we couldn't determine. We acknowledged in the current fiscal note that this is more restrictive, but to come up with an actual number that has a positive effect on the general fund, we don't know what that number would be. It would be pretty subjective to come up with something but we can look at it. Are you talking about a statewide cap at a certain level?

**Chairman Headland:** We'd be looking at an overall cap and once that number was reached the program would have to end for the biennium.

**Ryan Rauschenberger:** We administer statewide caps. We've done it different ways; automation was mentioned but seed capital has a statewide cap. It's first come, first serve. If you're in June and that statewide cap is met everybody would have to know that no more credits are earned for that year. We'd have to administer that and track it very closely as to how many credits have been earned within a year.

**Representative Mitskog:** The largest angel fund is assumed to be disqualified. It sounds like there were a large number of investors in that fund. That had to have had a big fiscal impact. If they are disqualified I would think that would lower that potential impact to our revenue.

**Ryan Rauschenberger:** That's true. That fund not moving forward wouldn't be eligible. Under the current version of the bill it would have to be new funds organized after a certain date that would even invest in a qualified business and get a credit. Overall, when comparing existing law to this bill that would restrict what's in existing law as well. There are a lot of moving parts in the new structure and a lot of subjectivity. We just don't know how many investments would be made in instate and out of state qualified businesses. If a cap were put it, I assume that would be hit, then that would limit it so we could measure given the current activity and have some level of fiscal note there.

**Senator Laffen:** Does this credit have a carry forward? If you had a cap but you invested in a year where there was no credit left would your investment still be good for carry over for the next year for whatever the cap is? How would that work?

**Ryan Rauschenberger:** If the investment was made you would not earn that credit and there would be no carry forward. After that point it wouldn't roll over or anything like that. The seed capital has a straight cutoff now. First investment in gets qualified until you reach the cap then nobody else gets it. It could be drafted in a different way to administer it differently but first come, first serve is how it's done with the other credits with a statewide cap.

**Senator Laffen:** If the cap had been met and you wanted to invest in aggregate funds you would wait until January of the next year?

Vice Chairman Dockter: It wouldn't qualify because it wouldn't count for any credits.

**Ryan Rauschenberger:** That's what happens with seed capital now. We haven't met that cap for a while because of the other restrictions; the per business investment restriction. When that was the popular program we hit that credit early in the year quite often then that was it until the next year.

Senator Cook: Do you announce that the cap has been hit?

**Ryan Rauschenberger:** We send a letter to the certified seed capital businesses informing them that any new investments after this date do not qualify for a credit. We tell them not to market it to their folks until next year. We let them know that if they're writing out a check after June 1 there is no credit allowed.

**Senator Cook:** I would be happy to let you work on some numbers for the fiscal note. The purpose of this is to have people invest money in the angel fund so that the angel fund then can put that money at risk for a startup company to get it going and become successful. The money has already left the investor's pocket and is now put into an angel fund. Now you have the angel fund charged with putting it at risk. I would hope that if something comes along when they want to put that money at risk it wouldn't be subject to a cap being reached.

**Chairman Headland:** I would like the opportunity to look into it just a little bit further. I tend to agree with what you're saying. I was hoping we would be able to draft amendments but I think we'll have to meet once more time.

**Senator Dotzenrod:** When we met during the interim we talked about some of the problems with angel funds having to do with real estate and real estate investing. In our old law we disallowed that but I see we are retaining that. On page 2 it says real estate or real estate holdings are not eligible. There was some difficulty enforcing the law and we had people in violation of that. Did we fix that in this bill? We've added two penalties; one on page 15 and one on the bottom of page 16.

**Chairman Headland:** That's certainly our intent. If we need further clarification, we should get that.

Senator Dotzenrod: I can look into that. I'd like to be satisfied that we have that covered.

Senator Cook: I'm satisfied.

Chairman Headland: Meeting adjourned.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee** 

Fort Totten Room, State Capitol

HB	1045
4/5/	2017
29	952

 $\Box$  Subcommittee  $\boxtimes$  Conference Committee

# Committee Clerk Signature Mary Brucher

# Explanation or reason for introduction of bill/resolution:

A bill relating to the angel fund investment tax credit and the seed capital investment tax credit.

# Minutes:

Attached amendments

Chairman Headland: Called the conference committee to order.

**Senator Cook:** I had Emily draft some amendments but they aren't as simple as we thought they would be because we are changing the rates between instate and out of state, so it was more extensive in the definition of a qualified business. Therefore, I don't have the amendments here yet but I believe they are done, it's just going through the proper channels. I could make the necessary motion that needs to be recorded then that would eliminate the need to meet again. We certainly all want to review the amendments before we sign off on the report. MADE A MOTION THE SENATE RECEDE FROM THEIR AMENDMENTS AND FURTHER AMEND so that the instate investment is 50% and out of state investment is 50%, the credit is 35% for those investments put at risk in the state of North Dakota and 25% for those investments put at risk in another state.

Chairman Headland: Would your motion also include the penalty for existing angel funds?

**Senator Cook:** In the research I've done I found that the existing penalty would apply to existing angel funds.

Chairman Headland: That's right, you already suggested that to me.

Representative Mitskog: Would there be a cap?

Senator Cook: No.

**Chairman Headland:** In researching the cap I think it would ineffective and would have the opposite impact of what we're trying to accomplish with angel funds.

**Representative Mitskog:** In speaking with some individuals who are involved with angel funds they think there will be less activity in the next year or two.

**Chairman Headland:** Would there be any consideration to lessening the years of carryover; the years to which the credit could be applied?

Senator Cook: Lowering to five?

Chairman Headland: Yes.

**Senator Cook:** I would rather not go down that road. We haven't discussed that throughout the duration of the hearings on this bill.

**Vice Chairman Dockter:** Next session, I'm going to try and bring a bill to have carry forwards are the same throughout code. The carry forwards are all over the board. I think that is something that needs to be consistent in code especially for the Tax Department and those policy makers.

# Senator Laffen: SECONDED

**Chairman Headland:** Does everyone understand what the amendment will have in it? Since there's no further discussion we'll take the roll on the senate receding and further amending.

# ROLL CALL VOTE: 6 YES 0 NO 0 ABSENT

# **MOTION CARRIED**

**Chairman Headland:** Thanks for your work on this. We will review the amendment once it's completed.

**Senator Cook:** I expect them at my desk tomorrow morning. I will get copies to you and members of the Senate.

Vice Chairman Dockter: If there was something wrong with the amendment, since you haven't signed off on them, we could come to you and call the conference committee back in.

Chairman Headland: Meeting adjourned.

Amendment 17.0158.04004 was received and reviewed by the House and the Senate. See attachment.

17.0158.04004 Title.06000 4/6/17 UP

INF 10

# PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1045

That the Senate recede from its amendments as printed on pages 1164-1172 of the House Journal and pages 896-904 of the Senate Journal and that Reengrossed House Bill No.1045 be amended as follows:

- Page 1, line 1, replace the comma with "and"
- Page 1, line 2, remove ", subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,"

Page 1, line 3, remove "57-38.5-04, 57-38.5-05, and 57-38.5-06"

Page 1, line 4, remove "and the seed capital investment tax credit; to repeal section"

Page 1, remove line 5

Page 1, line 6, remove "investment tax credit and the seed capital investment tax credit"

- Page 1, line 6, after the first semicolon insert "to provide a penalty;"
- Page 1, line 11, after the first boldfaced period insert "<u>(Effective for investments made before</u> <u>July 1, 2017)</u>"
- Page 1, line 13, replace "April" with "July"
- Page 1, line 14, overstrike "created" and insert immediately thereafter "<u>organized before July 1,</u> <u>2017,</u>"
- Page 6, after line 6, insert:

"SECTION 2. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

# 57-38-01.26. (Effective for investments made after June 30, 2017) Angel fund investmentinvestor tax credit.

- 1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is five hundred thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
- 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate

Page No. 1

17.0158.04004

account is maintained for the plan participant and the participant directly controls where the account assets are invested. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

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- 3. An angel fund must:
  - Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, limited liability limited partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.
  - c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
  - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax

commissioner which show as to each investment in the angel fund the following:

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- (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
- (2) The dollar amount remitted by the taxpayer or passthrough entity; and
- (3) The date the payment was received by the angel fund for the investment.
- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
- 4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.
- 5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.
- 6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
- 7. a. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.
  - b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of 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.
  - c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the

credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.

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- 8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:
  - a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
  - b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.

17.0158.04004

- f. Gross proceeds received by the tax credit transferor must be assigned 5 of 10 to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.
- <u>1.</u> For investments made after June 30, 2017, an angel investor is entitled to a credit against the income tax liability under section 57-38-30.3 for investments made by a certified angel fund into an in-state qualified business or an out-of-state qualified business. The credit is equal to thirty-five percent of the amount invested by the angel fund on behalf of the angel investor in an in-state qualified business during the taxable year and twenty-five percent of the amount invested by the angel fund on behalf of the angel investor in an out-of-state qualified business during the taxable year and twenty-five percent of the amount invested by the angel fund on behalf of the angel investor in an out-of-state qualified business during the taxable year.
  - a. The aggregate amount of credits allowed to an angel investor in a taxable year is limited to forty-five thousand dollars. The aggregate amount of credits allowed to an angel investor for investments made in all taxable years is five hundred thousand dollars. The limitation under this subdivision does not apply to the angel fund but applies to each angel investor.
  - b. The credit must be claimed in the taxable year in which the investment is made in an in-state qualified business or an out-of-state qualified business. The credit allowed may not exceed the liability for tax under this chapter. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the five succeeding taxable years.
  - c. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
  - <u>d.</u> Angel investors may not receive more than five million dollars in aggregate credits under this section during the life of an angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
  - e. Investments placed in escrow do not qualify for the credit.
  - <u>f.</u> <u>A passthrough entity entitled to the credit under this section must be</u> <u>considered to be the taxpayer for purposes of calculating the credit.</u> <u>The amount of the allowable credit must be determined at the</u> <u>passthrough entity level.</u> The total credit determined at the entity level

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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 section against the individual's state income tax liability under section 57-38-30.3.

- 2. For purposes of this section:
  - <u>a.</u> <u>"Early-stage entity" means an entity with annual revenues of up to two million dollars.</u>
  - b. <u>"In-state qualified business" means an early-stage or mid-stage</u> private, nonpublicly traded enterprise that:
    - (1) Is created, or its satellite operation is created, as a for-profit entity under the laws of this state.
    - (2) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in this state that has or is projected to have more than ten employees in this state.
    - (3) Relies on research or the development of new products and processes in its plans for growth and profitability.
    - (4) Is in compliance with state and federal securities laws.
    - (5) Is not an entity or enterprise which is engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
    - (6) Is certified as an in-state qualified business that meets the requirements of this section by the department of commerce.
  - <u>c.</u> "Investment" means a cash investment in an in-state qualified business or out-of-state qualified business that is made in exchange for common stock, a partnership or membership interest, preferred stock, debt with a mandatory conversion to equity, or an equivalent ownership interest as determined by the tax commissioner.
  - <u>d.</u> <u>"Mid-stage entity" means an entity with annual revenues over two</u> <u>million dollars not to exceed ten million dollars.</u>
  - e. <u>"Out-of-state qualified business" means an early-stage or mid-stage</u> private, nonpublicly traded enterprise that:
    - (1) Is created as a for-profit entity.
    - (2) Relies on research or the development of new products and processes in its plans for growth and profitability.
    - (3) Is in compliance with state and federal securities laws.
    - (4) Is not an entity or enterprise engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real

estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.

- (5) Is certified as an out-of-state qualified business that meets the requirements of this section by the department of commerce.
- 3. An angel fund must:
  - a. <u>Be a passthrough entity organized after June 30, 2017, as a domestic</u> for-profit entity under the laws of this state, and have its headquarters in this state.
  - b. Not have invested, or intend on investing during its certification period, in real estate or real estate activities as described under subdivision e of subsection 2.
  - c. Consist of at least six accredited investors as defined in regulation D, rule 501 of the federal Securities Act of 1933.
  - <u>d.</u> <u>Not have more than twenty-five percent of its capitalized investment</u> <u>assets owned by any one investor.</u>
  - e. Have at least five hundred thousand dollars in commitments from accredited investors which are subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - <u>f.</u> Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. <u>Be certified as an angel fund that meets the requirements of this</u> subsection by the department of commerce.
  - <u>h.</u> Be in, and remain in, compliance with state and federal securities laws, and invest only in in-state qualified businesses or an out-of-state qualified business that are issuing securities in compliance with state and federal securities laws.
- <u>4.</u> On or before December 31, 2019, and every two calendar years thereafter, a minimum of fifty percent of an angel fund's investments, as defined under subdivision b of subsection 2, must be invested into an in-state qualified business.
- 5. An angel fund shall hold the investment in an in-state qualified business or an out-of-state qualified business for at least three years from the date of investment. The three-year period does not apply if, before the end of the three-year period:
  - a. The investment becomes worthless;
  - b. Eighty percent or more of the assets of the in-state qualified business or out-of-state qualified business are sold;
  - <u>c.</u> <u>The in-state qualified business or out-of-state qualified business is</u> <u>sold;</u>

<u>d.</u> <u>The common stock of the in-state qualified business or out-of-state</u> <u>qualified business begins trading on a public exchange; or</u>

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- e. <u>A partner, shareholder, or member of the angel fund dies, in which</u> <u>case the exception to the three-year holding period only applies to the</u> <u>deceased individual's portion of the investment and related credit.</u>
- 6. Within thirty days after the date on which an angel fund makes an investment in an in-state qualified business or an out-of-state qualified business, the angel fund shall report the investment to the tax commissioner on forms and in the manner prescribed by the tax commissioner. The report must contain:
  - <u>a.</u> <u>The name, address, and federal employer identification number of the angel fund;</u>
  - b. The total amount of the investment from all angel investors investing in the in-state qualified business or out-of-state qualified business;
  - <u>c.</u> <u>The name, address, and social security or federal identification</u> <u>number of each angel investor investing in the in-state qualified</u> <u>business or out-of-state qualified business;</u>
  - <u>d.</u> The amount invested by each angel investor in the in-state qualified business or out-of-state qualified business;
  - e. The type of security received by the angel fund in exchange for the investment;
  - <u>f.</u> <u>The name, address, and federal employer identification number of the in-state qualified business or out-of-state qualified business;</u>
  - g. <u>The type of industry in which the in-state qualified business or</u> <u>out-of-state qualified business is engaged; and</u>
  - <u>h.</u> <u>Any other information the tax commissioner determines is necessary</u> <u>for administration of this section.</u>
- 7. An angel fund is subject to a penalty of one thousand dollars per month for each month, or fraction thereof, the report under subsection 6 is not filed. The tax commissioner, for good cause shown, may waive all or part of the penalty imposed under this subsection.
- 8. By January thirty-first of each year, the angel fund shall file with the tax commissioner a report showing:
  - <u>a.</u> The name and address of each in-state qualified business or out-of-state qualified business in which the angel fund has made an investment;
  - b. The principal place of business for each in-state qualified business or out-of-state qualified business reported under subdivision a:
  - <u>c.</u> <u>The total amount invested in each in-state qualified business or</u> <u>out-of-state qualified business; and</u>
  - <u>d.</u> Any other information the tax commissioner determines is necessary for administration of this section.

9. For an angel fund certified before July 1, 2017, within thirty days after the end of each calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment and the amount of the investment.

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- 10. Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose any information described under subsections 6, 8, and 9. This subsection does not authorize disclosure of the angel investor's name, social security number or federal employer identification number, address, or any other information prohibited from disclosure under this chapter.
- 11. Angel investors may be actively involved in the in-state qualified businesses or out-of-state qualified businesses in which the angel fund invests but the angel fund may not invest in any in-state qualified business or out-of-state qualified business if any one angel investor owns directly or indirectly more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business. The angel fund may not invest in an in-state qualified business or an out-of-state qualified business if any one angel investor is a partner, shareholder, or member of another passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business.
- 12. Failure to comply with any provision of this section is cause to revoke the certification of an angel fund or an in-state qualified business or an out-of-state qualified business, or disallow the credit attributable to the noncompliance.
  - a. Notice of the revocation of the angel fund or an in-state qualified business's or out-of-state qualified business's certification must be provided to the angel fund or the in-state qualified business or out-of-state qualified business by the tax commissioner, department of commerce, or securities commissioner. Within thirty days of receipt of the notice, the angel fund shall provide a copy of the notice to each of its angel investors.
  - b. The angel fund's investors shall file an amended return for each taxable year in which the disallowed credit reduced the investor's income tax liability and pay the amount due. The amended return, if required, must be filed within ninety days after the date of the written notice given to the angel fund.
  - c. If the amended return is not timely filed, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
  - <u>d.</u> If an amended return is filed as required under subdivision b, the tax commissioner has two years after the amended return is filed in which to audit and assess any tax due attributable to the revocation of the credit, even though other time periods for assessment under this chapter have expired. This subdivision does not limit or restrict any

other time period for assessment under this chapter that has not expired.

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- 13. An angel fund or a representative of the fund that knowingly makes, or causes to be made, any material false statement or representation in any application, report, or other document required to be filed under any provision of this section, or omits to state any material statement or fact in any such application, report, or other document required to be filed under any provision of this section, or fails to file the report required in subsection 8 or 9, and after thirty days' notice to file is given by the tax commissioner, is subject to a penalty of ten thousand dollars.
- 14. Notwithstanding any other provision of law, the tax commissioner, securities commissioner, and the department of commerce may exchange any information obtained under this section to the extent necessary to administer this section."

Page 6, line 13, remove the overstrike over "Seed"

- Page 6, line 13, remove "Angel investor seed"
- Page 6, line 14, remove "<u>(effective for the first three taxable years beginning after December</u> <u>31, 2016)</u>"
- Page 6, line 21, replace "three taxable years" with "taxable year"

Page 7, after line 4, insert:

"r. Angel investor tax credit under section 57-38-01.26."

Page 7, remove lines 5 through 30

Page 8, remove lines 1 through 29

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 10

Page 11, line 11, replace "Section 9 of this" with "This"

Page 11, line 12, remove "2019, and sections 2 through 8 of this Act are effective for taxable"

Page 11, line 13, remove "years beginning after December 31,"

Renumber accordingly

### 2017 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

### BILL/RESOLUTION NO. HB1045 as (re) engrossed

**House Finance and Taxation Committee** 

#### 

- □ HOUSE accede to Senate Amendments and further amend
- □ SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows See attached amendment #17.0158.04004
- □ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Cook Seconded by: Senator Laffen Ye 4-5 4-5 4-5 4-5 Representatives 4-3 Yes No Senators 4-3 No am pm am pm S Chairman Headland Senator Cook х х х х х х Х х **Representative Dockter** Senator Laffen х х х х х х Х х Senator Dotzenrod **Representative Mitskog** х х Х Х х х х х Total Rep. Vote 3 **Total Senate Vote** 3

Vote Count	Yes: <u>6</u>	No: 0	Absent: _0
House Carrier	Rep. Headland	Senate Carrier	Senator Cook
LC Number	17.0158.0400		of amendment
LC Number	17.0158.	.06000	of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Further amendments include instate investment is 50% and out of state investment is 50%, the credit is 35% for those investments put at risk in the state of North Dakota and 25% for those investments put at risk in another state.

Insert LC: 17.0158.04004 House Carrier: Headland Senate Carrier: Cook

#### REPORT OF CONFERENCE COMMITTEE

HB 1045, as reengrossed: Your conference committee (Sens. Cook, Laffen, Dotzenrod and Reps. Headland, Dockter, Mitskog) recommends that the SENATE RECEDE from the Senate amendments as printed on HJ pages 1164-1172, adopt amendments as follows, and place HB 1045 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1164-1172 of the House Journal and pages 896-904 of the Senate Journal and that Reengrossed House Bill No.1045 be amended as follows:

- Page 1, line 1, replace the comma with "and"
- Page 1, line 2, remove ", subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,"

Page 1, line 3, remove "57-38.5-04, 57-38.5-05, and 57-38.5-06"

Page 1, line 4, remove "and the seed capital investment tax credit; to repeal section"

Page 1, remove line 5

- Page 1, line 6, remove "investment tax credit and the seed capital investment tax credit"
- Page 1, line 6, after the first semicolon insert "to provide a penalty;"
- Page 1, line 11, after the first boldfaced period insert "<u>(Effective for investments made before July 1, 2017)</u>"
- Page 1, line 13, replace "April" with "July"
- Page 1, line 14, overstrike "created" and insert immediately thereafter "<u>organized before July</u> <u>1, 2017,</u>"

Page 6, after line 6, insert:

"SECTION 2. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

# 57-38-01.26. (Effective for investments made after June 30, 2017) Angel fund investmentinvestor tax credit.

- 1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is five hundred thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
- 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate account is maintained for the plan participant and the participant directly

#### Insert LC: 17.0158.04004 House Carrier: Headland Senate Carrier: Cook

controls where the account assets are invested. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

- 3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, limited liability limited partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.
  - c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
  - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:

- (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
- (2) The dollar amount remitted by the taxpayer or passthrough entity; and
- (3) The date the payment was received by the angel fund for the investment.
- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
- 4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.
- 5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.
- 6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
- 7. a. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.
  - b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of 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.
  - c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.
- 8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess

tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:

- a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
- b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57–38–38 or 57–38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred

credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

- h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.
- <u>1.</u> For investments made after June 30, 2017, an angel investor is entitled to a credit against the income tax liability under section 57-38-30.3 for investments made by a certified angel fund into an in-state qualified business or an out-of-state qualified business. The credit is equal to thirty-five percent of the amount invested by the angel fund on behalf of the angel investor in an in-state qualified business during the taxable year and twenty-five percent of the amount invested by the angel fund on behalf of the angel investor in an out-of-state qualified business during the taxable year.
  - a. The aggregate amount of credits allowed to an angel investor in a taxable year is limited to forty-five thousand dollars. The aggregate amount of credits allowed to an angel investor for investments made in all taxable years is five hundred thousand dollars. The limitation under this subdivision does not apply to the angel fund but applies to each angel investor.
  - b. The credit must be claimed in the taxable year in which the investment is made in an in-state qualified business or an out-of-state qualified business. The credit allowed may not exceed the liability for tax under this chapter. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the five succeeding taxable years.
  - c. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
  - <u>d.</u> Angel investors may not receive more than five million dollars in aggregate credits under this section during the life of an angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
  - e. Investments placed in escrow do not qualify for the credit.
  - <u>f.</u> A 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 section against the individual's state income tax liability under section 57-38-30.3.
- 2. For purposes of this section:
  - <u>a.</u> <u>"Early-stage entity" means an entity with annual revenues of up to</u> <u>two million dollars.</u>

- b. <u>"In-state qualified business" means an early-stage or mid-stage</u> private, nonpublicly traded enterprise that:
  - (1) <u>Is created, or its satellite operation is created, as a for-profit</u> <u>entity under the laws of this state.</u>
  - (2) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in this state that has or is projected to have more than ten employees in this state.
  - (3) Relies on research or the development of new products and processes in its plans for growth and profitability.
  - (4) Is in compliance with state and federal securities laws.
  - (5) Is not an entity or enterprise which is engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
  - (6) Is certified as an in-state qualified business that meets the requirements of this section by the department of commerce.
- <u>c.</u> "Investment" means a cash investment in an in-state qualified business or out-of-state qualified business that is made in exchange for common stock, a partnership or membership interest, preferred stock, debt with a mandatory conversion to equity, or an equivalent ownership interest as determined by the tax commissioner.
- <u>d.</u> <u>"Mid-stage entity" means an entity with annual revenues over two</u> <u>million dollars not to exceed ten million dollars.</u>
- e. <u>"Out-of-state qualified business" means an early-stage or mid-stage</u> private, nonpublicly traded enterprise that:
  - (1) Is created as a for-profit entity.
  - (2) Relies on research or the development of new products and processes in its plans for growth and profitability.
  - (3) Is in compliance with state and federal securities laws.
  - (4) Is not an entity or enterprise engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
  - (5) Is certified as an out-of-state qualified business that meets the requirements of this section by the department of commerce.
- 3. An angel fund must:

- a. <u>Be a passthrough entity organized after June 30, 2017, as a</u> <u>domestic for-profit entity under the laws of this state, and have its</u> <u>headquarters in this state.</u>
- b. Not have invested, or intend on investing during its certification period, in real estate or real estate activities as described under subdivision e of subsection 2.
- <u>c.</u> <u>Consist of at least six accredited investors as defined in regulation D,</u> <u>rule 501 of the federal Securities Act of 1933.</u>
- <u>d.</u> Not have more than twenty-five percent of its capitalized investment assets owned by any one investor.
- e. <u>Have at least five hundred thousand dollars in commitments from</u> <u>accredited investors which are subject to call to be invested over an</u> <u>unspecified number of years to build a portfolio of investments in</u> <u>enterprises.</u>
- <u>f.</u> Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
- g. <u>Be certified as an angel fund that meets the requirements of this</u> <u>subsection by the department of commerce.</u>
- h. Be in, and remain in, compliance with state and federal securities laws, and invest only in in-state qualified businesses or an out-of-state qualified business that are issuing securities in compliance with state and federal securities laws.
- <u>4.</u> On or before December 31, 2019, and every two calendar years thereafter, a minimum of fifty percent of an angel fund's investments, as defined under subdivision b of subsection 2, must be invested into an in-state qualified business.
- 5. An angel fund shall hold the investment in an in-state qualified business or an out-of-state qualified business for at least three years from the date of investment. The three-year period does not apply if, before the end of the three-year period:
  - a. The investment becomes worthless;
  - b. Eighty percent or more of the assets of the in-state qualified business or out-of-state qualified business are sold;
  - c. The in-state qualified business or out-of-state qualified business is sold;
  - <u>d.</u> <u>The common stock of the in-state qualified business or out-of-state</u> <u>qualified business begins trading on a public exchange; or</u>
  - e. <u>A partner, shareholder, or member of the angel fund dies, in which</u> <u>case the exception to the three-year holding period only applies to</u> <u>the deceased individual's portion of the investment and related</u> <u>credit.</u>

- 6. Within thirty days after the date on which an angel fund makes an investment in an in-state qualified business or an out-of-state qualified business, the angel fund shall report the investment to the tax commissioner on forms and in the manner prescribed by the tax commissioner. The report must contain:
  - <u>a.</u> <u>The name, address, and federal employer identification number of the angel fund;</u>
  - b. The total amount of the investment from all angel investors investing in the in-state qualified business or out-of-state qualified business;
  - c. The name, address, and social security or federal identification number of each angel investor investing in the in-state qualified business or out-of-state qualified business;
  - <u>d.</u> <u>The amount invested by each angel investor in the in-state qualified business or out-of-state qualified business;</u>
  - e. <u>The type of security received by the angel fund in exchange for the investment;</u>
  - <u>f.</u> <u>The name, address, and federal employer identification number of</u> <u>the in-state qualified business or out-of-state qualified business;</u>
  - g. <u>The type of industry in which the in-state qualified business or</u> <u>out-of-state qualified business is engaged; and</u>
  - <u>h.</u> <u>Any other information the tax commissioner determines is necessary</u> for administration of this section.
- 7. An angel fund is subject to a penalty of one thousand dollars per month for each month, or fraction thereof, the report under subsection 6 is not filed. The tax commissioner, for good cause shown, may waive all or part of the penalty imposed under this subsection.
- 8. By January thirty-first of each year, the angel fund shall file with the tax commissioner a report showing:
  - a. <u>The name and address of each in-state qualified business or</u> <u>out-of-state qualified business in which the angel fund has made an</u> <u>investment;</u>
  - b. <u>The principal place of business for each in-state qualified business</u> or out-of-state qualified business reported under subdivision a;
  - <u>c.</u> <u>The total amount invested in each in-state qualified business or</u> <u>out-of-state qualified business; and</u>
  - <u>d.</u> <u>Any other information the tax commissioner determines is necessary</u> for administration of this section.
- 9. For an angel fund certified before July 1, 2017, within thirty days after the end of each calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment and the amount of the investment.

- 10. Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose any information described under subsections 6, 8, and 9. This subsection does not authorize disclosure of the angel investor's name, social security number or federal employer identification number, address, or any other information prohibited from disclosure under this chapter.
- 11. Angel investors may be actively involved in the in-state qualified businesses or out-of-state qualified businesses in which the angel fund invests but the angel fund may not invest in any in-state qualified business or out-of-state qualified business if any one angel investor owns directly or indirectly more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business. The angel fund may not invest in an in-state qualified business or an out-of-state qualified business if any one angel investor is a partner, shareholder, or member of another passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business.
- 12. Failure to comply with any provision of this section is cause to revoke the certification of an angel fund or an in-state qualified business or an out-of-state qualified business, or disallow the credit attributable to the noncompliance.
  - a. Notice of the revocation of the angel fund or an in-state qualified business's or out-of-state qualified business's certification must be provided to the angel fund or the in-state qualified business or out-of-state qualified business by the tax commissioner, department of commerce, or securities commissioner. Within thirty days of receipt of the notice, the angel fund shall provide a copy of the notice to each of its angel investors.
  - b. The angel fund's investors shall file an amended return for each taxable year in which the disallowed credit reduced the investor's income tax liability and pay the amount due. The amended return, if required, must be filed within ninety days after the date of the written notice given to the angel fund.
  - c. If the amended return is not timely filed, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
  - d. If an amended return is filed as required under subdivision b, the tax commissioner has two years after the amended return is filed in which to audit and assess any tax due attributable to the revocation of the credit, even though other time periods for assessment under this chapter have expired. This subdivision does not limit or restrict any other time period for assessment under this chapter that has not expired.
- 13. An angel fund or a representative of the fund that knowingly makes, or causes to be made, any material false statement or representation in any application, report, or other document required to be filed under any provision of this section, or omits to state any material statement or fact in any such application, report, or other document required to be filed under any provision of this section, or fails to file the report required in subsection 8 or 9, and after thirty days' notice to file is given by the tax commissioner, is subject to a penalty of ten thousand dollars.

- 14. Notwithstanding any other provision of law, the tax commissioner, securities commissioner, and the department of commerce may exchange any information obtained under this section to the extent necessary to administer this section."
- Page 6, line 13, remove the overstrike over "Seed"
- Page 6, line 13, remove "Angel investor seed"
- Page 6, line 14, remove "(effective for the first three taxable years beginning after December 31, 2016)"
- Page 6, line 21, replace "three taxable years" with "taxable year"
- Page 7, after line 4, insert:
  - "r. Angel investor tax credit under section 57-38-01.26."
- Page 7, remove lines 5 through 30
- Page 8, remove lines 1 through 29
- Page 9, remove lines 1 through 31
- Page 10, remove lines 1 through 31
- Page 11, remove lines 1 through 10
- Page 11, line 11, replace "Section 9 of this" with "This"
- Page 11, line 12, remove "2019, and sections 2 through 8 of this Act are effective for taxable"
- Page 11, line 13, remove "years beginning after December 31,"
- Renumber accordingly
- Reengrossed HB 1045 was placed on the Seventh order of business on the calendar.

**2017 TESTIMONY** 

HB 1045

#### 17.9086.06000

HB 1045 #1 p.1

Prepared for the Political Subdivision Taxation Committee

# ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY -ANGEL FUND INVESTMENT TAX CREDIT

Pursuant to North Dakota Century Code Section 54-35-26, created by 2015 Senate Bill No. 2057, a variety of economic development tax incentives are to be reviewed by a Legislative Management interim committee over the ensuing 6-year period. The study is aimed at ensuring that economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the angel fund investment tax credit and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

# **EXPLANATION OF THE ANGEL FUND INVESTMENT TAX CREDIT**

Section 57-38-01.26 provides for an angel fund investment tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for investments made in an angel fund created under the laws of this state. A taxpayer may claim 45 percent of the amount remitted to each angel fund during the taxable year, up to an aggregate maximum amount of \$45,000 per year. The amount of the credit an individual, married couple, passthrough entity and its affiliates, or other taxpayer is allowed to claim is capped at a lifetime limit of \$500,000 in cumulative credits. An investment used to calculate an angel fund credit may not be used to calculate any other income tax deduction or credit.

A qualifying investment must be at risk in an angel fund for at least 3 years. An investment may be made from the assets of a retirement plan if the individual making the investment maintains a separate account and directly controls where the account assets are invested. An investment placed in escrow will not qualify for the credit. The credit must be claimed in the taxable year in which the investment is received by the angel fund. The amount of the credit claimed may not exceed the taxpayer's income tax liability. The amount of credit exceeding a taxpayer's liability may be carried forward to each of the 7 succeeding taxable years. A taxpayer claiming this credit may not claim a credit resulting from an investment made by an angel fund in a qualified business for purposes of the seed capital or agricultural commodity processing facility investment tax credit.

Section 57-38-01.26 provides for the types of entities that may form an angel fund and provides that a fund must be organized for the purpose of investing in at least three primary sector companies that are early- and mid-stage private, nonpublicly traded enterprises with strong growth potential. An angel fund must consist of at least six accredited investors and may not have more than 25 percent of its capitalized investment assets owned by an individual investor. The angel fund must have at least \$500,000 in commitments from accredited investors which is subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises. The angel fund must be member-managed or a manager-managed limited liability company and decisions regarding enterprises worthy of investment must be made on a group basis. The angel fund must be certified by the Department of Commerce and be in compliance with the security laws of this state.

Information must be filed by the angel fund with the Tax Commissioner within 30 days of the fund receiving an investment. This information includes the identifying information of the taxpayer or passthrough entity making the investment, the amount of the investment, and the date payment was received by the angel fund for the investment. The angel fund must also file a report with the Tax Commissioner within 30 days following the end of each year supplying the name and principal place of business of each enterprise in which the angel fund has an investment. The Tax Commissioner may disclose to Legislative Management the dollar amount remitted by each taxpayer or passthrough entity to an angel fund and the date each payment was received by the angel fund for the investment. The Tax Commissioner may also disclose to Legislative Management information provided by the angel fund pertaining to the principal place of business of each enterprise in which the angel fund has an investment.

An angel fund is restricted from investing in an enterprise if any one angel fund investor directly or indirectly owns more than 49 percent of the ownership interests in the enterprise. An angel fund also may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity directly or indirectly owns more than 49 percent of the ownership interests in the enterprise. Investors are prohibited from receiving more than \$5 million in aggregate credits from investments in a single angel fund during the life of the fund. A passthrough entity entitled to a credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level.

Section 57-38-01.26 also provides language regarding the sale, assignment, or transfer of the credit which was only available for investments made in the 2011 and 2012 tax years. Provisions are also included to allow the Tax Commissioner to adopt rules to administer the credit.

# PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE ANGEL FUND INVESTMENT TAX CREDIT

Provisions regarding an angel fund investment tax credit first appeared in an early version of 2007 Senate Bill No. 2224, but language creating the credit was ultimately amended into and passed in 2007 House Bill No. 1018. Upon a review of the legislative history relating to both bills, the perceived goal of the Legislative Assembly in creating this credit was to encourage investment in start-up businesses by offering a tax credit to angel fund investors. The credit was described as an extension of the seed capital tax credit and was intended to stimulate private investment and grow start-up or early-stage companies in this state. Companies targeted by angel fund investments were thought to be smaller companies that carried high-risk but also high-growth potential. The angel fund investment tax credit was viewed as a tool to create and maintain quality jobs and diversify a community's economic base. The estimated fiscal effect of the angel fund investment credit could not be determined during the 2007 legislative session.

In 2009, the credit was amended through the passage of Senate Bill No. 2269 which served to tighten up the provisions of the credit. The bill imposed additional requirements necessary to qualify for the credit including the requirement that an angel fund be headquartered in this state, and invest in a portfolio of at least three early- or mid-stage private, nonpublicly traded enterprises. The bill required the fund to consist of at least six accredited investors, with no one investor owning more than 25 percent of the capitalized investment assets, and have at least \$500,000 in commitments from accredited investors. The bill also required the fund to be member-managed, certified by the Department of Commerce, and in compliance with state securities laws. The bill prohibited an angel fund from investing in an enterprise if one angel fund investor owned more than 49 percent of the enterprise. The bill also capped the aggregate amount of credits that could be received by investors in a single angel fund at a lifetime limit of \$5 million.

In 2011, House Bill No. 1057 further amended Section 57-38-01.26 by limiting the total lifetime amount of credits a taxpayer could obtain to \$150,000 per taxpayer. The bill also added passthrough entities to the list of investors eligible to receive the credit. Reporting requirements were also added and certain information contained within the required reports was allowed to be provided to the Legislative Management. The bill permitted an investor in an angel fund to sell or transfer up to \$100,000 of the investor's credits to another taxpayer, in the hopes of attracting more out-of-state capital to North Dakota and the carryover period for unused credits was increased from 4 to 7 years. The bill also required the Tax Commissioner to report to the Legislative Management during the 2011-12 and 2013-14 interims on the number of in-state and out-of-state investors, the amount of each investment, and the amount of tax credits accrued, claimed, and transferred by each individual angel fund.

In 2013, Senate Bill Nos. 2325 and 2156 increased the lifetime credit limit from \$150,000 per taxpayer to \$500,000 per taxpayer. The bills also prohibited angel funds from investing in real estate or real estate holding companies. Any angel fund making these types of investments, and certified before January 1, 2013, would be barred from being recertified.

# DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE ANGEL FUND INVESTMENT TAX CREDIT

The interim Political Subdivision Taxation Committee identified various items of data and testimony which would need to be collected to effectively analyze the angel fund investment tax credit. The following list identifies the information the committee sought to collect and the receipt of that information throughout the course of the 2015-16 interim.

- 1. The number of claimants and the fiscal impact of the incentive.
  - Information (<u>Appendix A</u>) provided to the Political Subdivision Taxation Committee by the Tax Department on December 2, 2015, indicated an expanding use of the angel fund investment tax credit. The information indicated the number of individual income tax returns on which the credit was claimed and the total amount claimed.

In tax year 2007, a total of \$224,152 was claimed over 31 returns.

In tax year 2008, a total of \$589,391 was claimed over 53 returns.

In tax year 2009, a total of \$979,451 was claimed over 70 returns.

In tax year 2010, a total of \$2,206,706 was claimed over 106 returns.

In tax year 2011, a total of \$3,054,494 was claimed over 136 returns.

In tax year 2012, a total of \$6,240,847 was claimed over 251 returns.

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**Political Subdivision Taxation Committee** 

#10.3

HB 1045

In tax year 2013, a total of \$6,646,999 was claimed over 294 returns.

- In tax year 2014, a total of \$7,805,711 was claimed over 348 returns.
- The total amount claimed on corporate income tax returns in tax years 2006 through 2014 could not be disclosed due to confidentiality restrictions as the credit was claimed on less than five returns in each tax year.
- 2. The use of similar incentives in other states.
  - Incentives similar to this state's angel fund investment tax credit (<u>Appendix B</u>) were found in 11 other states.
- 3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive.
  - Information (<u>Appendix C</u>) pertaining to this item was provided by the Department of Commerce on January 13, 2016.
- 4. Negative impacts created as a result of the incentive.
  - The committee discussed potential misuse of the incentive based on advertising materials (<u>Appendix D</u>) published by an angel fund in this state.
- 5. Benefits that flow to out-of-state concerns resulting from the incentive.
  - Information (<u>Appendix E</u>) pertaining to this item was provided by the Tax Department on January 13, 2016.
  - Information (<u>Appendix F</u>) pertaining to this item was provided by the Department of Commerce on March 1, 2016.
- 6. Testimony from interested parties.
  - The following parties provided testimony in support of retaining the angel fund investment tax credit.

The Economic Development Association of North Dakota (Appendices <u>G</u> and <u>H</u>).

Great River Energy and the Midwest AgEnergy Group (Appendices 1 and 1).

Mr. John Cosgriff, Incubator Manager, North Dakota State University Research and Technology Park (<u>Appendix K</u>).

Mr. Corey Kratcha, Co-Founder and Chief Executive Officer of c2renew and c2sensor.

Ms. Katie Andersen, Mayor of Jamestown.

Ms. Jane Priebe, Economic Development Director for the city of Wahpeton.

Mr. Bruce Gjovig, CEO, University of North Dakota Center for Innovation Foundation (Appendices  $\underline{L}$ ,  $\underline{M}$ , and  $\underline{N}$ ).

Mr. Tom K. Kenville, Chair, Valley Angel Investment Fund, LLC (Appendices O, P, and Q).

- Mr. James Burgum, Co-founder and Managing Partner, Arthur Ventures (Appendix R).
- Mr. Greg Syrup, General Partner and Managing Director, 701 Angel Fund (Appendices <u>S</u> and <u>T</u>).
- Ms. Emily O'Brien, President and Chairman, Dakota Venture Group (Appendix U).
- Mr. Thomas Rolfstad, Venture Partner, Linn Grove Ventures.

Mr. Dan Hodgson, Managing Director, Linn Grove Growth Funds (Appendices  $\underline{V}$  and  $\underline{W}$ ).

Mr. John Cook, President, Springfield Group Angel Fund, LLC (Appendix X).

Mr. Chuck Hoge, Executive Director, North Dakota State University Research and Technology Park (Appendix Y)

• Testimony was not received from parties in opposition to retaining the angel fund investment tax credit.

ATTACH:25

# #2 HB 1045 1-9-17

# Testimony: HB1045 January 9, 2017 Tommy Kenville, Chair of Valley Angel Investment Fund, LLC

Chairman and Members of the House Finance & Tax Committee,

When established by the Legislature in 2007, the angel fund tax incentive was about creating an equity capital industry in North Dakota, *not an economic development incentive*.

To maximize capital formation, angels need to aggregate in groups and syndicate funds to be successful in this high risk endeavor. The state tax incentive is critical to this capital formation process. Angel funds did not exist in North Dakota before the state tax incentive in 2007, proof that the incentive worked. Twenty-nine states have tax incentives to encourage angel investing because incentives work.

It is critical to keep these angel funds active and favorable for ND taxpayer/investors to keep investment in ND angel funds instead of investing in land/housing in Florida or Arizona. Please consider the following to protect the tax payers of North Dakota and angel fund investors:

- 1. Delete the sunset of Jan 1, 2018, or at a minimum extend to 2021.
- 2. Require 50% of each angel funds capital to be invested in ND affiliated companies.
- 3. Work closely with the Securities department for oversite and transparency.

"Our focus on growing and diversifying the economy will be more aggressive than ever. The very best way to ensure our state remains strong is to work toward having the best business climate in the nation, to encourage investment and new business startups, and to attract and retain great people for great jobs".

-Senate Majority Leader Rich Wardner and House Majority Leader Al Carlson www.sayanythingblog.com/entry/republicans-clear-choice-november/

If access to capital is diminished, venture development will be diminished.

North Dakota needs *more angel funds* - not fewer - and North Dakota needs *more capital* for growth of startup industries and other ventures vital for innovation – the growth that provides the state's return on investment (ROI) for tax incentives.

During the Interim Legislative Committee meetings, it was noted that two of the 22 angel funds abused the state tax credits by investing in <u>real estate</u> holding companies. In 2013, SB 2156 prohibited angel funds from investing in real estate or real estate holding companies. Therefore the problem is not the law, but the administration of the tax credit rules.

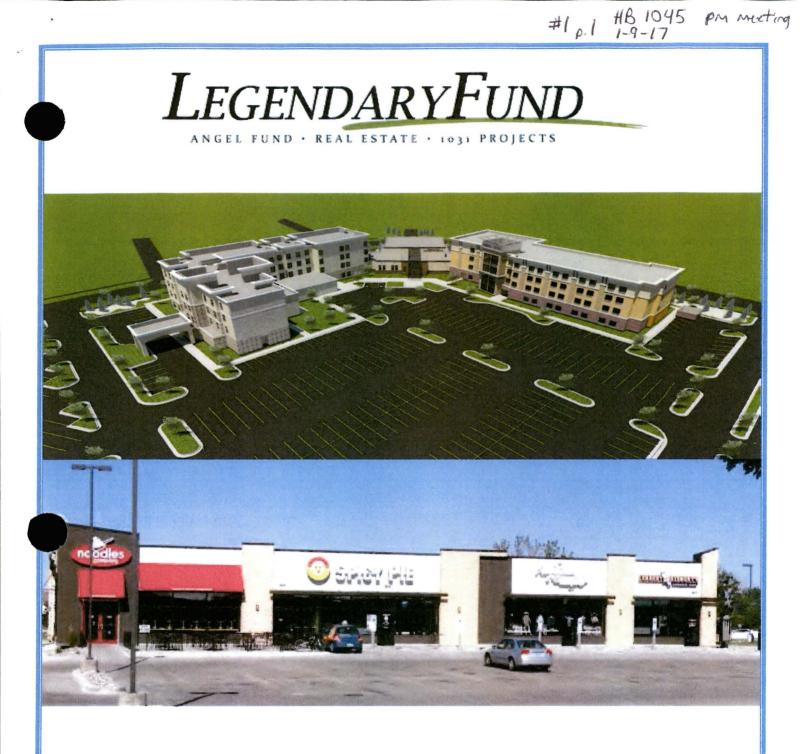
Thirty-four of the current angel fund investors are from out of state, investing about \$3.9 million. The angel funds helped attract out of state investment in North Dakota. So far, none of the North Dakota angel funds have realized a positive return. The tax credits encourage accredited investors to invest in private companies rather than in public markets out of state, or real estate and other lower risk investments. The tax credits brought 553 accredited investors into the entrepreneur ecosystem. That is impact.

**Angels provide entrepreneur expertise** - angels provide more than funding as they have experience, expertise and connections that are valuable to entrepreneurs. The tax credit encourages angels to provide funding and brainpower while doing economic development–<u>a triple bottom line return</u>.

onclusion: North Dakota has a good start on angel funds and pooling capital to minimize risk. This is tal for venture development and economic growth in North Dakota.

 Thank you for your time and consideration to do the right thing;
 diversify and grow the economy of North Dakota

 Tommy Kenville
 tom@tglobalinc.com
 218.779.9950



# 2015

Year End Angel Fund Opportunities

Accredited Investor Information

Todd Berning (701)740-0237 www.legendaryfund.com

Blake Nybakken (701)721-8047

# #1 p.2 HB 104 LEGENDARYFUND

## 2015 Year-End Angel Fund Opportunities

As 2015 comes to a close, we would like to remind you of the accredited investment opportunities and tax benefits of some of our current Angel Fund projects. The following projects have limited investment capacity, providing return with tax credits of 45% of your Angel Fund investment, interest payments, or an internal rate of return on your direct equity investment.

The General Angel Fund provides a tax credit only and a return of investment after three years.

All investors must by accredited as defined in Rule 501(a) of Regulation D of the Securities Act of North Dakota.

- Plaza 32 Grand Forks, ND
  - o \$300,000 capacity
- Homewood Suites, West Fargo, ND
  - o \$2,000,000 capacity
- General Angel Fund
  - o \$500,000 capacity



Progress of Meadowlark Homes in New Rockford, ND. Ten units of affordable housing developed inconjunction with Legendary Funds. Financing included Housing Incentive Funds through NDHFA, Bank of North Dakota Flex/PACE with New Rockford Area Betterment Corporation, Bank Forward, and subordinate-debt through Legendary's Angel Fund.

# #1 p.3 HB 1045 1-9-17

## PLAZA 32 - PROJECT OVERVIEW

Plaza 32 Partners, LLP has partnered with Legendary Investments to offer a debt series opportunity into the fully leased 32<sup>nd</sup> Avenue strip mall in Grand Forks, ND. Legal documents were prepared by Montgomery, Goff and Bullis; and the financing package has been prepared by Todd Berning.

BY THE NUMBERS

- 1-story, metal framed construction
- 9,263 square feet
- 4 quality tenants
- 100% occupied

Neighboring properties include: McDonald's, Olive Garden, Ground Round, Bremer Bank, Columbia Mall, Scheels

Legendary Investments is coordinating the purchase of the property, and raising funds for the acquisition. Investments into Plaza 32 will support the purchase of the project by providing sub-debt required to finance the facility.







Legendary Investments, LLC – Angel Fund

≠ | p.4 HB 1045 1-9-17 November 15, 2015

Legendary Investments, LLC has created a debt series within its Angel Fund to be used with helping clients bridge financing gaps with short term notes. The following is information in regards to the placement into the Angel Fund Debt Series of which there will be \$300,000 of capacity available. This series loan will be for Plaza 32, a strip mall in Grand Forks, ND that is completely occupied.

Type of Placement:	Debt Series – Plaza 32
Placement Increments:	\$50,000
Annual Rate of Return:	8.0%
Effective Annual Rate of Return:	17.0%
Term:	5 Years
Repayment Terms – Dividend:	Quarterly from deposit date
Repayment Terms – Principal:	At Maturity of Note
Security:	Second Mortgage of Land
Onetime Fee:	7%

\*The Effective Annual Rate of Return is based on the investor receiving a 45% ND State Income Tax Credit.

EXAMPLE:	
Investment:	\$50,000
Fee	\$3,500

Interest Tax Credit	\$4,000	\$4,000	Year 4 \$4,000		Total \$20,000 \$22,500
				Total ROI	\$42,500 85.0%

NOTE: Does not include present valuation & Federal tax deduction reduction. NOTE: ND State Tax Credit can be used up in one year or carried up to seven.

Please feel free to contact Todd Berning at 701.740.0237 or Blake Nybakken at 701.721.8047 on how to place your Angel Fund investment. All investors must be accredited investors under the laws of North Dakota.

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KAJ Hospitality has partnered with Legendary Investments to offer an investment opportunity in the West Fargo Homewood Suites by Hilton. Legal documents were prepared by Montgomery, Goff and Bullis in conjunction with Morgan Theeler, LLP; and the financing package has been prepared by Todd Berning in conjunction with KAJ.



## BY THE NUMBERS

- 4-story, wood-framed construction
- 105 guest rooms
- 80,000+ square feet
- 15 past and current properties owned & operated by KAJ Hospitality

This Homewood Suites by Hilton is located at the Northwest corner of I-94 & Veterans Boulevard, and will be adjacent to the newly constructed Cambria Suites, connected by the West Fargo Convention Center. Neighboring properties include: the new Sanford Medical Center, Costco, Blarney Stone Pub, and many more.

Legendary Investments is coordinating construction of the facility, and raising funds for the project. Investments into WF Hospitality, LLC will support the construction of the project by providing the equity and sub-debt required to finance the facility.



Render of complete development L to R: Future Homewood Suites, existing West Fargo Convention Center, and Cambria Suites.



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November 20, 2015

Legendary Investments, LLC has created an equity investment series with its Angel Fund to invest into a Hilton Homewood Suites property located on the intersection of I-94 and Veterans Boulevard in West Fargo, ND, just across the I-94 from the new \$600 million Sanford Hospital, serving its first patient in July of 2017.

This series is a direct equity investment, as the hotel property qualifies as primary sector as defined by the state of ND being that it is attached to the new Cambria convention center and this project will also include funds used to expand said convention center.

The following information is in regards to the investment into the Angel Fund Series called the WF Homewood Series of which there will be \$2,000,000 of capacity available.

#### ANGEL FUND INVESTMENT SPECIFICS

Type of Investment:	Equity
Investment Increments:	\$50,000 minimum, \$25,000 increments after that, up to \$100,000
Effective Average Annual Rate of Return (5 years)	21.8%
Term:	Approximately 5 years, object is to sell property at that time
Cash Distribution	Annual after year 2 of operation as per financial model
Onetime Fee:	7% of investment to cover legal and accounting expenses
Effective Average Annual Rate of Return (5 years) Term: Cash Distribution	21.8% Approximately 5 years, object is to sell property at that time Annual after year 2 of operation as per financial model

\*The Effective Average Annual Rate of Return is based on the investor receiving a 45% ND State Income Tax Credit and the payout of dividends, buy down of principal, and sale of property. It DOES NOT include any tax benefit from the passive tax loss created by depreciation.

#### **Angel Fund Example:**

 Investment:
 \$100,000

 Onetime Fee:
 \$7,000

 Total:
 \$107,000

Projected Annual Return: Tax Credit: Initial Investment		Year 1 \$6,713 \$15,000	Year 2 \$10,538 \$15,000	\$14,529	Year 4 \$15,994	Year5 \$24,569	Total	Total \$72,343 \$45,000 \$100,000 \$217,343
Total Return: Average Annual:	109% 21.8%						TOtal	Ş217,3 <del>4</del> 3

NOTE: Does not include present valuation and federal tax deduction reduction. Does not include operational passive tax loss due to depreciation. State tax credits can be used up in one year or carried forward up to seven.

Please feel free to contact Todd Berning at 701.740.0237 or Blake Nybakken at 701.721.8047 on how to place your investment. <u>All investors</u> must be accredited investors under the laws of North Dakota. Please consult your tax advisor.

#1<sub>p.</sub>7 HB 1045 1-9-17

November 25, 2015

PLACEMENT TO LEGENDARY ANGEL FUND GENERAL FUND

An investor may put an investment into the Angel Fund into our General Fund to qualify for a tax credit. The funds will sit in the general fund for three years and you can elect to move such funds to a series that opens when it is convenient for you. No return will be given until the series has been selected and then the return will be based upon the covenants of such series.

The following information is in regards to the investment into the Angel Fund General Fund of which there will be \$500,000 of capacity.

#### ANGEL FUND INVESTMENT SPECIFICS

Type of Investment:TBDInvestment Increments:\$50,000 minimum, \$25,000 increments after that, up to \$100,000Effective Average Annual Rate of Return (5 years)N/ATerm:Three YearsCash DistributionEnd of Three YearsOnetime Fee:7% of investment to cover legal and accounting expenses

\*The Effective Average Annual Rate of Return is based on the investor receiving a 45% ND State Income Tax Credit and the payout of dividends, buy down of principal, and sale of property. It DOES NOT include any tax benefit from the passive tax loss created by depreciation.

#### Angel Fund Example:



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Investment:	\$100,000
Onetime Fee:	\$7,000
Total:	\$107,000

Projected Annual F	Return:	Year 1 N/A	Year 2	Year 3		Total
Tax Credit: Initial Investment			\$15,000	\$15,000		\$45,000 \$100,000
					Total	\$145,000
Total Return:	N/A					
Average Annual:	N/A					

NOTE: Does not include present valuation and federal tax deduction reduction. Does not include operational passive tax loss due to depreciation. State tax credits can be used up in one year or carried forward up to seven.

Please feel free to contact Todd Berning at 701.740.0237 or Blake Nybakken at 701.721.8047 on how to place your investment. <u>All investors</u> <u>must be accredited investors under the laws of North Dakota</u>. <u>Please consult your tax advisor</u>.



HISTORY

Legendary Angel Fund and other Angel Funds have been used over the past six years to create well over \$150 million of projects across the state. Whether helping primary sector businesses with equity, or doing short term debt to new and existing businesses, the Legendary Fund is committed to working with entities to help them succeed and investors get a good return on their committed funds.



Picture of Boulevard Square I in West Fargo, ND. Project was built in 2013, and includes 12,000 sf of commercial space and 30 apartment units.

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Picture of Beaver Ridge Plaza in Minot, ND built in 2011. This mixed-use property is 64,000 sf of commercial space and apartment units.



Go to Legendaryfund.com to get more information on past and current projects.

# 17.0158.01004

Sixty-fifth Legislative Assembly of North Dakota

# HOUSE BILL NO. 1045

#10 p.1 1-16-17 HB 1045

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

1 A BILL for an Act to amend and reenact sections section 57-38-01.26-and, subsection 5 of

2 section 57-38.5-01, section 57-38.5-02, subsections 2 and 3 of section 57-38.5-03, and section

3 57-38.5-05 of the North Dakota Century Code, relating to the angel fund investment tax credit

4 and the seed capital investment tax credit; and to provide an effective date.

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

6 SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is
7 amended and reenacted as follows:

# 57-38-01.26. Angel fund investment tax credit.

9 A taxpayer is entitled to a credit against state income tax liability under section 1. 10 57-38-30 or 57-38-30.3 for an investment made prior to January 1, 2018, in an angel 11 fund that is a domestic organization created under the laws of this state. The amount 12 of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted 13 by the taxpayer to an angel fund during the taxable year. The aggregate annual credit 14 for which a taxpayer may obtain a tax credit is not more than forty-five thousand 15 dollars. The aggregate lifetime credits under this section that may be obtained by an 16 individual, married couple, passthrough entity and its affiliates, or other taxpayer is five 17 hundred thousand dollars. The investment used to calculate the credit under this 18 section may not be used to calculate any other income tax deduction or credit allowed 19 by law.

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three years. An investment made in a gualified business from the assets of a

To be eligible for the credit, the investment must be at risk in the angel fund for at least

retirement plan is deemed to be the retirement plan participant's investment for the

the participant directly controls where the account assets are invested. Investments

purpose of this section if a separate account is maintained for the plan participant and

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1 placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The 2 3 credit allowed may not exceed the liability for tax under this chapter. If the amount of 4 credit determined under this section exceeds the liability for tax under this chapter, the 5 excess may be carried forward to each of the seven succeeding taxable years. A 6 taxpayer claiming a credit under this section may not claim any credit available to the 7 taxpayer as a result of an investment made by the angel fund in a gualified business 8 under chapter 57-38.5 or 57-38.6.

3. An angel fund must:

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- 10a.Be a partnership, limited partnership, corporation, limited liability company, limited11liability partnership, limited liability limited partnership, trust, or estate organized12on a for-profit basis which is headquartered in this state.
- 13 Be organized for the purpose of investing in a portfolio of at least three primary b. 14 sector companies that are early-stage and mid-stage private, nonpublicly traded 15 enterprises with strong growth potential. For purposes of this section, an 16 early-stage entity means an entity with annual revenues of up to two million 17 dollars and a mid-stage entity means an entity with annual revenues over two 18 million dollars not to exceed ten million dollars. Investments in real estate or real 19 estate holding companies are not eligible investments by certified angel funds. 20 Any angel fund certified before January 1, 2013, which has invested in real estate 21 or a real estate holding company is not eligible for recertification.
- c. Consist of at least six accredited investors as defined by securities and exchange
   commission regulation D, rule 501.
- 24 d. Not have more than twenty-five percent of its capitalized investment assets25 owned by an individual investor.
- e. Have at least five hundred thousand dollars in commitments from accredited
  investors and that capital must be subject to call to be invested over an
  unspecified number of years to build a portfolio of investments in enterprises.
- 29f.Be member-managed or a manager-managed limited liability company and the30investor members or a designated board that includes investor members must31make decisions as a group on which enterprises are worthy of investments.

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1		g. Be certified as an angel fund that meets the requirements of this section by the	
2		department of commerce.	
3		h. Be in compliance with the securities laws of this state.	
4		i. Within thirty days after the date on which an investment in an angel fund is mad	e,
5		the angel fund shall file with the tax commissioner and provide to the investor	
6		completed forms prescribed by the tax commissioner which show as to each	
7		investment in the angel fund the following:	
8		(1) The name, address, and social security number or federal employer	
9		identification number of the taxpayer or passthrough entity that made the	
10		investment;	
11		(2) The dollar amount remitted by the taxpayer or passthrough entity; and	
12		(3) The date the payment was received by the angel fund for the investment.	
13		j. Within thirty days after the end of a calendar year, the angel fund shall file with	
14		the tax commissioner a report showing the name and principal place of business	S
15		of each enterprise in which the angel fund has an investment <u>and the amount of</u>	:
16		the investment.	
17	4.	The tax commissioner may disclose to the legislative management the reported	
18		information described under paragraphs 2 and 3 of subdivision i of subsection 3 and	
19		the reported information described under subdivision j of subsection 3.	
20	5.	Angel fund investors may be actively involved in the enterprises in which the angel	
21		fund invests but the angel fund may not invest in any enterprise if any one angel fund	
22		investor owns directly or indirectly more than forty-nine percent of the ownership	
23		interests in the enterprise. The angel fund may not invest in an enterprise if any one	
24		partner, shareholder, or member of a passthrough entity that directly or indirectly own	s
25		more than forty-nine percent of the ownership interests in the enterprise.	
26	6.	Investors in one angel fund may not receive more than five million dollars in aggregate	е
27		credits under this section during the life of the angel fund but this provision may not be	е
28		interpreted to limit additional investments in that angel fund.	
29	7.	a. A passthrough entity entitled to the credit under this section must be considered	
30		to be the taxpayer for purposes of this section, and the amount of the credit	
31		allowed must be determined at the passthrough entity level.	

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1		<del>b.</del>	For the first two taxable years beginning after December 31, 2010, if a
2			passthrough entity does not elect to sell, transfer, or assign the credit as provided
3			under this subsection and subsection 8, the amount of the total credit determined
4			at the entity level must be passed through to the partners, shareholders, or
5			members in proportion to their respective interests in the passthrough entity.
6		<del>C.</del>	For the first two taxable years beginning after December 31, 2010, if a
7			passthrough entity elects to sell, transfer, or assign a credit as provided under
8			this subsection and subsection 8, the passthrough entity shall make an
9			irrevocable election to sell, transfer, or assign the credit on the return filed by the
10			entity for the taxable year in which the credit was earned. A passthrough entity
11			that makes a valid election to sell, transfer, or assign a credit shall sell one
12			hundred percent of the credit earned, may sell the credit to only one purchaser,
13			and shall comply with the requirements of this subsection and subsection 8.
14	8.	For	the first two taxable years beginning after December 31, 2010, a taxpayer may
15		elec	t to sell, transfer, or assign all of the earned or excess tax credit earned under this
16		sect	tion for investment in an angel fund established after July 31, 2011, subject to the
17		follo	wing:
18		<del>a.</del>	A taxpayer's total credit sale, transfer, or assignment under this section may not
19			exceed one hundred thousand dollars over any combination of taxable years.
20			The cumulative credits transferred by all investors in an angel fund may not
21			exceed fifty percent of the aggregate credits under this section during the life of
22			the angel fund under subsection 6.
23		<del>b.</del>	If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
24			tax credit transferor and the tax credit purchaser jointly shall file with the tax
25			commissioner a copy of the purchase agreement and a statement containing the
26			names, addresses, and taxpayer identification numbers of the parties to the
27			transfer, the amount of the credit being transferred, the gross proceeds received
28			by the transferor, and the taxable year or years for which the credit may be
29			claimed. The taxpayer and the purchaser also shall file a document allowing the
30			tax commissioner to disclose tax information to either party for the purpose of
31			verifying the correctness of the transferred tax credit. The purchase agreement,

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supporting statement, and waiver must be filed within thirty days after	er the date
the purchase agreement is fully executed.	

c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor.
 This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

 A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.

13 If the amount of the credit available under this section is changed as a result of e. 14 an amended return filed by the transferor, or as the result of an audit conducted 15 by the internal revenue service or the tax commissioner, the transferor shall 16 report to the purchaser the adjusted credit amount within thirty days of the 17 amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall 18 19 file amended returns reporting the additional tax due or claiming a refund as 20 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit 21 these returns and assess or issue refunds, even though other time periods 22 prescribed in these sections may have expired for the purchaser.

f. Gross proceeds received by the tax credit transferor must be assigned to North
 Dakota. The amount assigned under this subsection cannot be reduced by the
 taxpayer's income apportioned to North Dakota or any North Dakota net
 operating loss of the taxpayer.

g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

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1	<del>h.</del>	The tax commissioner may adopt rules to establish necessary administrative
2		provisions for the credit under this section, including provisions to permit
3		verification of the validity and timeliness of the transferred tax credit.
4	SECTIO	N 2. AMENDMENT. Subsection 5 of section 57-38.5-01 of the North Dakota
5	Century Cod	e is amended and reenacted as follows:
6	5. "Qu	ualified business" means a business other than a real estate investment trust which
7	is a	primary sector business that:
8	a.	Is incorporated or its satellite operation is incorporated as a for-profit corporation,
9		passthrough entity, or joint venture;
10	b.	Is in compliance with the requirements for filings with the securities commissioner
11		under the securities laws of this state;
12	с.	Has North Dakota residents as a majority of its employees in the North Dakota
13		principal office or the North Dakota satellite operation;
14	d.	Has its principal office in this state and has the majority of its business activity
15		performed in this state, except sales activity, or has a significant operation in
16		North Dakota that has or is projected to have more than ten employees or one
17		hundred-fifty thousand dollars of sales annually; and
18	e.	Relies on innovation, research, or the development of new products and
19		processes in its plans for growth and profitability.
20	SECTIO	N 3. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is
21	amended ar	nd reenacted as follows:
22	57-38.5-	-02. Certification - Investment reporting by qualified businesses - Maximum
23	investment	s in qualified businesses.
24	1. Th	e director shall certify whether a business that has requested to become a qualified
25	bu	siness meets the requirements of subsection 5 of section 57-38.5-01. The director
26	sha	all establish the necessary forms and procedures for certifying qualified businesses.
27	2. A c	qualified business may apply to the director for a recertification. Only one
28	rec	certification is available to a qualified business. The application for recertification
29	mu	ust be filed with the director within ninety days before the original certification expiry
30	da	te. The recertification issued by the director must comply with the provisions of
31	su	bsection 3.

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- 3. A certification letter must be issued by the director to the qualified business. The certification letter must include:
  - a. The certification effective date.
  - b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.
- 4. The maximum aggregate amount of qualified investments a qualified business may
  receive for all tax years is limited to five hundred thousand four million dollars under
  this chapter. The tax credit allowed on qualified investments in a qualified business
  must be allowed to taxpayers in the chronological order of the taxpayer's qualified
  investments as determined from the forms filed under section 57-38.5-07. The
  limitation on investments under this subsection may not be interpreted to limit
  additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 5. By February first in each of the five years following a year in which a qualified
   business receives a qualified investment, the qualified business shall file with the tax
   commissioner completed forms prescribed by the tax commissioner which show the
   qualified business meets the requirements under section 57-38.5-01.

SECTION 4. AMENDMENT. Subsections 2 and 3 of section 57-38.5-03 of the North Dakota
 Century Code are amended and reenacted as follows:

- The maximum annual credit a taxpayer may claim under this section is not more than
   onetwo hundred twelvetwenty-five thousand five hundred dollars. This subsection may
   not be interpreted to limit additional investment by a taxpayer for which that taxpayer is
   not applying for a credit.
- Any amount of credit under subsection 1 not allowed because of the limitation in
   subsection 2 may be carried forward for up to fourseven taxable years after the
   taxable year in which the investment was made.

SECTION 5. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is
 amended and reenacted as follows:

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# 57-38.5-05. Seed capital investment tax credit limits.

The aggregate amount of seed capital investment tax credit allowed for investments under this chapter is limited to three<u>fifteen</u> million five hundred thousand dollars for each calendar year. If investments in qualified businesses reported to the commissioner under section

- 1 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit
- 2 must be allowed to taxpayers in the chronological order of their investments in qualified
- 3 businesses as determined from the forms filed under section 57-38.5-07.
- 4 SECTION 6. EFFECTIVE DATE. This Act is effective for taxable years beginning after
- 5 December 31, 2017.

## 17.0158.01003

Sixty-fifth Legislative Assembly of North Dakota

# HOUSE BILL NO. 1045

16 1-16-17 HB 1045

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

- 1 A BILL for an Act to amend and reenact sections 57-38-01.26 and subsection 7 of section
- 2 57-38-30.3, section 57-38.5-02, subsections 1, 2, and 3 of section 57-38.5-03, and section
- 3 57-38.5-05 of the North Dakota Century Code, relating to the angel fund investment tax credit
- 4 and the seed capital investment tax credit; and to repeal section 57-38-01.26 and chapter
- 5 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and
- 6 the seed capital investment tax credit; to provide an effective date; and to provide an expiration 7 date.

#### 8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is 10 amended and reenacted as follows: 11 57-38-01.26. Angel fund investment tax credit. 12 A taxpayor is ontitled to a credit against state income tax liability under section 13 57-38-30 or 57-38-30.3 for an investment made prior to January 1, 2018, in an angel 14 fund that is a domestic organization created under the laws of this state. The amount 15 of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted 16 by the taxpayer to an angel fund during the taxable year. The aggregate annual credit 17 for which a taxpayer may obtain a tax credit is not more than forty five thousand 18 dollars. The aggregate lifetime credits under this section that may be obtained by an 19 individual, married couple, passthrough entity and its affiliates, or other taxpayer is five 20 hundred thousand dollars. The investment used to calculate the credit under this 21 section may not be used to calculate any other income tax deduction or credit allowed 22 by law. 23 To be eligible for the credit, the investment must be at risk in the angel fund for at least 24

three years. An investment made in a qualified business from the assets of a

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1	retirement plan is deemed to be the retirement plan participant's investment for the
2	purpose of this section if a separate account is maintained for the plan participant and
3	the participant directly controls where the account assets are invested. Investments
4	placed in escrow do not qualify for the credit. The credit must be claimed in the taxable
5	year in which the investment in the angel fund was received by the angel fund. The
6	credit allowed may not exceed the liability for tax under this chapter. If the amount of
7	credit determined under this section exceeds the liability for tax under this chapter, the
8	excess may be carried forward to each of the seven succeeding taxable years. A
9	taxpayer claiming a credit under this section may not claim any credit available to the
10	taxpayer as a result of an investment made by the angel fund in a qualified business
11	under chapter 57-38.5 or 57-38.6.
12	
13	a. Be a partnership, limited partnership, corporation, limited liability company, limited
14	liability partnership, limited liability limited partnership, trust, or estate organized
15	on a for-profit basis which is headquartered in this state.

