

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ECONOMIC DEVELOPMENT COMMITTEE

Friday, June 25, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Rick Berg, Donald L. Clark, Mark A. Dosch, Mary Ekstrom, Glen Froseth, Jim Kasper, George Keiser, Eugene Nicholas, Kenton Onstad, Don Vigesaa; Senators Dick Dever, Duaine C. Espegard, Tony S. Grindberg, John O. Syverson, Ryan M. Taylor

Members absent: Representatives Tracy Boe, Nancy Johnson, Ken Svedjan

Others present: See Appendix A

REPORTS

Centers of Excellence

Chairman Berg called on Mr. Eddie Dunn, North Dakota University System, for a presentation regarding definitions and eligibility criteria regarding the centers of excellence program, pursuant to North Dakota Century Code (NDCC) Section 15-10-41. Mr. Dunn provided written testimony, which includes the economic development centers of excellence definitions and criteria, a copy of which is attached as Appendix B.

Mr. Dunn briefly reviewed the history of the centers of excellence program since enactment of NDCC Section 15-10-41 in 2003. He said in fall 2003, a University System task force and a North Dakota Economic Development Foundation task force merged to form the Joint Committee on Economic Development Centers of Excellence. This joint task force, with input by nearly 50 individuals in the primary economic sectors in the state, identified merging program needs and opportunities for focusing the resources of the North Dakota University System. Using the definitions and criteria developed, he said, two economic development centers of excellence projects have been selected from six proposals to receive funding, subject to the campuses being able to meet the \$2 to \$1 match requirement under Section 15-10-41. Mr. Dunn said these two proposals for funding are the Bismarck State College National Energy Technology Training and Education Center for \$300,000 and the Williston State College Oil Field Training Center for \$100,000.

Mr. Dunn reviewed the economic development centers of excellence definitions and criteria, including the background, long-term goals, potential categories

for designating economic development centers of excellence; definitions and criteria for economic development centers of excellence; and criteria for funding. He said economic development centers of excellence will be designated within two distinct categories--established centers of excellence and targeted centers of excellence. He said established centers of excellence are centers that are already established and have national or international recognition that meet the criteria established by the State Board of Higher Education. He said targeted centers of excellence are specialized areas for which a center does not currently exist or has not yet achieved full-fledged centers of excellence status but is desired by the private sector to support one or more of the targeted industry clusters designated by the North Dakota Economic Development Foundation.

In response to a question from Representative Berg, Mr. Dunn said there are two types of centers of excellence, only one of which is newly created in accordance with the 2003 centers of excellence legislation. He said the parties creating the criteria and definitions tried to distinguish between new economic development centers of excellence and nationally recognized centers of excellence that were already in existence prior to the 2003 legislation. He said it may be necessary to further clarify this distinction. Mr. Dunn said although the 2003 legislation does not preclude the University System from establishing additional centers of excellence, it will try to further clarify this distinction between the two types of centers of excellence.

Senator Espegard said the purpose of the 2003 centers of excellence legislation was to create jobs, not just put more money into a university special area. He said he is concerned the program may be going down the wrong road.

Mr. Dunn said the criteria requires that an economic development center of excellence create a high-value, private sector employment opportunity in the state and that it promote growth and expansion of knowledge-based industries.

In response to a question from Representative Keiser, Mr. Dunn said it is the State Board of Higher Education that actually makes the economic development center of excellence determination; however, the North Dakota Economic Development Foundation,

pursuant to NDCC Section 15-10-41, does provide recommendations. He said that hopefully each of the state's institutions of higher education will be able to identify an avenue in which to pursue an economic development center of excellence. He said the criteria needs to be input-based and needs to evolve to an outcome-based approach that evaluates factors such as whether the economic development center of excellence actually creates jobs. He said business and industry want a place to go to make business growth happen.

Senator Grindberg said the definitions and eligibility criteria appear to include a lot of gray area. He requested that Legislative Council staff compare NDCC Section 15-10-41 to the actual implementation to determine how closely the implementation complies with the legislation.

