NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ECONOMIC IMPACT COMMITTEE

Monday, February 3, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Dave Oehlke, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Dave Oehlke, Tom Campbell, Ron Carlisle, Mac Schneider, George B. Sinner, Terry M. Wanzek; Representatives Thomas Beadle, Joshua A. Boschee, Mike D. Brandenburg, Ed Gruchalla, Bob Hunskor, Nancy Johnson, Matthew M. Klein, Vernon R. Laning

Members absent: Representatives Rick Becker, Gary R. Sukut

Others present: See Appendix A

It was moved by Senator Carlisle, seconded by Senator Schneider, and carried on a voice vote that the minutes of the November 18, 2013, meeting be approved as distributed.

HOUSING FINANCE AGENCY REPORT

Chairman Oehlke called on Ms. Jolene Kline, Executive Director, Housing Finance Agency, for comments (Appendix B) relating to the status of its inventory of government programs providing residential and commercial development assistance.

In response to a question from Chairman Oehlke, Ms. Kline said the inventory has not revealed overlaps in housing programs. She said multiple funding sources are generally needed for housing projects, and layering of funding sources helps keep rents affordable. She said there has been some stagnation with respect to availability of federal funds, and there is a potential that federal tax reform could negatively affect housing programs. She said there is a greater likelihood of reductions in federal funding than increases, and some federal programs require leveraging of state funds. She said the biggest concern of local lenders is equity funding, and there is a reluctance to provide long-term financing of housing projects.

Mr. Robert Humann, Chief Lending Officer, Bank of North Dakota, said banks in the western portion of the state are providing short-term financing for housing projects but are reluctant to provide long-term financing. He said the Bank of North Dakota flex partnership in assisting community expansion (PACE) program has $12 million in interest buydowns for projects, and 25 percent of that funding has been requested. He said now that the program is firmly in place, there should be an increase in the volume of activity under that program.

In response to a question from Chairman Oehlke, Mr. Humann said one issue in the oil and gas counties is bankers dealing with out-of-state developers with whom there is not a prior business relationship. He said the banks are willing to make loans but prefer to lock in interest rates for 5 years to 10 years on apartment loans. He said the lack of long-term, low-interest financing affects cashflow and rents. He said in-state developers are likely to receive better terms due to the established business relationships and trust that has been established.

In response to a question from Representative Beadle, Mr. Humann said because the Federal Deposit Insurance Corporation (FDIC) allows banks to have a limited amount of loans in multifamily housing projects, banks in the western part of the state are selling the loans to the Bank of North Dakota, and the Bank is able to sell some of the loans to banks in the eastern portion of the state.

In response to a question from Senator Wanzek, Ms. Kline said the compliance division of the Housing Finance Agency works diligently to perform annual reviews and inspections of properties on which there are rent restrictions. She said it is more difficult to review the delivery of services that were promised to be provided for supportive housing which are outside of deed restrictions. However, she said, if a developer is not upholding those promises, the agency will not do further business with that developer.

In response to a question from Representative Boschee, Ms. Kline said she often hears concerns with respect to the cost of constructing single-family housing. She said one solution is developing programs or processes to help reduce land and infrastructure costs. Although the 2013 Legislative Assembly did not authorize the use of housing incentive funds to provide assistance to develop single-family housing, she said, there may be other options available. She said community land trusts have been shown to help affordability by eliminating land costs. She said a community land trust has been successful in Grand Forks, and other cities in the state are examining the potential for establishing such trusts.

CHILD CARE AVAILABILITY STUDY

Chairman Oehlke called on Ms. Tara Bitz, State Administrator, Early Childhood Education, Department of Public Instruction, for comments (Appendix C) relating to early childhood education.

In response to a question from Chairman Oehlke, Ms. Bitz said 51 school districts offer prekindergarten education. However, she said, not all the districts may be serving all of the eligible prekindergarten students. She said the programs are serving to capacity, and the number of students enrolled is dependent upon money and space.

In response to a question from Representative Hunskor, Ms. Bitz said the study the Superintendent of Public Instruction is required to conduct will identify areas of need. She said there are several factors involved in the provision of prekindergarten services, including availability of space and the availability of highly qualified teachers and staff.