16 Be organized for the purpose of investing in a portfolio of at least three primary 17 sector companies that are early stage and mid stage private, nonpublicly traded 18 enterprises with strong growth potential. For purposes of this section, an 19 early-stage entity means an entity with annual revenues of up to two million 20 dollars and a mid-stage entity means an entity with annual revenues over two 21 million dollars not to exceed ten million dollars. Investments in real estate or real 22 estate holding companies are not eligible investments by certified angel funds. 23 Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification. 24 25 Consist of at least six accredited investors as defined by securities and exchange 26 commission regulation D, rule 501. 27 Not have more than twenty-five percent of its capitalized investment assets 28 owned by an individual investor. 29 Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an 30 unspecified number of years to build a portfolio of investments in enterprises. 31

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1	f. Be member-managed or a manager-managed limited liability company and the
2	investor members or a designated board that includes investor members must
3	make decisions as a group on which enterprises are worthy of investments.
4	g. Be certified as an angel fund that meets the requirements of this section by the
5	department of commerce.
6	h. Be in compliance with the securities laws of this state.
7	
8	the angel fund shall file with the tax commissioner and provide to the investor
9	completed forms prescribed by the tax commissioner which show as to each
10	investment in the angel fund the following:
11	(1) The name, address, and social security number or federal employer
12	identification number of the taxpayer or passthrough entity that made the
13	investment;
14	————————————————————————————————————
15	————————————————————————————————————
16	j. Within thirty days after the end of a calendar year, the angel fund shall file with
17	the tax commissioner a report showing the name and principal place of business
18	of each enterprise in which the angel fund has an investment and the amount of
19	the investment.
20	4. The tax commissioner may disclose to the legislative management the reported
21	information described under paragraphs 2 and 3 of subdivision i of subsection 3 and
22	the reported information described under subdivision j of subsection 3.
23	
24	fund invests but the angel fund may not invest in any enterprise if any one angel fund
25	investor owns directly or indirectly more than forty-nine percent of the ownership
26	interests in the enterprise. The angel fund may not invest in an enterprise if any one
27	partner, shareholder, or member of a passthrough entity that directly or indirectly owns
28	more than forty-nine percent of the ownership interests in the enterprise.
29	6. Investors in one angel fund may not receive more than five million dollars in aggregate
30	credits under this section during the life of the angel fund but this provision may not be
31	interpreted to limit additional investments in that angel fund.

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1	7. a. A passthrough entity entitled to the credit under this section must be considered
2	to be the taxpayer for purposes of this section, and the amount of the credit
3	allowed must be determined at the passthrough entity level.
4	b. For the first two taxable years beginning after December 31, 2010, if a
5	passthrough entity does not elect to sell, transfer, or assign the credit as provided
6	under this subsection and subsection 8, the amount of the total credit determined
7	at the entity level must be passed through to the partners, shareholders, or
8	members in proportion to their respective interests in the passthrough entity.
9	c. For the first two taxable years beginning after December 31, 2010, if a
10	passthrough entity elects to sell, transfer, or assign a credit as provided under
11	this subsection and subsection 8, the passthrough entity shall make an
12	irrevocable election to sell, transfer, or assign the credit on the return filed by the
13	entity for the taxable year in which the credit was earned. A passthrough entity
14	that makes a valid election to sell, transfer, or assign a credit shall sell one
15	hundred percent of the credit earned, may sell the credit to only one purchaser,
16	and shall comply with the requirements of this subsection and subsection 8.
17	
18	elect to sell, transfer, or assign all of the earned or excess tax credit earned under this
19	section for investment in an angel fund established after July 31, 2011, subject to the
20	following:
21	a. A taxpayer's total credit sale, transfer, or assignment under this section may not
22	exceed one hundred thousand dollars over any combination of taxable years.
23	The cumulative credits transferred by all investors in an angel fund may not
24	exceed fifty percent of the aggregate credits under this section during the life of
25	the angel fund under subsection 6.
26	b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
27	tax credit transferor and the tax credit purchaser jointly shall file with the tax
28	commissioner a copy of the purchase agreement and a statement containing the
29	names, addresses, and taxpayer identification numbers of the parties to the
30	transfer, the amount of the credit being transferred, the gross proceeds received
31	by the transferor, and the taxable year or years for which the credit may be

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claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.

c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.

16 If the amount of the credit available under this section is changed as a result of 17 an amended return filed by the transferor, or as the result of an audit conducted 18 by the internal revenue service or the tax commissioner, the transferor shall 19 report to the purchaser the adjusted credit amount within thirty days of the 20 amended return or within thirty days of the final determination made by the 21 internal revenue service or the tax commissioner. The tax credit purchaser shall 22 file amended returns reporting the additional tax due or claiming a refund as 23 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit 24 these returns and assess or issue refunds, even though other time periods 25 prescribed in these sections may have expired for the purchaser. 26 Gross proceeds received by the tax credit transferor must be assigned to North

Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the

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1		correctness of the amount of the transferred credit and if necessary assess the
2		credit purchaser if additional tax is found due. This subdivision does not limit or
3		restrict any other time period prescribed in this chapter for the assessment of tax.
4		h. The tax commissioner may adopt rules to establish necessary
5		administrative provisions for the credit under this section, including provisions to
6		permit verification of the validity and timeliness of the transferred tax credit.
7	SECTION	1. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota
8	Century Code	is amended and reenacted as follows:
9	7. A tax	payer filing a return under this section is entitled to the following tax credits:
10	a.	Family care tax credit under section 57-38-01.20.
11	b.	Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
12	с.	Agricultural business investment tax credit under section 57-38.6-03.
13	d.	Seed capital investment tax credit under section 57-38.5-03 (effective for the first
14		three taxable years beginning after December 31, 2016).
15	e.	Planned gift tax credit under section 57-38-01.21.
16	f	Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
17		57-38-01.23.
18	g.	Internship employment tax credit under section 57-38-01.24.
19	h.	Workforce recruitment credit under section 57-38-01.25.
20	i.	Angel fund investment tax credit under section 57-38-01.26.
21	<del>j.</del>	Microbusiness tax credit under section 57-38-01.27.
22	<del>k.j.</del>	Marriage penalty credit under section 57-38-01.28.
23		Homestead income tax credit under section 57-38-01.29.
24		Commercial property income tax credit under section 57-38-01.30.
25	<u> </u>	Research and experimental expenditures under section 57-38-30.5.
26	<del>0.<u> </u>.</del>	Geothermal energy device installation credit under section 57-38-01.8.
27	<del>p.</del> <u>m.</u>	Long-term care partnership plan premiums income tax credit under section
28		57-38-29.3.
29	<del>q.<u>n.</u></del>	Employer tax credit for salary and related retirement plan contributions of
30		mobilized employees under section 57-38-01.31.

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1	<del>r.</del> 0.	Automating manufacturing processes tax credit under section 57-38-01.33			
2		(effective for the first five taxable years beginning after December 31, 2012).			
3	<del>s.</del> p.	Income tax credit for passthrough entity contributions to private education			
4		institutions under section 57-38-01.7.			
5	SECTION 2. AMENDMENT. Subsection 5 of section 57-38.5-01 of the North Dakota				
6	Century Code is amended and reenacted as follows:				
7	5. "C	Qualified business" means a business other than a real estate investment trust which			
8	is a primary sector business that:				
9	a.	Is incorporated or its satellite operation is incorporated as a for-profit corporation,			
10		passthrough entity, or joint venture;			
11	b.	Is in compliance with the requirements for filings with the securities commissioner			
12		under the securities laws of this state;			
13	с.	Has North Dakota residents as a majority of its employees in the North Dakota			
14		principal office or the North Dakota satellite operation;			
15	d.	Has its principal office in this state and has the majority of its business activity			
16		performed in this state, except sales activity, or has a significant operation in			
17		North Dakota that has or is projected to have more than ten employees or one			
18		hundred fifty thousand dollars of sales annually; and			
19	e.	Relies on innovation, research, or the development of new products and			
20		processes in its plans for growth and profitability.			
21	SECTION 3. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is				
22	amended a	nd reenacted as follows:			
23	57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum				
24	investment	s in qualified businesses.			
25	1. Th	e director shall certify whether a business that has requested to become a qualified			
26	bu	siness meets the requirements of subsection 5 of section 57-38.5-01. The director			
27	sh	all establish the necessary forms and procedures for certifying qualified businesses.			
28	2. A	qualified business may apply to the director for a recertification. Only one			
29	ree	certification is available to a qualified business. The application for recertification			
30	m	ust be filed with the director within ninety days before the original certification expiry			

1		date. The recertification issued by the director must comply with the provisions of
2		subsection 3.
3	3.	A certification letter must be issued by the director to the qualified business. The
4		certification letter must include:
5	х ж	a. The certification effective date.
6		b. The certification expiry date. The expiry date may not be more than four years
7		from the certification effective date.
8	4.	The maximum aggregate amount of qualified investments a qualified business may
9		receive for all tax years is limited to five hundred thousand four million dollars under
10		this chapter. The tax credit allowed on qualified investments in a qualified business
11		must be allowed to taxpayers in the chronological order of the taxpayer's qualified
12		investments as determined from the forms filed under section 57-38.5-07. The
13		limitation on investments under this subsection may not be interpreted to limit
14		additional investment by a taxpayer for which that taxpayer is not applying for a credit.
15	<u>5.</u>	By February first in each of the five years following a year in which a qualified
16		business receives a qualified investment, the qualified business shall file with the tax
17		commissioner completed forms prescribed by the tax commissioner which show the
18		qualified business meets the requirements under section 57-38.5-01.
19	SEC	<b>CTION 4. AMENDMENT.</b> Subsections <u>1</u> , 2, and 3 of section 57-38.5-03 of the North
20	Dakota (	Century Code are amended and reenacted as follows:
21	1.	The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent
22		of the amount invested by the taxpayer in qualified businesses during the taxable year.
23	2.	The maximum annual credit a taxpayer may claim under this section is not more than
24		enetwo hundred twelvetwenty-five thousand five hundred dollars. This subsection may
25		not be interpreted to limit additional investment by a taxpayer for which that taxpayer is
26		not applying for a credit.
27	3.	Any amount of credit under subsection 1 not allowed because of the limitation in
28		subsection 2 may be carried forward for up to fourseven taxable years after the
29		taxable year in which the investment was made.
30	SEC	CTION 5. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is
31	amende	d and reenacted as follows:

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1 57-38.5-05. Seed capital investment tax credit limits. 2 The aggregate amount of seed capital investment tax credit allowed for investments under 3 this chapter is limited to threefifteen million five hundred thousand dollars for each calendar 4 year. If investments in gualified businesses reported to the commissioner under section 5 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit 6 must be allowed to taxpayers in the chronological order of their investments in qualified 7 businesses as determined from the forms filed under section 57-38.5-07. 8 SECTION 6. REPEAL. Section 57-38-01.26 of the North Dakota Century Code is repealed. 9 SECTION 7. REPEAL. Chapter 57-38.5 of the North Dakota Century Code is repealed. 10 SECTION 8. EFFECTIVE DATE. This Section 7 of this Act is effective for taxable years 11 beginning after December 31, 2019, and the remainder of this Act is effective for taxable years 12 beginning after December 31, 20172016.

### 17.0158.01006

Sixty-fifth Legislative Assembly of North Dakota

### HOUSE BILL NO. 1045

#1 1-17-17 HB 1045

(Also 01/18/17 Att. 1a)

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

1 A BILL for an Act to amend and reenact sections 57-38-01.26-and, subsection 7 of

- 2 section 57-38-30.3, subsection 5 of section 57-38.5-01, sections 57-38.5-02, subsections 2 and
- 3 3 of section 57-38.5-03, and section 57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North Dakota
- 4 Century Code, relating to the angel fund investment tax credit and the seed capital investment
- 5 tax credit; and to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century
- 6 Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;
- 7 to provide an effective date; and to provide an expiration date.

### 8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is
 10 amended and reenacted as follows:

11 **57-38-01.26. Angel fund investment tax credit.** 

- 12 A taxpayer is entitled to a credit against state income tax liability under section 1. 13 57-38-30 or 57-38-30.3 for an investment made prior to January 1, 2018 April 1, 2017, 14 in an angel fund that is a domestic organization created under the laws of this state. 15 The amount of the credit to which a taxpayer is entitled is forty-five percent of the 16 amount remitted by the taxpayer to an angel fund during the taxable year. The 17 aggregate annual credit for which a taxpayer may obtain a tax credit is not more than 18 forty-five thousand dollars. The aggregate lifetime credits under this section that may 19 be obtained by an individual, married couple, passthrough entity and its affiliates, or 20 other taxpayer is five hundred thousand dollars. The investment used to calculate the 21 credit under this section may not be used to calculate any other income tax deduction 22 or credit allowed by law.
- 23 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least
  24 three years. An investment made in a qualified business from the assets of a

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1 retirement plan is deemed to be the retirement plan participant's investment for the 2 purpose of this section if a separate account is maintained for the plan participant and 3 the participant directly controls where the account assets are invested. Investments 4 placed in escrow do not qualify for the credit. The credit must be claimed in the taxable 5 year in which the investment in the angel fund was received by the angel fund. The 6 credit allowed may not exceed the liability for tax under this chapter. If the amount of 7 credit determined under this section exceeds the liability for tax under this chapter, the 8 excess may be carried forward to each of the seven succeeding taxable years. A 9 taxpayer claiming a credit under this section may not claim any credit available to the 10 taxpayer as a result of an investment made by the angel fund in a gualified business 11 under chapter 57-38.5 or 57-38.6.

12 3. An angel fund must:

- 13a.Be a partnership, limited partnership, corporation, limited liability company, limited14liability partnership, limited liability limited partnership, trust, or estate organized15on a for-profit basis which is headquartered in this state.
- 16 Be organized for the purpose of investing in a portfolio of at least three primary b. 17 sector companies that are early-stage and mid-stage private, nonpublicly traded 18 enterprises with strong growth potential. For purposes of this section, an 19 early-stage entity means an entity with annual revenues of up to two million 20 dollars and a mid-stage entity means an entity with annual revenues over two 21 million dollars not to exceed ten million dollars. Investments in real estate or real 22 estate holding companies are not eligible investments by certified angel funds. 23 Any angel fund certified before January 1, 2013, which has invested in real estate 24 or a real estate holding company is not eligible for recertification.
- c. Consist of at least six accredited investors as defined by securities and exchange
   commission regulation D, rule 501.
- 27 d. Not have more than twenty-five percent of its capitalized investment assets
  28 owned by an individual investor.
- e. Have at least five hundred thousand dollars in commitments from accredited
  investors and that capital must be subject to call to be invested over an
  unspecified number of years to build a portfolio of investments in enterprises.

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1		f.	Be member-managed or a manager-managed limited liability company and the							
2			investor members or a designated board that includes investor members must							
3			make decisions as a group on which enterprises are worthy of investments.							
4		g.	Be certified as an angel fund that meets the requirements of this section by the							
5			department of commerce.							
6		h.	Be in compliance with the securities laws of this state.							
7		i.	Within thirty days after the date on which an investment in an angel fund is made,							
8			the angel fund shall file with the tax commissioner and provide to the investor							
9			completed forms prescribed by the tax commissioner which show as to each							
10			investment in the angel fund the following:							
11			(1) The name, address, and social security number or federal employer							
12			identification number of the taxpayer or passthrough entity that made the							
13			investment;							
14			(2) The dollar amount remitted by the taxpayer or passthrough entity; and							
15			(3) The date the payment was received by the angel fund for the investment.							
16		j.	Within thirty days after the end of a calendar year, the angel fund shall file with							
17			the tax commissioner a report showing the name and principal place of business							
18			of each enterprise in which the angel fund has an investment and the amount of							
19			the investment.							
20	4.	The	tax commissioner may disclose to the legislative management the reported							
21		info	rmation described under paragraphs 2 and 3 of subdivision i of subsection 3 and							
22		the	reported information described under subdivision j of subsection 3.							
23	5.	Ang	el fund investors may be actively involved in the enterprises in which the angel							
24		func	d invests but the angel fund may not invest in any enterprise if any one angel fund							
25		inve	estor owns directly or indirectly more than forty-nine percent of the ownership							
26		inte	rests in the enterprise. The angel fund may not invest in an enterprise if any one							
27		part	ner, shareholder, or member of a passthrough entity that directly or indirectly owns							
28		mor	e than forty-nine percent of the ownership interests in the enterprise.							
29	6.	Inve	stors in one angel fund may not receive more than five million dollars in aggregate							
30		cred	lits under this section during the life of the angel fund but this provision may not be							
31		inter	nterpreted to limit additional investments in that angel fund.							

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1	7.	<del>a.</del>	A passthrough entity entitled to the credit under this section must be considered						
2			to be the taxpayer for purposes of this section, and the amount of the credit						
3			allowed must be determined at the passthrough entity level.						
4		<del>b.</del>	For the first two taxable years beginning after December 31, 2010, if a						
5			passthrough entity does not elect to sell, transfer, or assign the credit as provided	đ					
6			under this subsection and subsection 8, the amount of the total credit determined						
7			at the entity level must be passed through to the partners, shareholders, or						
8			members in proportion to their respective interests in the passthrough entity.						
9		<del>6.</del>	For the first two taxable years beginning after December 31, 2010, if a						
10			passthrough entity elects to sell, transfer, or assign a credit as provided under						
11			this subsection and subsection 8, the passthrough entity shall make an						
12			irrevocable election to sell, transfer, or assign the credit on the return filed by the						
13			entity for the taxable year in which the credit was earned. A passthrough entity						
14			that makes a valid election to sell, transfer, or assign a credit shall sell one						
15			hundred percent of the credit earned, may sell the credit to only one purchaser,						
16			and shall comply with the requirements of this subsection and subsection 8.	(					
17	8.	For	the first two taxable years beginning after December 31, 2010, a taxpayer may						
18		elee	ct to sell, transfer, or assign all of the earned or excess tax credit earned under this						
19		sec	tion for investment in an angel fund established after July 31, 2011, subject to the						
20		folle	<del>owing:</del>						
21		<del>a.</del>	A taxpayer's total credit sale, transfer, or assignment under this section may not						
22			exceed one hundred thousand dollars over any combination of taxable years.						
23			The cumulative credits transferred by all investors in an angel fund may not						
24			exceed fifty percent of the aggregate credits under this section during the life of						
25			the angel fund under subsection 6.						
26		<del>b.</del>	If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the						
27			tax credit transferor and the tax credit purchaser jointly shall file with the tax						
28			commissioner a copy of the purchase agreement and a statement containing the						
29			names, addresses, and taxpayer identification numbers of the parties to the						
30			transfer, the amount of the credit being transferred, the gross proceeds received						
31			by the transferor, and the taxable year or years for which the credit may be						

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	claimed. The taxpayer and the purchaser also shall file a document allowing the
	tax commissioner to disclose tax information to either party for the purpose of
	verifying the correctness of the transferred tax credit. The purchase agreement,
	supporting statement, and waiver must be filed within thirty days after the date
	the purchase agreement is fully executed.
<del>C.</del>	The purchaser of the tax credit shall claim the credit beginning with the taxable
	year in which the credit purchase agreement was fully executed by the parties. A

- 8 purchaser of a tax credit under this section has only such rights to claim and use
   9 the credit under the terms that would have applied to the tax credit transferor.
   10 This subsection does not limit the ability of the tax credit purchaser to reduce the
   11 tax liability of the purchaser, regardless of the actual tax liability of the tax credit
   12 transferor.
  - A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
- 16 If the amount of the credit available under this section is changed as a result of e. 17 an amended return filed by the transferor, or as the result of an audit conducted 18 by the internal revenue service or the tax commissioner, the transferor shall 19 report to the purchaser the adjusted credit amount within thirty days of the 20 amended return or within thirty days of the final determination made by the 21 internal revenue service or the tax commissioner. The tax credit purchaser shall 22 file amended returns reporting the additional tax due or claiming a refund as 23 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit 24 these returns and assess or issue refunds, even though other time periods 25 prescribed in these sections may have expired for the purchaser.
- 26f.Gross proceeds received by the tax credit transferor must be assigned to North27Dakota. The amount assigned under this subsection cannot be reduced by the28taxpayer's income apportioned to North Dakota or any North Dakota net29operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the

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1		correctness of the amount of the transferred credit and if necessary assess the
2		credit purchaser if additional tax is found due. This subdivision does not limit or
3		restrict any other time period prescribed in this chapter for the assessment of tax.
4	h.	The tax commissioner may adopt rules to establish necessary administrative
5		provisions for the credit under this section, including provisions to permit
6		verification of the validity and timeliness of the transferred tax credit.
7	SECTION	<b>2. AMENDMENT.</b> Subsection 7 of section 57-38-30.3 of the North Dakota
8	Century Code	e is amended and reenacted as follows:
9	7. A ta	xpayer filing a return under this section is entitled to the following tax credits:
10	a.	Family care tax credit under section 57-38-01.20.
11	b.	Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
12	c.	Agricultural business investment tax credit under section 57-38.6-03.
13	d.	SeedAngel investor seed capital investment tax credit under section 57-38.5-03
14		(effective for the first three taxable years beginning after December 31, 2016).
15	e.	Planned gift tax credit under section 57-38-01.21.
16	f.	Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
17		57-38-01.23.
18	g.	Internship employment tax credit under section 57-38-01.24.
19	h.	Workforce recruitment credit under section 57-38-01.25.
20	i.	Angel fund investment tax credit under section 57-38-01.26 (effective for the first
21		three taxable years beginning after December 31, 2016).
22	j.	Microbusiness tax credit under section 57-38-01.27.
23	k.	Marriage penalty credit under section 57-38-01.28.
24	le service e le	Homestead income tax credit under section 57-38-01.29.
25	<del></del>	Commercial property income tax credit under section 57-38-01.30.
26	n.	-Research and experimental expenditures under section 57-38-30.5.
27	<del>o.</del> m.	Geothermal energy device installation credit under section 57-38-01.8.
28	<del>p.<u>n.</u></del>	Long-term care partnership plan premiums income tax credit under section
29		57-38-29.3.
30	<del>q.<u>o.</u></del>	Employer tax credit for salary and related retirement plan contributions of
31		mobilized employees under section 57-38-01.31.

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1	f <del>.</del>	p. Automating manufacturing processes tax credit under section	57-38-01.33
2		(effective for the first five taxable years beginning after Decem	ber 31, 2012).
3	<del>s.</del>	g. Income tax credit for passthrough entity contributions to private	e education
4		institutions under section 57-38-01.7.	
5	SECT	FION 3. AMENDMENT. Subsection 5 of section 57-38.5-01 of the No	orth Dakota
6	Century C	Code is amended and reenacted as follows:	
7	5. '	"Qualified business" means a business other than a real estate inve	stment trust which
8	i	s a primary sector business that:	
9		a. Is incorporated or its satellite operation is incorporated as a for	-profit corporation,
10		passthrough entity, or joint venture;	
11	1	b. Is in compliance with the requirements for filings with the secur	ities commissione
12		under the securities laws of this state;	
13	and the	c. Has North Dakota residents as a majority of its employees in th	ne North Dakota
14		principal office or the North Dakota satellite operation;	
15		d. Has its principal office in this state and has the majority of its but	usiness activity
16		performed in this state, except sales activity, or has a significant	nt operation in
17	Jon to a to	North Dakota that has orat least two employees and is projected	ed to have more
18		than ten employees or one hundred fifty thousand dollars of sa	les annually; and
19	(	e. Relies on innovation, research, or the development of new proc	ducts and
20		processes in its plans for growth and profitability.	
21	SECT	ION 4. AMENDMENT. Section 57-38.5-02 of the North Dakota Cent	tury Code is
22	amended	and reenacted as follows:	
23	57-38.	5-02. Certification - Investment reporting by qualified business	es - Maximum
24	investme	nts in qualified businesses.	
25	1. T	The director shall certify whether a business that has requested to b	ecome a qualified
26	b	ousiness meets the requirements of subsection 5 of section 57-38.5-	-01. The director
27	s	hall establish the necessary forms and procedures for certifying qua	alified businesses.
28	2. A	qualified business may apply to the director for a recertification. Or	nly one
29	r	ecertification is available to a qualified business. The application for	recertification

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1		date. The recertification issued by the director must comply with the provisions of						
2		subsection 3.						
3	3.	A certification letter must be issued by the director to the qualified business. The						
4		certification letter must include:						
5		a. The certification effective date.						
6		b. The certification expiry date. The expiry date may not be more than four years						
7		from the certification effective date.						
8	4.	The maximum aggregate amount of qualified investments a qualified business may						
9		receive for all tax years is limited to five hundred thousand four million dollars under						
10		this chapter. The tax credit allowed on qualified investments in a qualified business						
11		must be allowed to taxpayers in the chronological order of the taxpayer's qualified						
12		investments as determined from the forms filed under section 57-38.5-07. The						
13		limitation on investments under this subsection may not be interpreted to limit						
14		additional investment by a taxpayer for which that taxpayer is not applying for a credit.						
15	<u>5.</u>	By February first in each of the five years following a year in which a qualified						
16		business receives a qualified investment, the qualified business shall file with the tax	1					
17		commissioner completed forms prescribed by the tax commissioner which show the						
18		qualified business meets the requirements under section 57-38.5-01.						
19	SEC	TION 3. AMENDMENT. Subsections 2 and 3 of section 57-38.5-03 of the North Dakota						
20	Century	Code are amended and reenacted as follows:						
21	<u> </u>	The maximum annual credit a taxpayer may claim under this section is not more than						
22		onetwo hundred twelvetwenty-five thousand five hundred dollars. This subsection may						
23		not be interpreted to limit additional investment by a taxpayer for which that taxpayer is						
24		not applying for a credit.						
25	<del>3.</del>	Any amount of credit under subsection 1 not allowed because of the limitation in						
26		subsection 2 may be carried forward for up to fourseven taxable years after the						
27	With a sheet of the	taxable year in which the investment was made.						
28	SEC	TION 5. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is						
29	amende	d and reenacted as follows:						

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1	Card Start Start Start							
1	57-	38.5-03. SeedAngel investor seed capital investment tax credit.						
2	lf a	If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to						
3	a credit	a credit against state income tax liability under section 57-38-30 or 57-38-30.3.						
4	1.	The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent						
5		of the amount invested by the taxpayer in qualified businesses during the taxable year.						
6	2.	The maximum annual credit a taxpayer may claim under this section is not more than						
7		one hundred twelve thousand five hundred dollars. This subsection may not be						
8		interpreted to limit additional investment by a taxpayer for which that taxpayer is not						
9		applying for a credit.						
10	3.	Any amount of credit under subsection 1 not allowed because of the limitation in						
11		subsection 2 may be carried forward for up to fourfive taxable years after the taxable						
12		year in which the investment was made.						
13	4.	A passthrough entity that invests in a qualified business must be considered to be the						
14		taxpayer for purposes of the investment limitations in this section and the amount of						
15		the credit allowed with respect to a passthrough entity's investment in a qualified						
16		business must be determined at the passthrough entity level. The amount of the total						
17		credit determined at the passthrough entity level must be allowed to the partners,						
18		shareholders, or members in proportion to their respective interests in the passthrough						
19		entity.						
20	5.	An investment made in a qualified business from the assets of a retirement plan is						
21		deemed to be the retirement plan participant's investment for the purpose of this						
22		chapter if a separate account is maintained for the plan participant and the participant						
23		directly controls where the account assets are invested.						
24	6.	The investment must be made on or after the certification effective date and must be						
25		at risk in the business to be eligible for the tax credit under this section. An investment						
26		for which a credit is received under this section must remain in the business for at						
27		least three years. Investments placed in escrow do not qualify for the credit.						
28	7.	The entire amount of an investment for which a credit is claimed under this section						
29		must be expended by the qualified business for plant, equipment, research and						
30		development, marketing and sales activity, or working capital for the qualified						
31		business.						

- 1 8. A taxpayer who owns a controlling interest in the gualified business or who receives 2 more than fifty percent of the taxpayer's gross annual income from the qualified 3 business is not entitled to a credit under this section. A member of the immediate 4 family of a taxpayer disgualified by this subsection is not entitled to the credit under 5 this section. For purposes of this subsection, "immediate family" means the taxpayer's 6 spouse, parent, sibling, or child or the spouse of any such person. 7 9. The tax commissioner may disallow any credit otherwise allowed under this section if 8 any representation by a business in the application for certification as a qualified 9 business proves to be false or if the taxpayer or qualified business fails to satisfy any 10 conditions under this section or any conditions consistent with this section otherwise 11 determined by the tax commissioner. The commissioner has four years after the due 12 date of the return or after the return was filed, whichever period expires later, to audit 13 the credit and assess additional tax that may be found due to failure to comply with the 14 provisions of this chapter. The amount of any credit disallowed by the tax 15 commissioner that reduced the taxpayer's income tax liability for any or all applicable 16 tax years, plus penalty and interest as provided under section 57-38-45, must be paid 17 by the taxpayer. 18 10. An angel fund that invests in a qualified business must be considered to be the 19 taxpayer for purposes of the investment limitations in this section. The amount of the 20 credit allowed with respect to an angel fund's investment in a qualified business must 21 be determined at the angel fund level. The amount of the total credit determined at the 22 angel fund level must be allowed to the investors in the angel fund in proportion to the 23 investor's respective interests in the fund. An angel fund that is subject to the tax 24 imposed under chapter 57-38 is not eligible for the investment tax credit under this 25 chapter. 26 SECTION 6. AMENDMENT. Section 57-38.5-04 of the North Dakota Century Code is 27 amended and reenacted as follows: 28 57-38.5-04. Taxable year for angel investor seed capital investment tax credit. 29 The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax 30 liability for the taxable year in which the investment in the gualified business was received by
- 31 the qualified business.

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1	SECTION 7. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is
2	amended and reenacted as follows:
3	57-38.5-05. SeedAngel investor seed capital investment tax credit limits.
4	The aggregate amount of angel investor seed capital investment tax credit allowed for
5	investments under this chapter is limited to three <u>fifteenten</u> million five hundred thousand dollars
6	for each calendar year. If investments in qualified businesses reported to the commissioner
7	under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this
8	section, the credit must be allowed to taxpayers in the chronological order of their investments
9	in qualified businesses as determined from the forms filed under section 57-38.5-07.
10	SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is
11	amended and reenacted as follows:
12	57-38.5-06. Seed Angel investor seed capital investment tax credit - Procedure -
13	Rules.
14	To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on
15	the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner
16	and file with the return a copy of the form issued by the qualified business as to the taxpayer's
17	investment in the qualified business under section 57-38.5-07.
18	SECTION 9. REPEAL. Section 57-38-01.26 and chapter 57-38.5 of the North Dakota
19	Century Code are repealed.
20	SECTION 10. EFFECTIVE DATE. This Section 9 of this Act is effective for taxable years
21	beginning after December 31, 2019, and sections 2 through 8 of this Act is are effective for
22	taxable years beginning after December 31, <del>2017</del> 2016.
23	SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency
24	measure.



17.0158.01006 Title. Prepared by the Legislative Council staff for HB 1045 Representative B. Koppelman January 17, 2017

#16

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### PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

- Page 1, line 1, replace "sections" with "section"
- Page 1, line 1, replace the second "and" with ", subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, sections"
- Page 1, line 1, remove "subsections 2"

Page 1, line 2, remove "and 3 of section"

Page 1, line 2, replace "and section" with "57-38.5-04,"

Page 1, line 2, after "57-38.5-05" insert ", and 57-38.5-06"

Page 1, line 3, replace the second "and" with "to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 1, line 10, replace "January 1, 2018" with "April 1, 2017"

Page 6, after line 3, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- 7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. <u>SeedAngel investor seed</u> capital investment tax credit under section 57-38.5-03 (effective for the first three taxable years beginning after December 31, 2016).
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first three taxable years beginning after December 31, 2016).
  - j. Microbusiness tax credit under section 57-38-01.27.

- k. Marriage penalty credit under section 57-38-01.28.
- I. Homestead income tax credit under section 57-38-01.29.
- m. Commercial property income tax credit under section 57-38-01.30.
- n. Research and experimental expenditures under section 57-38-30.5.
- <del>o.</del><u>m.</u> Geothermal energy device installation credit under section 57-38-01.8.
- p.<u>n.</u> Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- q.o. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- r.p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s.g. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

**SECTION 3. AMENDMENT.** Subsection 5 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;
  - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
  - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
  - d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has <del>or</del><u>at least two</u> <u>employees and</u> is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
  - e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability."

Page 6, line 22, remove the overstrike over "five hundred thousand"

Page 6, line 22, remove "four million"

Page 7, replace lines 1 through 9 with:

"**SECTION 5. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

### 57-38.5-03. SeedAngel investor seed capital investment tax credit.

If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

- The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
- 2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to <u>fourfive</u> taxable years after the taxable year in which the investment was made.
- 4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
- 6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for

certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 6. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-04. Taxable year for <u>angel investor</u> seed capital investment tax credit.

The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business."

- Page 7, line 12, overstrike "Seed" and insert immediately thereafter "angel investor seed"
- Page 7, line 13, after "of" insert "angel investor"
- Page 7, line 14, replace "fifteen" with "ten"
- Page 7, after line 18, insert:

"SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is amended and reenacted as follows:

### 57-38.5-06. Seed<u>Angel investor seed</u> capital investment tax credit - Procedure - Rules.

To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.5-07.

