

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### COMMERCE COMMITTEE

Thursday, May 2, 2002  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator John M. Andrist, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators John M. Andrist, Duaine C. Espegard, Tony Grindberg, Joel C. Heitkamp, Karen K. Krebsbach, Deb Mathern, Carolyn Nelson, Rich Wardner; Representatives Rick Berg, Mark A. Dosch, Glen Froseth, Pat Galvin, Scot Kelsh, Bob Martinson, Dale C. Severson, Blair Thoreson

**Members absent:** Senator Duane Mutch; Representatives Byron Clark, Doug Lemieux, Bill Pietsch, Lonny Winrich

**Others present:** See attached appendix

Chairman Andrist recognized Senator Krebsbach's accomplishment of being the 2002 recipient of the Minot Sertoma Club Service to Mankind Award. Committee counsel reported that the minutes of the January 24, 2002, meeting improperly refer to testimony from Mr. Miles L. Ruse and instead should refer to testimony from Mr. Miles S. Vosberg.

**It was moved by Representative Severson, seconded by Senator Wardner, and carried on a voice vote that the minutes of the January 24, 2002, meeting be amended to reflect that testimony was received from Mr. Miles S. Vosberg instead of from Mr. Miles S. Ruse and that the minutes be approved as amended.**

### OCCUPATIONAL AND PROFESSIONAL BOARDS STUDY

Chairman Andrist called on Mr. Gary R. Thune, Special Assistant Attorney General, Board of Podiatric Medicine, for a presentation regarding the fiscal status of the board, disciplinary activities of the board, and licensure activities of the board. Mr. Thune provided written testimony, a copy of which is on file in the Legislative Council office. He provided fiscal information of the board for 1998 through 2002, including the board's average annual income, annual expenses, current cash balance and investments, and current debts due and owing. Additionally, he provided information regarding the number of licenses issued and the outcome of examinations given for the years 1998 through 2002. He said the board has not issued any reciprocal licenses in the last five years.

Mr. Thune reported the disciplinary activity of the board for the years 1929 through 2000. He said from

the years 1929 through 1993 there were no formal complaints processed by the board; however, in 1993 five formal complaints were processed, in the years 1994 through 1998 there were 14 complaints processed, and in the year 2000 there were six complaints processed. He said all complaints received by the board were submitted in writing from nonboard members and were then investigated as provided by law.

Mr. Thune said as legal counsel he is not aware of a lack of funds ever affecting the ability of the board to perform its duties. He said the board is opposed to any plan abolishing the board in favor of a voluntary certification of podiatrists by a private professional organization. He said a return to pre-1929 "patient beware" status would not be in the public's best interest and would increase litigation.

Mr. Thune said the State Board of Medical Examiners is an existing occupational and professional board that would be able to perform the duties of the Board of Podiatric Medicine. He explained some of his thoughts on the advantages and disadvantages of assigning the board's duties to an existing occupational and professional board. He said he anticipates that within the next 18 to 24 months, the board will have improved its financial standing and will no longer be in debt. He said the board has not had to resort to borrowing money to address its fiscal problems.

Mr. Thune said a typical administrative disciplinary hearing costs approximately \$50,000 and this amount does not include an appeal to the district court or the North Dakota Supreme Court.

In response to a question from Senator Andrist, Mr. Thune said complaints received by the board are equally split as originating from private citizens and from orthopedic surgeons or legal counsel for clinics with orthopedic surgeons. He said the board has not subjected the state to tort liability resulting from the actions of the board. His recommendations are that the committee not take any legislative action on the issue of occupational and professional licensing boards. He said of the 25 formal complaints processed in the board's history, 23 complaints pertained to one podiatrist and two complaints pertained to a different podiatrist.

Chairman Andrist called on Ms. Kelly Schmidt, lay member, Board of Podiatric Medicine, for comments

regarding the occupational and professional boards study. Ms. Schmidt said the legislative changes made in 2001 have been positive. Additionally, she said, the board works and does not need fixing.

In response to a question from Senator Andrist, Ms. Schmidt said she is not a podiatrist. She said she fills the public member position on the board. If someone were to bring a civil action against the board at this time, she said, the board would be in a position to defend itself.

In response to a question from Senator Andrist, Mr. Thune said the Division of Risk Management will provide a defense if a person claims the board failed to do its job.

In response to a question from Representative Berg, Mr. Thune said the Board of Podiatric Medicine was able to work with the Attorney General's office regarding the board's outstanding debt for legal services. The board decided to carry the debt forward, and although this may not always be the right answer, this approach worked for the board at the time. He said the board is able to recover fees and costs if the board prevails in a disciplinary action. However, he said, it would be helpful if the Division of Risk Management would assist in paying claims arising from administrative hearings.