In response to a question from Senator Sinner, Ms. Bitz said prekindergarten programs vary with respect to funding. She said the programs are provided in some communities at no cost while other programs are funded solely through tuition. She said some schools may use leftover kindergarten funds to support prekindergarten programs.

In response to a question from Senator Schneider, Ms. Bitz said there are many different models nationally for prekindergarten programs. She said the study being conducted by the Superintendent of Public Instruction will examine programs in other states. For example, she said, North Carolina has been very innovative with respect to prekindergarten education programs, and Iowa has developed programs successfully on a step-by-step approach.

Chairman Oehlke called on Ms. Jennifer Barry, Administrator, Early Childhood Services, Children and Family Services Division, Department of Human Services, for a presentation (Appendix D) regarding early childhood education. Ms. Barry also distributed information (Appendix E) regarding early childhood services revocations and information (Appendix F) regarding child care regulation and cost.

In response to a question from Representative Hunskor, Ms. Barry said there is not sufficient funding to expand the Bright & Early program to reach every child care provider. However, she said, there is enough funding to reach all the providers that want to participate in the areas in which the program will be implemented. She said the program is intended to be expanded to all counties of the state by the end of the biennium. If the program demonstrates good results, she said, the department will look to request additional funding for the program.

In response to a question from Chairman Oehlke, Ms. Barry said the Bright & Early program is designed to allow any early childhood program to participate. She said the program works for home child care and child care centers. She said quality early childhood education programs can happen in any child care environment.

In response to a question from Representative Brandenburg, Ms. Barry said many initiatives have been implemented to assist child care providers and parents. She said she is not aware of concerns regarding who is eligible for the various programs. Although all funding helps, she said, there does not seem to be enough funding to meet all needs.

In response to a question from Representative Boschee, Ms. Barry said there appear to be workforce issues with respect to the use of the child care assistance funds. She said the additional child care assistance funding was intended to help increase wages in the child care workforce. Although she is not aware of automatic per pupil funding models in early childhood programs, she said, that type of model likely would be more common within systems like the Bright & Early program, which provide additional accountability and associated financing options.

In response to a question from Senator Sinner, Ms. Barry said there are programs in other states and federal programs that help providers pay competitive wages for child care services. She said there is a federal competitive grant that is designed to help build workforce through education and professional development. She said some states help provide money to keep child care workers in the workforce and develop early childhood care as a career.

In response to a question from Chairman Oehlke, Ms. Barry said the Department of Human Services works to provide training programs and education to child care center directors to help expand the workforce for centers.

In response to a question from Senator Campbell, Ms. Barry said representatives of the Department of Human Services take concerns and complaints with respect to state regulations seriously and regularly ask questions of providers regarding barriers to doing business. She said the responses generally received indicate that the concerns have nothing to do with state licensing rules and often are due to local fire and building codes and rules. She said although the 2013 Legislative Assembly increased group sizes for child care programs, many cities do not allow more children in groups. During the last three years, she said, the department has adopted three rule revisions, which have generally reduced the stringency of regulations of providers.

At the request of Chairman Oehlke, Ms. Linda Reinicke, Program Director, Child Care Aware of North Dakota, provided information (Appendix G) regarding the committee's study of child care availability.

In response to a question from Chairman Oehlke, Ms. Reinicke said county social service agencies inspect self-declared day care operators once per year. Because the complaints regarding regulation are frequently the result of local regulations or federal laws, she said, the state should avoid further deregulating child care programs. She said the child care assistance and food programs are the programs that are paperwork-intensive. She said policymakers should keep an eye toward quality, and the Bright & Early program metrics will show increased quality of programs over time.

In response to a question from Representative Beadle, Ms. Reinicke said she will attempt to obtain additional information regarding the Louisiana tax credit program. She said recent proposals in this state to provide tax credits for businesses involved in child care have faced fiscal note problems. She said it is important to sell the need for businesses to invest in child care.

In response to a question from Senator Campbell, Ms. Reinicke said the Bright & Early program is designed to hold child care providers accountable. After an assessment of a provider is done, she said, the provider needs to increase the quality of care before receiving funds. She said it is important that the investment is accompanied by accountability.

