

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### WORKFORCE COMMITTEE

Monday and Tuesday, July 19-20, 2010  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Tony S. Grindberg, Chairman, called the meeting to order at 9:05 a.m.

**Members present:** Senators Tony S. Grindberg, Tim Flakoll, Ray Holmberg, Karen K. Krebsbach, Dave Nething, Larry J. Robinson, Mac Schneider, Tom Seymour, Ryan M. Taylor; Representatives Donald L. Clark, Eliot Glassheim, Nancy Johnson, Lee Kaldor, Lisa Meier, Corey Mock, Lee Myxter, Michael R. Nathe, Ken Svedjan, Clark Williams

**Others present:** Senator David O'Connell, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

**It was moved by Senator Nething, seconded by Senator Seymour, and carried on a voice vote that the minutes of the May 26, 2010, meeting be approved as distributed.**

**It was moved by Representative Meier, seconded by Senator Krebsbach, and carried on a voice vote that the minutes of the June 9, 2010, meeting be approved as distributed.**

### REPORTS

Chairman Grindberg said over the course of the meeting the committee would be receiving the following three reports:

1. The report from the Statewide Longitudinal Data System Committee on the status of the plan for a longitudinal data system, as required under North Dakota Century Code Section 15.1-02-18;
2. The compilation and summary of state grantor reports filed annually by the Department of Commerce and of the reports of state agencies that award business incentives, as required under Section 54-60.1-07; and
3. The report from the State Board of Higher Education on its study of the status of the training activities provided by the four institutions of higher education assigned primary responsibility for workforce training in the state, as requested under Section 2 of 2009 Senate Bill No. 2019.

#### Statewide Longitudinal Data System

Chairman Grindberg called on Ms. Lisa Feldner, Chief Information Officer, Information Technology Department, and representative of the Statewide Longitudinal Data System Committee, for a

presentation of the status of the plan for a longitudinal data system. Ms. Feldner made a computer presentation ([Appendix B](#)). Additionally, she performed a demonstration of the North Dakota state longitudinal data system kindergarten through grade 12 data warehouse system.

As Ms. Feldner performed the demonstration, she stated that because Bismarck Public Schools has been using PowerSchool for quite some time, the district has more years of historical data than those schools that have recently implemented PowerSchool.

In response to a question from Representative Johnson, Ms. Feldner said data is uploaded nightly from PowerSchool into the state's data warehouse. She said the system provides for data to be pulled from schools as authorized. For example, she said, the system does not gather data relating to discipline of students. Additionally, she said, the system is very secure. She said the information available in the system varies based upon an individual's authorization.

In response to a question from Senator Taylor, Ms. Feldner said the \$6.9 million grant the Department of Public Instruction received from the United States Department of Education comes from prestimulus package funding.

In response to a question from Senator Grindberg, Ms. Feldner said the program is in the beginning phases of gathering data for the North Dakota integrated data system. She said the integrated data system will receive enrollment data from the North Dakota University System, as well as receive complete performance reports from the Department of Public Instruction, the Department of Career and Technical Education, and Job Service North Dakota. She said that over time she expects to grow this data collection to gather data from other sources. Additionally, she said, as the integrated data system is developed, the Workforce Development Council will be part of the application process in applying for a data quality grant.

In response to a question from Senator Seymour, Ms. Feldner said the Statewide Longitudinal Data System Committee is looking at what other states are doing to warehouse data. She said at this time, Florida is the only state that has a fully functioning system, whereas other states appear to be in the same situation as North Dakota. She said the good news is that the educational community is very open to sharing knowledge and systems.

### State Grantor Reports

Chairman Grindberg called on Mr. Gordon La France, Manager, Renaissance Zone Program, Division of Community Services, Department of Commerce, for a presentation of the compilation and summary of state grantor reports and reports of state agencies that award business incentives. Mr. La France provided written testimony ([Appendix C](#)).