In response to a question from Senator Andrist, Mr. Thune said the board uses a formal complaint process if it pursues a complaint. He said an administrative hearing officer oversees the hearing, after which the board determines whether to adopt the hearing officer's recommendation.

In response to a question from Representative Berg, Mr. Thune said the ability of boards to recover attorney's fees and costs is a common power for boards; however, the Legislative Assembly recently added the power of boards to suspend an occupational and professional license for failure to pay the ordered fees for attorneys and costs.

Chairman Andrist called on Mr. Douglas D. Schauer, Chairman, Board of Hearing Instrument Dispensers, for information regarding the fiscal status of the board, disciplinary activities of the board, and licensure activities of the board. Mr. Schauer provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Schauer provided fiscal information of the board for the past five years, licensure activity of the board for the last five years, and disciplinary activity of the board for the past five years. He said the board's cash and investments amount to \$26,610.45. He said over the last five years the board has not issued any reciprocal licenses. During the last five years, he said, the board has received eight complaints, all of which were settled. Additionally, he said, the lack of funds has never impacted the board's ability to perform its duties.

Mr. Schauer said the board is adamantly opposed to the idea of abolishing the board and allowing a

private professional organization to provide voluntary certification of hearing instrument dispensers. He said abolishment of the board would result in increased complaints due to uneducated individuals dispensing hearing instruments.

In response to a question from Senator Andrist, Mr. Schauer said the board licenses approximately 60 to 65 individuals. He said only one complaint in the board's history has gone to the administrative hearing level and that case was settled during the course of the hearing.

In response to a question from Representative Galvin, Mr. Schauer said the educational level of individuals licensed by the board varies from high school degrees to doctorate degrees. He said some, but not all, hearing aid dispensers are audiologists.

In response to a question from Representative Froseth, Mr. Schauer said typical complaints received by the board include complaints of improper advertisement. However, he said, the board is limited in that it does not regulate out-of-state hearing instrument dispensers who have advertised in the state, such as an advertisement in a magazine.

Chairman Andrist called on Mr. Kenneth Thompson, Secretary-Treasurer, State Board of Registration for Professional Soil Classifiers, for information regarding the fiscal status of the board, disciplinary activities of the board, and licensure activities of the board. Mr. Thompson provided written testimony, a copy of which is on file in the Legislative Council office. He reviewed the income revenues generated, expenditures, and cash balance and investments of the board for the preceding five years. He said the board has approximately \$20,000 in certificates of deposit as a reserve in the event of litigation.

Mr. Thompson provided information for the preceding five years regarding the number of licensees, the number of examinations given and the outcome, and the number of reciprocal licenses issued. He said the board has not received any formal complaint against members in the past five years. However, he said, the board has investigated reports of individuals performing soil classification activities without being licensed in North Dakota.

Mr. Thompson said a lack of funds has never impacted the board's ability to perform its duties. He said the American Society of Agronomy registers soil scientists as well as other disciplines; however, the American Society of Agronomy examination deals with science while soil classifiers deal both in science and the practical aspect. Additionally, he said, there is not an existing state entity that would be able to perform the board's duty if the board were abolished. He said that in light of the testimony of Mr. Thune, the \$20,000 in reserve certificates of deposit may not be adequate to fund possible litigation.

In response to a question from Senator Andrist, Mr. Thompson said Minnesota does not offer

reciprocity to North Dakota soil classifiers; therefore, it has been difficult coordinating licensure activities with Minnesota.

Chairman Andrist called on Ms. Jo Zschomler, Director, Division of Risk Management, Office of Management and Budget, for comments regarding the possibility of the state's exposure to tort liability claims and lawsuits related to activities of small occupational and professional boards. Ms. Zschomler provided written testimony, a copy of which is on file in the Legislative Council office.

Ms. Zschomler reviewed the basic provisions of the State Tort Claims Act enacted in 1995. She said for purposes of the Act, the occupational and professional boards are included in the definition of state. She said the Act addresses when the state and its employees, including voluntary board members, can be held liable for money damages. The Act, she said, directs that the state may only pay damages caused by negligence or a wrongful act or omission on the part of the state or state employee. However, she said, the Act contains certain exclusions such as quasi-judicial immunity, discretionary immunity, and quasi-legislative immunity.