**SECTION 9. REPEAL.** Section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code are repealed."

Page 7, line 19, replace "This" with "Section 9 of this Act is effective for taxable years beginning after December 31, 2019, and sections 2 through 8 of this"

Page No. 4





Page 7, line 19, replace "is" with "are"

Page 7, line 20, replace "2017" with "2016"

Page 7, after line 20, insert:

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"SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly





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	Applies to	Rate / Amount of Credit	Credit Limit Per Taxpayer			
Name of Credit	Tax Years		Per Tax Year	Lifetime	Other Limitations / Provisions	Unused Credit Options
Agricultural commodity processing facility investment credit	2005 and after (see Notes)	30% of eligible investment	\$50,000	\$250,000	<b>Program limit:</b> Limited to ten qualified businesses / facilities each calendar year	10-year carryforward
Angel fund investment credit	2007 and after	45% of cash investment	\$45,000	\$500,000	\$5 million of credits per angel fund	7-year carryforward
Automation manufacturing machinery and equipment credit	2013-2017	20% of purchase price			<ul> <li>Program limit (all taxpayers):</li> <li>\$2 million of credits per calendar year for 2013-15</li> <li>\$500,000 per calendar year for 2016-17</li> <li>Credit may be used to reduce the tax of an affiliate in a ND consolidated return</li> </ul>	5-year carryforward
Biodiesel fuel blending credit	2005 and after	\$0.05 per gallon blended				5-year carryforward
Biodiesel fuel production facility credit	2003 and after	<ul> <li>10% of eligible costs</li> <li>Allowed in each of first 5 tax years upon production start</li> </ul>		\$250,000		5-year carryforward
Biodiesel fuel sales equipment costs credit	2005 and after	<ul> <li>10% of eligible costs</li> <li>Allowed in each of first 5 tax years upon sales start</li> </ul>		\$50,000		5-year carryforward
Canola or soybean crushing facility credit	2009 and after	<ul> <li>10% of eligible costs</li> <li>Allowed in each of first 5 tax years upon production start</li> </ul>		\$250,000		5-year carryforward
Certified nonprofit development company investment credit	1989 and after	25% of eligible payments	\$2,000			7-year carryforward

2016 North Dakota Corporate Income Tax Credit Instructions

HB 1045

		Applies to	Rate / Amount of Credit	Credit Limit Per Taxpayer			
	Name of Credit	Tax Years		Per Tax Year	Lifetime	Other Limitations / Provisions	Unused Credit Options
	Credit for wages paid to mobilized employee	2009 and after	<ul> <li>25% of the lesser of:</li> <li>actual civilian wages paid during mobilization or</li> <li>deemed civilian wages over actual military wages paid</li> </ul>	\$1,000 per eligible employee			5-year carryforward
	Developmentally disabled or chronically mentally ill person employment credit	1987 and after	5% of first \$6,000 of wages paid during first 12 months of employment	50% of tax			None
	Endowment fund contribution credit	2007 and after	40% of contributions	\$10,000		ND taxable income must be increased to extent contribution reduced federal taxable income	3-year carryforward
5	Energy device credit—biomass, geothermal, solar, or wind device	Solar and wind: 1977- 2014 (see "Other Limitations / Provisions" for exception for wind device) Geothermal: 1981-2014 Biomass: 2007-2014	<ul> <li>3% of eligible costs</li> <li>Allowed in each of first 5 tax years, starting in year installed</li> </ul>			<ul> <li>Except for certain wind devices, device must be installed before 1/1/2015, to qualify. For a wind device only, if construction began before 1/1/2015, it is eligible for the credit if installed before 1/1/2017.</li> <li>Credit may be used to reduce the tax of an affiliate in a ND consolidated return</li> </ul>	All devices—If installed in tax years 2005-08 (before 10/1/2008): 5-year carryover. Biomass, geothermal, and solar devices—If installed after 9/30/2008 and before 1/1/2015: 10-year carryover. Wind device—If installed after 9/30/2008 and before 1/1/2012: 30-year carryover. Wind device—If installed after 12/31/2011 and before 1/1/2015 (or 1/1/2017, if construction began before 1/1/2015): 10-year carryover.

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		Applies to		edit L Taxp	imit Per ayer	Other Limitations / Provisions	
	Name of Credit	Tax Years	Rate / Amount of Credit	Per Tax Year	Lifetime		Unused Credit Options
	Housing incentive fund credit	2011-2016	100% of contribution			<ul> <li>ND taxable income must be increased to extent contribution reduced federal taxable income</li> <li>Program limit (all taxpayers): \$30 million for 2015-16 tax years</li> </ul>	10-year carryforward
	Internship employment credit	2007 and after	10% of wages		\$3,000	Limited to 5 interns per year	None
	Microbusiness investment credit	2007 and after	20% of eligible costs		\$10,000		5-year carryforward
	Nonprofit private primary school contribution credit (grades K – 8)	2015 and after	50% of contributions	Lesser of \$2,500 or 20% of tax			None
(v)	Nonprofit private high school contribution credit (grades 9 – 12)	1979 and after	50% of contributions	Lesser of \$2,500 or 20% of tax			None
	Nonprofit private college contribution credit	1975 and after	50% of contributions	Lesser of \$2,500 or 20% of tax			None
	Renaissance zone historic property preservation or renovation credit	1999 and after	50% of eligible costs			\$250,000 of credits per project	5-year carryforward
	Renaissance fund organization investment credit	1999 and after	50% of cash investment			<b>Program limit (all taxpayers):</b> \$10.5 million of credits	5-year carryforward
	Renaissance zone non- participating property owner credit	1999 and after	100% of approved costs				5-year carryforward

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2016 North Dakota Corporate Income Tax Credit Instructions

	Applies to		Credit Limit Per Taxpayer				
Name of Credit	Tax Years	Rate / Amount of Credit	Per Tax Year	Lifetime	Other Limitations / Provisions	Unused Credit Options	
Research & experimental expenditure credit	1987 and after	Expenditures in excess of base amount: • 25% of first \$100,000 of • Over \$100,000: • ND research began before 2007—18% in 2015 • ND research began in 2007-2010—20% in 2015 • ND research began after 2010—8%	\$2 million, if ND research started before 2007		<ul> <li>If certified by ND Commerce Dept. as qualified research and development company, up to \$100,000 of credit may be transferred to another taxpayer</li> <li>Credit may be used to reduce the tax of an affiliate in a ND consolidated return</li> </ul>	<ul> <li>3-year carryback</li> <li>15-year carryforward (after first being carried back)</li> <li>If eligible, up to \$100,000 may be transferred to another taxpayer.</li> </ul>	
Rural leadership ND program contributions credit	2013 and after	50% of contributions				None	
Seed capital business investment credit	2005 and after (see Notes)	45% of cash investment	\$112,500		<ul> <li>Program limit per business: Credit limited to first \$500,000 of investments received for all years</li> <li>Program limit (all investors): \$3.5 million of credits per year</li> </ul>	4-year carryforward	
Wage and salary credit ("new industry credit")	1969 and after	<ul> <li>1% of wages paid each year for first 3 tax years</li> <li>0.5% of wages paid each year for 4th and 5th tax years</li> </ul>				None	
Workforce recruitment credit	2007 and after	5% of wages paid in first 12 months of employment			Allowed in year after the year in which 12th month of employment falls	4-year carryforward	

Notes

• If more than one credit applies in a given year, apply the credits in the order that is most advantageous. Generally, this means applying the credits in the following order: (1) Credits with no carryback or carryforward feature. (2) Credits with a carryback feature. (3) Credits with a carryforward feature.

• If a credit is limited based on a percentage of the tax, apply the percentage to the tax before any credits are subtracted.

• The agricultural commodity processing facility investment credit was created in 2001, but it was not available to a C corporation until 2005.

• The seed capital business investment credit was created in 1993, but it was not available to a C corporation until 2005.



17.0158.01008 Title. Prepared by the Legislative Council staff for Representative Dockter January 23, 2017 1-31-17 HB 1045

### PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

- Page 1, line 1, replace "sections" with "section"
- Page 1, line 1, replace the second "and" with ", subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, sections"
- Page 1, line 1, remove "subsections 2"
- Page 1, line 2, remove "and 3 of section"
- Page 1, line 2, replace "and section" with "57-38.5-04,"
- Page 1, line 2, after "57-38.5-05" insert ", and 57-38.5-06"
- Page 1, line 3, replace the second "and" with "to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;"
- Page 1, line 4, after "date" insert "; and to provide an expiration date"
- Page 1, line 10, replace "January 1, 2018" with "April 1, 2017"
- Page 6, line 1, after "h." insert "a. <u>An angel fund certified before April 1, 2017, shall pay a</u> <u>one-time surcharge of forty-five percent on the angel fund's net</u> <u>uninvested capital. For purposes of this subdivision, "net uninvested</u> <u>capital" means fifty percent of the angel fund's uninvested capital on</u> <u>April 1, 2017. Uninvested capital is calculated by subtracting the</u> <u>cumulative dollars invested by the angel fund as reported under</u> <u>subdivision b from the cumulative dollars invested by its investors in</u> <u>the fund from January 1, 2013, through March 31, 2017, as reported</u> <u>under subdivision i of subsection 3.</u>
  - b. For each enterprise identified in the report required under subdivision j of subsection 3, the angel fund shall file a report with the tax commissioner showing the total dollars invested by the angel fund from January 1, 2013, through March 31, 2017. An angel fund may not amend the report filed under this section. The report must be filed on or before July 1, 2017.
  - <u>c.</u> The net uninvested capital surcharge must be paid on or before December 31, 2017.
  - d. <u>The provisions of this chapter relating to administration, collection,</u> <u>and enforcement apply to the net uninvested capital surcharge.</u>

9."

Page 6, after line 3, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- #1. 1-31-17 HB1045
- 7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. <u>SeedAngel investor seed</u> capital investment tax credit under section 57-38.5-03 (effective for the first three taxable years beginning after December 31, 2016).
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first three taxable years beginning after December 31, 2016).
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - I. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
  - o.m. Geothermal energy device installation credit under section 57-38-01.8.
  - p.<u>n.</u> Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
  - **q.**<u>o.</u> Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
  - r.p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
  - s.g. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

**SECTION 3. AMENDMENT.** Subsection 5 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;

- #1 1-31-17 HB 1045
- b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
- c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
- d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has <del>or</del><u>at least two</u> <u>employees and</u> is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
- e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability."

Page 6, line 22, remove the overstrike over "five hundred thousand"

Page 6, line 22, remove "four million"

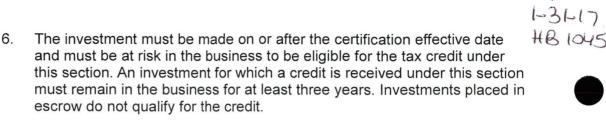
Page 7, replace lines 1 through 9 with:

"SECTION 5. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

### 57-38.5-03. SeedAngel investor seed capital investment tax credit.

If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

- 1. The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
- 2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four<u>five</u> taxable years after the taxable year in which the investment was made.
- 4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.



- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
- 10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 or which was certified under section 57-38-01.26 before April 1, 2017, is not eligible for the investment tax credit under this chapter.

**SECTION 6. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

## 57-38.5-04. Taxable year for <u>angel investor</u> seed capital investment tax credit.

The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business."

Page 7, line 12, overstrike "Seed" and insert immediately thereafter "Angel investor seed"

Page 7, line 13, after "of" insert "angel investor"

Page 7, line 14, replace "fifteen" with "ten"

Page 7, after line 18, insert:

"SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-06. Seed<u>Angel investor seed</u> capital investment tax credit - Procedure - Rules.

To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.5-07.

**SECTION 9. REPEAL.** Section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code are repealed."

- Page 7, line 19, replace "This" with "Section 9 of this Act is effective for taxable years beginning after December 31, 2019, and sections 2 through 8 of this"
- Page 7, line 19, replace "is" with "are"
- Page 7, line 20, replace "2017" with "2016"

Page 7, after line 20, insert:

"SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

### PROPOSED AMENDMENT TO HOUSE BILL 1045

Page 3, after line 31, insert:

### "<u>8. a.</u>

**New reporting** requirement under 8(b) below to report total \$ invested by the angel fund <u>into an enterprise</u> between 1/1/2013 and 3/31/2017.

- An angel fund certified before April 1, 2017, shall pay a one-time surcharge of 45% on the angel fund's net uninvested capital. For purposes of this subdivision, "net uninvested capital" is fifty percent of the angel fund's uninvested capital on April 1, 2017. Uninvested capital is calculated by subtracting the cumulative dollars invested by the angel fund as reported under subdivision b of this section from the cumulative dollars invested by its investors into the fund from January 1, 2013 through March 31, 2017, as reported under subdivision i of subsection 3.
- b. For each enterprise identified in the report required under subparagraph j of subsection 3, the angel fund shall file a report with the tax commissioner showing the total dollars invested by the angel fund from January 1, 2013 through March 31, 2017. An angel fund may not amend the report filed under this section. The report must be filed on or before July 1, 2017.
- <u>c.</u> <u>The net uninvested capital surcharge must be paid on or before December</u> 31, 2017.
- <u>d.</u> <u>The provisions of this chapter relating to administration, collection, and</u> <u>enforcement apply to the net uninvested capital surcharge.</u>"

requirement under N.D.C.C. § 57-38-01.26(3)(i) -Within 30 days of an <u>investment into the</u> <u>angel fund</u>, report name, address, SSN of investor, amount invested, and date of investment

**Old reporting** 

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Old reporting requirement under N.D.C.C. § 57-38-01.26(3)(j) -Within 30 days after end of calendar year, report name and principal place of business of each enterprise in which the angel fund has an investment.

#2 p. 1 1-31-17 HB 1045



### Alternative To Double-Dip Prohibition - Partial Clawback Feature

#### Concept:

Calculate the amount of dollars an Angel Fund raised but did not invest in qualified / targeted ventures, and then a clawback or tax a portion of the 45% credit on univested dollars.

#### Impact:

Uninvested dollars are now somewhat cleansed and Angel Fund dollars can then be invested into new Seed projects and earn 25% credits like any other taxpayer.

Example:		Note
Cumulative dollars invested by angel investors in the Angel Fund January 1, 2013 through March 31, 2017	\$5,000,000	<ul> <li>Both the Tax Department and Angel Fund will have this data.</li> <li>Tax Dept. data is based on whatever forms the Fund filed with us.</li> <li>Provides Angel Fund the benefit of doubt - assumes all funds received prior to 1/1/13 were invested into qualifying / intended enterprises.</li> </ul>
Subtract out: Cumulative dollars invested by Angel Fund into enterprises reported on the prior Annual Reports filed with Tax Department for years 1/1/13 through 3/31/17	(\$1,000,000)	<ul> <li>This number is currently not available nor required to be reported.</li> <li>An additional change to the law would be required to have this number reported for years 2013 through 3/31/17. (Only the company name was reportable, not the amount invested.)</li> </ul>
= Gross amount - uninvested capital as of 3/31/17	\$4,000,000	
Apply a surcharge / tax / clawback of credit on that, but probably only on a portion of that (chose 50%) Result = net uninvested capital	<u>x 50%</u> \$2,000,000	<ul> <li>This 50% reduction to uninvested capital gives consideration to the following concepts:</li> <li>1. normal excess capital that a fund would raise and not always invest (cushion / excess)</li> <li>2. future investments into potential good enterprises that don't have new Seed certication (ND and non-ND)</li> <li>3. small amounts of operating expenses of Angel Fund never to be available to be invested</li> <li>4. small amount of investment into Angel Fund for which tax credit was not earned by investor (limits, etc.)</li> <li>Angel Fund cannot generally know this amount. Tax Department can, but amount will vary</li> </ul>
Tax rate / clawback rate of 45%	x 45%	based on each fund.
Equals one-time tax owed by Angel Fund	\$900,000	

#### 17.0158.01009

Sixty-fifth Legislative Assembly of North Dakota

### HOUSE BILL NO. 1045

#1 p.1 2-1-17 HB 1045

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

1 A BILL for an Act to amend and reenact sections 57-38-01.26-and, subsection 7 of

2 section 57-38-30.3, subsection 5 of section 57-38.5-01, sections 57-38.5-02, subsections 2 and

3 3 of section 57-38.5-03, and section 57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North Dakota

4 Century Code, relating to the angel fund investment tax credit and the seed capital investment

5 tax credit; and to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century

6 Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;

7 to provide an effective date; to provide an expiration date; and to declare an emergency.

### 8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is
 10 amended and reenacted as follows:

### 11 57-38-01.26. Angel fund investment tax credit.

- 12 1. A taxpayer is entitled to a credit against state income tax liability under section 13 57-38-30 or 57-38-30.3 for an investment made prior to January 1, 2018 April 1, 2017, 14 in an angel fund that is a domestic organization created under the laws of this state. 15 The amount of the credit to which a taxpayer is entitled is forty-five percent of the 16 amount remitted by the taxpayer to an angel fund during the taxable year. The 17 aggregate annual credit for which a taxpayer may obtain a tax credit is not more than 18 forty-five thousand dollars. The aggregate lifetime credits under this section that may 19 be obtained by an individual, married couple, passthrough entity and its affiliates, or 20 other taxpayer is five hundred thousand dollars. The investment used to calculate the 21 credit under this section may not be used to calculate any other income tax deduction 22 or credit allowed by law.
- 23 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least
  24 three years. An investment made in a qualified business from the assets of a

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1 retirement plan is deemed to be the retirement plan participant's investment for the 2 purpose of this section if a separate account is maintained for the plan participant and 3 the participant directly controls where the account assets are invested. Investments 4 placed in escrow do not qualify for the credit. The credit must be claimed in the taxable 5 year in which the investment in the angel fund was received by the angel fund. The 6 credit allowed may not exceed the liability for tax under this chapter. If the amount of 7 credit determined under this section exceeds the liability for tax under this chapter, the 8 excess may be carried forward to each of the seven succeeding taxable years. A 9 taxpayer claiming a credit under this section may not claim any credit available to the 10 taxpayer as a result of an investment made by the angel fund in a gualified business 11 under chapter 57-38.5 or 57-38.6.

12 3. An angel fund must:

- a. Be a partnership, limited partnership, corporation, limited liability company, limited
  liability partnership, limited liability limited partnership, trust, or estate organized
  on a for-profit basis which is headquartered in this state.
- 16 b. Be organized for the purpose of investing in a portfolio of at least three primary 17 sector companies that are early-stage and mid-stage private, nonpublicly traded 18 enterprises with strong growth potential. For purposes of this section, an 19 early-stage entity means an entity with annual revenues of up to two million 20 dollars and a mid-stage entity means an entity with annual revenues over two 21 million dollars not to exceed ten million dollars. Investments in real estate or real 22 estate holding companies are not eligible investments by certified angel funds. 23 Any angel fund certified before January 1, 2013, which has invested in real estate 24 or a real estate holding company is not eligible for recertification.
- c. Consist of at least six accredited investors as defined by securities and exchange
   commission regulation D, rule 501.
- 27 d. Not have more than twenty-five percent of its capitalized investment assets28 owned by an individual investor.
- e. Have at least five hundred thousand dollars in commitments from accredited
  investors and that capital must be subject to call to be invested over an
  unspecified number of years to build a portfolio of investments in enterprises.

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1		f.	Be member-managed or a manager-managed limited liability company and the
2			investor members or a designated board that includes investor members must
3			make decisions as a group on which enterprises are worthy of investments.
4		g.	Be certified as an angel fund that meets the requirements of this section by the
5			department of commerce.
6		h.	Be in compliance with the securities laws of this state.
7		i.	Within thirty days after the date on which an investment in an angel fund is made,
8			the angel fund shall file with the tax commissioner and provide to the investor
9			completed forms prescribed by the tax commissioner which show as to each
10			investment in the angel fund the following:
11			(1) The name, address, and social security number or federal employer
12			identification number of the taxpayer or passthrough entity that made the
13			investment;
14			(2) The dollar amount remitted by the taxpayer or passthrough entity; and
15			(3) The date the payment was received by the angel fund for the investment.
16		j.	Within thirty days after the end of a calendar year, the angel fund shall file with
17			the tax commissioner a report showing the name and principal place of business
18			of each enterprise in which the angel fund has an investment and the amount of
19			the investment.
20	4.	The	tax commissioner may disclose to the legislative management the reported
21		info	rmation described under paragraphs 2 and 3 of subdivision i of subsection 3 and
22		the	reported information described under subdivision j of subsection 3.
23	5.	Angel fund investors may be actively involved in the enterprises in which the angel	
24		func	d invests but the angel fund may not invest in any enterprise if any one angel fund
25		inve	estor owns directly or indirectly more than forty-nine percent of the ownership
26		inte	rests in the enterprise. The angel fund may not invest in an enterprise if any one
27		part	mer, shareholder, or member of a passthrough entity that directly or indirectly owns
28		mor	e than forty-nine percent of the ownership interests in the enterprise.
29	6.	Inve	estors in one angel fund may not receive more than five million dollars in aggregate
30		crea	dits under this section during the life of the angel fund but this provision may not be
31		inte	rpreted to limit additional investments in that angel fund.

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1	7.	<del>a.</del>	A passthrough entity entitled to the credit under this section must be considered
2			to be the taxpayer for purposes of this section, and the amount of the credit
3			allowed must be determined at the passthrough entity level.
4		<del>b.</del>	For the first two taxable years beginning after December 31, 2010, if a
5			passthrough entity does not elect to sell, transfer, or assign the credit as provided
6			under this subsection and subsection 8, the amount of the total credit determined
7			at the entity level must be passed through to the partners, shareholders, or
8			members in proportion to their respective interests in the passthrough entity.
9		<del>c.</del>	For the first two taxable years beginning after December 31, 2010, if a
10			passthrough entity elects to sell, transfer, or assign a credit as provided under
11			this subsection and subsection 8, the passthrough entity shall make an
12			irrevocable election to sell, transfer, or assign the credit on the return filed by the
13			entity for the taxable year in which the credit was earned. A passthrough entity
14			that makes a valid election to sell, transfer, or assign a credit shall sell one
15			hundred percent of the credit earned, may sell the credit to only one purchaser,
16			and shall comply with the requirements of this subsection and subsection 8.
17	8.	For	the first two taxable years beginning after December 31, 2010, a taxpayer may
18		elec	t to sell, transfer, or assign all of the earned or excess tax credit earned under this
19		sect	tion for investment in an angel fund established after July 31, 2011, subject to the
20		follo	wing:
21		<del>a.</del>	A taxpayer's total credit sale, transfer, or assignment under this section may not
22			exceed one hundred thousand dollars over any combination of taxable years.
23			The cumulative credits transferred by all investors in an angel fund may not
24			exceed fifty percent of the aggregate credits under this section during the life of
25			the angel fund under subsection 6.
26		<del>b.</del>	If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
27			tax credit transferor and the tax credit purchaser jointly shall file with the tax
28			commissioner a copy of the purchase agreement and a statement containing the
29			names, addresses, and taxpayer identification numbers of the parties to the
30			transfer, the amount of the credit being transferred, the gross proceeds received
31			by the transferor, and the taxable year or years for which the credit may be

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claimed. The taxpayer and the purchaser also shall file a document allowing the
tax commissioner to disclose tax information to either party for the purpose of
verifying the correctness of the transferred tax credit. The purchase agreement,
supporting statement, and waiver must be filed within thirty days after the date
the purchase agreement is fully executed.

The purchaser of the tax credit shall claim the credit beginning with the taxable C. year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

- <del>d.</del> A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
- 16 If the amount of the credit available under this section is changed as a result of e. 17 an amended return filed by the transferor, or as the result of an audit conducted 18 by the internal revenue service or the tax commissioner, the transferor shall 19 report to the purchaser the adjusted credit amount within thirty days of the 20 amended return or within thirty days of the final determination made by the 21 internal revenue service or the tax commissioner. The tax credit purchaser shall 22 file amended returns reporting the additional tax due or claiming a refund as 23 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit 24 these returns and assess or issue refunds, even though other time periods 25 prescribed in these sections may have expired for the purchaser.
- 26 f. Gross proceeds received by the tax credit transferor must be assigned to North 27 Dakota. The amount assigned under this subsection cannot be reduced by the 28 taxpayer's income apportioned to North Dakota or any North Dakota net 29 operating loss of the taxpayer.
- 30 The tax commissioner has four years after the date of the credit assignment to <del>q.</del> 31 audit the returns of the credit transferor and the purchaser to verify the

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1			correctness of the amount of the transferred credit and if necessary assess the
2			credit purchaser if additional tax is found due. This subdivision does not limit or
3			restrict any other time period prescribed in this chapter for the assessment of tax.
4	ł	<del>า.<u>а.</u></del>	An angel fund certified before April 1, 2017, must pay a one-time surcharge of
5			forty-five percent on the angel fund's net uninvested capital. For purposes of this
6			subdivision, "net uninvested capital" means fifty percent of the angel fund's
7			uninvested capital on April 1, 2017. Uninvested capital is calculated by
8			subtracting the cumulative dollars invested by the angel fund as reported under
9			subdivision b from the cumulative dollars invested by its investors in the fund
10			from January 1, 2013, through March 31, 2017, as reported under subdivision i of
11			subsection 3.
12		b.	For each enterprise identified in the report required under subdivision j of
13			subsection 3, the angel fund shall file a report with the tax commissioner showing
14			the total dollars invested by the angel fund from January 1, 2013, through
15			March 31, 2017. An angel fund may not amend the report filed under this section.
16			The report must be filed on or before July 1, 2017.
17		C.	The net uninvested capital surcharge must be paid on or before December 31,
18			2017.
19		d.	The provisions of this chapter relating to administration, collection, and
20			enforcement apply to the net uninvested capital surcharge.
21	9.	_The	e tax commissioner may adopt rules to establish necessary administrative
22		prov	visions for the credit under this section, including provisions to permit verification of
23		the	validity and timeliness of the transferred tax credit.
24	SEC		N 2. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota
25	Century	Cod	e is amended and reenacted as follows:
26	7.	A ta	expayer filing a return under this section is entitled to the following tax credits:
27		a.	Family care tax credit under section 57-38-01.20.
28		b.	Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
29		c.	Agricultural business investment tax credit under section 57-38.6-03.
30		d.	SeedAngel investor seed capital investment tax credit under section 57-38.5-03
31			(effective for the first three taxable years beginning after December 31, 2016).

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1	е.	Planned gift tax credit under section 57-38-01.21.		
2	f.	Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and		
3		57-38-01.23.		
4	g.	Internship employment tax credit under section 57-38-01.24.		
5	h.	Workforce recruitment credit under section 57-38-01.25.		
6	i,	Angel fund investment tax credit under section 57-38-01.26 (effective for the first		
7		three taxable years beginning after December 31, 2016).		
8	j.	Microbusiness tax credit under section 57-38-01.27.		
9	k.	Marriage penalty credit under section 57-38-01.28.		
10	ŀ	Homestead income tax credit under section 57-38-01.29.		
11	<del></del>	Commercial property income tax credit under section 57-38-01.30.		
12	<del>.</del> .	-Research and experimental expenditures under section 57-38-30.5.		
13	<del>o.<u>m.</u></del>	Geothermal energy device installation credit under section 57-38-01.8.		
14	<del>p.<u>n.</u></del>	Long-term care partnership plan premiums income tax credit under section		
15		57-38-29.3.		
16	<del>q.<u>o.</u></del>	Employer tax credit for salary and related retirement plan contributions of		
17		mobilized employees under section 57-38-01.31.		
18	<del>r.</del> p.	Automating manufacturing processes tax credit under section 57-38-01.33		
19		(effective for the first five taxable years beginning after December 31, 2012).		
20	<del>s.</del> q.	Income tax credit for passthrough entity contributions to private education		
21		institutions under section 57-38-01.7.		
22	SECTION 3. AMENDMENT. Subsection 5 of section 57-38.5-01 of the North Dakota			
23	Century Code	e is amended and reenacted as follows:		
24	5. "Qu	alified business" means a business other than a real estate investment trust which		
25	is a	primary sector business that:		
26	a.	Is incorporated or its satellite operation is incorporated as a for-profit corporation,		
27		passthrough entity, or joint venture;		
28	b.	Is in compliance with the requirements for filings with the securities commissioner		
29		under the securities laws of this state;		
30	с.	Has North Dakota residents as a majority of its employees in the North Dakota		
31		principal office or the North Dakota satellite operation;		

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1		d.	Has its principal office in this state and has the majority of its	business activity	
2			performed in this state, except sales activity, or has a signific	ant operation in	
3			North Dakota that has orat least two employees and is proje	cted to have more	
4			than ten employees or one hundred fifty thousand dollars of	sales annually; and	
5		e.	Relies on innovation, research, or the development of new p	roducts and	
6			processes in its plans for growth and profitability.		
7	SEC	TION	4. AMENDMENT. Section 57-38.5-02 of the North Dakota C	entury Code is	
8	amende	d and	reenacted as follows:		
9	57-3	88.5-0	2. Certification - Investment reporting by qualified busine	esses - Maximum	
10	investm	ents	in qualified businesses.		
11	1.	The	director shall certify whether a business that has requested to	become a qualified	
12		busi	ness meets the requirements of subsection 5 of section 57-38	3.5-01. The director	
13		sha	I establish the necessary forms and procedures for certifying	qualified businesses.	
14	2.	Αqι	alified business may apply to the director for a recertification.	Only one	
15		rece	ertification is available to a qualified business. The application	for recertification	
16		mus	t be filed with the director within ninety days before the origina	al certification expiry	
17		date	e. The recertification issued by the director must comply with t	he provisions of	
18		sub	section 3.		
19	3.	A ce	ertification letter must be issued by the director to the qualified	business. The	
20		cert	ification letter must include:		
21		a.	The certification effective date.		
22		b.	The certification expiry date. The expiry date may not be mo	re than four years	
23			from the certification effective date.		
24	4.	The	maximum aggregate amount of qualified investments a quality	fied business may	
25		rece	vive for all tax years is limited to five hundred thousand <del>four mi</del>	<del>llion</del> dollars under	
26		this	chapter. The tax credit allowed on qualified investments in a c	qualified business	
27		mus	t be allowed to taxpayers in the chronological order of the tax	payer's qualified	
28		inve	stments as determined from the forms filed under section 57-	38.5-07. The	
29		limit	ation on investments under this subsection may not be interp	reted to limit	
30		add	tional investment by a taxpayer for which that taxpayer is not	applying for a credit.	

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1	<u>5.</u>	By February first in each of the five years following a year in which a qualified	
2		business receives a qualified investment, the qualified business shall file with the tax	
3		commissioner completed forms prescribed by the tax commissioner which show the	
4		qualified business meets the requirements under section 57-38.5-01.	
5		CTION 3. AMENDMENT. Subsections 2 and 3 of section 57-38.5-03 of the North Dakota	
6	Century	Code are amended and reenacted as follows:	
7	<u> </u>	The maximum annual credit a taxpayer may claim under this section is not more than	
8		onetwo hundred twelvetwenty-five thousand five hundred dollars. This subsection may	
9		not be interpreted to limit additional investment by a taxpayer for which that taxpayer is	
10		not applying for a credit.	
11	<del>3.</del>	Any amount of credit under subsection 1 not allowed because of the limitation in	
12		subsection 2 may be carried forward for up to fourseven taxable years after the	
13		taxable year in which the investment was made.	
14	SEC	CTION 5. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is	
15	amende	ed and reenacted as follows:	
16	57-38.5-03. Seed Angel investor seed capital investment tax credit.		
17	If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to		
18	a credit	against state income tax liability under section 57-38-30 or 57-38-30.3.	
19	1.	The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent	
20		of the amount invested by the taxpayer in qualified businesses during the taxable year.	
21	2.	The maximum annual credit a taxpayer may claim under this section is not more than	
22		one hundred twelve thousand five hundred dollars. This subsection may not be	
23		interpreted to limit additional investment by a taxpayer for which that taxpayer is not	
24		applying for a credit.	
25	3.	Any amount of credit under subsection 1 not allowed because of the limitation in	
26		subsection 2 may be carried forward for up to fourfive taxable years after the taxable	
27		year in which the investment was made.	
28	4.	A passthrough entity that invests in a qualified business must be considered to be the	
29		taxpayer for purposes of the investment limitations in this section and the amount of	
30		the credit allowed with respect to a passthrough entity's investment in a qualified	
31		business must be determined at the passthrough entity level. The amount of the total	

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1		credit determined at the passthrough entity level must be allowed to the partners,
2		shareholders, or members in proportion to their respective interests in the passthrough
3		entity.
4	5.	An investment made in a qualified business from the assets of a retirement plan is
5		deemed to be the retirement plan participant's investment for the purpose of this
6		chapter if a separate account is maintained for the plan participant and the participant
7		directly controls where the account assets are invested.
8	6.	The investment must be made on or after the certification effective date and must be
9		at risk in the business to be eligible for the tax credit under this section. An investment
10		for which a credit is received under this section must remain in the business for at
11		least three years. Investments placed in escrow do not qualify for the credit.
12	7.	The entire amount of an investment for which a credit is claimed under this section
13		must be expended by the qualified business for plant, equipment, research and
14		development, marketing and sales activity, or working capital for the qualified
15		business.
16	8.	A taxpayer who owns a controlling interest in the qualified business or who receives
17		more than fifty percent of the taxpayer's gross annual income from the qualified
18		business is not entitled to a credit under this section. A member of the immediate
19		family of a taxpayer disqualified by this subsection is not entitled to the credit under
20		this section. For purposes of this subsection, "immediate family" means the taxpayer's
21		spouse, parent, sibling, or child or the spouse of any such person.
22	9.	The tax commissioner may disallow any credit otherwise allowed under this section if
23		any representation by a business in the application for certification as a qualified
24		business proves to be false or if the taxpayer or qualified business fails to satisfy any
25		conditions under this section or any conditions consistent with this section otherwise
26		determined by the tax commissioner. The commissioner has four years after the due
27		date of the return or after the return was filed, whichever period expires later, to audit
28		the credit and assess additional tax that may be found due to failure to comply with the
29		provisions of this chapter. The amount of any credit disallowed by the tax
30		commissioner that reduced the taxpayer's income tax liability for any or all applicable

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1		tax years, plus penalty and interest as provided under section 57-38-45, must be paid
2		by the taxpayer.
3	10.	An angel fund that invests in a qualified business must be considered to be the
4		taxpayer for purposes of the investment limitations in this section. The amount of the
5		credit allowed with respect to an angel fund's investment in a qualified business must
6		be determined at the angel fund level. The amount of the total credit determined at the
7		angel fund level must be allowed to the investors in the angel fund in proportion to the
8		investor's respective interests in the fund. An angel fund that is subject to the tax
9		imposed under chapter 57-38 or which was certified under section 57-38-01.26 before
10		April 1, 2017, unless the angel fund pays the surcharge under subsection 8 of section
11		57-38-01.26, is not eligible for the investment tax credit under this chapter.
12	SEC	CTION 6. AMENDMENT. Section 57-38.5-04 of the North Dakota Century Code is
13	amende	d and reenacted as follows:
14	57-3	38.5-04. Taxable year for angel investor seed capital investment tax credit.
15	The	tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax
16	liability f	or the taxable year in which the investment in the qualified business was received by
17	the qual	ified business.
18	SEC	CTION 7. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is
19	amende	d and reenacted as follows:
20	57-3	38.5-05. <del>Seed</del> Angel investor seed capital investment tax credit limits.
21	The	aggregate amount of angel investor seed capital investment tax credit allowed for
22	investm	ents under this chapter is limited to three <u>fifteenten</u> million five hundred thousand dollars
23	for each	calendar year. If investments in qualified businesses reported to the commissioner
24	under se	ection 57-38.5-07 exceed the limits on tax credits for investments imposed by this
25	section,	the credit must be allowed to taxpayers in the chronological order of their investments
26	in qualif	ied businesses as determined from the forms filed under section 57-38.5-07.
27	SEC	CTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is
28	amende	d and reenacted as follows:



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1	57-38.5-06. SeedAngel investor seed capital investment tax credit - Procedure -
2	Rules.
3	To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on
4	the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner
5	and file with the return a copy of the form issued by the qualified business as to the taxpayer's
6	investment in the qualified business under section 57-38.5-07.
7	SECTION 9. REPEAL. Section 57-38-01.26 and chapter 57-38.5 of the North Dakota
8	Century Code are repealed.
9	SECTION 10. EFFECTIVE DATE. This Section 9 of this Act is effective for taxable years
10	beginning after December 31, 2019, and sections 2 through 8 of this Act isare effective for
11	taxable years beginning after December 31, <del>2017</del> 2016.
12	SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency
13	measure.