In response to a question from Representative Kaldor regarding the number of jobs created or retained by business involved in the business incentive agreements, Mr. La France said it is hard for him to know why in 2009 the new full-time position goals were more successfully met than the job retention goals. However, he said, it may be a reflection of the economy.

### Workforce Training

Chairman Grindberg called on Dr. Marsha Krotseng, Vice Chancellor for Strategic Planning, North Dakota University System, for a presentation of the report on the study and the status of the training activities provided by the four institutions of higher education assigned primary responsibility for workforce training in the state. Dr. Krotseng made a computer presentation ([Appendix D](#)).

In response to a question from Senator Holmberg, Dr. Krotseng said the followup information on North Dakota education and training can help gather data regarding income experience of employers and employees that use TrainND services.

In response to a question from Representative Nathe regarding the need to receive followup data on data collection requests, Dr. Krotseng said in order for the data collection system to successfully gather data regarding individual employees, the system needs identifying information such as the employee's Social Security number. However, she said, TrainND is not legally able to compel employers to provide identifying information such as an employee's Social Security number. However, she said, steps are being taken to use other data collection methods to match data.

In response to a question from Senator Krebsbach, Dr. Krotseng said she believes the periodic report on the TrainND system includes data regarding an employee's length of stay following training. She said she would look at providing this information at a future meeting.

### STUDIES

Chairman Grindberg called on Mr. Jim Wheeler and Mr. Jason Lovell, Thomas P. Miller and Associates, Indianapolis, Indiana, to present the report of the best practices review of North Dakota's centers of excellence program. A copy of the computer presentation is attached as [Appendix E](#) and a copy of the final report is attached as [Appendix F](#).

The final report made the following 14 recommendations:

1. Pursue a focused technology-based economic development strategy;
2. Build and assign a metrics working group to report new performance measurements for the centers of excellence program which aligns with state-level technology-based economic development metrics;
3. Educate, train, and provide services in intellectual property practices and technology transfer;
4. Monitor federal funding;
5. Adopt a more integrated statewide technology management program that can serve all campuses and centers of excellence;
6. Develop a center of excellence-based "proof-of-concept" program;
7. Add independent peer review to the center of excellence proposal process;
8. Reassess matching requirements;
9. Allow for modest overhead;
10. Review reporting requirements;
11. Create a targeted eminent scholar program;
12. Create a small business-focused grant program;
13. Create a federal funding match initiative; and
14. Strengthen collaboration and build commercialization and entrepreneurial networks.

In response to a question from Representative Svedjan regarding recommendation No. 8, Mr. Wheeler said typically a center program requires a 1-to-1 match. However, he said, some states have different matching requirements based on the size of the business. For example, he said, some states have a single match requirement but have grant funds available for smaller businesses to access.

In response to a question from Senator Nething, Mr. Wheeler said small companies can be very creative, but it can be difficult for the small companies to fulfill the matching requirements of the centers of excellence programs. He said sometimes an in-kind match would be easier for a small business to fulfill than a cash match requirement. He said examples of matching programs include Ohio, which has a lower match requirement, but focuses on commercialization, or Georgia, which has multiple programs that range from early stage to commercialization.

In response to a question from Senator Nething, Mr. Wheeler said Utah is an example of a smaller state with matching requirements; however, Utah has higher matching requirements than North Dakota.

In response to a question from Representative Johnson regarding recommendation No. 13, Mr. Wheeler said Kansas went after a large federal center, and the Legislature put money aside for this, recognizing the federal government may award the center. He said an advantage of having a source of funds available to the center program is that it helps the state respond quickly to opportunities. He said a state can never be certain when or what opportunity

will be available, and a funding source helps provide this flexibility.

In response to a question from Representative Nathe, Mr. Wheeler said if North Dakota were to implement a fund that was available for the program, a large-scale fund could be overseen by the Governor or a small-scale fund could reside in the Department of Commerce.