Ms. Zschomler said even when immunity is a valid defense to a lawsuit, that immunity does not in and of itself bar a person from bringing the lawsuit; therefore, the fund must expend money to pay costs and attorney's fees to defend the lawsuit. She said the coverage provided by the risk management fund is limited to payment of damages and associated costs caused by negligence or a wrongful act or omission of the state or a state employee. She said the fund does not finance an administrative process initiated by a board or represent or defend state entities in contract actions.

In response to a question from Senator Andrist, Ms. Zschomler said under the law, small boards are not necessarily more vulnerable than larger occupational and professional boards.

In response to a question from Representative Berg, Ms. Zschomler said to expand the role of the risk management fund to include previously excluded acts would require a change to the Act and an increase in the amount of the fund to accommodate increased use of the fund.

Chairman Andrist called on committee counsel to provide information regarding occupational and professional boards' ability to access funding from the Emergency Commission. Committee counsel said a review of the minutes of the Emergency Commission indicates that in the last five years the only instance of an occupational or professional board requesting funding from the Emergency Commission occurred in March 2000 when the Board of Examiners on Audiology and Speech-Language Pathology requested funding to cover costs associated with a disciplinary action being appealed to the district court.

Committee counsel said a representative of the Office of Management and Budget reported at the March Emergency Commission meeting that even if it were determined that the board was able to access Emergency Commission funds, regardless of whether the board had a state budget appropriation, there was still a lingering question regarding how to transfer these funds to the board. Additional comments at the March Emergency Commission meeting included concern over the idea of using general fund money to pay for self-funding boards; concern that the need for funds to perform a board's disciplinary duties is not an emergency; and whether the board may be able to access funds in some other manner. Ultimately, she said, the Emergency Commission denied the request of the Board of Examiners on Audiology and Speech-Language Pathology.

Chairman Andrist called on Mr. Bill Peterson, Assistant Attorney General, for comments regarding the committee's occupational and professional boards study. Mr. Peterson said he is legal counsel for several occupational and professional licensing boards.

In response to a question from Senator Mathern, Mr. Peterson said typically an individual who appeals the decision of an administrative proceeding is responsible for paying for a transcript; however, in the case of the Board of Examiners on Audiology and Speech-Language Pathology, the court determined the appellant was unable to pay and therefore required that the board pay for this transcript. He said it was the costs associated with preparing this transcript which resulted in the request for funds from the Emergency Commission.

Mr. Thune said before the end of sovereign immunity, the costs of civil proceedings were covered by the North Dakota Insurance Reserve Fund. He said some of these costs are covered by the risk management fund; however, some costs are not. He questioned whether the risk management fund ought to be able to cover defense costs but not damages. He said he is not sure how much the Board of Podiatric Medicine pays to participate in the risk management fund.

Senator Mathern requested that the Division of Risk Management provide information at a future meeting regarding the amount of premium each of the occupational and professional licensing boards that cover fewer than 100 licensees pay to the risk management fund.

Chairman Andrist called on Mr. John Emter, Bismarck, for comments regarding the committee's occupational and professional boards study. Mr. Emter said the administrative hearing system is unfair because if a board loses a case at the Supreme Court level, the board is not required to pay for costs and attorney fees for the winning party; however, if an individual loses at the Supreme Court level the individual is required to pay costs and attorney fees for

the board. Additionally, he said, North Dakota laws mean nothing because the courts do not follow the laws and the boards are not held accountable.

Senator Andrist said since the loss of sovereign immunity, the state is held more accountable than it has been in the past.

Representative Berg requested that committee counsel work with Ms. Zschomler and Mr. Thune regarding the ability of the Division of Risk Management to assist boards in some way with appeals of disciplinary proceedings.

**WORKFORCE TRAINING AND DEVELOPMENT PROGRAMS STUDY**

Chairman Andrist called on Mr. Randy Schwartz, Director, Manufacturing Extension Partnership, Division of Economic Development and Finance, Department of Commerce, for information regarding the manufacturing extension partnership program. Mr. Schwartz provided written testimony and written information regarding the manufacturing extension partnership program, copies of which are on file in the Legislative Council office. In addition, Mr. Mike Hohl, President, DMI Industries, joined the committee telephonically.

