

CHAPTER 54-60.1

BUSINESS INCENTIVES, AGREEMENTS, AND REPORTS

54-60.1-01. (Effective through July 31, 2015) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Benefit date" means the date on which the recipient receives the business incentive. If the business incentive involves the purchase, lease, or donation of physical equipment, the benefit date is the date when the recipient puts the equipment into service. If the business incentive is for improvements to property, the benefit date is the earlier of either when the improvements are finished for the entire project or when a business occupies the property. If a business occupies the property and the business incentive grantor expects that other businesses will also occupy the same property, the grantor may assign a separate benefit date for each subsequent business when that subsequent business first occupies the property.
2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more committed within a year. Unless specifically provided otherwise, the term does not include:
 - a. 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.
 - b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program. An entrepreneurial center award under section 10-30.5-12 is not a business incentive.
 - c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
 - d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.
 - e. Assistance to provide job-readiness and training services if the sole purpose of the assistance is to provide those services.
 - f. Assistance for housing.
 - g. Assistance for pollution control or abatement.
 - h. Assistance for energy conservation.
 - i. Tax reductions resulting from conformity with federal tax law.
 - j. Benefits derived from regulation.
 - k. Indirect benefits derived from assistance to educational institutions.

- l. Assistance for a collaboration between a North Dakota institution of higher education and a business.
 - m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
 - n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
 - o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.
 - p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.
 - q. Federal or state assistance for the oil and gas research, development, and marketing program under chapter 54-17.6.
 - r. Federal or state assistance for the renewable energy program under chapter 54-63.
- 3. "Compensation" means the value of an employee's:
 - a. Earnings, including wages, salary, bonus, and commissions; and
 - b. Benefits, including:
 - (1) Health, disability, life, and retirement benefits or insurance premium paid by the employer;
 - (2) An employee's share of payroll taxes paid by the employer; and
 - (3) Other fringe benefits such as housing allowance and transportation expenses.
- 4. "Department" means the department of commerce.
- 5. "Grantor" means the state or any political subdivision that directly or indirectly grants a business incentive to a recipient.
- 6. "Political subdivision" means a unit of local government in this state which has direct or indirect authority to grant a business incentive. The term includes any authority, agency, special district, or entity created by, authorized by, under the jurisdiction of, or contracting with a political subdivision.
- 7. "Public purpose" includes assisting community development, increasing the tax base, directly creating employment opportunities, or indirectly creating employment opportunities through increased economic activity. Job retention is only a public purpose in cases in which job loss is specific and demonstrable.
- 8. "Recipient" means any individual or business entity that receives a business incentive.
- 9. "State" means any North Dakota state government agency that has the authority to directly or indirectly award business incentives.

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54-60.1-02. Scope - Public purpose - Notice.

- 1. The application of this chapter is limited to business incentives provided by grantors to recipients, unless otherwise provided.

2. A grantor may not grant a business incentive to a recipient unless that business incentive meets a public purpose.
3. A state business incentive in the form of a direct cash transfer that is not a structured grant under state or federal law must be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.
4. A political subdivision business incentive in the form of a cash transfer of money may be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.

54-60.1-03. Business incentive agreement.

1. A recipient must enter a business incentive agreement with each grantor of a business incentive. The grantor and the recipient shall sign the agreement.
2. If a business incentive benefits more than one recipient, the grantor shall assign a proportion of the business incentive to each recipient that signs a business incentive agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.
3. A business incentive agreement must include:
 - a. A description of the business incentive, including the value of the business incentive, which may be the amount of the incentive, the fair market value of the property conveyed to the recipient, or the fair market value of other in-kind benefits provided to the recipient; the type of incentive; and the type of district if the incentive is tax increment financing.
 - b. A statement of the public purposes of the business incentive.
 - c. Goals for the business incentive. The goals must include the number of jobs to be created and the average compensation of the new jobs created. The information on average compensation must include identification of the average benefits and the average earnings to be provided by the employer on all jobs to be created or retained in association with the incentive. The job and average compensation goals may include separate goals for the number of part-time or full-time jobs to be created or, in cases in which potential job loss is specific and demonstrable, goals for the number of jobs to be retained. In addition to other specific goal timeframes, the job and average compensation goals must contain specific goals to be attained within two years of the benefit date.
 - d. A description of the financial obligation of the recipient if the goals are not met. This financial obligation must include an exception for any unmet goal that results from an act of God or terrorism.
 - e. A commitment by the recipient to continue operations in the jurisdiction in which the business incentive is used for five years or more after the benefit date.
 - f. The name and address of the parent company of the recipient, if any.
 - g. A list of all financial assistance by all grantors for the project.
 - h. The recipient's obligation if the recipient does not fulfill the business incentive agreement.

54-60.1-04. Failure to meet goals - Modification of goals.