In response to a question from Senator Schneider, Mr. Wheeler said he did have an opportunity to review the Department of Commerce performance audit. He said the audit appears to have been well-done and includes good responses from the Department of Commerce.

Mr. Wheeler said regarding the claim that the center of excellence reporting requirements are onerous, one way to address that may be to implement an electronic reporting system. He said an electronic reporting system could increase responsiveness and transparency and decrease the reporting burden.

In response to a question from Senator Holmberg, Mr. Wheeler said centers of excellence should be collecting data, such as patent information, which should not be a hardship for the centers to report as long as it is known upfront that the data will be requested.

In response to a question from Representative Kaldor, Mr. Wheeler said recommendation No. 5 focuses specifically on technology transfer and intellectual property services that could be assisted by providing an integrated technology management program. Additionally, he said, under recommendation No. 2, data collection should serve and measure current as well as future needs of the state. He said centers of excellence in large part focus on future data, such as income, jobs, investment, and job growth, and, therefore, should be measured accordingly.

Chairman Grindberg called on Mr. Shane C. Goettle, Commissioner of Commerce, for comments regarding the review of centers of excellence best practices. Mr. Goettle said in reviewing the best practices report, the Centers of Excellence Commission did make one recommendation that was not covered by the report. He said the commission recommends that the Legislative Assembly amend Section 15-69-04(2) in order to reflect the current practice of utilizing third-party accountants for agreed-upon procedures engagement instead of full fiscal audits. He distributed a copy of a bill draft ([Appendix G](#)) to accomplish this proposed change.

Mr. Goettle said the State Auditor's office has found that North Dakota law requires a full fiscal audit be conducted annually of each center of excellence. However, he said, an agreed-upon procedure, which includes a review of the centers' finances, has been utilized since the beginning of the program. He said the main difference is that a fiscal audit requires that an accountant express an opinion on the financial statements, whereas in an agreed-upon procedure the

accountant presents on the findings from the procedures performed.

Mr. Goettle said the Centers of Excellence Commission briefly reviewed the best practices report and expressed an emphasis on recommendation Nos. 3, 9, 10, and 11. He said as it relates to recommendation No. 3, the commission feels that intellectual property practices, including technology transfer to the private sector, is an area that can be improved within our universities. He said recommendation Nos. 9 and 10 deal with the burden the centers face with administrative costs associated with complying with the program and agreed that the centers' personnel concerns should be addressed. Finally, he said, recommendation No. 11 deals with the recruitment of talented personnel. He said the commission recognizes that some of the best practices recommendations do not require legislative action. For example, he said, recommendation No. 7, relating to peer review, can be accomplished under current law.

Mr. Goettle proposed a concept for allocation of centers of excellence funding. He reviewed the historic funding from the centers and said that regardless of future funding he thinks the allocation of the funds should be addressed in a manner such as the following:

- Fifty percent of funds used for research;
- Ten percent to fifteen percent of funds used for an eminent scholar program;
- Ten percent to fifteen percent of funds used for infrastructure and centers of excellence enhancement; and
- Twenty percent to twenty-five percent of funding used to assist small companies, grow an entrepreneurial culture, and support innovation.

In response to a question from Senator Schneider, Mr. Goettle said he is not certain how to reconcile the dual reporting needs of addressing the onerous nature of reporting as well as increasing the amount of information gathered. He said one way to address the issue may be to provide administrative overhead for reporting or to automate some of the portions of the reporting. Overall, he said, it is likely an administrative matter that needs to be changed and will not require legislation.

In response to a question from Representative Nathe, Mr. Goettle said that under recommendation No. 13 regarding federal funding match initiatives, the 15 percent to 20 percent funding allocation proposal could be used for this purpose.

Chairman Grindberg reviewed the Legislative Management chairman directive directing the committee to study the recommendations of the State Auditor's performance audit report of the Department of Commerce. He said that to help prepare for this presentation, committee members received an e-mail with a link to the Department of Commerce performance audit.