Mr. Schwartz provided information regarding the importance of manufacturing generally in the United States and specifically in North Dakota. He said the manufacturing extension partnership program is a nonprofit organization with the mission to “grow North Dakota manufacturing.” He said the North Dakota manufacturing extension partnership program is a partnership of federal, state, local, and private sector resources and is one of 70 centers in the manufacturing extension partnership program system. The North Dakota manufacturing extension partnership program, he said, targets its services to help manufacturers and focuses on companies that will create new wealth and opportunity in the community and in the state. He said companies pay for the services they receive and public sector funds provide for the system infrastructure needed to identify and ready manufacturers for improvement. He said the National Institute of Standards and Technology Manufacturing Extension Partnership program and the 70 centers work together to ensure that services provided to manufacturers are of the highest quality. He said one of these services offered exclusively by manufacturing extension partnership program centers is 360vu--a premier management resource designed specifically for small manufacturers. The 360vu program, he said, is a customizable suite of integrated tools and services to help manufacturers take a holistic approach to improving their companies.

Mr. Schwartz said the manufacturing extension partnership program can help companies with:

- Employee recruitment and selection.
- Employee relations.
- Business and strategic planning.

- Global business development.
- Succession planning.
- Financial services.
- Quality assurance and production control.
- Product design and development.
- Procurement.
- Supply chain management.
- Energy conservation.
- Plant maintenance.
- Lean enterprise.
- Plant layout and design.
- Environment, health, and safety issues.
- Market development, planning, and selling strategies.
- Customer, market, and competitor analysis.
- Information systems planning and software selection.
- E-business.

Mr. Schwartz said because the National Institute of Standard and Technology Manufacturing Extension Partnership is a system, North Dakota manufacturers benefit not just from locally available services but from services from the entire system.

Mr. Schwartz said the state, through the Department of Commerce, provides the manufacturing extension partnership program financial resources of \$200,000 per year, which helps leverage an additional \$200,000 from the National Institute of Standards and Technology Manufacturing Extension Partnership program. Additionally, he said, the North Dakota manufacturing extension partnership program is budgeted to generate another \$350,000 in fees for the work done with manufacturers.

Mr. Schwartz said the North Dakota manufacturing extension partnership program submits quarterly reports to the national system and the national system provides for followup with businesses that have received manufacturing extension partnership program services. He said the data reported last year is just now beginning to become available to reflect the official impact of the state’s program. He said from the independent followups, the average program project results in increased sales per company of \$470,000, cost-savings of \$99,000, new client investment of \$180,634, and the creation or retention of five jobs. He said based on this information, the Department of Commerce has come up with the following information:

<b>North Dakota Manufacturing Extension Partnership Program Additional Benefit to State of North Dakota</b>			
Number of company projects	30	40	50
Total employment	626	831	1,039
Total gross state product	\$29,500,000	\$39,100,000	\$48,900,000
Personal income	\$17,000,000	\$22,800,000	\$28,500,000
State tax revenues	\$3,600,000	\$4,800,000	\$6,000,000

In response to a question from Senator Mathern, Mr. Schwartz said in surveying whether companies have the necessary funding to grow, some companies' financial needs have been met, but some needs remain unmet. He said unfortunately, companies across the country are being negatively affected by the current economic state.

Chairman Andrist called on Mr. Hohl for comments regarding his experience with the North Dakota manufacturing extension partnership program. He said DMI Industries has received lean manufacturing services from the North Dakota manufacturing extension partnership program.

Mr. Hohl said lean manufacturing services his company received focus on how to increase the manufacturing of products with the minimal amount of resources. Lean manufacturing, he said, is different from streamlining that results in laying off employees. Instead, he said, the approach is to increase manufacturing and use employees and other resources more efficiently. He said so far this year, his company has been able to increase the number of employees and the number of actual manufactured products. His business has been able to operate with less waste and more production and therefore has become more competitive.

In response to a question from Senator Mathern, Mr. Schwartz said lean manufacturing deals with demand flow and recognizing that a frequent waste for manufacturers is inventory. Mr. Hohl said DMI Industries' manufacturing uses steel in its manufacturing but does not stock steel; instead steel is delivered as needed, thereby decreasing warehouse expenses.

Mr. Hohl said in North Dakota, manufacturing can provide a significant, positive impact on the state. He said the state needs to focus on increasing manufacturing, and he requested the state help the North Dakota manufacturing extension partnership program provide as many services as possible.

Chairman Andrist called on Mr. James Hirsch, Director, Workforce Development Division, Department of Commerce, for comments regarding possible gaps in the current workforce development system, single point of contact for the workforce development system, and any recommended legislation. Mr. Hirsch provided written testimony and informational material, copies of which are on file in the Legislative Council office. He reported that there are significant worker and skill shortages along with gaps in the current workforce development system. He said employment and underemployment data needed by the North Dakota workforce development system is either nonexistent or is not readily available in large part because the data is not tracked in an accessible data base.

