

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ECONOMIC DEVELOPMENT COMMITTEE

Monday, October 16, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 9:05 a.m.

Members present: Representatives Rick Berg, Dawn Marie Charging, Donald L. Clark, Donald D. Dietrich, Mark A. Dosch, Pam Gulleon, Jim Kasper, Bob Martinson, Lisa Meier, Kenton Onstad, Dan J. Ruby, Elwood Thorpe, Clark Williams; Senators Duane Mutch, Randy A. Schobinger, John O. Syverson, Ryan M. Taylor, John M. Warner

Members absent: Representatives Eliot Glassheim, Eugene Nicholas; Senators April Fairfield, Nicholas P. Hacker

Others present: See Appendix A

It was moved by Representative Martinson, seconded by Representative Thorpe, and carried on a voice vote that the minutes of the August 30, 2006, meeting be approved as distributed.

REPORTS

Renaissance Zones

Chairman Berg called on Mr. Richard Gray, Division of Community Services, Department of Commerce, to provide the annual report on renaissance zone progress, as required under North Dakota Century Code (NDCC) Section 40-63-03. Mr. Gray provided a written summary of renaissance zone activities for the period October 1, 2005, through July 31, 2006, a copy of which is attached as Appendix B. Additionally, he provided a more detailed list of renaissance zone projects activities, a copy of which is on file in the Legislative Council office.

Procurement Assistance Center Study

Chairman Berg called on Ms. Sherry Neas, Office of Management and Budget, to present the report on the outcome of the procurement assistance center study. Ms. Neas provided written testimony and a copy of the study, copies of which are attached as Appendix C.

Ms. Neas said the recommendations outlined in the study are:

1. Fund a North Dakota procurement technical assistance center to assist businesses in obtaining federal, state, and local government contracts.
2. Designate the Office of Management and Budget as the host agency for the North

Dakota procurement technical assistance center.

3. Once the federal procurement technical assistance center grant application is announced, direct the Office of Management and Budget, or an entity designated by the Office of Management and Budget, to submit an application for federal grant funds in order to expand the services offered by the North Dakota procurement technical assistance center.

Ms. Neas said it is the recommendation of the Office of Management and Budget that a North Dakota procurement technical assistance center be funded with state funds and not be dependent on federal funds for its continued existence. She said any federal grant money that is available should be used to expand the statewide program.

Ms. Neas said the study concluded legislation would not be required to create a North Dakota procurement technical assistance center; however, creation would require the following appropriation and budget authority:

- State fund appropriation of \$400,000;
- Federal fund spending authority of \$350,000; and
- Authorization for five full-time equivalent (FTE) positions.

In response to a question from Representative Berg, Ms. Neas said if the state were to implement a statewide procurement technical assistance center, she would expect this would have a positive impact, especially on distressed areas in the state and as the center related to minority-owned businesses.

In response to a question from Senator Warner, Ms. Neas said in performing the study, the Office of Management and Budget did consider whether it would be appropriate to have a procurement technical assistance center administered by an agency other than the Office of Management and Budget. Specifically, she said, in performing the study the Office of Management and Budget considered the desirability of having the Department of Commerce administer the procurement technical assistance center, but it was determined that in order to be successful, whatever entity administers the program would need to have individuals with strong procurement technical assistance skills. She said the Office of Management and Budget is able to provide

these skills both through an experienced staff with a mission and with expertise specialized in this area as well as through the web site and cooperative purchasing services. Overall, she said, the Office of Management and Budget seems like a logical host and helps to avoid fragmentation of services.

In response to a question from Representative Kasper, Ms. Neas said 2005 legislation took steps to improve procurement opportunities for North Dakota businesses. She said this legislation has been implemented and appears to be working well.

In response to a question from Representative Charging, Ms. Neas said the web site of state purchasing opportunities hosts procurement opportunities for a broad range of goods and services.

BUSINESS CLIMATE STUDY AND VENTURE AND RISK CAPITAL STUDY

Chairman Berg said in response to the committee work performed in conducting the business climate study and venture and risk capital study, committee counsel has worked with Mr. Rod Backman, Covenant Consulting Group, Bismarck, and with representatives from the Department of Commerce and other state agencies in drafting legislation. He said the committee will be reviewing 17 committee bill drafts, which are responsive to the key issues raised and the proposed action items addressing each of these key issues.