1. At a minimum, the financial obligation provision of a business incentive agreement must require a recipient that fails to meet business incentive agreement goals to pay back to the grantor the assistance, prorated to reflect any partial fulfillment of goals. A grantor may extend for up to one year the period for meeting the business incentive agreement goals if the grantor determines that circumstances have made it impossible for the recipient to achieve the required goals. A grantor may extend the period for meeting business incentive agreement goals by another additional year by documenting in writing the reason for the extension and attaching a copy of the documentation to the grantor's next annual report. Notwithstanding the five-year commitment in the business incentive agreement, a grantor may authorize a recipient to move from the jurisdiction in which the business incentive is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. If after extending the period for achieving the goals of the business incentive agreement for two years a grantor determines that a business incentive agreement goal of creation or retention of jobs has changed and justifies a decrease, after a public hearing, the grantor may decrease the job goals in the agreement to a lesser number or to zero and may adjust the average compensation goals to reflect changed circumstances. Justification for decreasing job goals may include that other public benefits adequately offset the failure to meet the initial job goals.
2. A recipient that fails to meet the terms of a business incentive agreement may not receive a business incentive from any grantor for a period of five years from the date of failure or until a recipient satisfies the repayment obligation under this section, whichever occurs first. For purposes of this subsection, if the recipient is an individual, the disqualification attaches to the individual and if the recipient is a business entity, the disqualification attaches to the business and to each owner or shareholder of twenty percent or more of the business.

54-60.1-05. State grantor recipient reports.

1. The department shall create state grantor recipient report forms that include:
 - a. The name and address of the recipient;
 - b. The type, public purpose, and value of the business incentive;
 - c. The number of new jobs to be created or retained in association with the business incentive;
 - d. 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;
 - e. The date the job and average compensation goals are expected to be reached;
 - f. A statement of goals identified in the business incentive agreement and an update on achievement of these goals, including the actual number of jobs created or retained and the average compensation of jobs created or retained at that point, including identification of the average benefits actually provided and the average earnings actually provided by the employer on all jobs created or retained;
 - g. The location of the recipient prior to receiving the business incentive;
 - h. The name and address of the parent corporation of the recipient, if any;
 - i. A list of business incentives by all grantors for the project; and

- j. Other information the department and grantor may request.
- 2. Each state grantor shall use recipient report forms created by the department to monitor the progress by each state grantor recipient in achieving business incentive agreement goals. At a minimum, each of these recipients shall provide the state grantor with an annual recipient report for two years following the benefit date or until the goals are met, whichever is later. If the business incentive agreement goals are not met, the state grantor recipient shall continue to provide recipient reports to the state grantor until the incentive is repaid. A state grantor shall file with the department a copy of each completed recipient report.
- 3. Before March 1, 2007, and each March first thereafter, a state grantor recipient shall file with the state grantor the recipient report for the previous calendar year. If a state grantor recipient fails to file a recipient report before March eighth, the state grantor shall mail the recipient a warning letter. If a noncompliant state grantor recipient fails to file the recipient report within fourteen days of the postmarked date of the warning letter, the recipient shall pay to the state grantor a penalty of one hundred dollars for each subsequent day until the report is filed. The maximum penalty under this section may not exceed one thousand dollars.

54-60.1-06. State grantor reports. Before April 1, 2007, and each April first thereafter, each state agency that has granted a business incentive within the last five calendar years shall file an annual state grantor report with the department. The department shall create the state grantor report form required under this section. A 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 the department does not receive a state grantor report before May first, the department shall issue a warning letter to the noncompliant grantor. If the department has not received a state grantor report from the noncompliant grantor before June first, that noncompliant grantor may not award any business incentive until the past-due grantor report is filed with the department.

54-60.1-07. Compilation and summary - Report to legislative council.

- 1. Beginning in 2007 and annually thereafter, the department shall publish a compilation and summary of the results of the state grantor reports for the previous calendar year. Beginning in 2007 and annually thereafter, the department of commerce shall file the reports of the state grantors and the compilation and summary with the legislative council. The department shall organize the compilation and summary so that useful comparisons across time periods and across grantors can be made. The department may add other information to the compilation and summary as deemed necessary to evaluate business incentives.
- 2. The compilation and summary must include:
 - a. The number of jobs targeted to be created or retained by each recipient receiving a business incentive in that year.
 - b. The number of jobs achieved in comparison to the jobs targeted for each business year by year.
 - c. 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.
 - d. The average compensation of jobs created or retained compared to the targeted average compensation for each business year by year.
 - e. A distribution of business incentives by type of business and by public purpose.

- f. The percentage of business incentives that reached goals within two, three, four, and five years from the benefit date.
- g. The percentage of business incentives that did not meet goals and that did not receive repayment.

54-60.1-08. Political subdivision grantor annual reports.

1. A political subdivision shall maintain records of business incentives provided to recipients.
2. Before April 1, 2007, and each April first thereafter, each political subdivision that granted a business incentive during the previous calendar year shall prepare an annual political subdivision grantor report. This annual report must include:
 - a. The names of the businesses receiving business incentives during that year;
 - b. The number of jobs expected to be created or retained by each business as a result of the business incentives;
 - c. 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
 - d. The total dollar value of all business incentives provided by the political subdivision during that year.

54-60.1-09. Appropriation requests. A state agency may not request an appropriation for the purpose of providing a business incentive in the form of a direct cash transfer unless the agency includes with the request a statement of the expected benefits associated with the direct cash transfer.