Mr. Hirsch said the state has a shortage of accessible short-term training options to allow employed and unemployed workers the opportunity to train for

higher skill opportunities. Additionally, he said, the state has a shortage or lack of short-term training programs to help the underemployed in accessing career ladder and skill upgrade training. The state, he said, has taken some positive steps to address these gaps by coordinating partnerships and coordinating the use of existing funds. He said continuation of the public-private partnership grant funds allocated to the Workforce Development Division will provide the match funding necessary to continue these coordinated partnerships.

Mr. Hirsch said the Workforce Development Division, along with system partners, is developing needs assessment documentation to support additional federal grant applications. However, he said, in addition to accessing federal grants, it is important to consider the use of state-funded programs to address state emphasis areas and to assist the underemployed in being retrained for other high skill and high wage opportunities available in the state.

Mr. Hirsch said in looking at the gaps in workforce development services, one option warranting study would be the provision of a mechanism to create community workforce training foundations. A community workforce training foundation, he said, could accept donations and use the donations to establish short-term training programs, develop training and technology centers that could support distance learning, and pay tuition costs for underemployed workers or youth who may want to train for higher skill jobs available in the community and wish to continue living in the community. He said the idea of creating a foundation would warrant further study and may require some startup funding to develop a pilot program.

Mr. Hirsch said rather than creating a single point of contact for programs and services delivered through the state's workforce development system, he advocates a system in which the customer may access the entire system through the customer's desired point of contact. He said wherever the customer accesses the system, that point of contact should develop a coordinated and timely response from the appropriate system partners. He said for this system to work, there needs to be formal points of contact identified for each partner and open communication between the partners, something that is already occurring formally in some areas of the state. However, he said, in order to be successful, the partners of the workforce development delivery system will also need to have constant interaction among themselves in order for the system to evolve. He said a catalyst to create this interaction may include the North Dakota Workforce Development Council, the Department of Commerce cabinet, and the quadrant interagency councils. He said more systems experience is needed before any meaningful reorganization proposals may be put together to improve the effectiveness and responsiveness of the workforce development systems partners.

Mr. Hirsch said legislation is needed to authorize the Department of Commerce to accept commissions for the marketing of subscriptions to the *www.northdakotahasjobs.com* web site used by employers to recruit workers from out of state. He said the Department of Commerce would use the commission to pay salaries to individuals who solicit the subscriptions and for marketing and advertising of the site to North Dakota alumni and any individuals from out of state who are trying to recruit employees for openings within the state.

Mr. Hirsch said the data warehouse concept is being explored and developed by the North Dakota Workforce Development Council and partner agencies. He said that group is working with the Information Technology Department on this issue and they do not have recommendations for legislation yet. He said a permanent funding source is needed for the Work Force 2000 workforce training program and new programs to train the underemployed. The state needs to continue providing match funding, he said, to support gathering information for use in planning and making funding decisions. Additionally, he said, the state needs to continue its research on the need for a program to fund retraining for the underemployed.

In response to a question from Senator Grindberg, Mr. Hirsch said North Dakota compares favorably with other states in the offering of a seamless workforce training and development system. However, he said, most states that call their systems "seamless" do not have seamless systems. He said in some instances the provision of services by quadrants may not be most efficient because sometimes those quadrants are too large; whereas, providing those services at a city level or at a cooperative city-city level may be more effective.

Chairman Andrist called on Ms. Maren Daley, Director, Job Service North Dakota, for comments regarding possible gaps in the current workforce development system and single point of contact for the workforce development system. Ms. Daley provided written testimony and written information, copies of which are on file in the Legislative Council office. She said she supports Mr. Hirsch's testimony and legislative suggestions. Additionally, she said, Mr. Hirsch should be recognized for the work he has done through the Workforce Development Council, resulting in an incentive grant in excess of \$700,000 under the Workforce Investment Act. She said North Dakota is one of only 12 states to be awarded this incentive grant funding.

Ms. Daley said access to the workforce training programs in the state is through a "no wrong door" approach. She said at whatever point a customer contacts the workforce development system, it is the responsibility of the partner agencies to coordinate, facilitate, and ensure the timely, smooth guidance of the customer to the right resources. She said this

network works for employees as well as employer customers.

Ms. Daley said in addition to the "no wrong door" approach, the Workforce Investment Act supports the concept of both a physical and a virtual Internet one-stop system in which workforce development partners collaborate and come together to serve the customer with as little disruption and repetition by the customer as possible. She said the state's one-stop is found at *www.crisnd.com*. She distributed informational brochures regarding this one-stop web site, copies of which are on file in the Legislative Council office. In addition to the virtual one-stop, she said, there are physical one-stop centers, such as the one-stop center being built in Bismarck. She said the Bismarck One-Stop Center is scheduled to be completed by the time the Legislative Assembly adjourns in January 2003, and she invited the legislators to tour this center to see firsthand how the one-stop centers operate in helping jobseekers and business come together.

