2011 HOUSE APPROPRIATIONS

HB 1060

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Education and Environment Division
Sakakawea Room, State Capitol

HB 1060
1/26/11
13465

☐ Conference Committee

Committee Clerk Signature Julie Ziegler

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 2 of section 15-69-05 of the North Dakota Century Code, relating to the reporting requirements of a center of excellence.

Minutes: Attachment # 1

Chairman Skarphol: Called the hearing on HB 1060 to order by calling on Justin Dever.

Dever: explained the changes to HB 1060.

Rep. Monson: Is this going to save or cost us money?

Dever: The agreed upon procedure, yearly audits would save us money.

Rep. Williams: instead of annual you will do a semi annual?

Dever: It would be annual
(Recording interruption)

Vice Chairman Hawken: the book you guys did it doesn't appear to me that many of these have finished. How does that work? There could be years in there where there would be nothing?

Justin Dever, Department of Commerce: You are correct; the monitoring timeframe is 6-10 years. None of the interests have reached that ten year mark. They would still do the agreed upon procedures. They just wouldn't have the full fiscal audit.

Vice Chairman Hawken: I didn't realize there was the timeframe on them. So we fund these research pieces and in my mind they were suppose to have a thing they did and then out of that would come a business and then we'd have a different one. When I look at that, that's really not what we are doing. They're ongoing. The very first one in the book, electronics design a manufacturing. That's like it's an ongoing research arm. I find this overwhelming and I'm not adverse to the auditing piece.

Dever: One of the criteria that are put into Center of Excellence is sustainability. The state provides start up funds for these centers with the hope that they will become self sustaining.

Chairman Skarphol: Is there not typically a requirement that they produce so many jobs?

Dever: There's not a specific requirement of how many jobs, but yes, that is one of the criteria we look at is job creation.

Chairman Skarphol: This halfway point monitoring situation, I would assume that there would be some degree of security of whether or not that center has achieved what it was hoped to achieve in that time frame. In the intervening time in the annual audit, if you get an indication that the center is not meeting the anticipated level of success, what recourse do you have?

Dever: We review these centers on an annual basis. We perform site visits and have quarterly updates where they're providing information what has occurred the previous quarter. The Center of Excellence Commission, after a center has been in existence at least 3 full fiscal year, they commission makes a determination whether the center is on track to meet those desired economic impacts.

Chairman Skarphol: Have we had one that was not on track?

Dever: There are two.

Chairman Skarphol: Those centers have been notified? A plan has been provided for change?

Dever: We've been in discussion with both of the centers. One of the changes made in 2007 is the center's funds are now distributed according to the budget. The first biennium, those were distributed upfront. If we still have remaining funds and we feel the center is not performing, we can withhold funds.

Rep. Martinson: Do you get verification from the employer say that there has been a certain amount of job creation?

Dever: We required documentation from the employer.

Rep. Martinson: Can you supply us with names of those employers and the jobs that they created?

Dever: We can provide the names of employers. The number of jobs specific to the company would be trade secret information (confidential). We do rely on the companies to put forward that information.

Chairman Skarphol: We can or cannot know how many employees they have?

Dever: We have that information at the Dept of Commerce but cannot release it as it is considered confidential under ND Century Code.

Chairman Skarphol: Why would that be confidential?

Dever: It would be trade secret information.

Chairman Skarphol: We cannot get the information, we have to trust.

Rep. Martinson: In looking at BSC Center of Excellence (which I support). I can see how they fill jobs that were created by someone else. Can you tell me how they create jobs?

Dever: They could better tell you that more directly. The case that they would make is that these employers are able to create these jobs because they are able to access the workforce.

Rep. Martinson: It is in your report so they must have told you something. That would be like, UND saying because they graduated a teacher, that was hired by the Bismarck School System, that they helped create that job. That's what you are saying?

Dever: I wouldn't say it in those words.

Chairman Skarphol: What would you say it differently? Stay with BSC and try to explain Representative Martinson's dilemma.

Dever: If a company is to expand, they would need the workforce to proceed. Having this workforce readily available created by BCS enters into their decision making process and whether or not to expand.

Rep. Martinson: Those companies could not expand if BSC could not provide the students.

Dever: It would contribute to it.

Rep. Martinson: I think we should go through the book and look at the jobs because that's part of the problem with this. I'd be better off if you'd say, yeah, they really don't create jobs, they educate people for jobs.

Rep. Williams: (refers to copy of HB 1060) This is new language. We are putting it into code. Are you doing this already?

Dever: Yes.

Rep. Williams: Why are we putting it into code?