In response to a question from Senator Schneider, Ms. Reinicke said she will look to see if there is any data from Louisiana regarding quality and child care access.

In response to a question from Representative Johnson, Ms. Reinicke said she will look for additional statistics that show the impact of quality child care. She said Child Care Aware of North Dakota will visit child care providers upon request and provide technical assistance. She said one center that received an assessment from Child Care Aware used funds provided by a city and grants from the Commerce Department to expand its facility and increased its quality of care significantly after the quality assessment.

In response to a question from Representative Hunskor, Ms. Reinicke said although most providers want to do a good job, some need help to improve the quality of care provided. She said providers sometimes do not have the time, money, or knowledge needed to improve quality care. She said if the state can provide some funding to keep quality at a good level, businesses and parents can find quality providers.

TRANSPORTATION INFRASTRUCTURE STUDY

Chairman Oehlke said after the railroad oil car derailment incident in Casselton, he thought it would be important for the committee to receive information regarding state and local emergency response preparedness. He called on Mr. Greg Wilz, Director, Division of Homeland Security, Department of Emergency Services, for comments regarding the role of the Department of Emergency Services and local responders in addressing incidents, such as the one in Casselton. Mr. Wilz submitted information (Appendix H) describing emergency response in the state.

Mr. Wilz said in 2009 the Legislative Assembly endorsed the concept of regional capability response to manmade and natural disasters in the state with the expectations that federal homeland security funding would likely be decreasing. He said the state has built regional capability for law enforcement for bomb squads and SWAT teams. After that capability was established, he said, a focus was put on hazardous material response. He said the larger jurisdictions have been willing to send assets to assist smaller jurisdictions.

Mr. Wilz said the State Emergency Operations Center (EOC) was aware of the incident in Casselton within seven minutes after the incident occurred. He said the incident met a threshold that triggered the initiation of the EOC within minutes. As a result, he said, the Department of Emergency Services contacted state agencies that likely would be involved in the response. In addition, he said, a regional coordinator was dispatched to the site of

the incident, and the Highway Patrol was onsite within minutes. He said the EOC received requests for restrictions on the air space and for sand which were coordinated through the center. He said the EOC examines scenarios and plans for responses through various time periods and examines the health and human services needs in an emergency situation. He said the incident in Casselton occurred in an area in which the county resources were in place to respond. In addition, he said, an exercise relating to a similar incident was conducted only 12 days before the incident. However, he said, the incident was a wake-up call for emergency responders, and responders will continue to train and prepare based on the evaluations of the response.

In response to a question from Chairman Oehlke, Mr. Wilz said the local and regional responders operated well within the incident response system during the Casselton incident. He said one lesson learned was the state should have contacted officials in Minnesota and South Dakota sooner with respect to the potentially toxic plume. He said volunteer responders in rural areas are generally well-trained. He said the regional teams in larger cities are full-time emergency responders.

In response to a question from Representative Klein, Mr. Wilz said general issues with respect to radio communications systems have not been fully resolved. Although the equipment compatibility issues have been resolved, he said, training remains an issue to address. He said the radio systems are complex and training is needed, particularly due to large amounts of responder turnover in some areas.

In response to a question from Representative Gruchalla, Mr. Wilz said the dispatch response in Cass County was nearly textbook. He said there was a small delay in the first contact with the regional hazardous materials response, but the coordinated response was handled well.

In response to a question from Senator Sinner, Mr. Wilz said because of the amount of stress encountered by emergency responders in the western portions of the state, there are concerns with volunteer responders. He said emergency responders are examining methods through which additional responders can be recruited and trained. He said volunteers are aging, and it is important to recruit younger volunteers.

In response to a question from Senator Schneider, Mr. Wilz said the Department of Emergency Services is not responsible for addressing railroad safety. He said the department will provide its opinion on issues with federal agencies and transportation carriers, but rail safety is generally regulated by the federal government.

