

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2149

2007 SENATE POLITICAL SUBDIVISIONS

SB 2149

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2149**

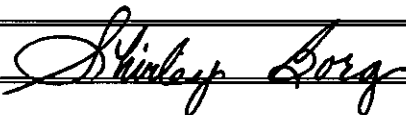
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **January 18, 2007**

Recorder Job Number: **1387**

Committee Clerk Signature



Minutes:

Chairman Cook called the Political Subdivisions Committee to order on January 18th, 2007.

All members (5) were present.

Chairman Cook opened the hearing on SB 2149 relating to powers of job development authorities to take equity positions.

Representative Monson, District 10, Cavalier, Pt Pembina, Pt Towner, prime sponsor, signed in in support of SB 2149. He had to leave to introduce another bill.

Senator Lindaas, Mayville, ND, District 20 Trail, Pt Cass, Pt Steele, Pt Barnes, introduced SB 2140. The change to the law is on the second page, and what it does is allow the Job Development Authorities or Economic Development Association to take equity positions in cases where the entities are having trouble making their loan schedules. At the present time there is neither a prohibition nor permission to do that. We want to get it into law. It is a practice that has been done in a few cases and we think it would give a little extra power to the JDA's to help these entities make some progress without unnecessary pressure in some cases. The bill pertains to counties but there are a few that are located within city jurisdictions. Senator Lindaas would like to have an amendment considered which would also include the cities. (See attachment #1)

Bill Shalhoob, Economic Development Association of ND, testified in support of SB 2149.

(See attachment #2-A) (See attachment 2-B - Attorney Generals Letter Opinion 2006-L-16)

Rick Forsgren, Executive Director of the Trail County Economic Development Commission,
Testified in support of SB 2149. (See attachment # 3)

Chairman Cook asked who asked for the Attorney Generals Opinion.

Rick Forsgren answered that the attorney generals opinion was asked for by the Trail County states attorney. We were in the process of dealing with another company and one of the county commissioners questioned whether it was legal for us to do the purchase stock and he asked the states attorney for an opinion and the states attorney was surprised when the attorney general did not agree that it was legal.

Chairman Cook asked what determines the interest rate. Is it the same on all loans?

Rick Forsgren answered that no, it is not the same but most of the loans are zero percent interest for a three year period. He attended a conference which the main purpose was to show the economy development directors how the banks and SDA, figure what they are interested in putting in and how you have to back figure what kind of gap financing you need to come up with to make a function bankable. The purpose of the JDA's or Economic Development groups is to help come up with the gap financing that will make the business venture bankable to the SCA. They ask for no collateral on the zero percent loans.

Senator Hacker asked if you could set any terms that you would want on the loan. Could you have a twenty year, zero percent interest loan?

Rick Forsgren answered that technically you could.

Paul Govig, Deputy Commissioner of the ND Department of Commerce, appeared in support of SB2149. This bill is one more tool that many communities can use to attract and expand businesses. Two points I would like to bring up are, It is typical that when the jobs development authorities do equity investments that either the Department of Commerce through the development fund or the community development block grant dollars or the bank of ND or all of us are involved. We had a fair amount of experience with this and getting back to some of the comments, there are exit strategies, which is the whole point or otherwise we would do a grant. We try to factor that so it works for both the state, JDA's and the companies. We recognize and try to protect the tax payers dollars that are coming in and we try to structure it to revolve these dollars and do those things as quick as we can. We factor that in on the front end and try to make it beneficial for the community and the state. There is generally no competition for these dollars as they are high risk. Most of the funds that we have are geared to primary sector businesses.

Terry Tranyor, Association of Counties, appeared in support of SB 2149.

No further testimony in support, opposed or neutral to SB 2149.

Chairman Cook closed the hearing on SB 2149.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2149

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 8, 2007 (Committee Work)

Recorder Job Number: 3223

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the committee to order. All members (5) present.

Chairman Cook : We have local Job Development Associations that have taken a equity position in companies that they have funded. The attorney generals opinion saying that they can not.

Senator Olafson: JDA's would love to have those options.

Chairman Cook: Over the years, every session we introduce more economic development tools. They are unlimited now. To me I think sometimes some of the old ones have to be eliminated. I think when they were created there was certainly a need for jobs to be created but now we have help wanted signs all over. I question if maybe the JDA's have served their purpose, done their job, done it well and maybe are not even needed anymore.