Dever: On line 7, the way that this was implemented and this was implemented back in 2006, instead of an audit, they created agreed upon procedures. Agreed upon procedures is conducted by a third party accountant. They do take a look at the books as well as other

things they are asked to take a look at. We have been operating under that since 2006. The auditors have since came back and said we disagree. We do not believe that, that qualifies as an annual audit. This is clarifying that.

Rep. Williams: This clarifies it with the auditors? Basically what we are doing is changing the auditing procedure?

Dever: Yes, at least allowing for that change.

Rep. Williams: When the board initiated this agreement, does this conflict with statue?

Dever: The auditors would say yes it did.

Chairman Skarphol: You just said what it really does which is to provide an alternative to what was initially required so who's going to make a determination as to which alternative they want to utilize? Who makes the decision as to whether they want annual audits or the procedure that you are recommending in the new language here. The Center? The Department?

Dever: It is the Center of Excellence that makes that decision.

Chairman Skarphol: Any questions? Anyone else wishing to testify? Due to no questions or further testifiers, hearing closed on HB 1060.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Education and Environment Division
Sakakawea Room, State Capitol

HB 1060
2/10/11
14319

☐ Conference Committee

Committee Clerk Signature Shirley Banning

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 2 of section 15-69-05 of the North Dakota Century Code, relating to the reporting requirements of a center of excellence

Minutes: You may make reference to "attached testimony."

Chairman Skarphol: The committee was called to order to discuss HB 1060.

Rep. Hawken: Move a Do not Pass on HB 1060

Rep. Monson: We just kill this one because we haven't amended it at all and then we will put Gordy's (Referring to Gordy Smith, State Auditor's Office) from HB 1018.

Chairman Skarphol: Whatever language we want to utilize, we will put in HB 1018.
I have a motion for a Do Not Pass. Do I have a Second?

Rep. Dosch: Second

Chairman Skarphol: Discussion

Roll Call Vote: 6-0-0 Motion Carried

Carrier: Rep. Hawken

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1060
2/18/11
14744

☐ Conference Committee

Committee Clerk Signature Shirley Banning

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 2 of section 15-69-05 of the North Dakota Century Code, relating to the reporting requirements of a center of excellence

Minutes: You may make reference to "attached testimony."

Chairman Delzer: Calling the Committee to order to hear HB 1060, Reporting requirements for the Centers of Excellence.

Representative Hawken: We treated this bill the way that we treated HB 1058 and HB 1059 and we put the wording for this into the Commerce budget so it received a **DO NOT PASS** out of our committee. We made changes in the commerce budget. Representative Skarphol will speak to those changes. This bill is about reporting. Move a **DO NOT PASS on HB 1060.**

Representative Skarphol: Second

Chairman Delzer: Discussion, hearing none we will take a roll call vote on HB 1060.

Roll Call Vote: 20-0-1 Motion carries.

Carrier: Representative Hawken.

Date: 2/10/11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1060

House Appropriations – Education and Environment Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Monson Seconded By Rep. Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Bob Skarphol	X		Clark Williams	X	
Vice Chair Hawken	X				
Mark Dosch	X				
Rep. Martinson:	X				
David Monson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment
Rep. Hawken

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

Date: 2/18
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1060

House Appropriations Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☑ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Hawken Seconded By Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson			Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Hawken

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

REPORT OF STANDING COMMITTEE

HB 1060: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO NOT PASS** (20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1060 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1060

HB 1060
attachment #1

North Dakota University System

HB 1060 – House Appropriations – Education and Environment Division

January 26, 2011

Dr. Marsha Krotseng, Vice Chancellor for Strategic Planning

Good afternoon, Chairman Skarphol and members of the House Appropriations Committee – Education and Environment Division. For the record, my name is Marsha Krotseng, Vice Chancellor for Strategic Planning/Exec. Director of CTEC, North Dakota University System. On behalf of the North Dakota University System, I appreciate this opportunity to support HB 1060 and, specifically, the clarification it provides regarding annual audits of the Centers of Excellence.

First and foremost, I would emphasize that the monitoring and auditing procedures for the Centers of Excellence must ensure clear accountability to all stakeholders – the Centers of Excellence Commission, Economic Development Foundation, Department of Commerce, State Board of Higher Education, the legislative and executive branches of state government, and the citizens of North Dakota. The Centers currently deliver a high level of accountability and reporting. Following receipt of all required approvals, each Center signs a compliance agreement with the Centers of Excellence Commission, agreeing:

1. To comply with the conditions set forth in N.D.C.C. § 15-69-05(2) regarding annual audits.
2. To provide any information necessary for the Centers of Excellence Commission to monitor the postaward activities of the Center.
3. To track any and all job creation that can reasonably be traced to the establishment of the Center of Excellence.