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#### PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

Page 1, line 1, replace "sections" with "section"

- Page 1, line 1, replace the second "and" with ", subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, sections"
- Page 1, line 1, remove "subsections 2"
- Page 1, line 2, remove "and 3 of section"

Page 1, line 2, replace "and section" with "57-38.5-04,"

Page 1, line 2, after "57-38.5-05" insert ", and 57-38.5-06"

Page 1, line 3, replace the second "and" with "to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;"

Page 1, line 4, after "date" insert "; to provide an expiration date; and to declare an emergency"

Page 1, line 10, replace "January 1, 2018" with "April 1, 2017"

Page 6, line 1, after "h-" insert "a. An angel fund certified before April 1, 2017, must pay a one-time surcharge of forty-five percent on the angel fund's net uninvested capital. For purposes of this subdivision, "net uninvested capital" means fifty percent of the angel fund's uninvested capital on April 1, 2017. Uninvested capital is calculated by subtracting the cumulative dollars invested by the angel fund as reported under subdivision b from the cumulative dollars invested by its investors in the fund from January 1, 2013, through March 31, 2017, as reported under subdivision i of subsection 3.

- b. For each enterprise identified in the report required under subdivision j of subsection 3, the angel fund shall file a report with the tax commissioner showing the total dollars invested by the angel fund from January 1, 2013, through March 31, 2017. An angel fund may not amend the report filed under this section. The report must be filed on or before July 1, 2017.
- <u>c.</u> The net uninvested capital surcharge must be paid on or before December 31, 2017.
- <u>d.</u> <u>The provisions of this chapter relating to administration, collection,</u> and enforcement apply to the net uninvested capital surcharge.

#### <u>9.</u>"

Page 6, after line 3, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:

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- a. Family care tax credit under section 57-38-01.20.
- b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.

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- c. Agricultural business investment tax credit under section 57-38.6-03.
- d. <u>SeedAngel investor seed</u> capital investment tax credit under section 57-38.5-03 (effective for the first three taxable years beginning after December 31, 2016).
- e. Planned gift tax credit under section 57-38-01.21.
- f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
- g. Internship employment tax credit under section 57-38-01.24.
- h. Workforce recruitment credit under section 57-38-01.25.
- i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first three taxable years beginning after December 31, 2016).
- j. Microbusiness tax credit under section 57-38-01.27.
- k. Marriage penalty credit under section 57-38-01.28.
- I. Homestead income tax credit under section 57-38-01.29.
- m. Commercial property income tax credit under section 57-38-01.30.
- n. Research and experimental expenditures under section 57-38-30.5.
- <del>o.</del><u>m.</u> Geothermal energy device installation credit under section 57-38-01.8.
- p.<u>n.</u> Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- **q**.<u>o.</u> Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- r.p. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s.<u>q.</u> Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

**SECTION 3. AMENDMENT.** Subsection 5 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;
  - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;

c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;

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- d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has <del>or</del><u>at least two</u> <u>employees and</u> is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
- e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability."
- Page 6, line 22, remove the overstrike over "five hundred thousand"
- Page 6, line 22, remove "four million"
- Page 7, replace lines 1 through 9 with:

"SECTION 5. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

#### 57-38.5-03. Seed<u>Angel investor seed</u> capital investment tax credit.

If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

- 1. The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
- 2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four<u>five</u> taxable years after the taxable year in which the investment was made.
- 4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.

6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.

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- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
- 10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 or which was certified under section 57-38-01.26 before April 1, 2017, unless the angel fund pays the surcharge under subsection 8 of section 57-38-01.26, is not eligible for the investment tax credit under this chapter.

**SECTION 6. AMENDMENT.** Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

# 57-38.5-04. Taxable year for <u>angel investor</u> seed capital investment tax credit.

The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business."

Page 7, line 12, overstrike "Seed" and insert immediately thereafter "Angel investor seed"

Page 7, line 13, after "of" insert "angel investor"

Page 7, line 14, replace "fifteen" with "ten"

Page 7, after line 18, insert:

"SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is amended and reenacted as follows:

## 57-38.5-06. Seed<u>Angel investor seed</u> capital investment tax credit - Procedure - Rules.

To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.5-07.

**SECTION 9. REPEAL.** Section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code are repealed."

- Page 7, line 19, replace "This" with "Section 9 of this Act is effective for taxable years beginning after December 31, 2019, and sections 2 through 8 of this"
- Page 7, line 19, replace "is" with "are"

Page 7, line 20, replace "2017" with "2016"

Page 7, after line 20, insert:

"SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

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STATE OF NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER Ryan Rauschenberger, Commissioner

## #3 p.1 2-1-17 HB 1045

# Memorandum

То:	Representative Craig Headland Chairman, House Finance and Taxation Committee
	Members of the House Finance and Taxation Committee
From:	Joseph J. Becker
Date:	February 1, 2017
Subject:	House Bill 1045 (Angel Fund / Seed Capital Tax Credit Programs)

I was asked to provide information to you and the Committee on the fiscal impact of proposed amendments to House Bill 1045. My comments that follow are based on the amended version of the bill numbered 17.0158.01008. As amended, the bill will discontinue the angel fund credit program, expand and rename the seed capital credit program, and repeal both programs after 2019.

#### Summary of bill's changes

Section 1 of the bill pertains to the angel fund income tax credit. The bill makes the following changes to the angel fund credit provisions:

- Places a sunset date of January 1, 2018, on the credit, which means the credit will no longer be allowed for investments made on or after this date.
- Requires an angel fund to include as part of its annual report to the Tax Department the amount it invested in a business enterprise.
- Removes obsolete language relating to the transferability of the credit.
- Requires an angel fund to file a report by 7/1/2017 in which it shows the amount it has invested in business enterprises.
- Requires an angel fund to pay back to the state a portion of the credits allowed to its angel investors in the form of a surcharge on a certain portion of the monies it has not invested in business enterprises.

Sections 3 through 8 of the bill pertain to the seed capital income tax credit. The bill makes the following changes to the seed capital credit provisions:

- Changes the name of the credit to "angel investor seed capital credit."
- An out-of-state business with significant operation in North Dakota must employ at least two employees in North Dakota.
- Reduces the credit rate from 45% to 25% of the qualifying investment.
- Increases the unused credit carryover period from 4 to 5 years.



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600 E. BOULEVARD AVE., DEPT 127

Rep. Craig Headland Page 2 February 1, 2017

- Increases the maximum number of credits allowed under the program from \$3.5 million to \$10 . million.
- Provides that the seed capital credit is not allowed to an angel fund certified before 4/1/2017.
- Requires a qualified business to file a year-end report with the Tax Department for each of the five years following the year in which it receives an investment qualifying for the credit, in which it verifies it still satisfies the certification conditions.

Section 9 of the bill repeals both the angel fund and seed capital tax credit programs, effective for tax years after 2019. Section 10 of the bill makes the revised seed capital tax credit provisions effective for the 2017 through 2019 tax years. Section 11 of the bill contains an emergency clause with respect to the 4/1/2017 sunset date on the angel fund tax credit.

#### **Fiscal impact**

Angel fund changes—The discontinuance of the angel fund tax credit program combined with the surcharge on angel funds' uninvested monies is expected to have a positive fiscal impact on state general fund revenues. The amount of that impact cannot be determined, but based on data for the 2011 through 2016 years, it could range from \$2 million to \$7 million for the second year of the 2017-19 biennium (not including the surcharge).

Seed capital changes—The key to the fiscal impact of the changes to the seed capital tax credit program will depend on whether or not the changes result in more use of that program. Certain of the limitations on the seed capital tax credit program will not change if the bill is passed in its amended form: a qualified business must be a primary sector business, must be located in or have a significant operation in North Dakota, and is subject to a lifetime limit of \$500,000 on the amount of investments it receives for which the credit is allowed. The bill will decrease the rate of the credit from 45% to 25%, which will reduce the allowable credit.

Assuming an increase in the use of the seed capital tax credit program because of the bill's changes, the bill will have negative fiscal impact on state general fund revenues for the second year of the 2017-19 biennium; however, the amount of the decrease, if any, is uncertain. The historical data suggests that there would need to be a significant increase in the level of activity under the seed capital program to offset the expected positive fiscal impact of discontinuing the angel fund tax credit program.



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Prepared by the Legislative Council staff for HB 1045 Representative B. Koppelman February 8, 2017

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#### PROPOSED AMENDMENTS TO HOUSE BILL NO. 1045

- Page 1, line 1, replace "sections" with "section"
- Page 1, line 1, replace the second "and" with ", subsection 7 of section 57-38-30.3, subsection 5 of section 57-38.5-01, sections"
- Page 1, line 1, remove "subsections 2"
- Page 1, line 2, remove "and 3 of section"
- Page 1, line 2, replace "and section" with "57-38.5-04,"
- Page 1, line 2, after "57-38.5-05" insert ", and 57-38.5-06"
- Page 1, line 3, replace the second "and" with "to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;"

Page 1, line 4, after "date" insert "; to provide an expiration date; and to declare an emergency"

Page 1, line 10, replace "January 1, 2018" with "April 1, 2017"

Page 6, after line 3, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- 7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. <u>SeedAngel investor seed</u> capital investment tax credit under section 57-38.5-03 (effective for the first three taxable years beginning after December 31, 2016).
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first three taxable years beginning after December 31, 2016).
  - j. Microbusiness tax credit under section 57-38-01.27.

- k. Marriage penalty credit under section 57-38-01.28.
- I. Homestead income tax credit under section 57-38-01.29.
- m. Commercial property income tax credit under section 57-38-01.30.

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- n. Research and experimental expenditures under section 57-38-30.5.
- <del>o.</del><u>m.</u> Geothermal energy device installation credit under section 57-38-01.8.
- p.<u>n.</u> Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- q.o. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- r.<u>p.</u> Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- s.<u>q.</u> Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.

**SECTION 3. AMENDMENT.** Subsection 5 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;
  - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
  - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
  - d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
  - e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability."

Page 6, line 22, remove the overstrike over "five hundred thousand"

- Page 6, line 22, remove "four million"
- Page 7, replace lines 1 through 9 with:

"**SECTION 5. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

### 57-38.5-03. SeedAngel investor seed capital investment tax credit.

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If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3.

- 1. The amount of the credit to which a taxpayer is entitled is forty-fivetwenty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
- 2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
- 3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four<u>five</u> taxable years after the taxable year in which the investment was made.
- 4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
- 6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for

HR certification as a qualified business proves to be false or if the taxpaver or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpaver.

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10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 or which was certified under section 57-38-01.26 before April 1, 2017, is not eligible for the investment tax credit under this chapter.

SECTION 6. AMENDMENT. Section 57-38.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-04. Taxable year for angel investor seed capital investment tax credit.

The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business."

- Page 7, line 12, overstrike "Seed" and insert immediately thereafter "Angel investor seed"
- Page 7, line 13, after "of" insert "angel investor"
- Page 7, line 14, replace "fifteen" with "ten"

Page 7, after line 18, insert:

"SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-06. SeedAngel investor seed capital investment tax credit -**Procedure - Rules.** 

To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpaver's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the gualified business under section 57-38.5-07.

SECTION 9. REPEAL. Section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code are repealed."

Page 7, line 19, replace "This" with "Section 9 of this Act is effective for taxable years beginning after December 31, 2019, and sections 2 through 8 of this"

Page 7, line 19, replace "is" with "are"

Page 7, line 20, replace "2017" with "2016"

Page 7, after line 20, insert:

"SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

#1

#### 17.0158.01010

Sixty-fifth Legislative Assembly of North Dakota

#### HOUSE BILL NO. 1045

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

1 A BILL for an Act to amend and reenact sections 57-38-01.26-and, subsection 7 of

- 2 section 57-38-30.3, subsection 5 of section 57-38.5-01, sections 57-38.5-02, subsections 2 and
- 3 3 of section 57-38.5-03, and section 57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North Dakota
- 4 Century Code, relating to the angel fund investment tax credit and the seed capital investment
- 5 tax credit; and to repeal section 57-38-01.26 and chapter 57-38.5 of the North Dakota Century
- 6 Code, relating to the angel fund investment tax credit and the seed capital investment tax credit;
- 7 to provide an effective date; to provide an expiration date; and to declare an emergency.

#### 8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is

10 amended and reenacted as follows:

### 11 57-38-01.26. Angel fund investment tax credit.

- 12 1. A taxpayer is entitled to a credit against state income tax liability under section 13 57-38-30 or 57-38-30.3 for an investment made prior to January 1, 2018 April 1, 2017. 14 in an angel fund that is a domestic organization created under the laws of this state. 15 The amount of the credit to which a taxpayer is entitled is forty-five percent of the 16 amount remitted by the taxpayer to an angel fund during the taxable year. The 17 aggregate annual credit for which a taxpayer may obtain a tax credit is not more than 18 forty-five thousand dollars. The aggregate lifetime credits under this section that may 19 be obtained by an individual, married couple, passthrough entity and its affiliates, or 20 other taxpayer is five hundred thousand dollars. The investment used to calculate the 21 credit under this section may not be used to calculate any other income tax deduction 22 or credit allowed by law.
- 23 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least
  24 three years. An investment made in a qualified business from the assets of a

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1 retirement plan is deemed to be the retirement plan participant's investment for the 2 purpose of this section if a separate account is maintained for the plan participant and 3 the participant directly controls where the account assets are invested. Investments 4 placed in escrow do not qualify for the credit. The credit must be claimed in the taxable 5 year in which the investment in the angel fund was received by the angel fund. The 6 credit allowed may not exceed the liability for tax under this chapter. If the amount of 7 credit determined under this section exceeds the liability for tax under this chapter, the 8 excess may be carried forward to each of the seven succeeding taxable years. A 9 taxpayer claiming a credit under this section may not claim any credit available to the 10 taxpaver as a result of an investment made by the angel fund in a gualified business 11 under chapter 57-38.5 or 57-38.6.

12 3. An angel fund must:

- a. Be a partnership, limited partnership, corporation, limited liability company,
  limited liability partnership, limited liability limited partnership, trust, or estate
  organized on a for-profit basis which is headquartered in this state.
- 16 Be organized for the purpose of investing in a portfolio of at least three primary b. 17 sector companies that are early-stage and mid-stage private, nonpublicly traded 18 enterprises with strong growth potential. For purposes of this section, an 19 early-stage entity means an entity with annual revenues of up to two million 20 dollars and a mid-stage entity means an entity with annual revenues over two 21 million dollars not to exceed ten million dollars. Investments in real estate or real 22 estate holding companies are not eligible investments by certified angel funds. 23 Any angel fund certified before January 1, 2013, which has invested in real estate 24 or a real estate holding company is not eligible for recertification.
- c. Consist of at least six accredited investors as defined by securities and exchange
   commission regulation D, rule 501.
- 27 d. Not have more than twenty-five percent of its capitalized investment assets28 owned by an individual investor.
- e. Have at least five hundred thousand dollars in commitments from accredited
  investors and that capital must be subject to call to be invested over an
  unspecified number of years to build a portfolio of investments in enterprises.

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# Sixty-fifth Legislative Assembly

1		f.	Be member-managed or a manager-managed limited liability company and the
2			investor members or a designated board that includes investor members must
3			make decisions as a group on which enterprises are worthy of investments.
4		g.	Be certified as an angel fund that meets the requirements of this section by the
5			department of commerce.
6		h.	Be in compliance with the securities laws of this state.
7		i.	Within thirty days after the date on which an investment in an angel fund is made,
8			the angel fund shall file with the tax commissioner and provide to the investor
9			completed forms prescribed by the tax commissioner which show as to each
10			investment in the angel fund the following:
11			(1) The name, address, and social security number or federal employer
12			identification number of the taxpayer or passthrough entity that made the
13			investment;
14			(2) The dollar amount remitted by the taxpayer or passthrough entity; and
15			(3) The date the payment was received by the angel fund for the investment.
16		j.	Within thirty days after the end of a calendar year, the angel fund shall file with
17			the tax commissioner a report showing the name and principal place of business
18			of each enterprise in which the angel fund has an investment and the amount of
19			the investment.
20	4.	The	tax commissioner may disclose to the legislative management the reported
21		info	rmation described under paragraphs 2 and 3 of subdivision i of subsection 3 and
22		the	reported information described under subdivision j of subsection 3.
23	5.	Ang	gel fund investors may be actively involved in the enterprises in which the angel
24		fund	d invests but the angel fund may not invest in any enterprise if any one angel fund
25		inve	estor owns directly or indirectly more than forty-nine percent of the ownership
26		inte	rests in the enterprise. The angel fund may not invest in an enterprise if any one
27		part	tner, shareholder, or member of a passthrough entity that directly or indirectly owns
28		mor	re than forty-nine percent of the ownership interests in the enterprise.
29	6.	Inve	estors in one angel fund may not receive more than five million dollars in aggregate
30		crea	dits under this section during the life of the angel fund but this provision may not be
31		inte	rpreted to limit additional investments in that angel fund.

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1	7.	<del>a.</del>	A passthrough entity entitled to the credit under this section must be considered
2			to be the taxpayer for purposes of this section, and the amount of the credit
3			allowed must be determined at the passthrough entity level.
4		<del>b.</del>	For the first two taxable years beginning after December 31, 2010, if a
5			passthrough entity does not elect to sell, transfer, or assign the credit as provided
6			under this subsection and subsection 8, the amount of the total credit determined
7			at the entity level must be passed through to the partners, shareholders, or
8			members in proportion to their respective interests in the passthrough entity.
9		<del>C.</del>	For the first two taxable years beginning after December 31, 2010, if a
10			passthrough entity elects to sell, transfer, or assign a credit as provided under
11			this subsection and subsection 8, the passthrough entity shall make an
12			irrevocable election to sell, transfer, or assign the credit on the return filed by the
13			entity for the taxable year in which the credit was earned. A passthrough entity
14			that makes a valid election to sell, transfer, or assign a credit shall sell one
15			hundred percent of the credit earned, may sell the credit to only one purchaser,
16			and shall comply with the requirements of this subsection and subsection 8.
17	8.	For	the first two taxable years beginning after December 31, 2010, a taxpayer may
18		ele	et to sell, transfer, or assign all of the earned or excess tax credit earned under this
19		see	tion for investment in an angel fund established after July 31, 2011, subject to the
20		folk	owing:
21		<del>a.</del>	A taxpayer's total credit sale, transfer, or assignment under this section may not
22			exceed one hundred thousand dollars over any combination of taxable years.
23			The cumulative credits transferred by all investors in an angel fund may not
24			exceed fifty percent of the aggregate credits under this section during the life of
25			the angel fund under subsection 6.
26		<del>b.</del>	If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
27			tax credit transferor and the tax credit purchaser jointly shall file with the tax
28			commissioner a copy of the purchase agreement and a statement containing the
29			names, addresses, and taxpayer identification numbers of the parties to the
30			transfer, the amount of the credit being transferred, the gross proceeds received
31			by the transferor, and the taxable year or years for which the credit may be

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claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.

c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

 A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.

16 If the amount of the credit available under this section is changed as a result of e. 17 an amended return filed by the transferor, or as the result of an audit conducted 18 by the internal revenue service or the tax commissioner, the transferor shall 19 report to the purchaser the adjusted credit amount within thirty days of the 20 amended return or within thirty days of the final determination made by the 21 internal revenue service or the tax commissioner. The tax credit purchaser shall 22 file amended returns reporting the additional tax due or claiming a refund as 23 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit 24 these returns and assess or issue refunds, even though other time periods 25 prescribed in these sections may have expired for the purchaser.

- 26f.Gross proceeds received by the tax credit transferor must be assigned to North27Dakota. The amount assigned under this subsection cannot be reduced by the28taxpayer's income apportioned to North Dakota or any North Dakota net29operating loss of the taxpayer.
- 30g.The tax commissioner has four years after the date of the credit assignment to31audit the returns of the credit transferor and the purchaser to verify the

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1		correctness of the amount of the transferred credit and if necessary assess the
2		credit purchaser if additional tax is found due. This subdivision does not limit or
3		restrict any other time period prescribed in this chapter for the assessment of tax.
4	<del>h.</del>	The tax commissioner may adopt rules to establish necessary administrative
5		provisions for the credit under this section, including provisions to permit
6		verification of the validity and timeliness of the transferred tax credit.
7	SECTION	N 2. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota
8	Century Code	e is amended and reenacted as follows:
9	7. A ta:	xpayer filing a return under this section is entitled to the following tax credits:
10	a.	Family care tax credit under section 57-38-01.20.
11	b.	Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
12	с.	Agricultural business investment tax credit under section 57-38.6-03.
13	d.	SeedAngel investor seed capital investment tax credit under section 57-38.5-03
14		(effective for the first three taxable years beginning after December 31, 2016).
15	е.	Planned gift tax credit under section 57-38-01.21.
16	f.	Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
17		57-38-01.23.
18	g.	Internship employment tax credit under section 57-38-01.24.
19	h.	Workforce recruitment credit under section 57-38-01.25.
20	i.	Angel fund investment tax credit under section 57-38-01.26 (effective for the first
21		three taxable years beginning after December 31, 2016).
22	j.	Microbusiness tax credit under section 57-38-01.27.
23	k.	Marriage penalty credit under section 57-38-01.28.
24	. I.	Homestead income tax credit under section 57-38-01.29.
25	<del>.</del>	Commercial property income tax credit under section 57-38-01.30.
26	<del>n.</del>	-Research and experimental expenditures under section 57-38-30.5.
27	<del>o.<u>m.</u></del>	Geothermal energy device installation credit under section 57-38-01.8.
28	<del>p.<u>n.</u></del>	Long-term care partnership plan premiums income tax credit under section
29		57-38-29.3.
30	<del>q.<u>o.</u></del>	Employer tax credit for salary and related retirement plan contributions of
31		mobilized employees under section 57-38-01.31.

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1	r.p.	Automating manufacturing processes tax credit under section 57-38-01.33
2		(effective for the first five taxable years beginning after December 31, 2012).
3	<u>ə.q</u>	Income tax credit for passthrough entity contributions to private education
4		institutions under section 57-38-01.7.
5	SECTI	ON 3. AMENDMENT. Subsection 5 of section 57-38.5-01 of the North Dakota
6	Century Co	ode is amended and reenacted as follows:
7	5. "(	Qualified business" means a business other than a real estate investment trust which
8	is	a primary sector business that:
9	a	. Is incorporated or its satellite operation is incorporated as a for-profit corporation,
10		passthrough entity, or joint venture;
11	b	. Is in compliance with the requirements for filings with the securities commissioner
12		under the securities laws of this state;
13	C	Has North Dakota residents as a majority of its employees in the North Dakota
14		principal office or the North Dakota satellite operation;
15	d	. Has its principal office in this state and has the majority of its business activity
16		performed in this state, except sales activity, or has a significant operation in
17		North Dakota that has or is projected to have more than ten employees or one
18		hundred fifty thousand dollars of sales annually; and
19	е	. Relies on innovation, research, or the development of new products and
20		processes in its plans for growth and profitability.
21	SECTI	ON 4. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is
22	amended a	and reenacted as follows:
23	57-38.	5-02. Certification - Investment reporting by qualified businesses - Maximum
24	investmen	ts in qualified businesses.
25	1. T	he director shall certify whether a business that has requested to become a qualified
26	b	usiness meets the requirements of subsection 5 of section 57-38.5-01. The director
27	s	nall establish the necessary forms and procedures for certifying qualified businesses.
28	2. A	qualified business may apply to the director for a recertification. Only one
29	re	ecertification is available to a qualified business. The application for recertification
30	m	ust be filed with the director within ninety days before the original certification expiry

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1		date. The recertification issued by the director must comply with the provisions of
2		subsection 3.
3	З.	A certification letter must be issued by the director to the qualified business. The
4		certification letter must include:
5		a. The certification effective date.
6		b. The certification expiry date. The expiry date may not be more than four years
7		from the certification effective date.
8	4.	The maximum aggregate amount of qualified investments a qualified business may
9		receive for all tax years is limited to five hundred thousand four million dollars under
10		this chapter. The tax credit allowed on qualified investments in a qualified business
11		must be allowed to taxpayers in the chronological order of the taxpayer's qualified
12		investments as determined from the forms filed under section 57-38.5-07. The
13		limitation on investments under this subsection may not be interpreted to limit
14		additional investment by a taxpayer for which that taxpayer is not applying for a credit.
15	<u>5.</u>	By February first in each of the five years following a year in which a qualified
16		business receives a qualified investment, the qualified business shall file with the tax
17		commissioner completed forms prescribed by the tax commissioner which show the
18		qualified business meets the requirements under section 57-38.5-01.
19	SEC	TION 3. AMENDMENT. Subsections 2 and 3 of section 57-38.5-03 of the North Dakota
20	<b>Century</b>	Code are amended and reenacted as follows:
21	<u> </u>	The maximum annual credit a taxpayer may claim under this section is not more than
22		one <u>two</u> hundred twelve <u>twenty-five</u> thousand five hundred dollars. This subsection may
23		not be interpreted to limit additional investment by a taxpayer for which that taxpayer
24		is not applying for a credit.
25	<del>3.</del>	Any amount of credit under subsection 1 not allowed because of the limitation in
26		subsection 2 may be carried forward for up to fourseven taxable years after the
27		taxable year in which the investment was made.
28	SEC	TION 5. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is
29	amende	d and reenacted as follows:

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2If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to3a credit against state income tax liability under section 57-38-30 or 57-38-30.3.41. The amount of the credit to which a taxpayer is entitled is forty fivetwenty-five percent5of the amount invested by the taxpayer in qualified businesses during the taxable year.62. The maximum annual credit a taxpayer may claim under this section is not more than7one hundred twelve thousand five hundred dollars. This subsection may not be8interpreted to limit additional investment by a taxpayer for which that taxpayer is not9applying for a credit.103. Any amount of credit under subsection 1 not allowed because of the limitation in11subsection 2 may be carried forward for up to fourfive taxable years after the taxable12year in which the investment was made.134. A passthrough entity that invests in a qualified business must be considered to be the14taxpayer for purposes of the investment limitations in this section and the amount of15the credit allowed with respect to a passthrough entity level. The amount of the total16credit determined at the passthrough entity level. The amount of the total17credit determined at the passthrough entity level. The amount of the total18shareholders, or members in proportion to their respective interests in the passthrough19entity.205. An investment made in a qualified business from the assets of a retirement plan is21deemed to be the retirement plan participant's investment	1	57-3	38.5-03. Seed Angel investor seed capital investment tax credit.	
<ol> <li>The amount of the credit to which a taxpayer is entitled is forty-fivety encent of the amount invested by the taxpayer in qualified businesses during the taxable year.</li> <li>The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.</li> <li>Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to fourfive taxable years after the taxable year in which the investment was made.</li> <li>A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.</li> <li>An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.</li> <li>The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.</li> <li>The entire amount of an investment for which a credit is clai</li></ol>	2	If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to		
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<ul> <li>A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.</li> <li>An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.</li> <li>The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.</li> <li>The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	11		subsection 2 may be carried forward for up to fourfive taxable years after the taxable	
<ul> <li>taxpayer for purposes of the investment limitations in this section and the amount of</li> <li>the credit allowed with respect to a passthrough entity's investment in a qualified</li> <li>business must be determined at the passthrough entity level. The amount of the total</li> <li>credit determined at the passthrough entity level. The amount of the total</li> <li>credit determined at the passthrough entity level must be allowed to the partners,</li> <li>shareholders, or members in proportion to their respective interests in the passthrough</li> <li>entity.</li> <li>An investment made in a qualified business from the assets of a retirement plan is</li> <li>deemed to be the retirement plan participant's investment for the purpose of this</li> <li>chapter if a separate account is maintained for the plan participant and the participant</li> <li>directly controls where the account assets are invested.</li> <li>The investment must be made on or after the certification effective date and must be</li> <li>at risk in the business to be eligible for the tax credit under this section. An investment</li> <li>for which a credit is received under this section must remain in the business for at</li> <li>least three years. Investments placed in escrow do not qualify for the credit.</li> <li>The entire amount of an investment for which a credit is claimed under this section</li> <li>must be expended by the qualified business for plant, equipment, research and</li> <li>development, marketing and sales activity, or working capital for the qualified</li> </ul>	12		year in which the investment was made.	
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<ul> <li>business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.</li> <li>5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.</li> <li>6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	14		taxpayer for purposes of the investment limitations in this section and the amount of	
<ul> <li>17 credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.</li> <li>20 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.</li> <li>24 6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.</li> <li>27 The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	15		the credit allowed with respect to a passthrough entity's investment in a qualified	
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<ul> <li>19 entity.</li> <li>20 5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.</li> <li>24 6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.</li> <li>28 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	17		credit determined at the passthrough entity level must be allowed to the partners,	
<ul> <li>5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.</li> <li>6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	18		shareholders, or members in proportion to their respective interests in the passthrough	
<ul> <li>deemed to be the retirement plan participant's investment for the purpose of this</li> <li>chapter if a separate account is maintained for the plan participant and the participant</li> <li>directly controls where the account assets are invested.</li> <li>The investment must be made on or after the certification effective date and must be</li> <li>at risk in the business to be eligible for the tax credit under this section. An investment</li> <li>for which a credit is received under this section must remain in the business for at</li> <li>least three years. Investments placed in escrow do not qualify for the credit.</li> <li>The entire amount of an investment for which a credit is claimed under this section</li> <li>must be expended by the qualified business for plant, equipment, research and</li> <li>development, marketing and sales activity, or working capital for the qualified</li> </ul>	19		entity.	
<ul> <li>chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.</li> <li>6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.</li> <li>7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	20	5.	An investment made in a qualified business from the assets of a retirement plan is	
<ul> <li>directly controls where the account assets are invested.</li> <li>6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.</li> <li>7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	21		deemed to be the retirement plan participant's investment for the purpose of this	
<ul> <li>6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.</li> <li>7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	22		chapter if a separate account is maintained for the plan participant and the participant	
<ul> <li>at risk in the business to be eligible for the tax credit under this section. An investment</li> <li>for which a credit is received under this section must remain in the business for at</li> <li>least three years. Investments placed in escrow do not qualify for the credit.</li> <li>7. The entire amount of an investment for which a credit is claimed under this section</li> <li>must be expended by the qualified business for plant, equipment, research and</li> <li>development, marketing and sales activity, or working capital for the qualified</li> </ul>	23		directly controls where the account assets are invested.	
<ul> <li>for which a credit is received under this section must remain in the business for at</li> <li>least three years. Investments placed in escrow do not qualify for the credit.</li> <li>7. The entire amount of an investment for which a credit is claimed under this section</li> <li>must be expended by the qualified business for plant, equipment, research and</li> <li>development, marketing and sales activity, or working capital for the qualified</li> </ul>	24	6.	The investment must be made on or after the certification effective date and must be	
<ul> <li>least three years. Investments placed in escrow do not qualify for the credit.</li> <li>7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified</li> </ul>	25		at risk in the business to be eligible for the tax credit under this section. An investment	
<ul> <li>7. The entire amount of an investment for which a credit is claimed under this section</li> <li>must be expended by the qualified business for plant, equipment, research and</li> <li>development, marketing and sales activity, or working capital for the qualified</li> </ul>	26		for which a credit is received under this section must remain in the business for at	
<ul> <li>must be expended by the qualified business for plant, equipment, research and</li> <li>development, marketing and sales activity, or working capital for the qualified</li> </ul>	27		least three years. Investments placed in escrow do not qualify for the credit.	
30 development, marketing and sales activity, or working capital for the qualified	28	7.	The entire amount of an investment for which a credit is claimed under this section	
	29		must be expended by the qualified business for plant, equipment, research and	
31 business.	30		development, marketing and sales activity, or working capital for the qualified	
	31		business.	

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- 8. A taxpayer who owns a controlling interest in the qualified business or who receives
   more than fifty percent of the taxpayer's gross annual income from the qualified
   business is not entitled to a credit under this section. A member of the immediate
   family of a taxpayer disqualified by this subsection is not entitled to the credit under
   this section. For purposes of this subsection, "immediate family" means the taxpayer's
   spouse, parent, sibling, or child or the spouse of any such person.
- 7 9. The tax commissioner may disallow any credit otherwise allowed under this section if 8 any representation by a business in the application for certification as a qualified 9 business proves to be false or if the taxpayer or qualified business fails to satisfy any 10 conditions under this section or any conditions consistent with this section otherwise 11 determined by the tax commissioner. The commissioner has four years after the due 12 date of the return or after the return was filed, whichever period expires later, to audit 13 the credit and assess additional tax that may be found due to failure to comply with the 14 provisions of this chapter. The amount of any credit disallowed by the tax 15 commissioner that reduced the taxpayer's income tax liability for any or all applicable 16 tax years, plus penalty and interest as provided under section 57-38-45, must be paid 17 by the taxpayer.
- 18 10. An angel fund that invests in a qualified business must be considered to be the 19 taxpayer for purposes of the investment limitations in this section. The amount of the 20 credit allowed with respect to an angel fund's investment in a qualified business must 21 be determined at the angel fund level. The amount of the total credit determined at the 22 angel fund level must be allowed to the investors in the angel fund in proportion to the 23 investor's respective interests in the fund. An angel fund that is subject to the tax 24 imposed under chapter 57-38 or which was certified under section 57-38-01.26 before 25 April 1, 2017, is not eligible for the investment tax credit under this chapter. 26 SECTION 6. AMENDMENT. Section 57-38.5-04 of the North Dakota Century Code is 27 amended and reenacted as follows:

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**57-38.5-04. Taxable year for <u>angel investor</u> seed capital investment tax credit.** The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which the investment in the qualified business was received by the qualified business.