Senator Anderson: Maybe some smaller counties or cities need this.

Senator Anderson moved a Do Pass

Senator Olafson seconded the motion.

Discussion:

Chairman Cook : May be we should put an amendment on this bill that JDA's are studied.

Senator Hacker: I wouldn't mind that.

Senator Anderson and Senator Olafson retracted their motions for a Do Pass.

Senator Cook made a motion to do a study on Job Development Authorities.

Committee work ended.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2149**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 9, 2007 Action

Recorder Job Number: 3256 and 3260 (Discussion and Action)

Committee Clerk Signature



Minutes:

Chairman Cook called the Senate Political Subdivisions Committee to order. All members (5) present.

Chairman Cook asked the committee to go to SB 2149. We have amendments on this.

Senator Hacker moved the amendments on SB

Senator Anderson seconded the motion.

Voice Vote: All members in favor. Amendments adopted on SB 2149.

Discussion:

Senator Hacker asked if they had forgotten Senator Lindaas 's amendments.

Chairman Cook asked to resend from the motion for a Do Pass on amendments.

Senator Hacker: I resend from my motion to amend SB 2149.

Senator Anderson: I resend from my motion.

Senator Hacker moved the amendments # 70111.0101

Senator Anderson seconded that motion.

Voice Vote: all members in favor. Amendment adopted

Recorder # 3260, February 9, 2007 (Vote)

Chairman Cook called for action on SB 2149.

Senator Hacker moved a Do Pass on SB 2149

Senator Anderson seconded the motion.

Discussion:

Roll call vote: Yes 4 No 5 Absent 0

Carrier: **Senator Olafson**

PROPOSED AMENDMENTS TO SENATE BILL 2149
(UPDATED)

Page 1, line 2, after "positions" insert ", and to require the legislative council to study job development authorities"

Page 2, after line 13, insert:

SECTION 2. LEGISLATIVE COUNCIL STUDY - JOB DEVELOPMENT AUTHORITIES. The legislative council shall study during the 2007-08 interim job development authorities across the state as to the economic impact created by such authorities, funding mechanisms used by the authorities when expending resources for economic use, and to what point the authorities still serve a viable purpose. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Date: 2-9-07
 Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2149

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved Amendments

Motion Made By Senator Hacker Seconded By Senator Anderson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman			Senator Arden C. Anderson		
Senator Curtis Olafson, ViceChair			Senator John M. Warner		
Senator Nicholas P. Hacker					

Total Yes 3 No —

Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO SENATE BILL NO. 2149

Page 1, line 1, replace "section" with "sections" and after "11-11.1-03" insert "and 40-57.4-03"

Page 2, after line 13, insert:

"SECTION 2. AMENDMENT. Section 40-57.4-03 of the North Dakota Century Code is amended and reenacted as follows:

40-57.4-03. Powers and duties of city job development authorities. The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city. In fulfilling this objective, the job development authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the city.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real or personal property.
6. To certify a tax levy as provided in section 40-57.4-04 and to expend moneys raised by the tax for the purposes provided in this chapter.
7. To insure or provide for insurance of any real or personal property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section.
10. To loan, grant, or convey any funds or other real or personal property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To use existing, uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.
12. To take equity positions in, provide loans to, or use other innovative financing mechanisms to provide capital for new or expanding businesses in this state or for businesses relocating to this state.

13. To exercise any other powers necessary to carry out the purposes and provisions of this chapter."

Renumber accordingly

February 9, 2007

J3
2-9-7
1082

PROPOSED AMENDMENTS TO SENATE BILL NO. 2149

Page 1, line 1, replace "section" with "sections" and after "11-11.1-03" insert "and 40-57.4-03"

Page 1, line 2, after "positions" insert "; and to provide for a legislative council study"

Page 2, after line 13, insert:

"SECTION 2. AMENDMENT. Section 40-57.4-03 of the North Dakota Century Code is amended and reenacted as follows:

40-57.4-03. Powers and duties of city job development authorities. The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city. In fulfilling this objective, the job development authority may exercise the following powers:

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2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the city.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real or personal property.
6. To certify a tax levy as provided in section 40-57.4-04 and to expend moneys raised by the tax for the purposes provided in this chapter.
7. To insure or provide for insurance of any real or personal property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section.
10. To loan, grant, or convey any funds or other real or personal property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To use existing, uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.