First Bill Draft

Chairman Berg called on committee counsel to review the bill draft [\[70189.0100\]](#). Committee counsel said this bill draft amends Section 17 of 2005 Senate Bill No. 2032, the provision that provides for the business climate study. She said these changes are made in response to the key issue of attracting and retaining young people and young families.

Committee counsel said this bill draft addresses the 2007-08 interim business climate study and retains the requirement of a minimum of six focus group discussions; however, the bill draft removes the specific references to what groups need to be specifically addressed in each of the focus groups. Additionally, she said, the bill draft adds young professionals to the already existing two groups that need to be addressed in the focus groups--economic developers and private business needs.

In response to a question from Senator Warner, committee counsel said the existing language already allows for the inclusion of trade people in the focus group and Business Congress activities. She said historically when putting together an invitation list for the focus groups and the Business Congress, an attempt has been made to invite business people from a broad spectrum of business types and business sizes.

Senator Schobinger said it is important to remain informed of how North Dakota ranks in business climate compared to other states. In response to this

comment, Mr. Shane C. Goettle, Commissioner, Department of Commerce, distributed the document *North Dakota Department of Commerce October 4, 2006 - Testimony Regarding 2006 Benchmark Report on State Economic Development*, a copy of which is on file in the Legislative Council office.

It was moved and carried on a voice vote that the committee support this bill draft.

Second Bill Draft

Chairman Berg called on committee counsel to review the bill draft [\[70187.0100\]](#). Committee counsel said this bill draft creates a new section to NDCC Chapter 2-05, relating to the Aeronautics Commission. Specifically, she said, this bill draft creates an airport economic fund, which will be a special fund administered by the Aeronautics Commission to provide grants to airports to assist in economic development. Additionally, she said, the bill draft provides for a \$5 million general fund appropriation. She said this bill draft is in response to the key issue of transportation as well as the recommendations included in the report of the Upper Great Plains Transportation Institute study.

In response to a question from Representative Ruby, Representative Berg said for smaller airports, there are limitations on the availability of federal funds.

Chairman Berg called on Mr. Gary R. Ness, Director, Aeronautics Commission, for comments on the bill draft. Mr. Ness spoke in support of the bill draft. He said smalltown airports have a four-mill taxing authority for airports as well as access to fees, but this results in limited funds being available for these airports.

In response to a question from Representative Ruby, Mr. Ness said the Aeronautics Commission tracks in detail the unmet needs of airports in the state.

Representative Berg said it is his intent and hope that after five years the small airports would be self-sustaining in funding improvements provided through the economic development grant.

In response to a question from Representative Berg, Mr. Ness said as the bill draft is drafted, he thinks it would be possible to limit grant recipients to rural airports.

In response to a question from Representative Thorpe, Mr. Ness said the Aeronautics Commission is very comfortable in expending funds on rural airports. He said the Aeronautics Commission recognizes statistically one of North Dakota's airports is lost every two years. He said the Aeronautics Commission does not invest in declining airports.

In response to a question from Senator Taylor, Mr. Ness said under current law the Aeronautics Commission distributes funds to airports using a priority scale. He said he envisions using a similar scale if the bill draft is enacted.

Representative Kasper said perhaps some of the grants would be used to extend runways to help in biodiesel production.

Senator Warner said he hopes the grant program will not be an impediment for using private funds for airport improvement.

Representative Berg said he views the grants as being incentives for private funds to be invested in smaller airports.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to create a rural airport economic development fund.

Third Bill Draft

Chairman Berg called on committee counsel to review the bill draft [\[70208.0200\]](#). Committee counsel said the bill draft amends two subsections of NDCC Section 54-17-07.3, which authorizes the Industrial Commission, acting as the Housing Finance Agency, to establish certain financing programs. She said the bill draft also provides for a Legislative Council study of housing needs and includes an emergency clause.

Committee counsel said the provisions in the bill draft are in response to the issues raised as part of the focus groups, Business Congress, and ongoing discussions regarding key issues of workforce and attracting and retaining young people and young families.

Representative Onstad questioned the necessity of a Legislative Council study of housing needs and how unmet housing needs affect economic development in the state. He said the Legislative Assembly already knows that housing issues are related to economic development.

In support of the Legislative Council study provision in the bill draft, Representative Berg said the study of housing needs would be valuable in considering what actions the state may be able to take to address housing issues. He said although the need for housing may already be known, it is important for legislators to continue to monitor actions to be taken to address the housing needs in the state.

