

## **CHAPTER 10-30.5**

### **NORTH DAKOTA DEVELOPMENT FUND, INCORPORATED**

**10-30.5-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the North Dakota development fund, incorporated, established under this chapter.
3. "North Dakota business" means a business owned by a North Dakota resident, partnership, association, corporation, or limited liability company domiciled in this state or a corporation or limited liability company, including a wholly owned subsidiary of a foreign corporation or limited liability company that does business primarily in this state or does substantially all of its production in this state.
4. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth. The term includes tourism but does not include production agriculture.
5. "Production agriculture" means the production of crops and livestock on or near a farm as part of the regular farm enterprise directed by a farm operator and the farm operator's partners. The term does not include an investor-owned livestock feeding or milking operation located apart from a farm headquarters which is managed by employees.

**10-30.5-02. (Effective through July 31, 2011) Purpose and fund uses.**

1. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.
2. The exclusive focus of this corporation is business development in this state; however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to state residents in the creation of jobs or secondary business. Emphasis should be to develop jobs that provide an income adequate to support a family above the poverty level.
3. Moneys in the development fund may be used to provide working capital or for financing the purchase of fixed assets but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
4. The commissioner of commerce shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.
5. Moneys in the development fund may be used to provide financing to early childhood facilities licensed under chapter 50-11.1. Moneys also may be used to

make grants or loans to match grants or loans made by county-authorized or city-authorized development corporations, job development authorities created under chapter 11-11.1 or 40-57.4, and regional planning councils for acquiring, leasing, or remodeling of real estate facilities or for acquiring equipment for establishing or expanding a licensed early childhood facility. In providing financing under this subsection, the corporation shall ensure funds are distributed fairly among for-profit early childhood facilities, nonprofit early childhood facilities, and public early childhood facilities. An award under this subsection may not exceed one hundred thousand dollars per award.

**(Effective after July 31, 2011) Purpose and fund uses.**

1. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.
2. The exclusive focus of this corporation is business development in this state; however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to state residents in the creation of jobs or secondary business. Emphasis should be to develop jobs that provide an income adequate to support a family above the poverty level.
3. Moneys in the development fund may be used to provide working capital or for financing the purchase of fixed assets but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
4. The commissioner of commerce shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.

**10-30.5-03. Organization.** A board of directors shall manage the corporation. The board of directors shall adopt and amend articles of incorporation and bylaws consistent with the purposes detailed in this chapter. The board of directors consists of eight members who shall serve three-year terms. The terms must be staggered so that no more than three positions require reappointment in any one year. The governor shall appoint the members and shall only consider representatives who serve in executive capacities from the following areas in making the selections: private sector manufacturing, finance, exported services, including tourism, and industrial technology and research. There must be at least one member who is enrolled in a federally recognized North Dakota Indian tribe who need not serve in an executive capacity, the commissioner of commerce or the commissioner's designee, and one member from a rural area on the board of directors. Members may be reappointed for additional terms.

**10-30.5-04. Powers.** The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

1. Cooperate and contract with any private or public entity.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors. The funds for the

entrepreneurship awards under section 10-30.5-12 may not exceed one million dollars.

3. Provide management services for the Bank's alternative and venture capital investments and early-stage capital funds.

**10-30.5-05. Management.** The director of the department of commerce division of economic development and finance shall appoint the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions.

All investments, contracts, partnerships, limited liability companies, and business transactions of the corporation are the responsibility of the chief executive officer and the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

**10-30.5-06. Divestiture.** The board of directors shall establish a policy for divesting the corporation's interest in any business when certain levels of profitability are obtained.

**10-30.5-07. Confidentiality of corporation records.** The following records of the corporation are confidential:

1. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase, to which a loan has been made, or capital otherwise provided, under this chapter.
2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.

**10-30.5-08. Annual audit.** The board of directors shall contract with a certified public accounting firm to audit annually the financial statements of the corporation in accordance with generally accepted auditing standards. The cost of the audit must be borne by the corporation.

**10-30.5-09. Annual report.** The corporation shall prepare and publish an annual report of its activities for the information of the governor, the legislative assembly, and the public. The report must include audited financial statements of the corporation for the fiscal year covered by the report and must specify:

1. The investment strategy and workplan approved by the board of directors.
2. The total investments made annually by the corporation in North Dakota businesses.
3. An estimate of jobs created and jobs preserved by investments of the corporation in North Dakota businesses.

**10-30.5-10. North Dakota development fund - Continuing appropriation.** The North Dakota development fund is established from moneys appropriated from the general fund and transfers from other funds. This is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11.

**10-30.5-11. Economic development funds - Wage requirements.** Any political subdivision or economic development authority may adopt a minimum wage requirement for any new business or business expansion in which a majority of the capital is provided by the North Dakota development fund and its own local development funds. These wage requirements may be imposed on all or any portion of the employees and may exceed federal minimum wage requirements.

**10-30.5-12. (Effective through July 31, 2015) Entrepreneurship awards.**

1. The corporation shall administer an entrepreneurship award program that provides funding awards to entrepreneurial centers and to entrepreneurs.
2. The following provisions apply to entrepreneurial center awards:
  - a. An applicant must be an entrepreneurial center certified by the department of commerce. In certifying an entrepreneurial center, the department shall consider whether the center provides business incubator services such as mentors, shared services, and relationships with educational institutions. An entrepreneurial center may not be a state entity or an institution under the control of the state board of higher education.
  - b. An award may not exceed fifty thousand dollars. An entrepreneurial center may not qualify for more than one award per year and may not receive more than five awards.
  - c. Before funds are distributed to a center under this subsection, the center shall provide the corporation with detailed documentation of the availability of one dollar of nonstate matching funds for each dollar of state funds distributed under this subsection. Matching funds must be cash and may not be in-kind assets.
  - d. If during the twelve months preceding the application for an award under this subsection, an entrepreneurial center was awarded state funding from any other source, the maximum award under this subsection must be decreased dollar for dollar for every dollar of other state funds awarded.
  - e. As a term of receipt of an award under this subsection, an entrepreneurial center shall pay back the funds awarded under this subsection. The payback schedule must be based on the center's ability to pay back the award.
  - f. An award under this subsection is not a business incentive under chapter 54-60.1.
3. The following provisions apply to entrepreneur awards:
  - a. An applicant must be an entrepreneur:
    - (1) Using the services of an entrepreneurial center certified by the department of commerce under subsection 2;
    - (2) With a business plan, but the business is not required to be a primary sector business; and
    - (3) That has been approved by the entrepreneurial center and by the corporation.
  - b. An award may not exceed twenty thousand dollars per business.
  - c. Before funds are distributed to an entrepreneur under this subsection, the entrepreneur shall provide the corporation with detailed documentation of the availability of one dollar of nonstate matching funds for every four dollars of state funds distributed under this subsection. Matching funds must be cash and may not be in-kind assets.
  - d. If during the twelve months preceding the application for an award under this subsection an entrepreneur received state funding for the business from any other source, the maximum award under this subsection must be decreased dollar for dollar for every dollar of other state funds received.

- e. As a term of receipt of an award under this subsection, the entrepreneur shall pay back the funds awarded under this subsection. The payback schedule must be based upon the entrepreneur's ability to pay back the award and may include debt, equity, or a combination of debt and equity.