Chairman Grindberg called on Mr. Robert R. Peterson, State Auditor, to provide information relating to the Department of Commerce performance audit. Mr. Peterson distributed written testimony ([Appendix H](#)).

In response to a question from Senator Grindberg, Mr. Peterson said there is no set standard regarding the timeframe within which a performance audit must be conducted; however, he said, his office typically shoots for a six-month timeframe.

Chairman Grindberg called on Mr. Gordy Smith, Audit Manager, Performance Audit Section, State Auditor's office, for comments regarding the Department of Commerce performance audit. Mr. Smith said in the case of the Department of Commerce performance audit, when the audit began three of the four team member positions were filled, with one of those three positions having been a new hire. He said during the course of the audit, that fourth spot was filled. Therefore, he said, essentially half of the team conducting the Department of Commerce performance audit was new.

Mr. Peterson said although his staff seeks to have services and material provided in a timely manner, in the case of the Department of Commerce performance audit, it took longer due to the newness of the team. He said typically when there are new team members, those individuals are given lighter tasks and are heavily mentored, especially during the first six-month probationary period.

In response to a question from Representative Kaldor, Mr. Peterson said when conducting performance audits, if discoveries are made relating to legal issues, he consults with the Attorney General. Mr. Smith said during the preliminary phase of the performance audit, the team members are continually learning, and during the fieldwork phase, it is not uncommon for team members to run into things that look unusual and, therefore, result in further investigation. He said when he says "unusual," he does not mean that there is a problem but means that the situation warrants further investigation.

Senator Grindberg said he questions whether the performance audit took into account legislative intent as it related to creation of the North Dakota Economic Development Foundation as well as the declassification of Department of Commerce employees.

Mr. Peterson said as it relates to legislative intent relating to the North Dakota Economic Development Foundation, the issue was related to the use of public funds versus private funds. He said this issue is not specifically contained within the performance audit report but was instead an issue discussed with the Attorney General. Mr. Smith said as it relates to the North Dakota Economic Development Foundation, the issue of private funds versus public funds arose in the context of a bar bill for a recruitment event. He said when this information was discovered, his team consulted the Attorney General's office. He said following this consultation, two informal

recommendations were made. He said he distinguishes informal recommendations from formal recommendations and points out that these were not considered to be major issues. He said informally, the Attorney General found that if the foundation was created by the Legislative Assembly, it is considered a public entity and, therefore, needs to consider its funds as public funds. He said it was recommended that the Department of Commerce take the necessary steps to ensure the foundation is organized in a way that allows it to spend funds as the Legislative Assembly intended. Additionally, he said, it was informally recommended that the Department of Commerce consult with the Risk Management Division to address possible state liability issues relating to the North Dakota Economic Development Foundation.

Mr. Smith said as it relates to Department of Commerce employee classification issues, in the course of the performance audit, the team listened to legislative committee discussion and reviewed the legislation. He said following this review, it appeared the Department of Commerce may have taken some actions that were counter to the legislative intent.

Senator Grindberg questioned whether the State Auditor would support legislation that limited the period of time in which a performance audit must be completed to no more than 90 days.

Chairman Grindberg called on Mr. Goettle for comments regarding the Department of Commerce performance audit process and the recommendations of the performance audit of the Department of Commerce.

Mr. Goettle said the Department of Commerce has taken steps to address all 49 of the recommendations in the performance audit with which the department agreed, including 41 recommendations that have been fully implemented. He said of the recommendations and the performance audit, the Department of Commerce disagreed with one recommendation and disagreed in part with one recommendation.

Mr. Goettle said he is frustrated with the timelines followed in conducting the performance audit. For example, he said, the performance audit took place during a legislative session, which is a very demanding time for Department of Commerce staff. He said he understands the need and the importance of performance audits; however, from an administrative perspective, the performance audit was a real challenge. He said that he will work with the Attorney General's office to appropriately address the North Dakota Economic Development Foundation issues.