In response to a question from Representative Ruby, Representative Berg said at the August 30, 2006, Economic Development Committee meeting, Mr. Mike Anderson, Housing Finance Agency, provided details on proposals to expand the housing finance programs.

In response to a question from Representative Kasper, Mr. Anderson said the Housing Finance Agency anticipates it will be able to fund the expansion of the financing programs within the current budget. He said the funds for many of the Housing Finance Agency programs are raised through federal and private funds. He said the current fund balance should be able to fund the expansion of the program.

Representative Kasper said he does not want the state to be losing money; however, it would be naive for the Legislative Assembly to assume that money

would not be lost under the expansion of the housing program.

Mr. Anderson said in meeting housing finance needs in the state, some of the strategies include providing a second mortgage on a residence.

Representative Onstad said it is a good point to remember some families are willing and able to make payments on a home, but the financing is not available due to the assessed value of the home in the rural community.

Senator Syverson said hopefully the definition of developing community is linked to the economic development needs of the community. He said he would not want a bedroom community to be included in the definition of developing community.

Mr. Anderson said the discussions leading to these program changes relate to economic development and the need for alternative housing. He said an example of the need for alternative housing includes the housing needs of senior citizens. He said because there are alternative housing needs in the state, the term developing community would not be tied solely to economic development.

Representative Charging said it is important to remember working class families have unmet housing needs.

It was moved and carried on a voice vote that the committee support this bill draft.

Fourth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [\[70186.0300\]](#). Committee counsel said the bill draft amends the definition of agricultural processing facility for purposes of the agricultural business investment tax credit law. She said the provisions in this bill draft are in response to discussions about recognizing economic development clusters and horizontal economic development.

Committee counsel said the bill draft provides investments in an agricultural processing facility, which may include a livestock feeding, handling, milking, or holding operation that uses distillers grain produced as a byproduct at an ethanol or biodiesel plant in the state may qualify for a tax credit. Additionally, she said, if the committee does pursue this bill draft, it will be necessary to include an effective date clause.

Representative Berg said he is supportive of providing incentives to help agricultural businesses utilizing biodiesel byproducts.

Senator Syverson said he is concerned the language is limited to use of distillers grain. In addition to distillers grain, he said, there are other raw products which are byproducts of the ethanol or biodiesel plants which can be used as animal-quality food.

Representative Onstad noted existing law provides for a limitation of 10 qualified businesses under the agricultural business investment tax credit law. He said he supports removal of the 10-business limit.

Representative Berg said he has concerns about removing the limitation on the number of qualified businesses. He said the committee has not received testimony that this is a problem and retention of the limit of the number of qualified businesses will help the Legislative Assembly monitor the use of this tax credit.

Senator Mutch questioned whether a livestock operation would have a minimum requirement of how much of the byproduct is being used to feed livestock.

Mr. Backman stated that as under the seed capital investment tax credit, the Department of Commerce will set guidelines relating to certification as a qualified business.

Mr. Goettle said the Department of Commerce would consider requiring a demonstrable link between the livestock operation and the use of byproducts for purposes of initial certification and for recertification the Department of Commerce would look at the operation's actual history.

It was moved and carried on a voice vote the committee support this bill draft, as amended, to provide an effective date and to broaden the definition of agricultural commodity processing facility to include livestock use of byproducts produced at an ethanol or biodiesel plant in the state.

Fifth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [\[70148.0200\]](#). Committee counsel said the bill draft amends the laws relating to the beginning entrepreneur loan guarantee program and the Biodiesel partnership in assisting community expansion (PACE) fund program and provides appropriations for the Biodiesel PACE program and the PACE fund. She said the language in this bill draft was provided by the Bank of North Dakota.

Committee counsel said:

- Section 1 of the bill draft amends the definition of beginning entrepreneur for purposes of the entrepreneur loan guarantee program, by simplifying the net worth limitations;
- Section 2 of the bill draft increases from \$4 million to \$8 million the maximum amount the Bank may guarantee in loans under the beginning entrepreneur loan guarantee program;
- Section 3 of the bill draft amends the definition of biodiesel production facility for purposes of the Biodiesel PACE program;
- Section 4 of the bill draft appropriates \$1.2 million of general funds to the Bank for the Biodiesel PACE program; and
- Section 5 of the bill draft appropriates \$8 million of general funds to the Bank to the PACE and flex PACE program.

Committee counsel said the Bank of North Dakota provided comments seeking an emergency clause be added to this bill draft.

Representative Thorpe questioned whether the Biodiesel PACE appropriation of \$1.2 million will be enough.