Representative Berg requested the North Dakota University System provide committee members with a list of the economic development centers of excellence and the list be prioritized and each center include a summary of its activities, including identifying a private party as may be appropriate. Additionally, he requested a preliminary list of proposed economic development centers of excellence.

Representative Kasper requested that Mr. Dunn provide the committee members with a list of the individuals who participated in helping identify emerging program needs and opportunities for focusing the resources of the University System.

Department of Commerce Report

Chairman Berg called on Mr. Lee Peterson, Commissioner, Department of Commerce, to present the annual report regarding specific economic goals and associated benchmarks, pursuant to 2003 Session Laws Chapter 18, Section 9. Mr. Peterson provided committee members with a copy of the annual report, a copy of which is attached as Appendix C.

Mr. Peterson's report responded to the required report on the following six goals and associated benchmarks, pursuant to 2003 Session Laws Chapter 18, Section 9:

1. Develop unified efforts for economic development based on collaboration and accountability:
 - a. Site selection ranking of the North Dakota department of commerce.
 - b. Share of local economic development organizations participating in statewide marketing strategy.
2. Strengthen cooperation between the university system, economic development organizations, and private businesses:
 - a. Academic research and development expenditures as percentage of gross state product.
 - b. Industry research and development expenditures as percentage of gross state product.
3. Create quality jobs that retain North Dakota's workforce and attract new high-skilled labor:
 - a. Net job growth.
 - b. New private sector businesses per one hundred thousand residents.
 - c. Average annual wage.
 - d. Net migration.
4. Create a strong marketing image that builds on the state's numerous strengths, including workforce, education, and quality of life.
 - a. Positive national and out-of-state media exposure (favorable mentions).
 - b. Number of North Dakota department of commerce web site hits per month.
 - c. Number of leads generated by the North Dakota department of commerce.
5. Accelerate job growth in sustainable, diversified industry clusters to provide opportunities for the state's economy:
 - a. Net job growth in manufacturing.
 - b. Net job growth in business services.
 - c. New private sector businesses in manufacturing.
 - d. New private sector businesses in business services.
 - e. Number of utility patents per one hundred thousand residents.
6. Strengthen North Dakota's business climate to increase international competitiveness:
 - a. Gross state product (annual growth rate).
 - b. Venture capital investments (thousands).
 - c. Merchandise export value (per capita).

In reviewing goal No. 3 regarding the creation of quality jobs, Mr. Peterson said North Dakota had the largest per capita personal income growth in the United States in 2003. He said per capita personal income includes self-employed individuals such as farmers, whereas average annual wage is limited to employees and does not include farmers.

In response to a question from Representative Keiser, Mr. Peterson said the department does not collect data regarding trends in employment benefits.

In response to a question from Representative Onstad regarding the year-to-year fluctuation in farm income, Mr. Peterson said the report reviews four years of data for the period 2000 through 2003. He said agriculture is a big part of the state's economy.

Representative Berg said he is a firm believer that wage level increases reflect a higher demand for employees; therefore, he prefers to look at annual average wage statistics instead of per capita personal income.

Mr. Peterson said there is value to both the average annual wage figure and the per capita personal income figure.

In reviewing goal No. 5 regarding industry clusters, Mr. Peterson said because there has been a change in industry codes, there will be a shift in this data. Mr. Cory Finneman, Department of Commerce, said the data relating to the number of utility patents reflects new patents from the state filed with the United States Patent and Trademark Office.

Mr. Peterson reviewed goal No. 6 regarding global competitiveness. He said the footnote on page 9 of the report further clarifies what sectors are included in determining gross state product.

Representative Berg said North Dakota's gross state product reflects the national trend. He said state spending should not exceed gross state product.

Senator Grindberg said the annual report is very valuable as it helps keep a strategic perspective on economic development. He said the six goals and associated benchmarks are greatly improved over the benchmarks used four or five years ago.

Mr. Peterson agreed that the annual report is a very valuable tool. He said these goals and associated benchmarks need to be used to guide economic development in the state.