In response to a question from Senator Taylor, Mr. Goettle said he too struggles with the issue of accountability as it relates to centers of excellence. He said he fully understands the importance of transparency and accountability, but he also recognizes the challenges relating to reporting. He said some unique reporting cases include the Beef

Systems Center of Excellence, which during the 2009 legislative session received legislative language that provides because the center has graduated from the centers of excellence program, the center is no longer required to provide reports. He said two other centers in similar situations have voluntarily provided information to the Department of Commerce but are not statutorily required to do so.

Chairman Grindberg called on Mr. Larry D. Anderson, Department of Commerce, to present a matrix of the e-folio systems being utilized by state entities. Mr. Anderson distributed written testimony and written material ([Appendix I](#)).

In response to a question from Representative Kaldor, Mr. Anderson said the information in the matrix reports those e-folio functions the institutions are using. He said it does not reflect unused capabilities of e-folio programs that are being used by the institutions in the state.

Representative Kaldor said he is concerned the material in the matrix does not give a full picture because the material does not include the capacity of the e-folio programs.

Committee counsel said she participated with the working group that put together the e-folio matrix information. She said the request she made of that working group was limited to gathering information regarding what products are being used and what features of that product are being used. She said the state institutions may not be the best source of information regarding the capacity and unused features of e-folio programs being used in the state. She said the e-folio program vendors may be in a better position to provide this information.

In response to a question from Representative Glasheim, Mr. Anderson said yes, it is anticipated that e-folio data will be fed into the data being collected under the longitudinal data system.

Chairman Grindberg called on committee counsel to review recently enacted Minnesota law relating to the refund of angel fund tax credits. Committee counsel said in 2010 Minnesota enacted House File No. 2695, which included tax credits for small business investment, which has come to be known as the angel tax credit. She said as part of this new tax credit, the law provides the credit is refundable, providing "[i]f the amount of the credit under this section for any taxable year exceeds the claimant's liability for tax under this chapter, the commissioner shall refund the excess to the claimant. An amount sufficient to pay the refunds required by this section is appropriated to the commissioner from the general fund."

Committee counsel said in Minnesota, tax credits are either nonrefundable or refundable. The Minnesota refundable tax credits include:

1. Dependent care expenses credit;
2. Working family credit;
3. Kindergarten through grade 12 education credit;
4. Motor fuels tax credit;

5. Military service credit;
6. Bovine tuberculosis testing credit; and
7. Angel tax credit.

Committee counsel said these first three credits are income-based and phase out as the taxpayer's income increases, and the fourth tax credit is limited to filers in the 5.35 percent tax bracket. Generally, she said, the refundable tax credits in Minnesota have been used to further a social objective and have therefore been income-based. However, she said, this is not a requirement.

Committee counsel distributed a memorandum entitled [Refund of Taxes Under the Gift Prohibition of the Constitution](#). She said in North Dakota, Article X, Section 18, of the Constitution of North Dakota prohibits the state from making donations to or in aid of any individual, association, or corporation except for reasonable support of the poor. She said this section of the constitution is commonly referred to as the constitutional gift prohibition. She said in the 1938 North Dakota Supreme Court case of *Petters & Co. v. Nelson County*, the court held that real estate taxes paid by the purchaser of a tax sale certificate could not be refunded. She said, however, it must be remembered that any law enacted by the Legislative Assembly is entitled to a presumption of constitutionality and may not be declared unconstitutional except by decision of at least four of the five justices of the North Dakota Supreme Court.

In response to a question from Senator Schneider, committee counsel said she understands the 1938 Supreme Court case to prohibit a tax credit refund if the liability were legally incurred, but to allow a refund if it is later determined that liability was not actually accrued.

In response to a question from Senator Nething regarding North Dakota Supreme Court analysis of economic development programs, committee counsel said the memorandum does not take this next step and address the constitutionality of the state's economic development system. However, she said, it is likely that such an analysis would focus on whether the state received consideration for the economic development funds provided.