In response to a question from Senator Andrist, Ms. Daley said to grasp how the workforce development system functions, it is important to remember that each partner in the system has a unique role and excels at providing this role.

Chairman Andrist called on Mr. Emter for comments regarding the committee's workforce training and development program study. Mr. Emter said his experience has been that some employers do not want well-trained employees because well-trained employees are more expensive to hire than the less-qualified workers.

Senator Andrist said the provision of workforce training in the state is designed to increase the training of North Dakotans.

## **INTERNATIONAL MARKETING STUDY**

Chairman Andrist called on Mr. Roger Johnson, Agriculture Commissioner, regarding international programs provided through the commissioner's office. Commissioner Johnson provided written testimony and written material, copies of which are on file in the Legislative Council office.

Commissioner Johnson said the bulk of export activities in the state is in the area of agriculture. He said these export activities are primarily in the form of raw agriculture commodities, processed foods, and agricultural equipment. He said the international trade activities of his office are centered in the marketing services area. His office, he said, is in a partnership with Mid-America International Trade Council (MIATCO), which is primarily composed of 12 state departments of agriculture in the Midwest region. He said he is president of MIATCO. He said in addition to the contacts and special relations gained through MIATCO, MIATCO provides an export hotline, Food Show Plus, and a branded program.

Commissioner Johnson said through the export hotline, North Dakota companies are able to have an

expert identify the top export market for a particular product. He said this service is free to North Dakota companies through the state's MIATCO membership.

Commissioner Johnson said Food Show Plus is a customized service for food trade shows which may include crucial feedback regarding a product's competitive position in the market, prearranged meetings with potential buyers, interpreters and translation assistants, site visits to local outlets, market seminars, and followup assistance after the show. He said Food Show Plus services are provided at a very nominal cost.

Commissioner Johnson said the branded program can provide North Dakota companies with up to 50 percent cost reimbursement for a wide variety of eligible international marketing and promotional activities.

Commissioner Johnson said the state's annual dues for MIATCO are \$7,000. He said it would be foolish for individual states to try to replicate these programs on their own. The MIATCO program, he said, gives North Dakota companies access to markets almost anywhere in the world.

Commissioner Johnson said his office works closely with the state commodity councils and funds, including the Wheat Commission, Corn Utilization Council, Barley Council, Oil Seed Council, Soybean Council, Potato Council, Dry Pea and Lentil Council, Dry Bean Council, Dairy Promotion Commission, Beef Commission, turkey promotion fund, and honey promotion fund. He said together these commodity councils spend almost \$15 million in marketing North Dakota products. He said much of the money spent by the commodity councils is targeted at foreign market development. He said he serves on the Agricultural Products Utilization Commission, the Northern Crops Institute Board of Directors, and the State Seed Commission. Additionally, he said, he is one of three members of the Industrial Commission, which oversees the State Mill and Elevator, which is becoming more involved in international marketing.

Commissioner Johnson said his office is very active in direct services with North Dakota companies, including conducting educational seminars, researching potential markets, providing financial assistance for companies to attend international trade shows, encouraging and hosting reverse trade missions, organizing North Dakota companies for foreign visits, following up on international trade inquiries, and providing networking services between North Dakota companies and export providers.

Commissioner Johnson said in the current bienium, his office has assisted companies in nine international shows. He said as a result of assisting in the shows, several companies have shown substantial increases of sales. He reviewed a list of recent activities his office worked with in promoting international sales. Overall, he said, both directly and with partnerships with others, his department is very active in

helping North Dakota companies access global markets.

Commissioner Johnson said there are several ways the Department of Agriculture and the Department of Commerce can work together on international trade. He said first, and probably most importantly, there is a need to share information between agencies. This sharing of agricultural information, he said, could be shared with the Department of Commerce by creating a data base in a format that is compatible with the Department of Commerce system. He said both agencies can certainly work together without stumbling over each other or duplicating efforts.

Commissioner Johnson said there may be benefits in creating some type of relationship between the Department of Agriculture, the Department of Commerce, and the University System. He said the Department of Agriculture has worked with Minot State University's Institute for International Business. Overall, he said, he sees a key element in partnering with others to maximize output.

In response to a question from Senator Andrist, Commissioner Johnson said under the current system, some cooperation and coordination of the provision of international trade takes place between the state agencies and private organizations.