In response to a question from Representative Kasper regarding job growth and targeted industries, Mr. Peterson said the Department of Commerce is continually reviewing and trying to refine target industry areas. He said he is constantly looking at targeted job growth and he recognizes that these targets may vary across the state.

Representative Berg said the issue of economic development accountability is a hot topic. He said previous attempts to legislate economic development accountability have been flawed. He said accountability provisions need to allow local economic developers the flexibility to do their jobs.

In response to a question from Representative Froseth regarding North Dakota Indian reservations, Mr. Peterson said the data in the annual report is statewide and includes the Indian reservations. He said he is working closely with economic developers on the Indian reservations and he is also working on improving these partnerships.

BUSINESS CLIMATE STUDY

Chairman Berg briefly reviewed the business climate study activities of the committee and reviewed a one-page summary of how he envisions the committee continuing this study. A copy of this summary is on file in the Legislative Council office. He said the mission is to stimulate job growth and

enhance economic prosperity by making the North Dakota business climate the best in the nation and to strengthen the capacity of state and local officials to encourage business growth and job expansion. He said the goals are to make North Dakota even more attractive to businesses so that businesses will grow and prosper here, businesses will locate here, and businesses will be born here. He said under the North Dakota business climate initiative more than 20 individual action items have been raised. The action items, he said, may involve legislative initiative and in most cases the Legislative Assembly will designate North Dakota agencies and organizations to assist in further developing and implementing each action item. He said action items fall into the following major categories:

1. General business climate.
2. Business services.
3. Image and marketing.
4. Support from local economic development.
5. Education partnerships.

Chairman Berg said the contractual arrangement with Mr. Miles Friedman, National Association of State Development Agencies, has been extended and he will continue to assist the committee in the business climate study. Chairman Berg called on Mr. Friedman to present his proposals for potential initiatives resulting from the Primary Sector Business Congress. Mr. Friedman presented the final report of the activities of the first portion of his consulting services, a copy of which is on file in the Legislative Council office.

Mr. Friedman made a computer presentation *The ND Business Climate Initiative: Promoting Jobs and Prosperity for North Dakotans a New Plan for the Ongoing Review and Enhancement of Our North Dakota Business Climate*, a copy of which is on file in the Legislative Council office.

Mr. Friedman said he designated three categories of actions for each of the action items:

1. Begin drafting legislation after this meeting.
2. Refer to relevant lead agencies and await reports.
3. Direct long-term, further study.

Mr. Friedman provided the following action items:

1. External image.
2. Internal image.
3. Marketing available resources.
4. International business development.
5. Support for local economic developers.
6. Manufacturing.
7. Procurement.
8. Ongoing consultation on strategies.
9. Targeting industry.
10. Taxes.
11. Tribal businesses.
12. Technology commercialization.
13. North Dakota University System.
14. Venture capital.
15. Workforce development.

16. Education.
17. Intellectual property protection.
18. Liability and insurance.
19. Energy.
20. Transportation.
21. Gauging return on investment for economic development.

Following the computer presentation, Mr. Friedman distributed the following documents:

1. Items proposed for legislative language development (Appendix D).
2. Items assigned to lead agencies who will report back to the committee with suggestions for legislative action (Appendix E).
3. Third-party research projects that are ready for legislative authorization (Appendix F).

Chairman Berg requested that committee members review each of these action items and discuss whether to proceed with the action item.

- **External image.**

Representative Keiser said addressing external image should be broader than the proposal. He said the proposal should include business people because business people have a high degree of contact with individuals outside the state.

Representative Delmore said it may be valuable to look for an existing system that provides services across the state in order to implement the external image program. She said one such system the committee could consider using may be Job Service North Dakota.

Representative Kasper said external image could be addressed as part of a good ad campaign, which may use video and audio training components.

Representative Berg said the Department of Commerce has a directive for marketing.

Representative Ekstrom said the external image portion needs to include telling the world what they do not already know about North Dakota as this may pertain to tourism, agriculture, and higher education.

Representative Froseth said several of the external image items do not require legislation.