The committee requested additional information regarding constitutional analysis of economic development programs in North Dakota.

Chairman Grindberg called on Mr. Joseph Becker, Tax Department, for information regarding proposed Connecticut law relating to the sale and transferability of angel fund tax credits. Mr. Becker distributed a document ([Appendix J](#)) comparing Minnesota's angel investment tax credit legislation to Connecticut's angel investment tax credit legislation.

In response to a question from Senator Schneider, Mr. Becker said he is not able to provide any detailed data regarding the history of the use of the transfer clause in the North Dakota research and development tax credit because so few taxpayers have used the credit, the disclosure would risk identifying the identity of the taxpayers.

In response to a question from Representative Nathe, Mr. Becker said the Tax Department does not weigh in in favor of transferability of tax credits; however, this is a public policy decision with which the department will comply if enacted. He said risks associated with transferability clauses include that the state does not necessarily have any connection with the out-of-state taxpayer.

In response to a question from Senator Nething, Mr. Becker said the Tax Department has concerns regarding accountability if tax credits are made transferable. He said this is likely a curable concern that is related to the amount of administration in which the department would be involved.

Senator Grindberg distributed a document he drafted entitled *2011/2013 Legislative "Jobs" Agenda* ([Appendix K](#)). He said this preliminary document can be used by the committee as a discussion starting point for putting together legislative recommendations for the 2011 legislative session.

Senator Nething said he supports Senator Grindberg's proposals as it relates to the State Auditor. He said the current law allowing for a six-month audit period and a 30-day agency response time seems inequitable. He said the committee may wish to consider giving the audited agency the same period of time as the State Auditor receives.

Senator Nething questioned whether the committee has established an approach for gathering fiscal information and whether to include appropriation language in these legislative recommendations.

Senator Grindberg said he expects the centers of excellence will pursue some legislation and perhaps can include the appropriation clauses in these proposals. He said he looks to the committee to address the fiscal component of the recommendations.

Senator Robinson said that generally he supports Senator Grindberg's proposal. Additionally, he said, these legislative recommendations should be forwarded to the Workforce Conference that will be held in Medora.

Senator Robinson requested information at a future meeting regarding the fiscal state of existing programs two years ago compared to the current fiscal state of the programs being impacted by the legislative proposal.

Representative Nathe said he would like for the committee to consider amending the angel fund tax credit law to open eligibility to out-of-state investors as well as to allow for transferability.

Mr. Becker said if the angel fund tax credit were open to out-of-state investors, the investment base would likely be increased, but administratively there would be very little impact on the office.

Representative Glassheim said he would support inclusion of appropriation clauses in the committee's legislative recommendations.

Chairman Grindberg called on Mr. Keith Lund, Economic Development Association of North Dakota, for comments regarding the association's legislative agenda for 2011. Mr. Lund distributed written testimony ([Appendix L](#)).

In response to a question from Senator Nething, Mr. Lund said the association will be working on prioritizing the legislative agenda and hopes to have this available for the committee by September when the committee meets in Grand Forks.

Senator Nething said it would be helpful for the committee to receive additional information regarding the state's foundation aid stabilization fund as it relates to scholarship funding.

Senator Flakoll said the use of the funds in the foundation aid stabilization fund would supplant the scholarship funds currently budgeted and would not supplement these funds. He said what he seeks is a funding mechanism that ensures the state can meet its scholarship obligations in future years. He said he estimates the state will have a \$32 million per biennium scholarship obligation once the scholarship program is fully implemented.

In response to a question from Representative Nathe, Chairman Grindberg said the proposed legislation presented to the committee by Mr. Goettle could be an agency bill or could be a recommendation of the Workforce Committee.

No further business remaining, Chairman Grindberg adjourned the meeting at 10:40 a.m.

---

Jennifer S. N. Clark  
Committee Counsel

ATTACH:12