Chairman Oehlke said the discussion related to railroad safety is similar to issues faced by the Highway Patrol in trying to eliminate all accidents. He said if the Highway Patrol were to enforce every speed limit strictly and all other laws strictly, the public would not tolerate that level of enforcement. He said some things need to be fixed, but not all the fixes can happen at once. Senator Sinner said the Burlington Northern Santa Fe (BNSF) Railway is slowing trains down. However, he said, he is suggesting other ideas to address the lack of rail availability for grain producers. He said there is an agricultural crisis going on now.

Senator Sinner provided written testimony (Appendix I) regarding the committee study for transportation infrastructure.

Chairman Oehlke distributed a communication (Appendix J) received from representatives of the BNSF Railway.

Representative Brandenburg said it is important to look at the rail problems. In addition, he said, the Keystone XL Pipeline is needed. He said grain transport is pushed aside for oil transportation.

Senator Sinner said because there is no penalty for delivering grain cars late and the railroad contracts with elevators are one-sided, elevators and grain producers are at a disadvantage.

Senator Sinner requested Chairman Oehlke to allow Mr. Ervin Lee, Minot, the opportunity to present information (Appendix K) regarding a rail tank car flame suppression system concept.

Representative Gruchalla said the committee should request additional information from the BNSF Railway regarding safety issues.

Chairman Oehlke called on Mr. Grant Levi, Director, Department of Transportation, for a presentation (Appendix L) relating to highway funding.

In response to a question from Senator Carlisle, Mr. Levi said the Department of Transportation is planning for future years based on the federal government approving funding at approximately the current level. He said the department will address options to replace federal funding during the next biennium, if necessary, to offset a loss in

federal funds. Because it is possible decisions regarding federal funding will not be made until after the next legislative session begins, he said, state funding levels may have to be reevaluated during the legislative session.

In response to a question from Chairman Oehlke, Mr. Levi said right-of-way costs for highway construction vary greatly. He said the cost for a bypass in Williston reached $165,000 per acre. He said the costs of acquisition along Highway 85 were approximately $25,000 to $30,000 an acre.

UNMANNED AIRCRAFT SYSTEMS REPORT

Chairman Oehlke called on Mr. Alan Anderson, Commissioner, Department of Commerce, and Mr. Robert Becklund, Director, Northern Plains Unmanned Aircraft Systems Test Site, Department of Commerce, for a presentation (Appendix M) regarding unmanned aircraft systems (UAS) test sites.

In response to a question from Representative Klein, Mr. Becklund said unmanned aircraft have many applications in the state, including use by energy companies to monitor pipelines and powerlines.

In response to a question from Senator Carlisle, Mr. Becklund said the failure of legislation under consideration during the 2013 legislative session, which would have regulated the use of unmanned aircraft, was beneficial in pursuing and being selected as a test site.

In response to a question from Chairman Oehlke, Mr. Becklund said there are no piloting regulations for unmanned aircraft. He said the state can be involved in the development of those standards because it has been selected as a test site.

In response to a question from Senator Campbell, Mr. Becklund said although six test sites were chosen, other applicants may contribute to research. He said being selected as a test site puts this state in a great position to influence the Federal Aviation Administration (FAA) with respect to technologies and training standards.

In response to a question from Senator Schneider, Mr. Becklund said it is easier to attract companies to do business in this state because it is easy to get things done. In addition, he said, there is excellent involvement from government and expertise at the University of North Dakota.

TRANSPORTATION INFRASTRUCTURE STUDY

Chairman Oehlke called on Mr. Dan Zink, Director of Administration, Red River Valley and Western Railroad, for comments regarding the committee's study of transportation infrastructure. Mr. Zink distributed information (Appendix N) regarding the rail system in the state. He said although there are only 7 large railroad companies in operation, over 500 small railroad companies operate in the country providing freight service. Because large railroad companies were having financial difficulties in the 1980s, he said, many short line railroads bought tracks from the large companies. He said the Red River Valley and Western Railroad was established in 1987, and other short line railroads began operation in the state shortly thereafter. He said approximately 40 percent of the track miles in the state are operated by short line railroads, which are primarily agricultural-based.