- **Internal image/Marketing of available resources.**

Representative Keiser said he has a feeling of frustration and a small sense of failure in the limited success of the committee to attract business people to provide input for this study. He said somehow they need to demonstrate to these missing business

people that this process is worth their participation.

- **International trade.**
- **Support for local economic development.**
- **Manufacturing.**

Representative Keiser said one of the manufacturing challenges faced is that specialization is expensive to support.

Mr. Friedman said the state's Manufacturers Extension Partnership has been very successful.

Representative Kasper questioned whether a state manufacturers' association should be receiving state funding.

Mr. Friedman said the state could be active in the facilitation for the startup of a manufacturers' association, with a plan for self-sufficiency.

Representative Berg said the institutions of higher education may be able to facilitate a manufacturers' association startup. He said a statewide association may help in improving awareness between manufacturing businesses.

- **Procurement.**

Senator Syverson said many of the issues being addressed by the committee seem to lend themselves to an ongoing business congress and the procurement issue is an example of this. He said these meetings help to get business people together to interact.

- **Ongoing consultation on strategies.**

Representative Berg said this is a continuing effort and the ongoing consultation would provide this opportunity.

Representative Keiser said if ongoing consultation on strategies is desired, the committee needs to extend this study through legislation.

- **Targeting industry.**

Representative Berg said there needs to be more of a focus and more of an ongoing focus on narrowing the current target industries.

Representative Ekstrom said the target industries should include a focus on developing smaller entrepreneurs.

Representative Keiser said as an example, Iowa spent a large amount of money to pursue target industries and in the process

found the University System to be very valuable in this pursuit.

- **Tax issues.**

Representative Keiser said one of the major issues in the state is property tax. He said the issues relating to property owners that do not pay property tax, such as nonprofit organizations, need to be addressed.

- **Tribal business development.**

Representative Kasper said he thinks that the American Indian tribes need to be specifically involved in any program in order for the program to be successful.

Representative Berg said representatives of the North Dakota Indian tribes have attended several committee meetings and as a result the committee has received valuable input.

- **Technology commercialization.**

- **Venture capital.**

Representative Berg said it will be important to identify venture capital and other funding gaps.

Representative Keiser said the attempt and failure of the recent initiated measure No. 1 may need to be reviewed by the committee. He said that the public needs to be better informed regarding this issue and how this issue may impact the business environment of the state.

Representative Berg said the corporate issues relating to the unsuccessful initiated measure No. 1 should be addressed by the committee.

Representative Nicholas said in order to increase high-tech opportunities in the state, there needs to be an increase in venture capital for these sectors. He said economic development is about money and money capital. He said North Dakota is capital-starved and everything possible needs to be done to support high-tech industries.

Representative Kasper said he would like to include as part of the venture capital study the issue of funding nonprimary sector businesses. Representative Berg said the issue of funding for nonprimary sector businesses should be included in the committee's actions.

Senator Grindberg requested that Mr. Dean Reese, Department of Commerce, provide an updated document regarding funding programs available to businesses according to their development stage.

Senator Espgaard said businesses in the state need more risk investment. He said the Bank of North Dakota has a white paper regarding the issue of bonding. He said the committee may wish to include the Bank of North Dakota in this discussion. Representative Berg requested that the issue of bonding by the Bank of North Dakota be included in this list of legislative actions.

- **Education.**

Representative Delmore said some school districts in the state are already providing programs, such as job shadowing, so it would be necessary for the committee to have an update on these programs and more information.

Representative Onstad said because the Department of Commerce has followed the activities of the Primary Sector Business Congress, it might not be necessary to recommend bill drafts in order to accomplish most of these items.

Mr. Friedman said that not only does the creation of legislation provide a mandate for the Department of Commerce or another lead agency but the bill also provides a vehicle for that agency to get the needed resources to provide the service.

Mr. Friedman reviewed the items he would propose be assigned to lead agencies and organizations that will report back to the committee with suggestions for legislative actions.