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1	SECTION 7. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is
2	amended and reenacted as follows:
3	57-38.5-05. Seed Angel investor seed capital investment tax credit limits.
4	The aggregate amount of angel investor seed capital investment tax credit allowed for
5	investments under this chapter is limited to three <u>fifteenten</u> million five hundred thousand dollars
6	for each calendar year. If investments in qualified businesses reported to the commissioner
7	under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this
8	section, the credit must be allowed to taxpayers in the chronological order of their investments
9	in qualified businesses as determined from the forms filed under section 57-38.5-07.
10	SECTION 8. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is
11	amended and reenacted as follows:
12	57-38.5-06. Seed Angel investor seed capital investment tax credit - Procedure -
13	Rules.
14	To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on
15	the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner
16	and file with the return a copy of the form issued by the qualified business as to the taxpayer's
17	investment in the qualified business under section 57-38.5-07.
18	SECTION 9. REPEAL. Section 57-38-01.26 and chapter 57-38.5 of the North Dakota
19	Century Code are repealed.
20	SECTION 10. EFFECTIVE DATE. This Section 9 of this Act is effective for taxable years
21	beginning after December 31, 2019, and sections 2 through 8 of this Act is are effective for
22	taxable years beginning after December 31, <del>2017</del> 2016.
23	SECTION 11. EMERGENCY. Section 1 of this Act is declared to be an emergency
24	measure.

- 3/1/2017

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#### Prepared for the Political Subdivision Taxation Committee

Attachment # 1

### ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY -SEED CAPITAL INVESTMENT TAX CREDIT

Pursuant to North Dakota Century Code Section 54-35-26, created by 2015 Senate Bill No. 2057, a variety of economic development tax incentives are to be reviewed by a Legislative Management interim committee over the ensuing six-year period. The study is aimed at ensuring that economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the seed capital investment tax credit and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

#### EXPLANATION OF THE SEED CAPITAL INVESTMENT TAX CREDIT

Section 57-38.5-03 provides for a seed capital investment tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for qualified investments made in a qualifying business. A "qualifying business" is defined in Section 57-38.5-01 as a primary sector business, certified by the Director of the Department of Commerce's Division of Economic Development and Finance, which relies on innovation, research, or the development of new products and processes for growth and profitability. A qualifying business must be in compliance with the state's security laws and must be a for-profit corporation, passthrough entity, or joint venture with the majority of the businesses in-state employees being North Dakota residents. The business must have its principal office located in this state and perform the majority of its business activities in this state, with the exception of sales activities, or the business must have significant current or anticipated operations in North Dakota which consist of employing more than 10 employees or reaching more than \$150,000 in annual sales. A qualifying business does not include a real estate investment trust.

The credit is equal to 45 percent of the amount of the qualified investment which may consist of direct cash payments or cash transfers from a retirement plan if the investor maintains a separate account and controls where the plan's assets are invested. A qualifying investment must be at risk in the qualifying business for at least three years. Investments placed in escrow will not qualify for the credit. A qualifying business must expend investment amounts for equipment, plant facilities, research and development, marketing, or working capital. A taxpayer, or a member of the taxpayer's immediate family, receiving more than half of the taxpayer's yearly gross income, or owning a controlling interest in qualified business, may not receive a credit for qualified investments in that business.

A taxpayer may claim no more than \$112,500 in credits per taxable year. Credit amounts exceeding a taxpayer's liability may be carried forward for up to four taxable years following the year in which the investment was made. A passthrough entity entitled to the credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level and passed through to the entity's partners, shareholders, or members in proportion to their respective ownership interests in the passthrough entity. Pursuant to Section 57-38.5-07, a qualified business is required to file with the investor, the Tax Commissioner, and the Director of the Department of Commerce's Division of Economic Development and Finance information identifying each taxpayer making an investment, the amount remitted by the taxpayer, and the date on which the investment was received by the qualifying business. The total aggregate amount of all seed capital investment tax credits allowed per year is limited to \$3.5 million. If the amount of credits applied for exceeds the maximum yearly cap, credits must be awarded based on the date each investment was received by a qualifying business. The maximum aggregate amount of qualified investments upon which the credit may be based may not exceed \$500,000 for any one qualified business over any combination of tax years.

#### PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE SEED CAPITAL INVESTMENT TAX CREDIT

Provisions relating to a seed capital investment tax credit were first enacted through the passage of 1993 Senate Bill No. 2052. The bill provided a credit to individual income taxpayers for investments in primary sector companies that exported products, provided new jobs, and created new wealth from customers outside this state. A taxpayer was required to invest between \$5,000 and \$50,000 in a qualified business and the investment was required to be at risk in the business for at least three years. The credit was equal to 30 percent of the amount invested. A taxpayer could claim no more than 50 percent of the credit in a single taxable year and the credit could not exceed 50 percent of the taxpayer's income tax liability. Credit amounts exceeding a taxpayer's liability could be carried forward for up to 15 taxable years following the year in which the investment was made. The total aggregate amount of all seed capital investment tax credits allowed per year was limited to \$250,000. Upon a review of the legislative history relating to this bill, the perceived goal of the Legislative Assembly in creating this credit was to stimulate private investment in new and growing North Dakota companies to help

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diversify and expand the state's economy. It was estimated that the seed capital investment tax credit could result in a reduction in general fund revenues of up to \$500,000 during the 1993-95 biennium.

The credit was amended through the passage of 2001 House Bill No. 1413, which eliminated the limitation that the seed capital credit could not exceed 50 percent of a taxpayer's tax liability. The bill also increased the aggregate amount of allowable seed capital investment tax credits from \$250,000 to \$1,000,000 through calendar year 2002 and to \$2,500,000 after calendar year 2002. The number of North Dakota employees a qualified business was required to employ was decreased to 10 and annual sales requirements were decreased to \$150,000. The bill also allowed for an organization to be classified as a qualified business if it attracted investments to build and own a value-added agricultural processing facility that it leased with an option to purchase to a primary sector business.

The credit was further amended through the passage of 2003 House Bill No. 1019, which eliminated the \$250,000 limit per qualifying business of investments that could qualify for the credit. The bill also increased the available credit amount from 30 to 45 percent the amount of the qualifying investment. Legislation enacted during the 2005 legislative session, through the passage of Senate Bill No. 2032, further expanded the credit to allow it to be claimed by corporations and passthrough entities. The bill also limited qualified investments in a qualified business to a maximum of \$500,000 for which the credit could be claimed. The bill allowed investments made before 2005, which did not qualify for the tax credit because of the limitation in effect at that time, to claim a credit of 45 percent of the amount invested in a qualified business with a minimum qualifying investment of \$5,000 and maximum investment of \$250,000 required in order to obtain the credit. For these taxpayers, no more than one-fourth of the credit could be claimed in any taxable year. It was estimated that the credit would decrease general fund revenues by \$250,000 in the 2005 fiscal year and by \$3,000,000 during the 2005-07 biennium if the caps provided within the credit provisions were reached.

Senate Bill No. 2224 (2007) expanded the credit to allow investments by an angel fund to be eligible for the seed capital investment tax credit and Senate Bill No. 2084 reduced the maximum amount that could be claimed by a taxpayer to \$112,500 per year and revised provisions regarding certification of a qualified business by the Department of Commerce. The remaining changes to the credit were mostly technical in nature and occurred during the 2009 and 2013 legislative sessions. The passage of 2009 House Bill No. 1324 eliminated the optional long-form filing method (Form ND-2) and replaced it with a simplified filing method for any taxpayer who did not have tax deductions or credits and 2013 House Bill No. 1106 streamlined the lengthy description of a passthrough entity by providing a definition of the term at the outset of the income tax chapter.

#### DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE SEED CAPITAL INVESTMENT TAX CREDIT

The interim Political Subdivision Taxation Committee identified various items of data and testimony that would need to be collected to effectively analyze the seed capital investment tax credit. The following list identifies the information the committee sought to collect and the receipt of that information throughout the course of the 2015-16 interim.

- 1. The number of claimants and the fiscal impact of the incentive.
  - Information (<u>Appendix A</u>) provided to the Political Subdivision Taxation Committee by the Tax Department on December 2, 2015, indicated the number of individual income tax returns on which the credit was claimed and the total amount claimed.

In tax year 2006, a total of \$1,657,308 was claimed over 699 returns.

In tax year 2007, a total of \$3,456,317 was claimed over 662 returns.

In tax year 2008, a total of \$3,041,632 was claimed over 396 returns.

In tax year 2009, a total of \$2,892,224 was claimed over 295 returns.

In tax year 2010, a total of \$1,950,451 was claimed over 143 returns.

In tax year 2011, a total of \$1,273,452 was claimed over 87 returns.

In tax year 2012, a total of \$1,404,615 was claimed over 87 returns.

In tax year 2013, a total of \$1,577,110 was claimed over 86 returns.

In tax year 2014, a total of \$1,289,347 was claimed over 74 returns.

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**Political Subdivision Taxation Committee** 

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• The information provided by the Tax Department also indicated the number of corporate income tax returns on which the credit was claimed and the total amount claimed.

In tax years 2006, 2007, and 2009, the total amount claimed could not be disclosed due to confidentiality restrictions as the credit was claimed on fewer than five returns in each tax year.

In tax year 2008 and tax years 2010 through 2014, the credit was not claimed on any corporate income tax returns.

- 2. The use of similar incentives in other states.
  - Incentives similar to this state's seed capital investment tax credit (<u>Appendix B</u>) were found in seven other states.
- 3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive.
  - Information (Appendices <u>C</u>, <u>D</u>, and <u>E</u>) pertaining to this item was provided by the Department of Commerce on January 13, 2016, and March 1, 2016.
- 4. Negative impacts created as a result of the incentive.
  - The committee continues to assess whether any negative impacts have been created as a result of the incentive.
- 5. Benefits that flow to out-of-state concerns resulting from the incentive.
  - The committee continues to assess whether any benefits flow to out-of-state concerns as a result of the incentive.
- 6. Testimony from interested parties.
  - The following parties provided testimony in support of retaining the seed capital investment tax credit.

The Economic Development Association of North Dakota (Appendix F).

The North Dakota State University Research and Technology Park.

Mr. Corey Kratcha, Co-Founder and Chief Executive Officer of c2renew and c2sensor.

- Testimony has yet to be received from parties in opposition to retaining the seed capital investment tax credit.
- Testimony has yet to be received from the North Dakota Economic Development Foundation.

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Attachment # 2

Prepared for the Political Subdivision Taxation Committee

### ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY -ANGEL FUND INVESTMENT TAX CREDIT

Pursuant to North Dakota Century Code Section 54-35-26, created by 2015 Senate Bill No. 2057, a variety of economic development tax incentives are to be reviewed by a Legislative Management interim committee over the ensuing 6-year period. The study is aimed at ensuring that economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the angel fund investment tax credit and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

#### EXPLANATION OF THE ANGEL FUND INVESTMENT TAX CREDIT

Section 57-38-01.26 provides for an angel fund investment tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for investments made in an angel fund created under the laws of this state. A taxpayer may claim 45 percent of the amount remitted to each angel fund during the taxable year, up to an aggregate maximum amount of \$45,000 per year. The amount of the credit an individual, married couple, passthrough entity and its affiliates, or other taxpayer is allowed to claim is capped at a lifetime limit of \$500,000 in cumulative credits. An investment used to calculate an angel fund credit may not be used to calculate any other income tax deduction or credit.

A qualifying investment must be at risk in an angel fund for at least 3 years. An investment may be made from the assets of a retirement plan if the individual making the investment maintains a separate account and directly controls where the account assets are invested. An investment placed in escrow will not qualify for the credit. The credit must be claimed in the taxable year in which the investment is received by the angel fund. The amount of the credit claimed may not exceed the taxpayer's income tax liability. The amount of credit exceeding a taxpayer's liability may be carried forward to each of the 7 succeeding taxable years. A taxpayer claiming this credit may not claim a credit resulting from an investment made by an angel fund in a qualified business for purposes of the seed capital or agricultural commodity processing facility investment tax credit.

Section 57-38-01.26 provides for the types of entities that may form an angel fund and provides that a fund must be organized for the purpose of investing in at least three primary sector companies that are early- and mid-stage private, nonpublicly traded enterprises with strong growth potential. An angel fund must consist of at least six accredited investors and may not have more than 25 percent of its capitalized investment assets owned by an individual investor. The angel fund must have at least \$500,000 in commitments from accredited investors which is subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises. The angel fund must be member-managed or a manager-managed limited liability company and decisions regarding enterprises worthy of investment must be made on a group basis. The angel fund must be certified by the Department of Commerce and be in compliance with the security laws of this state.

Information must be filed by the angel fund with the Tax Commissioner within 30 days of the fund receiving an investment. This information includes the identifying information of the taxpayer or passthrough entity making the investment, the amount of the investment, and the date payment was received by the angel fund for the investment. The angel fund must also file a report with the Tax Commissioner within 30 days following the end of each year supplying the name and principal place of business of each enterprise in which the angel fund has an investment. The Tax Commissioner may disclose to Legislative Management the dollar amount remitted by each taxpayer or passthrough entity to an angel fund and the date each payment was received by the angel fund for the investment. The Tax Commissioner may also disclose to Legislative Management information provided by the angel fund pertaining to the principal place of business of each enterprise in which the angel fund has an investment.

An angel fund is restricted from investing in an enterprise if any one angel fund investor directly or indirectly owns more than 49 percent of the ownership interests in the enterprise. An angel fund also may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity directly or indirectly owns more than 49 percent of the ownership interests in the enterprise. Investors are prohibited from receiving more than \$5 million in aggregate credits from investments in a single angel fund during the life of the fund. A passthrough entity entitled to a credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level.

Section 57-38-01.26 also provides language regarding the sale, assignment, or transfer of the credit which was only available for investments made in the 2011 and 2012 tax years. Provisions are also included to allow the Tax Commissioner to adopt rules to administer the credit.

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Attachment # 2

**Political Subdivision Taxation Committee** 

#### PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE ANGEL FUND INVESTMENT TAX CREDIT

Provisions regarding an angel fund investment tax credit first appeared in an early version of 2007 Senate Bill No. 2224, but language creating the credit was ultimately amended into and passed in 2007 House Bill No. 1018. Upon a review of the legislative history relating to both bills, the perceived goal of the Legislative Assembly in creating this credit was to encourage investment in start-up businesses by offering a tax credit to angel fund investors. The credit was described as an extension of the seed capital tax credit and was intended to stimulate private investment and grow start-up or early-stage companies in this state. Companies targeted by angel fund investments were thought to be smaller companies that carried high-risk but also high-growth potential. The angel fund investment tax credit was viewed as a tool to create and maintain quality jobs and diversify a community's economic base. The estimated fiscal effect of the angel fund investment credit could not be determined during the 2007 legislative session.

In 2009, the credit was amended through the passage of Senate Bill No. 2269 which served to tighten up the provisions of the credit. The bill imposed additional requirements necessary to qualify for the credit including the requirement that an angel fund be headquartered in this state, and invest in a portfolio of at least three early- or mid-stage private, nonpublicly traded enterprises. The bill required the fund to consist of at least six accredited investors, with no one investor owning more than 25 percent of the capitalized investment assets, and have at least \$500,000 in commitments from accredited investors. The bill also required the fund to be member-managed, certified by the Department of Commerce, and in compliance with state securities laws. The bill prohibited an angel fund from investing in an enterprise if one angel fund investor owned more than 49 percent of the enterprise. The bill also capped the aggregate amount of credits that could be received by investors in a single angel fund at a lifetime limit of \$5 million.

In 2011, House Bill No. 1057 further amended Section 57-38-01.26 by limiting the total lifetime amount of credits a taxpayer could obtain to \$150,000 per taxpayer. The bill also added passthrough entities to the list of investors eligible to receive the credit. Reporting requirements were also added and certain information contained within the required reports was allowed to be provided to the Legislative Management. The bill permitted an investor in an angel fund to sell or transfer up to \$100,000 of the investor's credits to another taxpayer, in the hopes of attracting more out-of-state capital to North Dakota and the carryover period for unused credits was increased from 4 to 7 years. The bill also required the Tax Commissioner to report to the Legislative Management during the 2011-12 and 2013-14 interims on the number of in-state and out-of-state investors, the amount of each investment, and the amount of tax credits accrued, claimed, and transferred by each individual angel fund.

In 2013, Senate Bill Nos. 2325 and 2156 increased the lifetime credit limit from \$150,000 per taxpayer to \$500,000 per taxpayer. The bills also prohibited angel funds from investing in real estate or real estate holding companies. Any angel fund making these types of investments, and certified before January 1, 2013, would be barred from being recertified.

#### DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE ANGEL FUND INVESTMENT TAX CREDIT

The interim Political Subdivision Taxation Committee identified various items of data and testimony which would need to be collected to effectively analyze the angel fund investment tax credit. The following list identifies the information the committee sought to collect and the receipt of that information throughout the course of the 2015-16 interim.

- 1. The number of claimants and the fiscal impact of the incentive.
  - Information (<u>Appendix A</u>) provided to the Political Subdivision Taxation Committee by the Tax Department on December 2, 2015, indicated an expanding use of the angel fund investment tax credit. The information indicated the number of individual income tax returns on which the credit was claimed and the total amount claimed.

In tax year 2007, a total of \$224,152 was claimed over 31 returns.

In tax year 2008, a total of \$589,391 was claimed over 53 returns.

In tax year 2009, a total of \$979,451 was claimed over 70 returns.

In tax year 2010, a total of \$2,206,706 was claimed over 106 returns.

In tax year 2011, a total of \$3,054,494 was claimed over 136 returns.

In tax year 2012, a total of \$6,240,847 was claimed over 251 returns.

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#### 17.9086.06000

**Political Subdivision Taxation Committee** 

In tax year 2013, a total of \$6,646,999 was claimed over 294 returns.

In tax year 2014, a total of \$7,805,711 was claimed over 348 returns.

- The total amount claimed on corporate income tax returns in tax years 2006 through 2014 could not be disclosed due to confidentiality restrictions as the credit was claimed on less than five returns in each tax year.
- 2. The use of similar incentives in other states.
  - Incentives similar to this state's angel fund investment tax credit (<u>Appendix B</u>) were found in 11 other states.
- 3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive.
  - Information (<u>Appendix C</u>) pertaining to this item was provided by the Department of Commerce on January 13, 2016.
- 4. Negative impacts created as a result of the incentive.
  - The committee discussed potential misuse of the incentive based on advertising materials (<u>Appendix D</u>) published by an angel fund in this state.
- 5. Benefits that flow to out-of-state concerns resulting from the incentive.
  - Information (<u>Appendix E</u>) pertaining to this item was provided by the Tax Department on January 13, 2016.
  - Information (<u>Appendix F</u>) pertaining to this item was provided by the Department of Commerce on March 1, 2016.
- 6. Testimony from interested parties.
  - The following parties provided testimony in support of retaining the angel fund investment tax credit.

The Economic Development Association of North Dakota (Appendices <u>G</u> and <u>H</u>).

Great River Energy and the Midwest AgEnergy Group (Appendices I and J).

Mr. John Cosgriff, Incubator Manager, North Dakota State University Research and Technology Park (<u>Appendix K</u>).

Mr. Corey Kratcha, Co-Founder and Chief Executive Officer of c2renew and c2sensor.

Ms. Katie Andersen, Mayor of Jamestown.

Ms. Jane Priebe, Economic Development Director for the city of Wahpeton.

Mr. Bruce Gjovig, CEO, University of North Dakota Center for Innovation Foundation (Appendices  $\underline{L}$ ,  $\underline{M}$ , and  $\underline{N}$ ).

- Mr. Tom K. Kenville, Chair, Valley Angel Investment Fund, LLC (Appendices O, P, and Q).
- Mr. James Burgum, Co-founder and Managing Partner, Arthur Ventures (Appendix R).
- Mr. Greg Syrup, General Partner and Managing Director, 701 Angel Fund (Appendices S and T).
- Ms. Emily O'Brien, President and Chairman, Dakota Venture Group (Appendix U).
- Mr. Thomas Rolfstad, Venture Partner, Linn Grove Ventures.

Mr. Dan Hodgson, Managing Director, Linn Grove Growth Funds (Appendices  $\underline{V}$  and  $\underline{W}$ ).

Mr. John Cook, President, Springfield Group Angel Fund, LLC (Appendix X).

Mr. Chuck Hoge, Executive Director, North Dakota State University Research and Technology Park (Appendix Y)

Testimony was not received from parties in opposition to retaining the angel fund investment tax credit.

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N DAR E G

## DEPARTMENT OF COMMERCE TESTIMONY ON HB 1045 MARCH 7, 2017, 9:00 A.M. SENATE FINANCE AND TAXATION COMMITTEE SENATOR DWIGHT COOK, CHAIRMAN

### JAY SCHULER - COMMERCE COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good afternoon, Mr. Chairman and members of the committee, my name is Jay Schuler and I serve as Commissioner for the North Dakota Department of Commerce. I am here today to speak in opposition to HB 1045.

Having been involved with numerous startup companies, I know first-hand the importance of having access to capital. It can mean the difference between having a successful startup and one that fails.

North Dakota currently ranks 47th in the nation in business capital formation. In the new world of economic development, it is the cultivation of startup businesses and support of the entrepreneurial industry that fosters business success – and capital formation is a key to that success.

North Dakota has two tax credits to assist entrepreneurs with access to capital, with each serving different purposes.

The Seed Capital Investment Tax Credit incentivizes individual investors to invest in qualified businesses. This works well for businesses that need larger investments and have the staff and resources to meet with multiple investors and put deals together. The Seed Capital Investment Tax Credit program is having a measurable impact to the state's economy with 50 certified companies receiving investment of over \$32 million, resulting in 359 direct jobs as of 2015. Using a REMI Policy Insight<sup>™</sup> model for North Dakota, the overall economic impact in 2015 was 689 jobs, a \$68.8 million increase to the state's GDP, and a \$44.2 million increase in personal income.

The Angel Fund tax credit was added because the Seed Capital tax credit was not sufficient, as entrepreneurs need to raise adequate private equity in aggregation, not slowly meeting with one investor at a time. The sunset of the angel fund industry would starve entrepreneurs of much needed capital, while punishing those who have complied with the law for the actions of the few. Any legislation passed should focus on building more capital – not less – while also giving authority to enforce the laws currently in place. In 2013, SB 2156 prohibited investment in real estate in angel funds. The current problem is the enforcement of the law, not the law.

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One of the benefits of angel funds is the ability to syndicate deals with other funds. This syndication further diversifies their portfolio, while encouraging funds from outside the state to invest in North Dakota companies.

The Angel Fund and Seed Capital investment tax credits have a short-term cost and a long-term benefit in the form of jobs for North Dakota citizens and tax revenue for the state. They help to diversify our economy, at a time that diversification is greatly needed, with 71% of the state's private economic base being tied to energy and agriculture. The old style of economic development of chasing smoke stacks is done – we are now in an era when we need to grow from within. These tax credits provide entrepreneurs with the capital resources needed to succeed in this changing economy.

I recognize the need to fix loopholes in the law and I would be happy to work with this committee to find appropriate solutions.

Mr. Chairman and members of the Finance and Taxation Committee, thank you for allowing me to visit with you today. That concludes my testimony and I am happy to entertain any questions.

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Mr. Chairman and Committee Members:

## Reasons for Angel Fund Investment Tax Credits in North Dakota

## Emily O'Brien Representative, District 42 President Emeritus, Dakota Venture Group, Grand Forks, ND Entrepreneur Specialist, UND Center for Innovation

#### March 7, 2017

My name is Emily O'Brien, I am a graduate at the University of North Dakota in Entrepreneurship and Business Management and currently pursing my Masters in Entrepreneurship, I joined Dakota Venture Group in October of 2013- with zero knowledge in the private equity/angel investing sector. For the last 2 years, I had the privilege of serving as President of Dakota Venture Group (DVG). Dakota Venture Group is the nation's first student run private equity fund – with 29 investors, 18 being from North Dakota. DVG was founded in October 2006 through a \$300.000 donation from Bart and Lynn Holaday from their Dakota Foundation. Later, DVG received a \$100,000 donation to grow the fund. Harvest Fund Partners, LLC was organized by DVG as another unprecedented opportunity for UND students. Harvest Fund I, LLLP continues the innovative work DVG students are doing by becoming the first ever in the nation, for-profit venture capital fund managed by students. This fund provides DVG members additional experience with fundraising and investor relations; both valuable skills needed for becoming future venture capitalists and entrepreneurs alike. Harvest Fund I, LLLP is currently \$1.4M of capital under management today with focus in high-growth, early stage ventures focusing on the medical, technology, and energy sectors. Harvest Fund's mission is threefold: providing return on investment, providing economic stimulus to the region/country and building future entrepreneur talent a triple-bottom line ROI.

Throughout my time in Dakota Venture Group, I have realized that angel investors play a crucial role in the economy that not many are willing to fill: They make personal, risky bets on start-up companies that have the potential to create significant numbers of well-paying jobs. Banks are unable to do that. Venture capitalists won't jump until the bet looks safer. Grants from government agencies and nonprofits aren't enough to keep companies on track. This is not that banks, venture capitalists, grants or nonprofits aren't vital for startup companies, but there are phases that startups must go through to reach those points. In the majority of cases, only angels provide money that allows a new company to take the initial steps toward becoming a big employer and possibly even an inspiration for other new businesses. That's a role worthy of government support. Tax credits are the best way to provide that support.

Yes, it is true that tax credits won't make angels invest in a company that they wouldn't invest in without the credit. But not always. A bad investment is a bad investment, and while angels are risk takers, most of them aren't so foolish as to throw their money away because someone waves an incentive in front of them.

But there are two ways that tax credits can increase the amount of funding available for startup companies. They keep more money in the pockets of existing angel inventors- money that can be plowed back into a company an investor has already funded, as it continues to grow, or that can help the investor support another company that might otherwise go unfunded. And credits can help create new angel investors- people who otherwise would put their money in financial

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instruments, real estate, art or some other more-proven assets if a tax credit didn't make investing in a start-up worth considering.

There is anecdotal evidence that tax credits are doing more than just pushing money around from state to state in search of the best deal- they are bringing new investors, and therefore new money, into the angel fold. Angel Fund tax credits do attract some money from public markets back to North Dakota however also, encouraging some accredited investors to invest in entrepreneurs for the first time.

Creating jobs- only a very small percentage of start-ups receive angel investment- the companies that do attract angel investment generally have the potential to employ far more people per company than those that muddle through their early years without any help from angels. The impact of angel investment on employment should not be underestimated – without angels, many companies that today employ dozens of people or more might not ever had it past infancy. And the money their employees are pumping into the economy might not be there.

If we continue to compare our angel fund tax credit to surrounding states and what worked best for their "Angel Fund Tax Credit" we will continue to run in circles. We need to focus on our ecosystem and what is best for our growth as a state. Yes, we need to invest in companies outside our state- BUT we need to drive these companies to start doing deals in North Dakota whether it is syndication with ND Angel Investors, manufacturing in the state, opening up offices in the state, and/or hiring employees in North Dakota.

Not every investment is going to be a success. That is why angels build portfolios with 10 or more companies, in syndication with other funds from ND and surrounding states.

To the best of my knowledge, the reporting on outside investors has been lacking in the past. But that simply does not mean to axe a program. We need a leadership team that will help with these efforts and supporting the importance of reporting these numbers. I understand that it is difficult to resurface items from the past- but the best we can do is communicate and work on receiving this information- NO it is not going to happen overnight, but we can start now for the future.

The possibility of losing not only these angel investors to other states and deals, but future angel investors is a risk that we can't afford to take. If these investors have success, North Dakota will see a return through income tax.

#### Reasons to oppose HB 1045:

- With these angel fund changes, North Dakota becomes an anti-investor state that will not support angel investing or entrepreneurs in early stages of growth. 29 states have angel investing incentives for good reasons – incentives work when investment risks are high.
- North Dakota's 553 angels across the state have yet to see a return on investment (ROI) on the \$41.3 M they invested in 156 companies. Thus the state angel fund tax incentive is vital to encourage angels to continue investing in high risk, long horizons investing. HB 1045 will kill angel investing in the state, as pooled angel funds are needed to aggregate the capital for entrepreneurs.

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- 3. The original concept in 2007 of the angel fund legislation was to help develop a private equity investment industry by encouraging high net worth investors (potential angels) to join together to invest in high growth entrepreneurs. Aggregating angels increases access to entrepreneur capital as entrepreneurs where not able to find enough angel investors on their own. Most angel funds have a 10 to 15-year life cycle, often longer. Funds are high risk, long horizon, *potentially* high return in the long term... but no guarantee.
- The angel funds tax credit was added in 2007 because the 2001 seed capital tax credit was not successfully used by very many companies. Entrepreneurs need to have angels invest in groups - through angel funds - to successfully raise sufficient private equity.
- 4. Angel Funds cannot be restricted to North Dakota only. Angel Fund investment in out-of-state companies draws companies to ND (several manufacture at ComDel Innovation in Wahpeton) and allows for partnering with out-of-state angel fund to invest into ND companies (syndication). Most of the North Dakota entrepreneur ventures have investments from both ND and MN, SD or MT angel funds. Angel Funds prefer to invest in local ventures, where they can watch and monitor them closely.
- 6. ROI to the state on angel fund tax credits needs to be measured over a longer time frame. Venture growth and job creation take time and the failures occur before the successes mature. New ventures often pivot from their original business model and often succeed in a different manner than originally planned. For example, a startup retail computer store may end up a software giant, like Great Plains Software. A machine to clean barns may grow to a multi-national company like Bobcat. The market and investors should pick the winners knowing they will also have failures in their portfolio

The angel funds, angels and entrepreneur are not against any reform and changes, but the current Bill is unworkable and ill advised.

If there are unlawful investments, we want those violators to be investigated and dealt with appropriately through the Tax, Commerce, & Securities Departments for violating the law. If the current penalty is not severe enough, increase it. No other angel fund condones their conduct. *In 2013, SB 2156 prohibited angel funds from investing in real estate or real estate holding companies.* The problem is the administration of the law, not the law.

#### We offered amendments on HB 1045 which were not included:

1). **Twice a year reporting** to Commerce and Securities on companies invested in the last six months, reporting by Feb 1 for 12/31 and Aug 1 for 6/30 to ensure compliance and help identify problem investments earlier.

2) Ask Securities, Commerce and Tax Dept what **additional penalties** are needed to ensure compliance such as additional prohibitions of investments in real estate or real estate holdings that have been defined as tourism investments.

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3). Require a **majority of portfolio companies be based in North Dakota** or have jobs in North Dakota.(like manufacturing, sales, service, etc)

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4). Delay Tax credit for angel fund until the first investment in North Dakota company

4) Reduce **45% tax credit to 35%**, enough to encourage angels to form funds but less generous.

**Conclusion:** To sunset the angel fund tax incentive is to starve entrepreneurs and ventures of private equity and thus their future. Encouraging angels to invest in funds or groups, rather than individuals under the Seed Capital tax credit, is essential to grow the private equity market in North Dakota and rise ND above a miserable 47th out of 50th (bottom 10%) in access to venture and angel capital (SSTI).

Thank you for your favorable consideration to incentivize angels to invest in funds that invest in startup ventures, and oppose HB 1045.