Mr. Zink said the Red River Valley and Western Railroad has used loans from the revolving loan program administered by the Department of Transportation almost every year to help finance the cost of rail line rehabilitation. He said the loans generally range from $250,000 to $1 million. Although the loans have helped replace wood crossties and rock ballasts, he said, the cost of replacing the rail is substantially higher. He said 60 to 70 percent of the rail needs to be replaced within the next 10 years to 15 years because the old rail is too light to support heavier loads and is too old. Therefore, he said, additional funds in the revolving loan fund are necessary to help replace the aging infrastructure, including providing funding for bridges.

In response to a question from Representative Johnson, Mr. Zink said new rail would likely last 50 years to 75 years.

In response to a question from Chairman Oehlke, Mr. Zink said although the typical size of a loan from the Department of Transportation is $1 million, there is no formal limit on the amount of loans. However, he said, available funds are limited.

In response to a question from Representative Johnson, Mr. Zink said the loan fund likely has $12 million to $14 million, 50 percent of which is loaned out. He said the biggest concern facing short line railroads is the size of future rail rehabilitation projects and the availability of funding. He said the loan program is a low-risk program, which has never had a loan default. Although he would not want to jeopardize other Department of Transportation funding, he said, he would like to see an additional $40 million be placed into the revolving loan program.

In response to a question from Senator Sinner, Mr. Zink said the terms of the loans are generally better than other sources because the Department of Transportation has determined that railroad rehabilitation is of strategic importance to the state.

In response to a question from Senator Campbell, Mr. Zink said representatives of short line railroads have not discussed the establishment of a loan program with the Bank of North Dakota because the revolving loan program has been in place and there does not appear to be a need to implement another program.

Representative Brandenburg said supplementing the loan program is important to help maintain rail infrastructure in the state so that more trucks are not put on the roads.

In response to a question from Senator Carlisle, Senator Sinner said the Bank of North Dakota is not authorized to make direct loans unless permitted specifically by law. He said most other loans through the Bank are done in conjunction with commercial banks.

Mr. Larry Jamieson, President, Northern Plains Railroad, said the three largest short line railroads in the state are in agreement with respect to the need for additional loan funds for railroad rehabilitation. He said the Northern Plains Railroad operates 375 miles of track in the state and is also at the point of needing to replace rail. He said 75 percent of the rail was rolled in 1905. Because of the age of the rail, he said, the railroad has reduced its speed and is operating shorter trains. In addition, he said, the railroad is inspecting its rail very carefully.

Mr. Mark Bazan, Assistant Vice President of Marketing, Dakota, Missouri Valley and Western Railroad, Inc., said the railroad operates 500 miles of track in the state, and the rail needs replacement. He said the state should help support the replacement of the infrastructure and provide funding for upgrading rail crossings.

Chairman Oehlke called on Dr. Denver Tolliver, Director, Upper Great Plains Transportation Institute, for a presentation (Appendix O) relating to the needs study of roads and bridges in the state.

In response to a question from Representative Brandenburg, Dr. Tolliver said although the needs assessment was not intended to address the amount of traffic taken off the roads by railroads, he will attempt to provide some information.

In response to a question from Representative Gruchalla, Dr. Tolliver said the needs study will address bridge replacement and rehabilitation and list traffic counts and detour distances if bridges are closed. He said the bridges will be ranked according to traffic and detour distance.

In response to a question from Chairman Oehlke, Dr. Tolliver said bridges are inspected once every two years and are rated based on the worst element. He said the inspections are done by field engineers. He said improvements to bridges are different from improvements to roads and it is difficult to rehabilitate bridges that have been rated as functionally obsolete.

Mr. Tim Horner, Program Director, Transportation Learning Network, Upper Great Plains Transportation Institute, said the load of bridges is measured on a structural analysis rather than the test used for roads. He said the analysis of bridges is very time-consuming, and a quicker method is to conduct regular bridge inspections.

Dr. Tolliver said the needs study will forecast which bridges will transition through ratings over time and will forecast deterioration into the future.

Chairman Oehlke said the next meeting of the committee will likely be in late March or April in Grand Forks.

No further business appearing, Chairman Oehlke adjourned the meeting at 3:10 p.m.

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John Bjornson
Assistant Code Revisor

ATTACH:15