In response to a question from Representative Delmore, Mr. Friedman said a large amount of what is being asked about is already taking place in the state; however, the committee would be seeking more detailed information regarding what these activities are and what improvements could be made.

Mr. Friedman reviewed the action items for which third-party research projects may be ready for legislative authorization. He said that for some of these issues it is possible that no specific legislative action need be sought at this time; however, the committee may wish to direct a study at some future date. He said although all the issues raised in the course of the Primary Sector Business Congress are very important, some issues require additional research.

Representative Keiser said with the exception of the item regarding the request for a report from the Attorney General, each of the items on this list provides for a study. He said it is important to know how much these studies would cost and who would be performing the study.

Senator Syverson said on the issue of current incentive programs, he would like a comprehensive listing under one document that briefly outlines the program and who is affected by the program.

Representative Keiser said as it relates to the issue of incentive programs, it would be valuable to know what programs have worked in other states, what programs have not worked in other states, and how these programs compare to what North Dakota is currently doing.

Representative Delmore said it may be valuable to prioritize which of the third-party research projects the committee wishes to pursue.

Chairman Berg said he would propose taking committee action to seek additional information from the Attorney General relating to tribal businesses and that third-party research be performed regarding the issues involved in the protection of intellectual property rights and the study of current incentive programs the state uses to attract, expand, retain, and incubate businesses.

Senator Grindberg said he supports the study of intellectual property rights.

Representative Keiser supported Representative Berg's list of three items.

Representative Kasper said he would support studying the issue of liability and insurance, particularly in the travel and tourism industry. Representative Berg said the issue of liability and insurance could be expanded to also address liability insurance as it may apply to research and universities.

Representatives Froseth and Berg said the study regarding energy exportation may be most appropriately provided by the private sector.

It was moved by Representative Keiser, seconded by Representative Dosch, and carried on a voice vote that the Legislative Council staff be requested to request a report from the Attorney General regarding legal issues arising in the context of partnerships with tribally owned businesses and to prepare bill drafts in accordance with each of the proposed items for legislative language development as well as for third-party research projects regarding the study of the issues involved in the protection of intellectual property rights, on the issues of liability and insurance, and on the current incentive programs the state uses to attract, expand, retain, and incubate businesses.

It was moved by Representative Keiser, seconded by Representative Vigesaa, and carried on a voice vote that the Legislative Council staff be requested to request information from lead agencies and organizations.

Chairman Berg said that procedurally the information from lead agencies and private sector organizations would be provided to the Legislative Council and Mr. Friedman by mid-August and then proposals of Mr. Friedman would be presented to the committee in September.

SEED CAPITAL INVESTMENT TAX CREDIT

Chairman Berg reviewed the history of the seed capital investment tax credit under NDCC Chapter 57-38.5. He said the Tax Commissioner has determined that the tax credit limits under this program have been reached under Section 57-38.5-05, which provides:

Seed capital investment tax credit limits. The aggregate amount of seed capital investment tax credit allowed for investments under this chapter through calendar year 2002 is limited to one million dollars and after calendar year 2002 is limited to two million five hundred thousand dollars. If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

Chairman Berg called on Mr. Art Rosenberg, Renaissance Ventures, for comments regarding the seed capital investment tax credit. Mr. Rosenberg said when the cap was reached in May 2004 several businesses were unfairly disadvantaged.

Chairman Berg called on Mr. Joe Crary, Composite America, for comments regarding the seed capital investment tax credit. Mr. Crary said his business has used the seed capital investment tax credit to raise \$1.5 million in investments, resulting in 20 jobs. He thanked the Legislative Assembly for the tax credit and said his business would not be here were it not for that credit.

Chairman Berg called on Mr. Tom Bresnahan, Sinner Brothers and Bresnahan and Identity Agricultural Processing, LLC, for comments regarding the seed capital investment tax credit. Mr. Bresnahan said his business was negatively affected by the cap being reached. He said by the time his business became a "qualified business," the cap had already been reached. He requested the cap be raised and there not be a gap in credits.