Mr. Bob Humann, Bank of North Dakota, said the Bank is seeking to retain funding for the Biodiesel PACE program at the same amount as appropriated for the 2005-07 biennium. He said at this point in the biennium, \$440,000 has been used and it is anticipated another \$400,000 will be used by the end of the biennium. He said if these numbers are accurate, the Bank will return \$400,000 to the general fund at the end of the biennium.

Representative Thorpe said he would like more money to be available for biodiesel. He said he has a real concern the state might be missing an opportunity by underfunding biodiesel expansion.

Senator Taylor questioned whether the Biodiesel PACE program is being effective; specifically, he questioned whether a \$400,000 incentive has an impact on whether a biodiesel facility will be located in the state.

Mr. Humann said generally in determining whether to locate a biodiesel facility in the state, the entire package of business incentives is considered. He said the Biodiesel PACE program is only one part of the package. The general threshold, he said, is that a biodiesel facility expects a \$1 million business incentive in determining whether to open operations. Additionally, he said, smaller biodiesel products are not prohibited from using the PACE program.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to include an emergency clause.

Sixth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [\[70195.0200\]](#). Committee counsel said the bill draft creates a tourism PACE program and creates a rural community tourism enhancement program. She said the programs in this bill draft are in response to the key issue of image and the specific action item to provide incentives for tourism.

Committee counsel said Section 1 of the bill draft creates a new chapter in NDCC Title 6, creating a Bank of North Dakota-administered tourism PACE program. She said Section 2 of the bill draft creates a Department of Commerce-administered rural community enhancement grant program. She said under this program, cities with populations of fewer than 8,000 may apply for a matching fund grant for purposes of helping the community access public or private grants. She said a recipient of the grant would need to use the money to help identify and enhance the city's unique characteristics in attracting visitors and improve the appearance of the rural community. Under the program, she said, the maximum amount of the grant is \$10,000 per applicant, with a maximum total of grants per biennium not exceeding \$100,000.

Representative Berg said he thinks the PACE and flex PACE program already make services available for tourism.

Mr. Humann said the PACE program already provides services for major tourism activities. Additionally, he said, the flex PACE program provides additional services to support tourism facilities that local communities seek to support.

In response to a question from Senator Warner, Mr. Humann said the biggest difference between the PACE and flex PACE program requirements is the PACE program has job creation requirements, whereas the flex PACE program does not. Instead, he said, the flex PACE program focuses on businesses the community wants to support. He said as far as identified funding for the PACE and flex PACE programs, although they are included in one appropriation, the Bank does designate a specified amount for each of the two programs. He said the flex PACE program was very successful and the funds set aside for that program were used very quickly during the biennium.

In response to a question from Representative Ruby, Mr. Humann said the PACE program includes a primary sector business requirement, whereas the flex PACE program does not. However, he said, a flex PACE business could be a primary sector business that does not create new jobs.

Representative Charging pointed out that both the PACE program and the flex PACE program require local matching. She questioned whether there might be a way to bypass the local match requirement and instead require the business to provide the matching funds.

In response to a question from Representative Berg, Mr. Goettle said the Tourism Alliance Partnership is in support of creating the tourism enhancement grant program.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to remove the Tourism PACE program.

Seventh Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70194.0200]. Committee counsel said the bill draft creates a Department of Commerce Division of Tourism-administered tourism visitor information center assistance program and expands the Department of Commerce-administered image information program. She said the items are in response to the key issue of image.

Committee counsel said Section 1 of the bill draft provides for a visitor information center program, which may include matching fund grants for visitor information centers and rest stop volunteers, training assistance for visitor information centers and rest stop volunteers, and marketing assistance for visitor information centers and rest stop volunteers. She said Section 2 of the bill draft expands the existing image information program to require services be provided to private sector businesses and employees.

In response to a question from Representative Kasper, Mr. Goettle said under the visitor information center assistance program, the department would not

be building new tourism information center facilities. He said he envisions the program would be used to train personnel as well as providing funds to extend the hours of the facility.

Mr. Goettle said under the visitor information center assistance program, the Department of Commerce would extend current marketing efforts to include marketing in the state. He said in the 1990s a visitor information center program was discontinued; however, at that time the Department of Commerce did have the same accountability as it has now. He said at this time the Department of Commerce has benchmarks to make sure the intended benefits are being accomplished by the department's programs. Additionally, he said, the Tourism Alliance Partnership supports the concept of a visitor information center assistance program.