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Prepared by the Office of State Tax Commissioner (Commerce) March 20, 2017 17.0158.04000

## PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1045

1 2	Page 1, line 1, replace the comma with "and"
2 3 4 5	Page 1, line 2, remove ", subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,"
6 7	Page 1, line 3, remove "57-38.5-04, 57-38.5-05, and 57-38.5-06"
8 9	Page 1, line 4, remove "and the seed capital investment tax credit; to repeal section"
10 11	Page 1, remove line 5
12 13	Page 1, line 6, remove "investment tax credit and the seed capital investment tax credit"
14 15	Page 1, line 6, after the first semi-colon, insert "and"
16 17	Page 1, line 6, remove the second semi-colon
18 19	Page 1, line 7, remove "and to provide an expiration date"
20 21 22	Page 1, line 11, after "57-38-01.26." insert "(Effective for investments made before July 1, 2017)"
23 24	Page 1, line 13, replace " <u>April 1, 2017</u> " with " <u>July 1, 2017</u> "
25 26	Page 2, line 14, after "organized" insert "before July 1, 2017"
27 28	Page 6, after line 6, insert:
29 30 31	<b>"SECTION 2. AMENDMENT.</b> Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:
32 33 34	57-38-01.26. (Effective for investments made after June 30, 2017) Angel <del>fund investment</del> <u>investor</u> tax credit.
35	1. A taxpayer is entitled to a credit against state income tax liability under
36	section 57-38-30 or 57-38-30.3 for an investment made prior to April 1,
37	2017, in an angel fund that is a domestic organization created under the
38	laws of this state. The amount of the credit to which a taxpayer is entitled
39	is forty-five percent of the amount remitted by the taxpayer to an angel

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1		fund during the taxable year. The aggregate annual credit for which a
2		taxpayer may obtain a tax credit is not more than forty-five thousand
3		dollars. The aggregate lifetime credits under this section that may be
4		obtained by an individual, married couple, passthrough entity and its
5		affiliates, or other taxpayer is five hundred thousand dollars. The
6		investment used to calculate the credit under this section may not be used
7		to calculate any other income tax deduction or credit allowed by law.
8	<del>2.</del>	To be eligible for the credit, the investment must be at risk in the angel
9		fund for at least three years. An investment made in a qualified business
10		from the assets of a retirement plan is deemed to be the retirement plan
11		participant's investment for the purpose of this section if a separate
12		account is maintained for the plan participant and the participant directly
13		controls where the account assets are invested. Investments placed in
14		escrow do not qualify for the credit. The credit must be claimed in the
15		taxable year in which the investment in the angel fund was received by
16		the angel fund. The credit allowed may not exceed the liability for tax
17		under this chapter. If the amount of credit determined under this section
18		exceeds the liability for tax under this chapter, the excess may be carried
19		forward to each of the seven succeeding taxable years. A taxpayer
20		claiming a credit under this section may not claim any credit available to
21		the taxpayer as a result of an investment made by the angel fund in a
22		qualified business under chapter 57-38.5 or 57-38.6.
23	<del>3.</del>	An angel fund must:
24		a Be a partnership, limited partnership, corporation, limited liability
25		company, limited liability partnership, limited liability limited
26		partnership, trust, or estate organized on a for-profit basis which is
27		headquartered in this state.
28		b. Be organized for the purpose of investing in a portfolio of at least
29		three primary sector companies that are early-stage and mid-stage
30		private, nonpublicly traded enterprises with strong growth potential.
31		For purposes of this section, an early-stage entity means an entity
32		with annual revenues of up to two million dollars and a mid-stage
33		entity means an entity with annual revenues over two million dollars
34		not to exceed ten million dollars. Investments in real estate or real

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1		estate holding companies are not eligible investments by certified
2		angel funds. Any angel fund certified before January 1, 2013, which
3		has invested in real estate or a real estate holding company is not
4		eligible for recertification.
5	<del>6.</del> -	Consist of at least six accredited investors as defined by securities
6		and exchange commission regulation D, rule 501.
7	<del>d.</del>	Not have more than twenty-five percent of its capitalized
8		investment assets owned by an individual investor.
9	e.	Have at least five hundred thousand dollars in commitments from
10		accredited investors and that capital must be subject to call to be
11		invested over an unspecified number of years to build a portfolio of
12		investments in enterprises.
13	f	Be member-managed or a manager-managed limited liability
14		company and the investor members or a designated board that
15		includes investor members must make decisions as a group on
16		which enterprises are worthy of investments.
17	<del>g.</del>	Be certified as an angel fund that meets the requirements of this
18		section by the department of commerce.
19	<del>h.</del>	Be in compliance with the securities laws of this state.
20	i	Within thirty days after the date on which an investment in an angel
21		fund is made, the angel fund shall file with the tax commissioner
22		and provide to the investor completed forms prescribed by the tax
23		commissioner which show as to each investment in the angel fund
24		the following:
25		(1) The name, address, and social security number or federal
26		employer identification number of the taxpayer or
27		passthrough entity that made the investment;
28		(2) The dollar amount remitted by the taxpayer or passthrough
29		entity; and
30		(3) The date the payment was received by the angel fund for
31		the investment.
32	j	Within thirty days after the end of a calendar year, the angel fund
33		shall file with the tax commissioner a report showing the name

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1			and principal place of business of each enterprise in which the
2			angel fund has an investment and the amount of the investment.
3	4	The t	ax commissioner may disclose to the legislative management the
4		repor	ted information described under paragraphs 2 and 3 of subdivision i
5		<del>of su</del>	bsection 3 and the reported information described under subdivision
6		<del>j of s</del>	ubsection 3.
7	<del>5.</del>	Ange	I fund investors may be actively involved in the enterprises in which
8		the a	ngel fund invests but the angel fund may not invest in any enterprise
9		if any	one angel fund investor owns directly or indirectly more than forty-
10		nine	percent of the ownership interests in the enterprise. The angel fund
11		may	not invest in an enterprise if any one partner, shareholder, or
12		mem	ber of a passthrough entity that directly or indirectly owns more than
13		forty-	nine percent of the ownership interests in the enterprise.
14	<del>6.</del>	Inves	tors in one angel fund may not receive more than five million dollars
15		in ag	gregate credits under this section during the life of the angel fund but
16		this p	rovision may not be interpreted to limit additional investments in that
17		ange	I fund.
18	7.	<del>a.</del>	A passthrough entity entitled to the credit under this section must
19		<del>be co</del>	onsidered to be the taxpayer for purposes of this section, and the
20		amou	int of the credit allowed must be determined at the passthrough
21		entity	<del>· level.</del>
22		<del>b.</del>	For the first two taxable years beginning after December 31, 2010,
23			if a passthrough entity does not elect to sell, transfer, or assign the
24			credit as provided under this subsection and subsection 8, the
25			amount of the total credit determined at the entity level must be
26			passed through to the partners, shareholders, or members in
27			proportion to their respective interests in the passthrough entity.
28		<del>C.</del>	For the first two taxable years beginning after December 31, 2010,
29			if a passthrough entity elects to sell, transfer, or assign a credit as
30			provided under this subsection and subsection 8, the passthrough
31			entity shall make an irrevocable election to sell, transfer, or assign
32			the credit on the return filed by the entity for the taxable year in
33			which the credit was earned. A passthrough entity that makes a
34			valid election to sell, transfer, or assign a credit shall sell one

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hundred percent of the credit earned, may sell the credit to only 1 2 one purchaser, and shall comply with the requirements of this 3 subsection and subsection 8. 4 8. For the first two taxable years beginning after December 31, 2010, a 5 taxpayer may elect to sell, transfer, or assign all of the earned or excess 6 tax credit earned under this section for investment in an angel fund 7 established after July 31, 2011, subject to the following: 8 A taxpayer's total credit sale, transfer, or assignment under this <del>a.</del> 9 section may not exceed one hundred thousand dollars over any 10 combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of 11 12 the aggregate credits under this section during the life of the angel 13 fund under subsection 6. 14 <del>b.</del> If the taxpayer elects to sell, assign, or transfer a credit under this 15 subsection, the tax credit transferor and the tax credit purchaser 16 jointly shall file with the tax commissioner a copy of the purchase 17 agreement and a statement containing the names, addresses, and 18 taxpayer identification numbers of the parties to the transfer, the 19 amount of the credit being transferred, the gross proceeds 20 received by the transferor, and the taxable year or years for which 21 the credit may be claimed. The taxpayer and the purchaser also 22 shall file a document allowing the tax commissioner to disclose tax 23 information to either party for the purpose of verifying the 24 correctness of the transferred tax credit. The purchase agreement, 25 supporting statement, and waiver must be filed within thirty days 26 after the date the purchase agreement is fully executed. 27 The purchaser of the tax credit shall claim the credit beginning <del>C.</del> 28 with the taxable year in which the credit purchase agreement was 29 fully executed by the parties. A purchaser of a tax credit under this 30 section has only such rights to claim and use the credit under the 31 terms that would have applied to the tax credit transferor. This 32 subsection does not limit the ability of the tax credit purchaser to 33 reduce the tax liability of the purchaser, regardless of the actual 34 tax liability of the tax credit transferor.

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1 d. A sale, assignment, or transfer of a tax credit under this section is 2 irrevocable and the purchaser of the tax credit may not sell. assign, or otherwise transfer the credit. 3 If the amount of the credit available under this section is changed 4 e. 5 as a result of an amended return filed by the transferor, or as the 6 result of an audit conducted by the internal revenue service or the 7 tax commissioner, the transferor shall report to the purchaser the 8 adjusted credit amount within thirty days of the amended return or 9 within thirty days of the final determination made by the internal 10 revenue service or the tax commissioner. The tax credit purchaser 11 shall file amended returns reporting the additional tax due or 12 claiming a refund as provided in section 57-38-38 or 57-38-40, 13 and the tax commissioner may audit these returns and assess or 14 issue refunds, even though other time periods prescribed in these 15 sections may have expired for the purchaser. 16 f. Gross proceeds received by the tax credit transferor must be 17 assigned to North Dakota. The amount assigned under this 18 subsection cannot be reduced by the taxpayer's income 19 apportioned to North Dakota or any North Dakota net operating 20 loss of the taxpayer. 21 The tax commissioner has four years after the date of the credit <del>g.</del> 22 assignment to audit the returns of the credit transferor and the 23 purchaser to verify the correctness of the amount of the 24 transferred credit and if necessary assess the credit purchaser if 25 additional tax is found due. This subdivision does not limit or 26 restrict any other time period prescribed in this chapter for the 27 assessment of tax. 28 h. The tax commissioner may adopt rules to establish necessary 29 administrative provisions for the credit under this section, including 30 provisions to permit verification of the validity and timeliness of the 31 transferred tax credit. For investments made after June 30, 2017, an angel investor is entitled to a 32 1. credit against the income tax liability under section 57-38-30.3 for investments 33 made by a certified angel fund into a qualified business. The credit is equal to 34

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1		forty-1	five percent of the amount invested by the angel fund on behalf of the angel	
2		investor in a qualified business during the taxable year.		
3		<u>a.</u>	The aggregate amount of credits allowed to an angel investor in a taxable	
4		<u></u>	year is limited to forty-five thousand dollars. The aggregate amount of	
5			credits allowed to an angel investor for investments made in all taxable	
6			years is five hundred thousand dollars. The limitation under this	
7			subdivision does not apply to the angel fund but applies to each angel	
8			investor.	
9		<u>b.</u>	The credit must be claimed in the taxable year in which the investment is	
10		<u>0.</u>	made in the qualified business. The credit allowed may not exceed the	
10			liability for tax under this chapter. If the amount of credit determined	
12			under this section exceeds the liability for tax under this chapter, the	
13			excess may be carried forward to each of the five succeeding taxable	
14			years.	
15		<u>C.</u>	<u>The investment used to calculate the credit under this section may not be</u>	
16		<u>u.</u>	used to calculate any other income tax deduction or credit allowed by law.	
10		<u>d.</u>	Angel investors may not receive more than five million dollars in	
18		<u>u.</u>	aggregate credits under this section during the life of an angel fund but	
19			this provision may not be interpreted to limit additional investments in that	
20			angel fund.	
20		0	Investments placed in escrow do not qualify for the credit.	
21		<u>e.</u> <u>f.</u>	A passthrough entity entitled to the credit under this section must be	
22		<u>1.</u>	considered to be the taxpayer for purposes of calculating the credit. The	
23 24			amount of the allowable credit must be determined at the passthrough	
24 25			entity level. The total credit determined at the entity level must be passed	
25 26				
20 27			through to the partners, shareholders, or members in proportion to their	
			respective interests in the passthrough entity. An individual taxpayer may	
28			take the credit passed through under this section against the individual's	
29 30	2		state income tax liability under 57-38-30.3.	
	<u>2.</u>		urposes of this section:	
31 32		<u>a.</u>	<u>"Early-stage entity" means an entity with annual revenues of up to two</u>	
32 33		h	million dollars.	
		<u>b.</u>	<u>"Investment" means a cash investment in a qualified business that is</u>	
34			made in exchange for common stock, a partnership or membership	

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1		interes	st, preferred stock, debt with a mandatory conversion to equity, or
2		an equ	uivalent ownership interest as determined by the tax commissioner.
3	<u>C.</u>	<u>"Mid-s</u>	tage entity" means an entity with annual revenues over two million
4		dollars	s not to exceed ten million dollars.
5	<u>d.</u>	"Quali	fied business" means an early-stage or mid-stage private,
6		nonpu	blicly traded enterprise that:
7		<u>(1)</u>	Is created as a for-profit entity.
8		<mark>(2)</mark>	Relies on research or the development of new products and
9			processes in its plans for growth and profitability.
10		<mark>(3)</mark>	Is in compliance with state and federal securities laws.
11		<u>(4)</u>	Is not an entity or enterprise which is engaged in real estate
12			development, is a real estate holding company, derives income
13			from the selling or leasing of residential or commercial real estate,
14			or carries on operations in the hotel, restaurant, convention, and
15			hospitality industries, or any other similar use of real estate.
16		<u>(5)</u>	Is certified as a qualified business that meets the requirements of
17			this section by the department of commerce.
18		<u>(6)</u>	Except for this subdivision, the use of the term "qualified business"
19			includes a North Dakota qualified business.
20	<u>e.</u>	"North	Dakota qualified business" means an early-stage or mid-stage
21		private	e, nonpublicly traded enterprise with that:
22		<u>(1)</u>	Is created, or its satellite operation is created, as a for-profit entity
23			under the laws of this state.
24		<u>(2)</u>	Has its principal office in this state and has the majority of its
25			business activity performed in this state, except sales activity, or
26			has a significant operation in North Dakota that has or is projected
27			to have more than ten employees in this state.
28		<mark>(3)</mark>	Relies on research or the development of new products and
29			processes in its plans for growth and profitability.
30		<u>(4)</u>	Is in compliance with state and federal securities laws.
31		<u>(5)</u>	Is not an entity or enterprise which is engaged in real estate
32			development, is a real estate holding company, derives income
33			from the selling or leasing of residential or commercial real estate,

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		or car	<mark>ries on operatio</mark>	ns in the hotel, restaurant, convention, and
		<u>hospit</u>	ality industries,	or any other similar use of real estate.
	<mark>(6)</mark>	ls cert	ified as a North	Dakota qualified business that meets the
		require	ements of this s	section by the department of commerce.
An ang	gel fund	must:		
<u>a.</u>	<u>Be a pa</u>	assthro	ough entity orga	nized after June 30, 2017, as a domestic for-
	profit e	ntity ur	nder the laws of	f this state, and has its headquarters in this
	state.			

- Not have invested, or intend on investing during its certification period, in b. real estate or real estate activities as described under paragraph 7 of subdivision d of subsection 2.
- Consist of at least six accredited investors as defined by the Securities <u>C.</u> Act of 1933, Title 17 Code of Federal Regulations part 230 section 501(a).
- d. Not have more than twenty-five percent of its capitalized investment assets owned by any one investor.
  - Have at least five hundred thousand dollars in commitments from <u>e.</u> accredited investors which are subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
- f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - Be certified as an angel fund that meets the requirements of this g. subsection by the department of commerce.
- Be in, and remain in, compliance with state and federal securities laws, h. and invest only in qualified businesses that are issuing securities in compliance with state and federal securities laws.
- On or before December 31, 2019, and every two calendar years thereafter, a <u>4.</u> minimum of twenty-five percent of an angel fund's investments under subdivision b of subsection 2 must be invested into a North Dakota gualified business.





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4	F	A	nacl free	d must hold the investment in a qualified business for at least three		
1	<u>5.</u>			d must hold the investment in a qualified business for at least three		
2			years from the date of investment. The three-year period does not apply if, before			
3			end of the three-year period:			
4		<u>a.</u>		The investment becomes worthless;		
5		<u>b.</u>		Eighty percent or more of the assets of the qualified business are sold;		
6		<u>C.</u>		qualified business is sold;		
7		<u>d.</u>		common stock of the qualified business begins trading on a public		
8			<u>excha</u>	ange; or		
9		<u>e.</u>	<u>A par</u>	tner, shareholder, or member of the angel fund dies, in which case		
10			the e	xception to the three-year holding period only applies to the		
11			dece	ased's portion of the investment and related credit.		
12	<u>6.</u>	a.	<u>Withi</u>	<u>n thirty days after the date on which an angel fund makes an</u>		
13			inves	tment in a qualified business, the angel fund shall report the		
14			inves	tment to the tax commissioner on forms and in the manner		
15			preso	ribed by the tax commissioner. The report must contain the		
16			follow	<u>ving:</u>		
17			<u>(1)</u>	Name, address, and federal employer identification number of the		
18				angel fund;		
19			<u>(2)</u>	Total amount of the investment from all angel investors investing		
20				in the qualified business;		
21			<u>(3)</u>	Name, address, and social security or federal identification		
22				number of each angel investor investing in the qualified business;		
23			<u>(4)</u>	Amount invested by each angel investor in the qualified business;		
24			(5)	Type of security received by the angel fund in exchange for the		
25				investment;		
26			<u>(6)</u>	Name, address, and federal employer identification number of the		
27				gualified business;		
28			(7)	<u>The type of industry in which the qualified business is engaged;</u>		
29			1-1	and		
30			(8)	Any other information the tax commissioner determines is		
31			(-)	necessary for administration of this section.		
32		<u>b.</u>	An a	ngel fund is subject to a penalty of one thousand dollars per month		
33		<u>N.</u>		ach month, or fraction thereof, the report is not filed. The tax		
55			101 80	ach month, or machon thereof, the report is not med. The tax		

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	1		commissioner may for good cause shown waive all or part of the penalty		
	2		imposed under this subsection.		
	3	<u>7.</u>	By January thirty-first of each calendar year, the angel fund shall file with		
	4		the tax commissioner a report showing:		
	5		a. The name and address of each qualified business in which the angel fund		
	6		has made an investment;		
	7		b. The principal place of business for each qualified business reported under		
	8		subdivision a;		
	9		c. The total amount invested in each qualified business; and		
	10		d. Any other information the tax commissioner determines is necessary		
	11		for administration of this section.		
ſ	12	<u>8.</u>	For an angel fund certified prior to July 1, 2017, within thirty days after the end of		
	13		each calendar year, the angel fund shall file with the tax commissioner a report		
ŕ	14		showing the name and principal place of business of each enterprise in which the		
ŕ	15		angel fund has an investment and the amount of the investment.		
	16	<u>9.</u>	Upon receipt of a written request from the chairman of the legislative		
ľ	17		management or the chairman of a standing committee of the legislative		
)	18		assembly, the tax commissioner shall disclose any information described under		
	19		subsections 6, 7, and 8. This subsection does not authorize disclosure of the		
2	20		angel investor's name, social security number or federal employer identification		
2	21		number, address, or any other information prohibited from disclosure under this		
2	22		chapter.		
2	23	<u>10.</u>	Angel investors may be actively involved in the qualified businesses in which the		
2	24		angel fund invests but the angel fund may not invest in any qualified business if		
2	25		any one angel investor owns directly or indirectly more than forty-nine percent of		
2	26		the ownership interests in the qualified business. The angel fund may not invest		
2	27		in a qualified business if any one angel investor is a partner, shareholder, or		
2	28		member of another passthrough entity that directly or indirectly owns more than		
2	29		forty-nine percent of the ownership interests in the qualified business.		
:	30	<u>11.</u>	Failure to comply with any provision of this section shall be cause to revoke the		
:	31		certification of an angel fund or qualified business, or disallow the credit		
:	32		attributable to the noncompliance.		
. :	33		a. Notice of the revocation of the angel fund or qualified business'		
	34		certification must be provided to the angel fund or qualified business by		

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1		the tax commissioner, department of commerce, or securities	
2		commissioner. Within thirty days of receipt of the notice, the angel fund	
3		must provide a copy of the notice to each of its angel investors.	
4		b. The angel fund's investors shall file an amended return for each taxable	
5		year in which the disallowed credit reduced the income tax liability and	
6		pay the amount due. The amended return, if required, must be filed	
7		within ninety days after the date of the written notice given to the angel	
8		fund.	
9		c. If the amended return is not timely filed, the tax commissioner shall	
10		disallow the credit and assess any tax due. An assessment of tax made	
11		under this subsection is final and irrevocably fixed.	
12		d. If an amended return is filed as required under subdivision b, the tax	
13		commissioner has two years after the amended return is filed in which to	
14		audit and assess any tax due attributable to the revocation of the credit,	
15		even though other time periods for assessment under this chapter have	
16		expired. This subdivision does not limit or restrict any other time period for	
17		assessment under this chapter that has not expired.	
18	<u>12.</u>	An angel fund or a representative of the fund that knowingly makes, or causes to	
19		be made, any material false statement or representation in any application,	
20		report, or other document required to be filed under any provision of this section,	
21		or omits to state any material statement or fact in any such application, report, or	
22		other document required to be filed under any provision of this section, or fails to	
23		file the report required in subsection 6 or 7, and after thirty days' notice to file is	
24		given by the tax commissioner, shall be subject to a penalty of ten thousand	
25		dollars.	
26	<u>13.</u>	Notwithstanding any other provision of law, the tax commissioner and the	
27		department of commerce may exchange any information obtained under this	
28		section to the extent necessary to administer this section."	
29	Page 6, line 13, remove the overstrike over "Seed"		
30	Page 6, line 13, remove " <u>Angel investor seed</u> "		
31	Page 6, remo	ove line 14	
32	Page 6, line 2	20 remove " <u>(effective for the first</u> "	
33	Page 6, line 21, remove "three taxable years beginning after December 31, 2016)"		
34	Page 7, remo	ove lines 5 through 30	

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- 1 Page 8, remove lines 1 through 29
- 2 Page 9, remove lines 1 through 31
- 3 Page 10, remove lines 1 through 31
- 4 Page 11, remove lines 1 through 10
- 5 Page 11, after line 10, insert:
  - " SECTION 3. LEGISLATIVE INTENT REGARDING ANGEL FUND INVESTOR TAX
- 7 **CREDIT.** It is the intent of the sixty-fifth legislative assembly that the angel fund investor tax
- 8 credit be one of the economic development tax incentives selected for analysis during the 2017-
- 9 18 interim by the legislative management interim committee assigned the study responsibility
- 10 under section 54-35-26 of the North Dakota Century Code."
- 11 Page 11, line 11, remove "Section 9 of"
- 12 Page 11, line 11, replace "this" with "This"
- 13 Page 11, line 12 replace "2019" with "2016"
- 14 Page 11, line 12, remove ", and sections 2 through 8 of this Act are effective for taxable"
- Page 11, line 13, remove "years beginning after December 31, 2016"Renumber accordingly





HB1045 Attachment #1 THIRD ENGROSSMENT

\*3/22/2017 17.0158.04002

> Sixty-fifth Legislative Assembly of North Dakota

## **REENGROSSED HOUSE BILL NO. 1045**

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

- 1 A BILL for an Act to amend and reenact section 57-38-01.26, and subsection 7 of section
- 2 57-38-30.3, subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,
- 3 57-38.5-04, 57-38.5-05, and 57-38.5-06 of the North Dakota Century Code, relating to the angel
- 4 fund investment tax credit and the seed capital investment tax credit; to repeal section
- 5 57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund
- 6 investment tax credit and the seed capital investment tax credit; to provide for a legislative
- 7 management study; to provide a penalty; to provide an effective date; and to provide an
- 8 expiration date.

# 9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is
 amended and reenacted as follows:

# 12 57-38-01.26. (Effective for investments made before July 1, 2017) Angel fund

13 investment tax credit.

14 1. A taxpayer is entitled to a credit against state income tax liability under section 15 57-38-30 or 57-38-30.3 for an investment made prior to April July 1, 2017, in an angel 16 fund that is a domestic organization created organized before July 1, 2017, under the 17 laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five 18 percent of the amount remitted by the taxpayer to an angel fund during the taxable 19 year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not 20 more than forty-five thousand dollars. The aggregate lifetime credits under this section 21 that may be obtained by an individual, married couple, passthrough entity and its 22 affiliates, or other taxpayer is five hundred thousand dollars. The investment used to 23 calculate the credit under this section may not be used to calculate any other income 24 tax deduction or credit allowed by law.

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1 To be eligible for the credit, the investment must be at risk in the angel fund for at least 2. 2 three years. An investment made in a gualified business from the assets of a 3 retirement plan is deemed to be the retirement plan participant's investment for the 4 purpose of this section if a separate account is maintained for the plan participant and 5 the participant directly controls where the account assets are invested. Investments 6 placed in escrow do not qualify for the credit. The credit must be claimed in the taxable 7 year in which the investment in the angel fund was received by the angel fund. The 8 credit allowed may not exceed the liability for tax under this chapter. If the amount of 9 credit determined under this section exceeds the liability for tax under this chapter, the 10 excess may be carried forward to each of the seven succeeding taxable years. A 11 taxpayer claiming a credit under this section may not claim any credit available to the 12 taxpayer as a result of an investment made by the angel fund in a gualified business 13 under chapter 57-38.5 or 57-38.6.

14 3. An angel fund must:

- a. Be a partnership, limited partnership, corporation, limited liability company, limited
  liability partnership, limited liability limited partnership, trust, or estate organized
  on a for-profit basis which is headquartered in this state.
- 18 Be organized for the purpose of investing in a portfolio of at least three primary b. 19 sector companies that are early-stage and mid-stage private, nonpublicly traded 20 enterprises with strong growth potential. For purposes of this section, an 21 early-stage entity means an entity with annual revenues of up to two million 22 dollars and a mid-stage entity means an entity with annual revenues over two 23 million dollars not to exceed ten million dollars. Investments in real estate or real 24 estate holding companies are not eligible investments by certified angel funds. 25 Any angel fund certified before January 1, 2013, which has invested in real estate 26 or a real estate holding company is not eligible for recertification.
- c. Consist of at least six accredited investors as defined by securities and exchange
   commission regulation D, rule 501.
- 29 d. Not have more than twenty-five percent of its capitalized investment assets
  30 owned by an individual investor.

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1		e.	Have at least five hundred thousand dollars in commitments from accredited
2			investors and that capital must be subject to call to be invested over an
3			unspecified number of years to build a portfolio of investments in enterprises.
4		f.	Be member-managed or a manager-managed limited liability company and the
5			investor members or a designated board that includes investor members must
6			make decisions as a group on which enterprises are worthy of investments.
7		g.	Be certified as an angel fund that meets the requirements of this section by the
8			department of commerce.
9		h.	Be in compliance with the securities laws of this state.
10		i.	Within thirty days after the date on which an investment in an angel fund is made,
11			the angel fund shall file with the tax commissioner and provide to the investor
12			completed forms prescribed by the tax commissioner which show as to each
13			investment in the angel fund the following:
14			(1) The name, address, and social security number or federal employer
15			identification number of the taxpayer or passthrough entity that made the
16			investment;
17			(2) The dollar amount remitted by the taxpayer or passthrough entity; and
18			(3) The date the payment was received by the angel fund for the investment.
19		j.	Within thirty days after the end of a calendar year, the angel fund shall file with
20			the tax commissioner a report showing the name and principal place of business
21			of each enterprise in which the angel fund has an investment and the amount of
22			the investment.
23	4.	The	tax commissioner may disclose to the legislative management the reported
24		info	mation described under paragraphs 2 and 3 of subdivision i of subsection 3 and
25		the	reported information described under subdivision j of subsection 3.
26	5.	Ang	el fund investors may be actively involved in the enterprises in which the angel
27		func	invests but the angel fund may not invest in any enterprise if any one angel fund
28		inve	stor owns directly or indirectly more than forty-nine percent of the ownership
29		inter	ests in the enterprise. The angel fund may not invest in an enterprise if any one
30		part	ner, shareholder, or member of a passthrough entity that directly or indirectly owns
31		mor	e than forty-nine percent of the ownership interests in the enterprise.

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1	6.	Inve	estors in one angel fund may not receive more than five million dollars in aggregate
2		cree	dits under this section during the life of the angel fund but this provision may not be
3		inte	erpreted to limit additional investments in that angel fund.
4	7.	<del>a.</del>	A passthrough entity entitled to the credit under this section must be considered
5			to be the taxpayer for purposes of this section, and the amount of the credit
6			allowed must be determined at the passthrough entity level.
7		<del>b.</del>	For the first two taxable years beginning after December 31, 2010, if a
8			passthrough entity does not elect to sell, transfer, or assign the credit as provided
9			under this subsection and subsection 8, the amount of the total credit determined
10			at the entity level must be passed through to the partners, shareholders, or
11			members in proportion to their respective interests in the passthrough entity.
12		<del>C.</del>	For the first two taxable years beginning after December 31, 2010, if a
13			passthrough entity elects to sell, transfer, or assign a credit as provided under
14			this subsection and subsection 8, the passthrough entity shall make an
15			irrevocable election to sell, transfer, or assign the credit on the return filed by the
16			entity for the taxable year in which the credit was earned. A passthrough entity
17			that makes a valid election to sell, transfer, or assign a credit shall sell one
18			hundred percent of the credit earned, may sell the credit to only one purchaser,
19			and shall comply with the requirements of this subsection and subsection 8.
20	8.	For	the first two taxable years beginning after December 31, 2010, a taxpayer may
21		elec	ct to sell, transfer, or assign all of the earned or excess tax credit earned under this
22		Sec	tion for investment in an angel fund established after July 31, 2011, subject to the
23		folle	owing:
24		<del>a.</del>	A taxpayer's total credit sale, transfer, or assignment under this section may not
25			exceed one hundred thousand dollars over any combination of taxable years.
26			The cumulative credits transferred by all investors in an angel fund may not
27			exceed fifty percent of the aggregate credits under this section during the life of
28			the angel fund under subsection 6.
29		<del>b.</del>	If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
30			tax credit transferor and the tax credit purchaser jointly shall file with the tax
31			commissioner a copy of the purchase agreement and a statement containing the

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1		names, addresses, and taxpayer identification numbers of the parties to the
2		transfer, the amount of the credit being transferred, the gross proceeds received
3		by the transferor, and the taxable year or years for which the credit may be
4		claimed. The taxpayer and the purchaser also shall file a document allowing the
5		tax commissioner to disclose tax information to either party for the purpose of
6		verifying the correctness of the transferred tax credit. The purchase agreement,
7		supporting statement, and waiver must be filed within thirty days after the date
8		the purchase agreement is fully executed.
9	<del>C.</del>	The purchaser of the tax credit shall claim the credit beginning with the taxable
10		year in which the credit purchase agreement was fully executed by the parties. A
11		purchaser of a tax credit under this section has only such rights to claim and use
12		the credit under the terms that would have applied to the tax credit transferor.
13		This subsection does not limit the ability of the tax credit purchaser to reduce the
14		tax liability of the purchaser, regardless of the actual tax liability of the tax credit
15		transferor.
16	<del>d.</del>	A sale, assignment, or transfer of a tax credit under this section is irrevocable and
17		the purchaser of the tax credit may not sell, assign, or otherwise transfer the
18		<del>credit.</del>
19	e.	If the amount of the credit available under this section is changed as a result of
20		an amended return filed by the transferor, or as the result of an audit conducted
21		by the internal revenue service or the tax commissioner, the transferor shall
22		report to the purchaser the adjusted credit amount within thirty days of the
23		amended return or within thirty days of the final determination made by the

internal revenue service or the tax commissioner. The tax credit purchaser shall
 file amended returns reporting the additional tax due or claiming a refund as
 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit
 these returns and assess or issue refunds, even though other time periods
 prescribed in these sections may have expired for the purchaser.

f. Gross proceeds received by the tax credit transferor must be assigned to North
 Dakota. The amount assigned under this subsection cannot be reduced by the

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1		taxpayer's income apportioned to North Dakota or any North Dakota net
2		operating loss of the taxpayer.
3	<del>g.</del>	The tax commissioner has four years after the date of the credit assignment to
4		audit the returns of the credit transferor and the purchaser to verify the
5		correctness of the amount of the transferred credit and if necessary assess the
6		credit purchaser if additional tax is found due. This subdivision does not limit or
7		restrict any other time period prescribed in this chapter for the assessment of tax.
8	<del>h.</del>	The tax commissioner may adopt rules to establish necessary administrative
9		provisions for the credit under this section, including provisions to permit
10		verification of the validity and timeliness of the transferred tax credit.
11	SECTION	2. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is
12	amended and	I reenacted as follows:
13	57-38-01	26. (Effective for investments made after June 30, 2017) Angel fund
14	investment <u>ir</u>	ivestor tax credit.
15	<u>1. A ta</u>	xpayer is entitled to a credit against state income tax liability under section
16	57-3	38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic
17	orga	anization created under the laws of this state. The amount of the credit to which a
18	taxp	ayer is entitled is forty-five percent of the amount remitted by the taxpayer to an
19	ange	el fund during the taxable year. The aggregate annual credit for which a taxpayer
20	may	obtain a tax credit is not more than forty five thousand dollars. The aggregate
21	lifeti	me credits under this section that may be obtained by an individual, married
22	cout	ole, passthrough entity and its affiliates, or other taxpayer is five hundred thousand
23	dolla	ars. The investment used to calculate the credit under this section may not be used
24	t <del>o ca</del>	alculate any other income tax deduction or credit allowed by law.
25	<u>2. To b</u>	e eligible for the credit, the investment must be at risk in the angel fund for at least
26	three	e years. An investment made in a qualified business from the assets of a
27	retire	ement plan is deemed to be the retirement plan participant's investment for the
28	purp	ose of this section if a separate account is maintained for the plan participant and
29	the j	participant directly controls where the account assets are invested. Investments
30	<del>plac</del>	ed in escrow do not qualify for the credit. The credit must be claimed in the taxable
31	year	in which the investment in the angel fund was received by the angel fund. The

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1	credit allowed may not exceed the liability for tax under this chapter. If the amount of
2	credit determined under this section exceeds the liability for tax under this chapter, the
3	excess may be carried forward to each of the seven succeeding taxable years. A
4	taxpayer claiming a credit under this section may not claim any credit available to the
5	taxpayer as a result of an investment made by the angel fund in a qualified business
6	under chapter 57-38.5 or 57-38.6.
7	
8	a. Be a partnership, limited partnership, corporation, limited liability company, limited
9	liability partnership, limited liability limited partnership, trust, or estate organized
10	on a for-profit basis which is headquartered in this state.
11	b. Be organized for the purpose of investing in a portfolio of at least three primary
12	sector companies that are early-stage and mid-stage private, nonpublicly traded
13	enterprises with strong growth potential. For purposes of this section, an
14	early-stage entity means an entity with annual revenues of up to two million
15	dollars and a mid-stage entity means an entity with annual revenues over two
16	million dollars not to exceed ten million dollars. Investments in real estate or real
17	estate holding companies are not eligible investments by certified angel funds.
18	Any angel fund certified before January 1, 2013, which has invested in real estate
19	or a real estate holding company is not eligible for recertification.
20	c. Consist of at least six accredited investors as defined by securities and exchange
21	commission regulation D, rule 501.
22	d. Not have more than twenty-five percent of its capitalized investment assets
23	owned by an individual investor.
24	e. Have at least five hundred thousand dollars in commitments from accredited
25	investors and that capital must be subject to call to be invested over an
26	unspecified number of years to build a portfolio of investments in enterprises.
27	f. Be member-managed or a manager-managed limited liability company and the
28	investor members or a designated board that includes investor members must
29	make decisions as a group on which enterprises are worthy of investments.
30	g. Be certified as an angel fund that meets the requirements of this section by the
31	department of commerce.