- 2012
12. To take an equity position in, provide a loan to, or use any other innovative financing mechanism to provide capital for a new or expanding business in this state or for a business relocating to this state.
 13. To exercise any other powers necessary to carry out the purposes and provisions of this chapter.

SECTION 3. LEGISLATIVE COUNCIL STUDY - JOB DEVELOPMENT

AUTHORITIES. The legislative council shall study during the 2007-08 interim job development authorities across the state to determine the economic impact created by the authorities, to examine funding mechanisms used by the authorities when expending resources for economic development purposes, and to determine whether the authorities serve a viable purpose. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 2-9-07
 Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2149

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved Amendment 701 III. 0101

Motion Made By Senator Anderson Seconded By Senator Hacker

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman			Senator Arden C. Anderson		
Senator Curtis Olafson, ViceChair			Senator John M. Warner		
Senator Nicholas P. Hacker					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-9-07
Roll Call Vote #: 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2149

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Senator Hacker Seconded By Senator Hacker

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman		X	Senator Arden C. Anderson	X	
Senator Curtis Olafson, ViceChair	X		Senator John M. Warner	X	
Senator Nicholas P. Hacker	X				

Total Yes 4 No 1

Absent 0

Floor Assignment Senator Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2149: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2149 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections" and after "11-11.1-03" insert "and 40-57.4-03"

Page 1, line 2, after "positions" insert "; and to provide for a legislative council study"

Page 2, after line 13, insert:

"SECTION 2. AMENDMENT. Section 40-57.4-03 of the North Dakota Century Code is amended and reenacted as follows:

40-57.4-03. Powers and duties of city job development authorities. The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city. In fulfilling this objective, the job development authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the city.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real or personal property.
6. To certify a tax levy as provided in section 40-57.4-04 and to expend moneys raised by the tax for the purposes provided in this chapter.
7. To insure or provide for insurance of any real or personal property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section.
10. To loan, grant, or convey any funds or other real or personal property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To use existing, uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.
12. To take an equity position in, provide a loan to, or use any other innovative financing mechanism to provide capital for a new or expanding business in this state or for a business relocating to this state.

13. To exercise any other powers necessary to carry out the purposes and provisions of this chapter.

SECTION 3. LEGISLATIVE COUNCIL STUDY - JOB DEVELOPMENT AUTHORITIES. The legislative council shall study during the 2007-08 interim job development authorities across the state to determine the economic impact created by the authorities, to examine funding mechanisms used by the authorities when expending resources for economic development purposes, and to determine whether the authorities serve a viable purpose. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2149

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2149

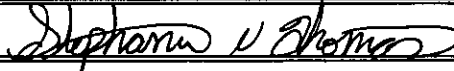
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 4035

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on SB 2149.

Sen Elroy Lindaas, District 20: If you look at the bill itself, you have the amendments to existing law that occur on the 2nd page. It has to do with the local economic development authority picking equity decisions in the entities that are attempting to get up and running, and set up businesses. In the past, there has been entity assistance taken by some job development authorities. However, we find out according to the Attorney General's opinion that there is neither a prohibition, nor permission to do that, so we have to get something into statute at this time in order to make it legal. There are a lot of businesses out there that set up the address and money from the job development authorities. Perhaps, part of that agreement is that they would take a low equity in the business, sometimes they've gone along with that, and are unable to expose in the fashion predicted earlier, and so in order to keep them going, and help with the cash flow position, the economic development group, so that they can't be beat.

Rep. Clark: If there's no prohibition against taking equity position, why do we have to make it legal?

Sen. Lindaas: That's probably a question that should be offered to the Attorney General at this point.

Rep. Keiser: On page 2 above subsection 12 subsections 10 and 11, those were initially written in such a general way that most attorneys for the cities, and counties interpreted those to allow what is in subsection 12. However, there are always those who have concern, because it's not explicitly stated.

Rep. Boe: This will just reflect what we currently are doing now?

Rep. Keiser: That is correct.

Bill Shalhoob, Economic Development Association of ND: See written testimony #1.

Rep. Johnson: Was the engrossment part the addition to legislative councils study?