In response to a question from Representative Ruby, Mr. Goettle said the language in Section 1 of the bill draft regarding the visitor information center assistance program is discretionary. He said he supports this discretion, recognizing the Department of Commerce's primary duty is to market outside the state. He said he needs to continue funding for marketing outside the state at least at its current level, but if additional funds are available, he would extend this marketing internally under this new program.

In response to a question from Representative Onstad, Mr. Goettle said one way to fund the visitor information center assistance program would be the appropriation of additional funds. He said if this program is implemented, he envisions a matching fund requirement in order to leverage the limited state resources.

In response to a question from Senator Warner, Mr. Goettle said the services of the visitor information center assistance program could likely be provided under the existing authority of the Department of Commerce; however, there are funding issues. Additionally, he said, the expansion of the image information program also raises resource issues. He said if the program is expanded, one approach he would consider is the "train the trainer" model.

It was moved and carried on a voice vote that the committee support this bill draft.

Eighth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70181.0200]. Committee counsel said the bill draft creates a business and tourism acceleration commission to administer grant programs for innovation, tourism, and international trade. She said this program addresses issues raised regarding the key issues of trade, higher education, and image, and issues relating to the venture and risk capital study.

Committee counsel said this program is modeled on the Agricultural Products Utilization Commission (APUC) law and is an office of the Department of Commerce. She said under the business and tourism acceleration commission law, assistance would be

provided for the research, development, technology, and marketing needs of businesses, and entrepreneurs to aid in innovation of new or existing businesses, expansion of existing and the development of new tourism-based businesses, and growth of international business trade.

Committee counsel said under the business and tourism acceleration commission, the Governor would appoint three of the seven members and the Commissioner of Commerce would appoint the remaining four members. She said as under the APUC law, the business and tourism acceleration commission administrative expenses may not exceed 10 percent of state funds provided for the program.

Committee counsel said a provision of this bill draft provides a grant provided under the business and tourism acceleration commission is not considered a business incentive under NDCC Chapter 54-60.1. However, she said, there would be accountability requirements for grants issued under this program.

In response to a question from Senator Warner, Mr. Goettle said if the funds appropriated for the business and tourism acceleration commission were minimal, the Department of Commerce would likely be able to administer the program with its current staff. However, he said, if there were a large appropriation for this program, the department may require additional funding for additional staff. He said if additional staff is required, he will seek reimbursement from the business and tourism acceleration commission.

In response to a question from Representative Guleson, Mr. Goettle said he envisions a business and tourism acceleration commission would work with regional councils, just as APUC does.

Representative Onstad said if the state provided more funding to the regional councils, it is possible they would be able to provide most of the services that the committee is considering having the business and tourism acceleration commission provide. However, he said, the regional councils would likely be unable to address the issue of international trade. He questioned what the North Dakota Trade Office is doing to provide these trade services.

Mr. Goettle said the North Dakota Trade Office sees a need to provide additional funding to increase business capacity for trade.

In response to a question from Senator Taylor, Mr. Goettle said under the business incentive law and the APUC law, receipt of APUC funding is a business incentive under NDCC Chapter 54-60.1. He said the fact that an APUC grant is a business incentive has been an issue of concern. He said for purposes of APUC, the state may need to set different measurements for accountability and this may be an issue the department pursues during the 2007 legislative session.

Representative Berg said the committee may wish to keep the business and tourism acceleration commission language the same as the APUC language regarding its status as a business incentive.

He said if the two programs are the same, the Department of Commerce can present information during the 2007 legislative session to address both of the programs.

Mr. Goettle said he agrees the business and tourism acceleration commission and APUC should be treated the same.

Mr. Justin Dever, Department of Commerce, said the grants provided through APUC are provided at the front end of the business cycle and are not necessarily intended to be for job creation.

Mr. Goettle said the Legislative Assembly should consider completion of a feasibility study a success even if the study does not result in a business startup.

In response to a question from Representative Kasper, Mr. Goettle said it is possible that private and federal funds may be available to assist in providing services for the business and tourism acceleration commission. For example, he said, for purposes of APUC, the \$4 million appropriation for the 2007-09 biennium included \$600,000 of spending authority of federal funds, \$1.8 million of general fund money, and \$1.6 million of special funds.

Representative Charging said she supports this bill draft.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to remove the business incentive exemption language.