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1	h. Be in compliance with the securities laws of this state.
2	i. Within thirty days after the date on which an investment in an angel fund is made,
3	the angel fund shall file with the tax commissioner and provide to the investor
4	completed forms prescribed by the tax commissioner which show as to each
5	investment in the angel fund the following:
6	(1) The name, address, and social security number or federal employer
7	identification number of the taxpayer or passthrough entity that made the
8	investment;
9	(2) The dollar amount remitted by the taxpayer or passthrough entity; and
10	(3) The date the payment was received by the angel fund for the investment.
11	j. Within thirty days after the end of a calendar year, the angel fund shall file with
12	the tax commissioner a report showing the name and principal place of business
13	of each enterprise in which the angel fund has an investment.
14	4. The tax commissioner may disclose to the legislative management the reported
15	information described under paragraphs 2 and 3 of subdivision i of subsection 3 and
16	the reported information described under subdivision j of subsection 3.
17	5. Angel fund investors may be actively involved in the enterprises in which the angel
18	fund invests but the angel fund may not invest in any enterprise if any one angel fund
19	investor owns directly or indirectly more than forty-nine percent of the ownership
20	interests in the enterprise. The angel fund may not invest in an enterprise if any one
21	partner, shareholder, or member of a passthrough entity that directly or indirectly owns
22	more than forty-nine percent of the ownership interests in the enterprise.
23	6. Investors in one angel fund may not receive more than five million dollars in aggregate
24	credits under this section during the life of the angel fund but this provision may not be
25	interpreted to limit additional investments in that angel fund.
26	7. a. A passthrough entity entitled to the credit under this section must be considered
27	to be the taxpayer for purposes of this section, and the amount of the credit
28	allowed must be determined at the passthrough entity level.
29	b. For the first two taxable years beginning after December 31, 2010, if a
30	passthrough entity does not elect to sell, transfer, or assign the credit as provided
31	under this subsection and subsection 8, the amount of the total credit determined

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1	at the entity level must be passed through to the partners, shareholders, or
2	members in proportion to their respective interests in the passthrough entity.
3	c. For the first two taxable years beginning after December 31, 2010, if a
4	passthrough entity elects to sell, transfer, or assign a credit as provided under
5	this subsection and subsection 8, the passthrough entity shall make an
6	irrevocable election to sell, transfer, or assign the credit on the return filed by the
7	entity for the taxable year in which the credit was earned. A passthrough entity
8	that makes a valid election to sell, transfer, or assign a credit shall sell one
9	hundred percent of the credit earned, may sell the credit to only one purchaser,
10	and shall comply with the requirements of this subsection and subsection 8.
11	8. For the first two taxable years beginning after December 31, 2010, a taxpayer may
12	elect to sell, transfer, or assign all of the earned or excess tax credit earned under this
13	section for investment in an angel fund established after July 31, 2011, subject to the
14	following:
15	a. A taxpayer's total credit sale, transfer, or assignment under this section may not
16	exceed one hundred thousand dollars over any combination of taxable years.
17	The cumulative credits transferred by all investors in an angel fund may not
18	exceed fifty percent of the aggregate credits under this section during the life of
19	the angel fund under subsection 6.
20	b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
21	tax credit transferor and the tax credit purchaser jointly shall file with the tax
22	commissioner a copy of the purchase agreement and a statement containing the
23	names, addresses, and taxpayer identification numbers of the parties to the
24	transfer, the amount of the credit being transferred, the gross proceeds received
25	by the transferor, and the taxable year or years for which the credit may be
26	claimed. The taxpayer and the purchaser also shall file a document allowing the
27	tax commissioner to disclose tax information to either party for the purpose of
28	verifying the correctness of the transferred tax credit. The purchase agreement,
29	supporting statement, and waiver must be filed within thirty days after the date
30	the purchase agreement is fully executed.

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1	c. The purchaser of the tax credit shall claim the credit beginning with the taxable
2	year in which the credit purchase agreement was fully executed by the parties. A
3	purchaser of a tax credit under this section has only such rights to claim and use
4	the credit under the terms that would have applied to the tax credit transferor.
5	This subsection does not limit the ability of the tax credit purchaser to reduce the
6	tax liability of the purchaser, regardless of the actual tax liability of the tax credit
7	transforor.
8	d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and
9	the purchaser of the tax credit may not sell, assign, or otherwise transfer the
10	credit.
11	e. If the amount of the credit available under this section is changed as a result of
12	an amended return filed by the transferor, or as the result of an audit conducted
13	by the internal revenue service or the tax commissioner, the transferor shall
14	report to the purchaser the adjusted credit amount within thirty days of the
15	amended return or within thirty days of the final determination made by the
16	internal revenue service or the tax commissioner. The tax credit purchaser shall
17	file amended returns reporting the additional tax due or claiming a refund as
18	provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit
19	these returns and assess or issue refunds, even though other time periods
20	prescribed in these sections may have expired for the purchaser.
21	f. Gross proceeds received by the tax credit transferor must be assigned to North
22	Dakota. The amount assigned under this subsection cannot be reduced by the
23	taxpayer's income apportioned to North Dakota or any North Dakota net
24	operating loss of the taxpayer.
25	g. The tax commissioner has four years after the date of the credit assignment to
26	audit the returns of the credit transferor and the purchaser to verify the
27	correctness of the amount of the transferred credit and if necessary assess the
28	credit purchaser if additional tax is found due. This subdivision does not limit or
29	restrict any other time period prescribed in this chapter for the assessment of tax.

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CLARK TANK		h.	The tax commissioner may adopt rules to establish necessary administrative
			provisions for the credit under this section, including provisions to permit
			verification of the validity and timeliness of the transferred tax credit.
CHINESE CON	1.	For	investments made after June 30, 2017, an angel investor is entitled to a credit
		aga	inst the income tax liability under section 57-38-30.3 for investments made by a
		cert	ified angel fund into a qualified business. The credit is equal to thirty-five percent of
Testi o Cres e Suite		the	amount invested by the angel fund on behalf of the angel investor in a qualified
		bus	iness during the taxable year.
and reserves		а.	The aggregate amount of credits allowed to an angel investor in a taxable year is
			limited to forty-five thousand dollars. The aggregate amount of credits allowed to
			an angel investor for investments made in all taxable years is five hundred
			thousand dollars. The limitation under this subdivision does not apply to the angel
			fund but applies to each angel investor.
and the second se		b.	The credit must be claimed in the taxable year in which the investment is made in
			the qualified business. The credit allowed may not exceed the liability for tax
			under this chapter. If the amount of the credit determined under this section
			exceeds the liability for tax under this chapter, the excess may be carried forward
			to each of the five succeeding taxable years.
and the second se		с.	The investment used to calculate the credit under this section may not be used to
			calculate any other income tax deduction or credit allowed by law.
Sec. 1		d.	Angel investors may not receive more than five million dollars in aggregate
			credits under this section during the life of an angel fund but this provision may
			not be interpreted to limit additional investments in the angel fund.
and a second sec		e.	Investments placed in escrow do not qualify for the credit.
	. James	f.	A 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
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1	under this section against the individual's state income tax liability under section
2	<u>57-38-30.3.</u>
3	2. For purposes of this section:
4	a. "Early-stage entity" means an entity with annual revenues of up to two million
5	dollars.
6	b. "Investment" means a cash investment in a qualified business that is made in
7	exchange for common stock, a partnership or membership interest, preferred
8	stock, debt with a mandatory conversion to equity, or an equivalent ownership
9	interest as determined by the tax commissioner.
10	c. "Mid-stage entity" means an entity with annual revenues over two million dollars
11	not to exceed ten million dollars.
12	d. "North Dakota Qualified business" means an early-stage or mid-stage private,
13	nonpublicly traded enterprise that:
14	(1) Is created, or its satellite operation is created, as a for-profit entity under the
15	laws of this state.
16	(2) Has its principal office in this state and has the majority of its business
17	activity performed in this state, except sales activity, or has a significant
18	operation in this state that has or is projected to have more than ten
19	employees in this state.
20	(3) Relies on research or the development of new products and processes in its
21	plans for growth and profitability.
22	(4) Is in compliance with state and federal securities laws.
23	(5) Is not an entity or enterprise which is engaged in real estate development, is
24	a real estate holding company, derives income from the selling or leasing of
25	residential or commercial real estate, or carries on operations in the hotel,
26	restaurant, convention, or hospitality industries, or makes any other similar
27	use of real estate.
28	(6) Is certified as a North Dakota qualified business that meets the
29	requirements of this section by the department of commerce.
30	e. "Qualified business" means an early-stage or mid-stage private, nonpublicly
31	traded enterprise that:

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(1) Is created as a for-profit entity.
(2) Relies on research or the development of new products and processes in its
plans for growth and profitability.
(3) Is in compliance with state and federal securities laws.
(4) Is not an entity or enterprise engaged in real estate development, is a real
estate holding company, derives income from the selling or leasing of
residential or commercial real estate, or carries on operations in the hotel,
restaurant, convention, or hospitality industries, or makes any other similar
use of real estate.
(5) Is certified as a qualified business that meets the requirements of this
section by the department of commerce.
Except as used in this subdivision, the term "qualified business" also includes a
North Dakota qualified business.
3. An angel fund must:
a. Be a passthrough entity organized after June 30, 2017, as a domestic for-profit
entity under the laws of this state, and have its headquarters in this state.
b. Not have invested, or intend on investing during its certification period, in real
estate or real estate activities as described under subdivision e of subsection 2.
c. Consist of at least six accredited investors as defined in regulation D, rule 501 of
the federal Securities Act of 1933.
d. Not have more than twenty-five percent of its capitalized investment assets
owned by any one investor.
e. Have at least five hundred thousand dollars in commitments from accredited
investors which are subject to call to be invested over an unspecified number of
years to build a portfolio of investments in enterprises.
f. Be member-managed or a manager-managed limited liability company and the
investor members or a designated board that includes investor members must
make decisions as a group on which enterprises are worthy of investments.
g. Be certified as an angel fund that meets the requirements of this subsection by
the department of commerce.

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1		h. Be in, and remain in, compliance with state and federal securities laws, and
2		invest only in qualified businesses that are issuing securities in compliance with
3		state and federal securities laws.
4	4.	On or before December 31, 2019, and every two calendar years thereafter, a minimum
5		of seventy-five percent of an angel fund's investments, as defined under subdivision b
6		of subsection 2, must be invested into a North Dakota qualified business.
7	5.	An angel fund shall hold the investment in a qualified business for at least three years
8		from the date of investment. The three-year period does not apply if, before the end of
9		the three-year period:
10		a. The investment becomes worthless;
11		b. Eighty percent or more of the assets of the qualified business are sold;
12		c. The qualified business is sold;
13		d. The common stock of the qualified business begins trading on a public exchange;
14		<u>or</u>
15		e. A partner, shareholder, or member of the angel fund dies, in which case the
16		exception to the three-year holding period only applies to the deceased
17		individual's portion of the investment and related credit.
18	6.	Within thirty days after the date on which an angel fund makes an investment in a
19		qualified business, the angel fund shall report the investment to the tax commissioner
20		on forms and in the manner prescribed by the tax commissioner. The report must
21		contain:
22		a. The name, address, and federal employer identification number of the angel
23		<u>fund;</u>
24		b. The total amount of the investment from all angel investors investing in the
25		qualified business;
26		c. The name, address, and social security or federal identification number of each
27		angel investor investing in the qualified business;
28		d. The amount invested by each angel investor in the qualified business;
29		e. The type of security received by the angel fund in exchange for the investment;
30		f. The name, address, and federal employer identification number of the qualified
31		business;

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	g. The type of industry in which the qualified business is engaged; and
	h. Any other information the tax commissioner determines is necessary for
	administration of this section.
7	An angel fund is subject to a penalty of one thousand dollars per month for each
	month, or fraction thereof, the report under subsection 6 is not filed. The tax
	commissioner, for good cause shown, may waive all or part of the penalty imposed
	under this subsection.
8.	By January thirty-first of each year, the angel fund shall file with the tax commissioner
	a report showing:
	a. The name and address of each qualified business in which the angel fund has
	made an investment;
	b. The principal place of business for each qualified business reported under
	subdivision a;
	c. The total amount invested in each qualified business; and
	d. Any other information the tax commissioner determines is necessary for
	administration of this section.
9.	For an angel fund certified before July 1, 2017, within thirty days after the end of each
	calendar year, the angel fund shall file with the tax commissioner a report showing the
	name and principal place of business of each enterprise in which the angel fund has
	an investment and the amount of the investment.
10.	Upon receipt of a written request from the chairman of the legislative management or
	the chairman of a standing committee of the legislative assembly, the tax
	commissioner shall disclose any information described under subsections 6, 8, and 9.
11.	Angel investors may be actively involved in the qualified businesses in which the angel
	fund invests but the angel fund may not invest in any qualified business if any one
	angel investor owns directly or indirectly more than forty-nine percent of the ownership
	interests in the qualified business. The angel fund may not invest in a qualified
	business if any one angel investor is a partner, shareholder, or member of another
	passthrough entity that directly or indirectly owns more than forty-nine percent of the
	ownership interests in the qualified business.
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1	12.	Failure to comply with any provision of this section is cause to revoke the certification
2		of an angel fund or qualified business, or disallow the credit attributable to the
3		noncompliance.
4		a. Notice of the revocation of the angel fund or qualified business's certification
5		must be provided to the angel fund or qualified business by the tax
6		commissioner, department of commerce, or securities commissioner. Within thirty
7		days of receipt of the notice, the angel fund shall provide a copy of the notice to
8		each of its angel investors.
9		b. The angel fund's investors shall file an amended return for each taxable year in
10		which the disallowed credit reduced the investor's income tax liability and pay the
11		amount due. The amended return, if required, must be filed within ninety days
12		after the date of the written notice given to the angel fund.
13		c. If the amended return is not timely filed, the tax commissioner shall disallow the
14		credit and assess any tax due. An assessment of tax made under this subsection
15		is final and irrevocably fixed.
16		d. If an amended return is filed as required under subdivision b, the tax
17		commissioner has two years after the amended return is filed in which to audit
18		and assess any tax due attributable to the revocation of the credit, even though
19		other time periods for assessment under this chapter have expired. This
20		subdivision does not limit or restrict any other time period for assessment under
21		this chapter that has not expired.
22	13.	An angel fund or a representative of the fund that knowingly makes, or causes to be
23		made, any material false statement or representation in any application, report, or
24		other document required to be filed under any provision of this section, or omits to
25		state any material statement or fact in any such application, report, or other document
26		required to be filed under any provision of this section, or fails to file the report
27		required in subsection 7 or 9, and after thirty days' notice to file is given by the tax
28		commissioner, is subject to a penalty of ten thousand dollars.
29	14.	Notwithstanding any other provision of law, the tax commissioner and the department
30		of commerce may exchange any information obtained under this section to the extent
31		necessary to administer this section.

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1	SECTIO	N 3. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota	
2	Century Code is amended and reenacted as follows:		
3	7. A ta	xpayer filing a return under this section is entitled to the following tax credits:	
4	a.	Family care tax credit under section 57-38-01.20.	
5	b.	Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.	
6	C.	Agricultural business investment tax credit under section 57-38.6-03.	
7	d.	Seed Angel investor seed capital investment tax credit under section 57-38.5-03	
8		(effective for the first three taxable years beginning after December 31, 2016).	
9	e.	Planned gift tax credit under section 57-38-01.21.	
10	f.	Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and	
11		57-38-01.23.	
12	g.	Internship employment tax credit under section 57-38-01.24.	
13	h.	Workforce recruitment credit under section 57-38-01.25.	
14	i.	Angel fund investment tax credit under section 57-38-01.26 (effective for the first	
15		three taxable years beginning after December 31, 2016).	
16	j.	Microbusiness tax credit under section 57-38-01.27.	
17	k.	Marriage penalty credit under section 57-38-01.28.	
18	I.	Homestead income tax credit under section 57-38-01.29.	
19	<del>m.</del>	Commercial property income tax credit under section 57-38-01.30.	
20	<del>n.</del>	Research and experimental expenditures under section 57-38-30.5.	
21	<del>o.<u>m.</u></del>	Geothermal energy device installation credit under section 57-38-01.8.	
22	<del>p.<u>n.</u></del>	Long-term care partnership plan premiums income tax credit under section	
23		57-38-29.3.	
24	<del>q.<u>o.</u></del>	Employer tax credit for salary and related retirement plan contributions of	
25		mobilized employees under section 57-38-01.31.	
26	<del>r.</del> p.	Automating manufacturing processes tax credit under section 57-38-01.33	
27		(effective for the first five taxable years beginning after December 31, 2012).	
28	<u>s.q.</u>	Income tax credit for passthrough entity contributions to private education	
29		institutions under section 57-38-01.7.	
30	SECTION	V 4. AMENDMENT. Subsection 5 of section 57-38.5-01 of the North Dakota	
31	Century Code	e is amended and reenacted as follows:	

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1	
2	is a primary sector business that:
3	a. Is incorporated or its satellite operation is incorporated as a for-profit corporation,
4	passthrough entity, or joint venture;
5	b. Is in compliance with the requirements for filings with the securities commissioner
6	under the securities laws of this state;
7	
8	principal office or the North Dakota satellite operation;
9	d. Has its principal office in this state and has the majority of its business activity
10	performed in this state, except sales activity, or has a significant operation in
11	North Dakota that has or is projected to have more than ten employees or one
12	hundred fifty thousand dollars of sales annually; and
13	e. Relies on innovation, research, or the development of new products and
14	processes in its plans for growth and profitability.
15	
16	amended and reenacted as follows:
17	
18	investments in qualified businesses.
19	1. The director shall certify whether a business that has requested to become a qualified
20	business meets the requirements of subsection 5 of section 57-38.5-01. The director
21	shall establish the necessary forms and procedures for certifying qualified businesses.
22	
23	recertification is available to a qualified business. The application for recertification
24	must be filed with the director within ninety days before the original certification expiry
25	date. The recertification issued by the director must comply with the provisions of
26	subsection 3.
27	
28	certification letter must include:
29	a. The certification effective date.
30	b. The certification expiry date. The expiry date may not be more than four years
31	from the certification effective date.

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1	4. The maximum aggregate amount of qualified investments a qualified business ma	ŀ <del>У</del>
2	receive for all tax years is limited to five hundred thousand dollars under this chap	<del>ter.</del>
3	The tax credit allowed on qualified investments in a qualified business must be	
4	allowed to taxpayers in the chronological order of the taxpayer's qualified investm	ents
5	as determined from the forms filed under section 57-38.5-07. The limitation on	
6	investments under this subsection may not be interpreted to limit additional invest	ment
7	by a taxpayer for which that taxpayer is not applying for a credit.	
8	<u>5. By February first in each of the five years following a year in which a qualified</u>	
9	business receives a qualified investment, the qualified business shall file with the	t <u>ax</u>
10	commissioner completed forms prescribed by the tax commissioner which show t	ne
11	qualified business meets the requirements under section 57-38.5-01.	
12		
13	amended and reenacted as follows:	
14	<u>57-38.5-03. SeedAngel investor seed capital investment tax credit.</u>	
15		<del>ed to</del>
16	a credit against state income tax liability under section 57-38-30 or 57-38-30.3.	
17	1. The amount of the credit to which a taxpayer is entitled is forty-five twenty-five per	cent
18	of the amount invested by the taxpayer in qualified businesses during the taxable	<del>year.</del>
19		han
20	one hundred twelve thousand five hundred dollars. This subsection may not be	
21	interpreted to limit additional investment by a taxpayer for which that taxpayer is r	<del>ot</del>
22	applying for a credit.	
23		
24	subsection 2 may be carried forward for up to fourfive taxable years after the taxa	ble
25	year in which the investment was made.	
26	4. A passthrough entity that invests in a qualified business must be considered to be	the
27	taxpayer for purposes of the investment limitations in this section and the amount	of
28	the credit allowed with respect to a passthrough entity's investment in a qualified	
29	business must be determined at the passthrough entity level. The amount of the t	otal
30	credit determined at the passthrough entity level must be allowed to the partners,	

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1	shareholders, or members in proportion to their respective interests in the passthrough
2	entity.
3	— 5. An investment made in a qualified business from the assets of a retirement plan is
4	deemed to be the retirement plan participant's investment for the purpose of this
5	chapter if a separate account is maintained for the plan participant and the participant
6	directly controls where the account assets are invested.
7	6. The investment must be made on or after the certification effective date and must be
8	at risk in the business to be eligible for the tax credit under this section. An investment
9	for which a credit is received under this section must remain in the business for at
10	least three years. Investments placed in escrow do not qualify for the credit.
11	
12	must be expended by the qualified business for plant, equipment, research and
13	development, marketing and sales activity, or working capital for the qualified
14	business.
15	
16	more than fifty percent of the taxpayer's gross annual income from the qualified
17	business is not entitled to a credit under this section. A member of the immediate
18	family of a taxpayer disqualified by this subsection is not entitled to the credit under
19	this section. For purposes of this subsection, "immediate family" means the taxpayer's
20	spouse, parent, sibling, or child or the spouse of any such person.
21	9. The tax commissioner may disallow any credit otherwise allowed under this section if
22	any representation by a business in the application for certification as a qualified
23	business proves to be false or if the taxpayer or qualified business fails to satisfy any
24	conditions under this section or any conditions consistent with this section otherwise
25	determined by the tax commissioner. The commissioner has four years after the due
26	date of the return or after the return was filed, whichever period expires later, to audit
27	the credit and assess additional tax that may be found due to failure to comply with the
28	provisions of this chapter. The amount of any credit disallowed by the tax
29	commissioner that reduced the taxpayer's income tax liability for any or all applicable
30	tax years, plus penalty and interest as provided under section 57-38-45, must be paid
31	by the taxpayer.

17.0158.04002

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Attachment #/

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3	Legislative Assembly
1	- 10. An angel fund that invests in a qualified business must be considered to be the
2	taxpayer for purposes of the investment limitations in this section. The amount of the
3	credit allowed with respect to an angel fund's investment in a qualified business must
4	be determined at the angel fund level. The amount of the total credit determined at the
5	angel fund level must be allowed to the investors in the angel fund in proportion to the
6	investor's respective interests in the fund. An angel fund that is subject to the tax
7	imposed under chapter 57-38 or which was certified under section 57-38-01.26 before
8	April 1, 2017, is not eligible for the investment tax credit under this chapter.
9	
10	amended and reenacted as follows:
11	
12	
13	liability for the taxable year in which the investment in the qualified business was received by
14	the qualified business.
15	SECTION 8. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is
16	amended and reenacted as follows:
17	57-38.5-05. Seed <u>Angel investor seed</u> capital investment tax credit limits.
18	<ul> <li>The aggregate amount of <u>angel investor</u> seed capital investment tax credit allowed for</li> </ul>
19	investments under this chapter is limited to threeten million five hundred thousand dollars for
20	each calendar year. If investments in qualified businesses reported to the commissioner under
21	section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the
22	credit must be allowed to taxpayers in the chronological order of their investments in qualified
23	businesses as determined from the forms filed under section 57-38.5-07.
24	SECTION 9. AMENDMENT. Section 57-38.5-06 of the North Dakota Century Code is
25	amended and reenacted as follows:
26	
27	Rules.
28	— To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on
29	the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner
30	and file with the return a copy of the form issued by the qualified business as to the taxpayer's
31	investment in the qualified business under section 57-38.5-07.

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1 SECTION 10. REPEAL, Section 57-38-01.26 and chapter 57-38.5 of the North Dakota 2 Century Code are repealed. 3 SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ANGEL INVESTOR TAX CREDIT. 4 During the 2017-18 interim, the legislative management shall consider studying the angel 5 investor tax credit. The study must include a review of the amount claimed pursuant to the 6 credit, the number of claimants, the amount invested by each angel fund in qualified 7 businesses, and the state's return on investment resulting from the availability of the credit. The 8 legislative management shall report its findings and recommendations, together with any 9 legislation required to implement the recommendations, to the sixty sixth legislative assembly. 10 SECTION 5. EFFECTIVE DATE. Section 9 of this This Act is effective for taxable years 11 beginning after December 31, 2019, and sections 2 through 8 of this Act are effective for 12 taxable years beginning after December 31, 2016.

HB 1045

17.0158.04004 Title.06000

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1045

That the Senate recede from its amendments as printed on pages 1164-1172 of the House Journal and pages 896-904 of the Senate Journal and that Reengrossed House Bill No.1045 be amended as follows:

- Page 1, line 1, replace the comma with "and"
- Page 1, line 2, remove ", subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,"
- Page 1, line 3, remove "57-38.5-04, 57-38.5-05, and 57-38.5-06"
- Page 1, line 4, remove "and the seed capital investment tax credit; to repeal section"
- Page 1, remove line 5
- Page 1, line 6, remove "investment tax credit and the seed capital investment tax credit"
- Page 1, line 6, after the first semicolon insert "to provide a penalty;"
- Page 1, line 11, after the first boldfaced period insert "<u>(Effective for investments made before</u> July 1, 2017)"
- Page 1, line 13, replace "April" with "July"
- Page 1, line 14, overstrike "created" and insert immediately thereafter "organized before July 1, 2017,"
- Page 6, after line 6, insert:

"SECTION 2. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

## 57-38-01.26. (Effective for investments made after June 30, 2017) Angel fund investmentinvestor tax credit.

- 1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is five hundred thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
- 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate

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account is maintained for the plan participant and the participant directly controls where the account assets are invested. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

- 3. An angel-fund-must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, limited liability limited partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.
  - c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
  - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax

commissioner which show as to each investment in the angel fund the following:

- (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
- (2) The dollar amount remitted by the taxpayer or passthrough entity; and
- (3) The date the payment was received by the angel fund for the investment.
- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
- 4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.
- 5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.
- 6. Investors in one-angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
- 7. a. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.
  - b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of 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.
  - c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the

credit carned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.

- 8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:
  - a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
  - b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57 38 38 or 57 38 40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.

- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.
- 1. For investments made after June 30, 2017, an angel investor is entitled to a credit against the income tax liability under section 57-38-30.3 for investments made by a certified angel fund into an in-state qualified business or an out-of-state qualified business. The credit is equal to thirty-five percent of the amount invested by the angel fund on behalf of the angel investor in an in-state qualified business during the taxable year and twenty-five percent of the amount invested by the angel fund on behalf of the angel investor in an out-of-state qualified business during the taxable year and twenty-five percent of the amount invested by the angel fund on behalf of the angel investor in an out-of-state qualified business during the taxable year.
  - a. The aggregate amount of credits allowed to an angel investor in a taxable year is limited to forty-five thousand dollars. The aggregate amount of credits allowed to an angel investor for investments made in all taxable years is five hundred thousand dollars. The limitation under this subdivision does not apply to the angel fund but applies to each angel investor.
  - b. The credit must be claimed in the taxable year in which the investment is made in an in-state qualified business or an out-of-state qualified business. The credit allowed may not exceed the liability for tax under this chapter. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the five succeeding taxable years.
  - <u>c.</u> The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
  - d. Angel investors may not receive more than five million dollars in aggregate credits under this section during the life of an angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
  - e. Investments placed in escrow do not qualify for the credit.
  - <u>f.</u> <u>A passthrough entity entitled to the credit under this section must be</u> <u>considered to be the taxpayer for purposes of calculating the credit.</u> <u>The amount of the allowable credit must be determined at the</u> <u>passthrough entity level.</u> 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 section against the individual's state income tax liability under section 57-38-30.3.

- 2. For purposes of this section:
  - <u>a.</u> <u>"Early-stage entity" means an entity with annual revenues of up to two million dollars.</u>
  - b. <u>"In-state qualified business" means an early-stage or mid-stage</u> private, nonpublicly traded enterprise that:
    - (1) Is created, or its satellite operation is created, as a for-profit entity under the laws of this state.
    - (2) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in this state that has or is projected to have more than ten employees in this state.
    - (3) Relies on research or the development of new products and processes in its plans for growth and profitability.
    - (4) Is in compliance with state and federal securities laws.
    - (5) Is not an entity or enterprise which is engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
    - (6) Is certified as an in-state qualified business that meets the requirements of this section by the department of commerce.
  - <u>c.</u> <u>"Investment" means a cash investment in an in-state qualified</u> <u>business or out-of-state qualified business that is made in exchange</u> for common stock, a partnership or membership interest, preferred stock, debt with a mandatory conversion to equity, or an equivalent ownership interest as determined by the tax commissioner.
  - <u>d.</u> <u>"Mid-stage entity" means an entity with annual revenues over two</u> <u>million dollars not to exceed ten million dollars.</u>
  - e. <u>"Out-of-state qualified business" means an early-stage or mid-stage</u> private, nonpublicly traded enterprise that:
    - (1) Is created as a for-profit entity.
    - (2) Relies on research or the development of new products and processes in its plans for growth and profitability.
    - (3) Is in compliance with state and federal securities laws.
    - (4) <u>Is not an entity or enterprise engaged in real estate</u> <u>development, is a real estate holding company, derives income</u> <u>from the selling or leasing of residential or commercial real</u>

estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.

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- (5) Is certified as an out-of-state qualified business that meets the requirements of this section by the department of commerce.
- 3. An angel fund must:
  - a. <u>Be a passthrough entity organized after June 30, 2017, as a domestic</u> for-profit entity under the laws of this state, and have its headquarters in this state.
  - b. Not have invested, or intend on investing during its certification period, in real estate or real estate activities as described under subdivision e of subsection 2.
  - <u>c.</u> <u>Consist of at least six accredited investors as defined in regulation D,</u> <u>rule 501 of the federal Securities Act of 1933.</u>
  - <u>d.</u> <u>Not have more than twenty-five percent of its capitalized investment</u> <u>assets owned by any one investor.</u>
  - e. <u>Have at least five hundred thousand dollars in commitments from</u> <u>accredited investors which are subject to call to be invested over an</u> <u>unspecified number of years to build a portfolio of investments in</u> <u>enterprises.</u>
  - <u>f.</u> <u>Be member-managed or a manager-managed limited liability</u> <u>company and the investor members or a designated board that</u> <u>includes investor members must make decisions as a group on which</u> <u>enterprises are worthy of investments.</u>
  - g. <u>Be certified as an angel fund that meets the requirements of this</u> subsection by the department of commerce.
  - <u>h.</u> Be in, and remain in, compliance with state and federal securities laws, and invest only in in-state qualified businesses or an out-of-state qualified business that are issuing securities in compliance with state and federal securities laws.
- <u>4.</u> On or before December 31, 2019, and every two calendar years thereafter, a minimum of fifty percent of an angel fund's investments, as defined under subdivision b of subsection 2, must be invested into an in-state qualified business.
- 5. An angel fund shall hold the investment in an in-state qualified business or an out-of-state qualified business for at least three years from the date of investment. The three-year period does not apply if, before the end of the three-year period:
  - a. The investment becomes worthless;
  - b. Eighty percent or more of the assets of the in-state qualified business or out-of-state qualified business are sold;
  - <u>c.</u> <u>The in-state qualified business or out-of-state qualified business is</u> <u>sold;</u>

- <u>d.</u> <u>The common stock of the in-state qualified business or out-of-state</u> <u>qualified business begins trading on a public exchange; or</u>
- e. <u>A partner, shareholder, or member of the angel fund dies, in which</u> <u>case the exception to the three-year holding period only applies to the</u> <u>deceased individual's portion of the investment and related credit.</u>
- 6. Within thirty days after the date on which an angel fund makes an investment in an in-state qualified business or an out-of-state qualified business, the angel fund shall report the investment to the tax commissioner on forms and in the manner prescribed by the tax commissioner. The report must contain:
  - <u>a.</u> <u>The name, address, and federal employer identification number of the angel fund;</u>
  - b. The total amount of the investment from all angel investors investing in the in-state qualified business or out-of-state qualified business;
  - c. The name, address, and social security or federal identification number of each angel investor investing in the in-state qualified business or out-of-state qualified business;
  - <u>d.</u> <u>The amount invested by each angel investor in the in-state qualified</u> <u>business or out-of-state qualified business;</u>
  - e. The type of security received by the angel fund in exchange for the investment;
  - <u>f.</u> <u>The name, address, and federal employer identification number of the</u> in-state qualified business or out-of-state qualified business;
  - g. <u>The type of industry in which the in-state qualified business or</u> <u>out-of-state qualified business is engaged; and</u>
  - <u>h.</u> Any other information the tax commissioner determines is necessary for administration of this section.
- 7. An angel fund is subject to a penalty of one thousand dollars per month for each month, or fraction thereof, the report under subsection 6 is not filed. The tax commissioner, for good cause shown, may waive all or part of the penalty imposed under this subsection.
- 8. By January thirty-first of each year, the angel fund shall file with the tax commissioner a report showing:
  - a. <u>The name and address of each in-state qualified business or</u> <u>out-of-state qualified business in which the angel fund has made an</u> <u>investment;</u>
  - <u>b.</u> <u>The principal place of business for each in-state qualified business or</u> <u>out-of-state qualified business reported under subdivision a:</u>
  - <u>c.</u> <u>The total amount invested in each in-state qualified business or</u> <u>out-of-state qualified business; and</u>
  - <u>d.</u> Any other information the tax commissioner determines is necessary for administration of this section.

- 9. For an angel fund certified before July 1, 2017, within thirty days after the end of each calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment and the amount of the investment.
- 10. Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose any information described under subsections 6, 8, and 9. This subsection does not authorize disclosure of the angel investor's name, social security number or federal employer identification number, address, or any other information prohibited from disclosure under this chapter.
- 11. Angel investors may be actively involved in the in-state qualified businesses or out-of-state qualified businesses in which the angel fund invests but the angel fund may not invest in any in-state qualified business or out-of-state qualified business if any one angel investor owns directly or indirectly more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business. The angel fund may not invest in an in-state qualified business or an out-of-state qualified business if any one angel investor is a partner, shareholder, or member of another passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business.
- 12. Failure to comply with any provision of this section is cause to revoke the certification of an angel fund or an in-state qualified business or an out-of-state qualified business, or disallow the credit attributable to the noncompliance.
  - a. Notice of the revocation of the angel fund or an in-state qualified business's or out-of-state qualified business's certification must be provided to the angel fund or the in-state qualified business or out-of-state qualified business by the tax commissioner, department of commerce, or securities commissioner. Within thirty days of receipt of the notice, the angel fund shall provide a copy of the notice to each of its angel investors.
  - b. The angel fund's investors shall file an amended return for each taxable year in which the disallowed credit reduced the investor's income tax liability and pay the amount due. The amended return, if required, must be filed within ninety days after the date of the written notice given to the angel fund.
  - c. If the amended return is not timely filed, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
  - d. If an amended return is filed as required under subdivision b, the tax commissioner has two years after the amended return is filed in which to audit and assess any tax due attributable to the revocation of the credit, even though other time periods for assessment under this chapter have expired. This subdivision does not limit or restrict any

other time period for assessment under this chapter that has not expired.

- 13. An angel fund or a representative of the fund that knowingly makes, or causes to be made, any material false statement or representation in any application, report, or other document required to be filed under any provision of this section, or omits to state any material statement or fact in any such application, report, or other document required to be filed under any provision of this section, or fails to file the report required in subsection 8 or 9, and after thirty days' notice to file is given by the tax commissioner, is subject to a penalty of ten thousand dollars.
- 14. Notwithstanding any other provision of law, the tax commissioner, securities commissioner, and the department of commerce may exchange any information obtained under this section to the extent necessary to administer this section."

Page 6, line 13, remove the overstrike over "Seed"

- Page 6, line 13, remove "Angel investor seed"
- Page 6, line 14, remove "<u>(effective for the first three taxable years beginning after December</u> <u>31, 2016)</u>"
- Page 6, line 21, replace "three taxable years" with "taxable year"

Page 7, after line 4, insert:

"r. Angel investor tax credit under section 57-38-01.26."

- Page 7, remove lines 5 through 30
- Page 8, remove lines 1 through 29
- Page 9, remove lines 1 through 31
- Page 10, remove lines 1 through 31
- Page 11, remove lines 1 through 10
- Page 11, line 11, replace "Section 9 of this" with "This"

Page 11, line 12, remove "2019, and sections 2 through 8 of this Act are effective for taxable"

Page 11, line 13, remove "years beginning after December 31,"

Renumber accordingly