

FACT SHEET: 2005 Business Incentives Law

What is the Business Incentives Law?

- ✓ North Dakota Century Code Chapter 54-60.1 contains the Business Incentives Law and was created by the passage of House Bill 1203 during the 2005 Legislative session.
- ✓ Applies to business incentives with benefit dates on or after January 1, 2006.
- ✓ The law requires that a business incentive must meet a public purpose and that a recipient must enter into a business incentive agreement with a grantor that includes specific job and compensation goals.
- ✓ A recipient, having received an incentive from a state grantor, must report to a state grantor annually each year until the business has achieved all its goals.

Who does the law apply to, and for what types of incentives?

- ✓ State government agencies and political subdivisions with the authority to provide business incentives with state or local government funds, and entities created or authorized by a local government with this authority, are subject to the law.
- ✓ Types of assistance meeting the definition of a “business incentive” include:
 - state or political subdivision direct cash transfers, loans, or equity investments;
 - contributions of property or infrastructure;
 - reductions or deferrals of any taxes or any fees;
 - guarantees of any payment under any loan, lease, or other obligation; and
 - preferential use of government facilities.
- ✓ Under ND Century Code §54-60.1-01(2); the law explicitly excludes 16 types of assistance from the definition of business incentives, including:
 - assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria;
 - assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services; and
 - federal assistance until assistance has been repaid to, and reinvested by, the state or political subdivision (*once assistance has been repaid to and reinvested by a government agency it is subject to the reporting requirements outlined in the statute*).

What is required in order to award a business incentive?

- ✓ The law outlines 8 elements that must be included in business incentive agreements:
 - a description of the incentive, including the amount and type of incentive, and type of district if the incentive is TIF;
 - a statement of the public purposes for the incentive;
 - goals for the business incentive;
 - a description of the financial obligation of the recipient if goals are not met;
 - a commitment by the recipient to continue operations in the jurisdiction where the incentive is used for five years after the benefit date;
 - the name and address of the parent corporation of the recipient, if any;
 - a list of all financial assistance by all grantors for the project; and,
 - the recipient’s obligation if the recipient does not fulfill the business incentive agreement.
- ✓ All incentive agreements, in addition to other goals, must include:
 - goals for the number of jobs created, which may include separate goals for the number of part-time or full-time jobs, or, in cases where job loss is specific and demonstrable, goals for the number retained; and
 - average compensation goals for the number of jobs created or retained, including identification of the average benefits and the average earnings to be provided by the employer.

- ✓ If the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero.
- ✓ Business incentives must meet a public purpose which may include assisting community development, increasing the tax base, directly creating employment opportunities, or indirectly creating employment opportunities through increased economic activity. The law specifies that job retention may only be used as a public purpose in cases where job loss is specific and demonstrable.
- ✓ If a business incentive benefits more than one recipient, the grantor must assign a proportion of the incentive to each recipient signing the agreement.
- ✓ State incentives in the form of grants must be structured as forgivable loans. For other types of business incentives, the agreement must state the fair market value of the incentive or other in-kind benefits.

What happens if a recipient does not meet business incentive goals?

- ✓ Business incentive agreements must specify the recipient's obligation if the recipient does not fulfill the agreement. At a minimum, a recipient failing to meet goals must pay back the assistance provided that repayment may be prorated to reflect partial fulfillment of goals.
- ✓ Recipients failing to fulfill business incentive agreements may not receive business incentives from any grantor for five years or until they have satisfied their repayment obligation, whichever occurs first.

Who is required to report business incentives, and how?

- ✓ Recipients, who have received an incentive from a state grantor, must submit annual recipient report forms to state grantors with information on their progress toward goals outlined in the agreement, and will be subject to a penalty as defined in ND Century Code §54-60.1-05(3) for failing to report. At a minimum, each recipient shall provide the state grantor with annual report for two years following the benefit date or until the goals are met, whichever is later.
- ✓ The recipient report form will ask recipients to report, at a minimum, the information that ND Century Code §54-60.1-05(1) requires, including:
 - the type, public purpose, and value of the incentive;
 - the number of new jobs to be created or retained in association with the business incentive;
 - the average compensation of all jobs to be created or retained in association with the business incentive, including identification of the average benefits and the average earnings provided by the employer on all jobs created or retained in association with the business incentive;
 - the date the job and average compensation goals are expected to be reached;
 - the actual number of jobs created or retained;
 - the average compensation of all jobs created or retained, including identification of the average benefits and average earnings provided by the employer on all jobs created or retained;
 - a statement of goals identified in the agreement and an update on progress toward them;
 - the location of the recipient prior to receiving the business incentive;
 - the name and address of the parent corporation of the recipient, if any; and
 - a list of all financial assistance by all grantors for the project.
- ✓ State Grantors must submit an annual State Grantor Report to DOC along with a copy of a recipient report form for each business incentive agreement signed on or after January 1, 2006. The State Grantor Report must include a list of all recipients, each recipient's business incentive agreement goals, and a report on each recipient's progress toward the goals.
- ✓ If DOC has not received a State Grantor Report by April 1 from a State agency required to report, DOC must issue a warning. If DOC has still not received the State Grantor Report by June 1, the State agency in default may not award any business incentives until the report has been filed.
- ✓ State funds passed through local agencies to businesses are reported by the state grantor. However, local agencies must maintain a report on applicable local funds awarded in conjunction with state funds and on state funds which have been repaid to and reinvested by the local agency (e.g. revolving funds).

- ✓ Political subdivision grantors shall maintain records of business incentives provided to recipients. They shall prepare an annual political subdivision grantor report before April 1 each year that includes:
 - The name of the businesses receiving business incentives during that year;
 - The number of jobs expected to be created or retained by each business as a result of the business incentives;
 - The average compensation expected to be provided by the employer for the jobs expected to be created or retained as a result of the business incentives, including identification of the average benefits and average earnings to be provided by the employer for these jobs; and
 - The total dollar value of all business incentives provided by the political subdivision during that year.

How will information reported by agencies be used?

- ✓ DOC is required to publish a report summarizing information reported through the State Grantor Reports each year. Copies of the report will be submitted to the Legislative Council and posted on DOC's website. DOC's compilation and summary must include:
 - The number of jobs targeted to be created or retained by each recipient receiving a business incentive in that year.
 - The number of jobs achieved in comparison to the jobs targeted for each businesses year by year.
 - The average compensation of jobs targeted to be created or retained by each recipient that year, including identification of the average benefits and average earnings to be provided by the employer for these jobs.
 - The average compensation of jobs created or retained compared to the targeted average compensation for each business year by year.
 - A distribution of business incentives by type of business and by public purpose.
 - The percentage of business incentives that reached goals within two, three, four, and five years from the benefit date.
 - The percentage of business incentives that did not meet goals and that did not receive repayment.

Where can I find the law?

- ✓ The law can be found online at <http://www.legis.nd.gov/cencode/t54c601.pdf>.

This fact sheet is intended to help grantors and recipients to understand the business incentives law and does not serve as a substitute for statute language. Grantors are responsible for complying with the law and should view the law for questions and specific details and requirements that are not outlined in this fact sheet. Questions about the law can be directed to DOC:

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