In response to a question from Senator Grindberg, Commissioner Johnson said the Department of Agriculture has a working relationship with several other organizations; however, there is room for improving this coordination. He said he does not suggest creating a new board or new agency to head global marketing but instead supports improving coordination between the existing agencies and organizations.

In response to a question from Senator Espgaard, Commissioner Johnson said he does not think the international marketing services offered through his office and through the Department of Commerce duplicate each other. He said although both agencies do have some overlap in the companies with which they work, the agencies are offering these companies different services.

Chairman Andrist called on Mr. Lee Peterson, Commissioner, Department of Commerce, for comments regarding the presence of an international marketing component within the department. Mr. Peterson provided written testimony, a copy of which is on file in the Legislative Council office. He stated that the information he is providing regarding what role an international business division would have within the Department of Commerce is in response to the committee's request and he is not advocating for this position per se. He said if this international business division were created, the exportation program would include coordinating and cooperating with current international trade programs, including the Department of Agriculture; providing hands-on assistance to private businesses to get them export ready; working with entities to provide

educational opportunities for customers choosing to consider the possibility of exporting; and helping businesses to determine if they are ready for the associated growth related to international trade. Additionally, he provided financial estimates of the biennial costs associated with hiring an international business and marketing director and one full-time employee support staff as well as the administrative expenses associated with such a position. He said with a director's annual salary of approximately \$45,600, support staff salary of approximately \$27,312, and administrative expenses, creation of the position would cost approximately \$342,828 for the initial biennium.

In response to a question from Senator Heitkamp, Mr. Peterson agreed that the Department of Commerce is not going to be able to keep providing more services without being provided additional funding. Senator Heitkamp said he is concerned that the Legislative Assembly is sending mixed messages in that the duties of the Department of Commerce continue to grow, but the department's resources are not growing at the same rate.

Senator Grindberg said increasing the Department of Commerce budget is not the answer to all the problems. He said an important distinction between the executive branch and the legislative branch is that it is the executive branch's duty to prioritize what services will be offered under the available funding. He said if global marketing is such a high-priority item, the executive branch has a duty to put it at the top of the list at the expense of other programs.

Senator Andrist said if global marketing is important enough, the Governor will be in a position to find the money to support the program.

Representative Berg said the work of the previous Commerce and Labor Committee resulted in the bill draft creating a commerce department, which included a global marketing division. He said the creation of the global marketing division was intended to reduce duplication of services.

Senator Heitkamp said he agrees with Representative Berg that it is important to reduce duplication, but provision of these services will not be effective unless the Department of Commerce is able to recruit knowledgeable people to work on the program.

Chairman Andrist requested that representatives of the Department of Commerce meet with representatives of other agencies and private organizations interested in global marketing and report back to the committee with a single focus concept for international marketing.

Chairman Andrist called on Mr. Jim Ondracek, Institute for International Business, Minot State University, for comments regarding the international marketing study. Mr. Ondracek said one way Minot State University is able to address international business is by hiring staff members who have this expertise and by using the manpower of students.

## **BUSINESS PROGRAMS STUDIES**

Chairman Andrist called on Mr. Peterson for comments regarding the effectiveness of economic development services offered through the Department of Commerce, creation of a state equity fund, and creation of a program to provide business startup funds. He provided written testimony, a copy of which is on file in the Legislative Council office. He said his view of economic development is based on helping new business startups, retaining existing businesses, and recruiting businesses to the state. He said the Department of Commerce is paying particular attention to industries related to value-added agriculture, energy, advanced manufacturing, information technology, and tourism.

Mr. Peterson provided fiscal information for the North Dakota Development Fund, including a projection of the future benefit the state will reap from North Dakota Development Fund projects in 2001. He also provided information on the North Dakota Development Fund rate of return on investments for the current year and preceding three years.

Mr. Peterson reviewed fiscal information pertaining to the community development block grant program and the community loan fund. He said in calendar year 2001, the community development block grant program funded 22 economic development projects for a total of \$3,200,000 with an average of \$145,454 per project. The total capital investment in all projects, he said, was in excess of \$31 million. Of the 22 projects, he said, 12 were business startups, 6 were expansions, 2 were purchases of existing businesses, and 2 were designated as job retention. Additionally, he provided forecasts on the effect these 22 projects will have on the state's economy over the next four years.

Mr. Peterson reviewed the manufacturing extension partnership program. He said with the \$400,000 originally put into the program, an additional \$600,000 in federal and private funds has been leveraged. He said so far the program has touched 90 companies within the state, with at least 800 employees in the state having seen direct benefit from the program.