Mr. Bresnahan said possible improvements to the seed capital investment tax credit may include improved marketing for the program, which may be achieved through a small appropriation for this purpose as well as lessening some of the restrictions on the program. For example, he said, the aggregate annual investment limitation of \$250,000 can be worked around if the partners in a business separate; however, this is a very time-consuming procedure. He said there are some timing issues and qualification procedures that are cumbersome, awkward, and occasionally counterproductive. He questioned the restrictions on who may claim a tax credit, specifically

questioning why a majority owner would be prohibited from taking a credit. Overall, he said, he is very supportive of the program.

In response to a question from Representative Kasper, Mr. Bresnahan said in his instance although the cap was reached in May 2004, there was money that was invested after that point but before June 1, which is being found ineligible for the credit.

Chairman Berg called on Mr. Syver Vinje, LAS International, Ltd., for comments regarding the seed capital investment tax credit. Mr. Vinje provided written testimony, a copy of which is attached as Appendix G.

Mr. Vinje said his company has been very successful in using the seed capital investment tax credit; however, since the credit was exhausted in May 2004, brokers' sales efforts have come to a near standstill. He said he is very supportive of addressing this issue of the cap having been reached and would support holding a special session.

In response to a question from Senator Grindberg, Mr. Vinje said if a business wants to locate in North Dakota, economic developers should encourage this, regardless of whether it fits into some type of strategic plan.

In response to a question from Representative Kasper, Mr. Vinje said current law provides that a taxpayer is entitled to a credit of 45 percent of the amount invested in a qualified business during the taxable year. When that amount was 30 percent, he said, the tax credit was significantly less attractive.

In response to a question from Senator Grindberg regarding how North Dakota law treats universities and LLCs, Mr. Vinje said he does not think it is necessary for state law to restrict how money is used.

Mr. Rosenberg said there is some question regarding whether the seed capital investment tax credit limits have actually been exhausted. He said issues may arise regarding whether the amount of tax credits speculated is accurate, whether the \$1 million in unused tax credits from the previous year may be accessible, and whether it is appropriate to limit the number of credits to one-third of the allotted credits based upon the three-year period over which the credit may be attributed. He said he supports changing the limitations on the seed capital investment tax credit, thereby allowing LLCs and other passthroughs to participate in the tax credit.

Chairman Berg requested that the Legislative Council staff research how the state law relating to the seed capital investment tax credit addresses the

issue of calculating and determining the amount of the cap for any given year.

Representative Kasper questioned whether it may be appropriate for the committee to request an Attorney General's opinion on this seed capital investment tax credit issue. Chairman Berg said although he supports the idea of requesting an Attorney General's opinion, he would like to wait until after the Legislative Council staff has had an opportunity to report back to the committee on this matter.

Chairman Berg called on Ms. Jill Weigel, Tax Commissioner's office, for comments regarding the seed capital investment tax credit. Chairman Berg requested that the Tax Commissioner's office establish who has been negatively impacted by this cap having been reached. Ms. Weigel said the seed capital investment tax credit cap was reached as of May 25, 2004. She said there is a possibility that as more information is gathered, the actual date may be sooner than May 25, 2004. She said there have been 14 companies that have been identified as qualified businesses.

Chairman Berg said it will be important that the Tax Commissioner's office be able to report to the Legislative Assembly during the upcoming legislative session regarding the matter of who was negatively impacted by the cap having been reached and data regarding the amount of money that is involved in this matter.

Mr. Bresnahan said his company was a qualified business before May 25; however, he has not submitted investment data, and therefore the Tax Commissioner's data may not recognize him as a negatively impacted business.

Chairman Berg said it will be important for the Tax Commissioner's office to include businesses such as Mr. Bresnahan's in the data compiled and reported during the next legislative session. He said that during the next legislative session, the Legislative Assembly is going to have to deal with the issue of the cap as well as possible changes in the seed capital investment tax credit law.

No further business remaining, Chairman Berg adjourned the meeting at 2:25 p.m.

Jennifer S. N. Clark
Committee Counsel

ATTACH:7