The language in HB 1060 provides for at least two annual fiscal audits of each Center. This is important to verify and demonstrate proper use of state funds. There are two additional key points in the language: (1) The bill provides that "for all other years during the postaward monitoring the center [will] contract with an independent accountant for an agreed-upon procedures engagement" and (2) It would still allow additional annual fiscal audits to be conducted if deemed necessary.

The combination of the two fiscal audits with the agreed-upon procedures in all other years establishes a very effective process for the following reasons:

- Fiscal audits will demonstrate proper use of and accounting for all funds at appropriate times.
- Agreed-upon procedures ensure accountability beyond the financial statement. The agreed-upon procedures require review and confirmation of funds received, the cash match, in-kind contributions, expenditures, and labor and effort-reporting charged to the grant. However, the agreed-upon procedures also provide for an objective third party examination of very specific and critical items that are not ordinarily or necessarily

reviewed as part of the financial audit: jobs created by the Center, material changes to the project timeline, and material changes to the scope of the project.

- Given the information generated by the agreed-upon procedures process, the cost of conducting a fiscal audit every year does not produce a good return on investment. According to one accounting firm, the cost of the financial audit would be 3 to 4 times greater than the agreed-upon procedures. Since fees for the agreed-upon procedures currently range from $2,000 to $4,000 per Center, the financial audit would range from $6,000 to $16,000 per Center. Multiplying the middle range of $11,000 for a fiscal audit of each Center by the 20 existing Centers results in an annual cost to the state of $220,000. If the items from the agreed-upon procedures were added to the annual financial audit, the yearly cost would be even higher.

In short, the language proposed by HB 1060 provides for the most effective and efficient use of state funds. It increases accountability by specifying the use of two financial audits with the additional information generated through the agreed-upon procedures in all other years and, thus, maximizes the use of Centers of Excellence funds for their designated purpose.

Mr. Chairman, Thank you for this opportunity to provide comments in support of this bill. I will be pleased to address any questions.

HB1060
Handout #1
1/26/11

Suggestions for Consideration Relating to HB1060

1. Items which could be included in the legislation that would be required to be included in "agreed upon procedures engagements".

   "At a minimum the independent audit firm conducting the agreed upon procedures engagement will conduct the following steps and comment on them in their report:

   a) Verify the accuracy of jobs claimed as created by the center of excellence through their functional reviews or any other form of reporting. These job created totals should be specifically presented in the agreed upon procedures report identifying those private sector jobs separately from those created within the university.

   LAW b) Determine whether all matching requirements listed in NDCC 15-69-05 (including in-lieu of cash contributions and in-kind contributions) and any other matching requirements promulgated by the Centers of Excellence Commission were met and are properly supported;

   LAW c) Determine whether any of the funding was used for infrastructure, to supplant funding for current operations or to pay indirect costs prohibited by ND 15-69-05;

   d) Evaluate whether the center of excellence met timelines set forth in their application for funding and whether any changes were properly set forth in their functional review;

   e) Evaluate if the center of excellence's scope of activities matches the scope included in the application for funding. If these are not the same, did the center of excellence identify this in their functional review;

   f) Review a reasonable sample of expenditures and determine if they were properly approved, properly supported with documentation and were made in accordance with the scope described in the application for funding;

   g) Trace a sample of labor charged to the funding to supporting effort-reporting documentation;

   LAW h) Review business incentive agreements (as defined in NDCC Chapter 54-60.1-02) provided to a business and valued at $25,000 or more to report any noted instances of noncompliance with Chapter NDCC 54-60.1 and;

   i) Include a comparison of budget (submitted with application for funding) and actual expenditures and an explanation of any significant differences.

   Note: This language or similar language could be inserted into the bill which will require all agreed upon procedures engagements at a minimum to include the

above steps. The current agreed upon engagements include many of these steps already. Including these into statute would ensure that future engagements continue to include this work.

2. Lines 14-17 require a full audit be completed at the halfway point and at the end of the post award monitoring period (6-10 years). A concern with this is that center of excellence may expend all of the funding awarded within the first couple of years. Therefore it's possible the center of excellence would not receive a complete audit until years after the funding has been expended which would appear to limit the usefulness of the audit.

   A suggestion would be to require an audit when the center of excellence has expended substantially all of the funding from the Department of Commerce. Thus if center of excellence expended substantially all of the funding awarded by the Department of Commerce by year 2 of existence, a full audit would be required to be obtained at the end of year 2 rather than an agreed upon procedures engagement. If the legislature and the Department of Commerce feel that a full audit should also be completed at the end of the post award monitoring period, that part of the bill language could remain the same.

3. Lines 17-18. It appears the language allows the center of excellence to use funds distributed to the center to pay for audits, but it doesn't say that the funds can be used to pay for agreed upon procedures engagements. The language should be changed to allow for payment for those types of engagements also.

HB1060
attachment #1
2/10/11

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