Mr. Peterson presented fiscal information pertaining to the North Dakota Agricultural Products Utilization Commission. He said the commission administers four grant programs, including basic and applied research, marketing and utilization, farm diversification, and agricultural prototypes. He said in 2001 the commission received 73 applications requesting a total of over \$3.1 million. He said of those 73 applications, 37 projects were funded at a total of \$944,142.

Mr. Peterson said the Department of Commerce has the necessary tools to make startup financing and equity investments available through the North Dakota Development Fund, Inc., community development block grant, and community development loan fund. He said the North Dakota Development Fund,

Inc., has the flexibility to provide funds in the form of loans, equity investments, stock purchases, grants, and guarantees. He said in 2001 the North Dakota Development Fund, Inc., provided funds for 19 primary sector startups. Of those 19 primary sector startups, he said, seven startups were projects that both the North Dakota Development Fund, Inc., and Division of Community Services were involved with. He also said of the 19 startups, the Department of Commerce provided nine equity investments.

Mr. Peterson said what the Department of Commerce needs is for the legislators to understand that not every application for funds is appropriate for funding. He said the department will continue to provide assistance to projects in order to get to the point where it makes good business sense to provide funding; however, there are times when the answer to the request for funding should be no. Additionally, he said, he requests the legislators' understanding that equity and startup funds are the most risky financing available, so it follows there will be a higher loss associated with these types of financing. He said currently the North Dakota Development Fund, Inc., loss rate is approximately 16 percent and the community loan fund is approximately 35 percent.

Mr. Peterson suggested a new account be created within the North Dakota Development Fund, Inc. He said with \$1 million to \$1.5 million per biennium, this new account could target equity and startups with an understanding that the loss in this account could be as high as 50 to 80 percent. He said one requirement that would be essential to this fund is that the company receiving funds agrees to professional management assistance, including a specific amount of advice and counseling during the startup of the company.

Mr. Peterson said in reviewing the spectrum of funding programs available to businesses, there is a gap in the area of seed stage financing. He said this is a universal problem that is not unique to North Dakota. He said the state once had a seed capital fund called Technology Transfer, Inc. This program, he said, provided seed funding for new technology projects, but the program was discontinued by the Legislative Assembly. He said overall the ability in North Dakota to fund viable projects is excellent. As a result of resources such as the One-Stop Capitol Center, United States Department of Agricultural Rural Development, Bank of North Dakota, Small Business Association, local development corporations, regional councils, local financial institutions, and the North Dakota small business investment companies program.

Mr. Peterson said to increase deal flow, the Department of Commerce needs to market its programs. He said although the department staff has the ability to meet with local bankers, development officials, and possible clients to discuss how the

department can become part of the financing package, the problem is that the current workload of 39 projects keeps the staff extremely busy. He said if deal flow is increased, the workload will become too large to handle with the current staff. He said as the overall marketing program begins to increase new companies locating in North Dakota, the deal flow will naturally increase. Additionally, he said, working with startups and expansions is much more time-consuming than providing assistance to strong viable companies.

Chairman Andrist called on Mr. Steve Cochrane, Executive Director, Retirement and Investment Office, for comments regarding how the office has impacted economic development in the state. Mr. Cochrane provided written testimony, a copy of which is on file in the Legislative Council office. He said the State Investment Board supports the advancement of development in the state in several ways, including the Lewis and Clark Private Equities, L.P., in the amount of \$7,500,000; Bank of North Dakota demand deposit in the amount of \$30,438,000; and Bank of North Dakota match loan program with a \$100,000,000 commitment.

In response to a question from Senator Nelson, Mr. Cochrane said the expected return on the Teachers' Fund for Retirement is 9.12 percent and the expected return on the Public Employees Retirement System is 9.9 percent.

Chairman Andrist said in reviewing the committee's charge, he does not anticipate at this time any committee bill drafts relating to the occupational and professional boards study. He said the committee will receive testimony regarding workforce training and the four quadrants. Additionally, he said, at the next meeting the committee will receive a report from Mr. Peterson regarding his meeting with international marketing partners within the state. As far as the business programs study, he said he does not see any immediate need for legislation except perhaps as suggested by Mr. Hirsch.

Senator Wardner requested that committee counsel work with Mr. Hirsch to put together a committee bill draft to allow the Department of Commerce to accept commissions for the marketing of subscriptions to the *northdakotahasjobs.com* web site.

No further business remaining, Chairman Andrist adjourned the meeting at 3:35 p.m.

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Jennifer S. N. Clark  
Committee Counsel

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