Bill: No, the amendments clarify that not only a city, but a county GDA could also do this. The original bill only had one of the two entities in there, and the amendments added a city GDA to do it. A number of large cities do not use GDA's anymore, and for those who don't know a GDA is authority granted by the legislature for a political subdivision specifically, I believe, it's county to levy a four mill tax to be used for economic development.

Rep. Ruby: I understand what the interpretation is, but what was the original legislative intent?

Rep. Keiser: It was every bit our intent to allow those things to happen, however, it was not discussed in the committee hearing, so it was not part of the official record, and it was not part of the bill. The Attorney General made the correct ruling based on the facts.

Rep. Boe: I move a do pass.

Rep. Clark: Second.

Roll call vote was taken, 13 Yeas, 0 Nays, 1 Absent, Carrier: Rep. Clark

Hearing closed.

Date: 2-27-07
 Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2149

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Rep Boe Seconded By Rep Clark

Representatives			Representatives		
	Yes	No		Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Clark

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2149, as engrossed: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2149 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2149

ECONOMIC DEVELOPMENT ASSOCIATION OF NORTH DAKOTA



PO BOX 2639 • 2000 SCHAFER STREET • BISMARCK, NORTH DAKOTA 58502

Testimony of Bill Shalhoob
Economic Development Association of North Dakota
SB 2149
January 18, 2007

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am representing EDND, North Dakota's association of economic developers. We are appearing in support of SB 2149.

We are all aware of the efforts and programs we have developed over the years in trying to spur economic development in our state. We see SB 2149 as a logical extension and another tool in the ability of a political subdivision, particularly one with limited resources, to attract or expand a business in their community. It follows the uses allowed in items one through eleven especially when considering the ability of a JDA to act as a pass through for acquiring gifts specified in item five and using them to secure a business project. It is also consistent with a JDA's current authority to invest funds specified in item eight.

EDND believes SB 2149 will aid development in North Dakota and urges a do pass. I would be happy to answer any questions.

LETTER OPINION 2006-L-16

May 9, 2006

Page 2

Unlike the North Dakota Development Fund,⁴ a county JDA has no explicit statutory authority to take equity positions in private companies.⁵ Because taking an equity position in a private company is not an express power of a county JDA,⁶ it must be determined whether the power is necessarily implied from those powers expressly granted or otherwise necessary to carry out the purposes of the JDA.⁷

"In cases where the North Dakota Supreme Court has found an incidental or implied power to exist, there appears to be a direct correlation between the express and incidental or implied power . . . [and] the express power could not be fully exercised without the implied power"⁸ For example, when asked whether a JDA's member could vote by proxy, this office stated, "[t]he JDA could easily 'encourage and assist in the development of employment and promotion of tourism within the county' without the power to vote by proxy; a JDA is not dependent upon the ability to vote by proxy to fulfill its purpose."⁹

Similarly, there is no necessarily direct correlation between any of the county JDA's express powers and any implied power to take equity positions in a private company. The JDA can still fulfill its duty to encourage and assist in the development of employment and promotion of tourism in the county without the power to take equity positions in private companies. A county JDA is not dependent on the ability to take equity positions in private companies to fulfill its purpose.

Based on the foregoing, it is my opinion that a county JDA lacks express or implied statutory authority to take an equity position in a private company. Because of this

⁴ See N.D.C.C. § 10-30.5-02(1) (North Dakota Development Fund has "authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state"). Had the Legislature intended a county JDA to have such a power, it could have easily specified it, as it did in N.D.C.C. § 10-30.5-02(1).

⁵ Cf. N.D.A.G. Letter to Nelson (Feb. 19, 1991) ("state may take an equity position in North Dakota businesses or subscribe to or become the owner of capital stock in North Dakota businesses . . . through an industry, business, or enterprise in which the state is engaged . . . for a public purpose").

⁶ Cf. N.D.A.G. 2003-L-19 (city JDA, as an alter ego of the city, may only make the investments allowed a city under N.D.C.C. § 21-06-07 and the statute does not permit taking an equity position in a limited liability company); N.D.A.G. 2000-F-01 ("no state law authorizes either a city job development authority or a county job development authority to issue equity securities on behalf of a private company which would be sold to the general public in this state").

⁷ See N.D.A.G. 2004-L-08.

⁸ Id.

⁹ Id.