Ninth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [\[70179.0300\]](#). Committee counsel said the bill draft provides for a biennial tax expenditure report and state businesses incentive expenditure report; increases the seed capital investment tax credit; expands sales tax exemptions to include tourism equipment and wireless service provider equipment; provides for a Legislative Council study of wireless service providers; and repeals the beginning entrepreneur income tax incentives. She said these items in the bill draft are primarily in response to recommendations made in the Department of Commerce business incentive study report as well as in response to items relating to the venture and risk capital study.

Committee counsel said Section 1 of the bill draft creates a new section to NDCC Chapter 54-60, relating to the Department of Commerce. She said this section of the bill draft provides for the Department of Commerce to create a biennial tax expenditure report. She said the language in this section is loosely modeled on West Virginia law.

Committee counsel said under Section 1 of the bill draft, during each legislative session the Commissioner of Commerce is required to provide a tax expenditure report for the last two years for which information is available. She said the report needs to include data that identifies all tax expenditures for the two-year period as well as an analysis of these expenditures, including a description of the annual

state revenue losses and benefits and a cyclical analysis of these losses and benefits. Under the bill draft, she said, the Tax Commissioner would be required to provide tax data to the Department of Commerce and this information would be exempt from the privacy statutes.

Committee counsel said Section 2 of the bill draft creates a new section to the business incentive law, NDCC Chapter 54-60.1. She said the business incentive expenditure report language is modeled on the language in Section 1 of the bill draft providing for the tax expenditure report.

Committee counsel said under Section 2 of the bill draft, during each legislative session the Commissioner of Commerce is required to provide a state business incentive expenditure report for the last two years for which information is available. She said the report needs to include data that identifies all state business incentives for the two-year period as well as an analysis of these expenditures, including the description of the annual state revenue losses and benefits and a cyclical analysis of these benefits.

Committee counsel said under Section 2 of the bill draft, the Department of Commerce would be provided information from the administering agency for each state business incentive program. She said the definition of a business incentive under the program is the same for the rest of NDCC Chapter 54-60.1, except it excludes a tax expenditure as defined under Section 1 of the bill draft.

In response to a question from Senator Warner regarding confidentiality, Mr. Goettle said his intent under the tax expenditure report is that the Department of Commerce would need to be able to track tax incentives in a way that would attach a tax benefit to a specific taxpayer. However, he said, the report would then present this information in a way that does not identify the taxpayer. He said he favors protecting the taxpayer's identity and wants to make sure when the Department of Commerce receives this information that the Department of Commerce is required to keep it confidential.

In response to a question from Representative Kasper, Mr. Goettle said under the tax expenditure reports program, he would seek to replicate whatever penalty there might be for violating confidentiality statutes in the same manner the penalty applies to the Tax Commissioner and his office.

Committee counsel said Section 3 of the bill draft amends NDCC Section 57-38.5-05, relating to the seed capital investment tax credit. She said the amendment in this section raises the total annual cap under the program from \$2.5 million to \$5 million.

Committee counsel said Section 4 of the bill draft amends NDCC Section 57-39.2-04.3 regarding sales tax exemptions for certain machinery and equipment. Mr. Backman said as part of the business incentive study, it was reported in portions of this state there is a perceived lack of high-speed wireless connection or a complete lack of service. Wireless service providers are faced with expensive equipment as well as the

issue of equipment becoming outdated quickly. Additionally, he said, as it relates to tourism equipment needs, the study indicated each of the state's target industries has a sales tax exemption except for the tourism industry.

Senator Taylor questioned whether the definition of wireless service provider includes the booth in a retail mall selling cell phones.

Representative Berg said he would like the state to focus on increasing wireless service as well as increasing wireless coverage.

Mr. John Walstad, Legislative Council staff, said the definition of wireless service provider used in Section 4 of the bill draft is based on the definition of wireless service provider in the E-911 statute. Additionally, he said, there may be difficulties associated with requiring proof of business expansion and what qualifies as business expansion.

Mr. Walstad said the language of the bill draft could be changed to limit the sales tax exemption for wireless service providers so it would only be applicable to new businesses or enhanced services.

In response to a question from Representative Dosch, Mr. Walstad said the language could be drafted so that if a wireless service provider expanded services to cover a community or came to the state to provide services, the exemption would apply.

Representative Gulleason questioned if any similar tax exemption is available for broadband equipment.

Mr. Backman said that in performing the business incentive study, it was his impression that most of the state has already been covered with hardwire services. Mr. Backman said wireless service is not limited to cell phone coverage but includes wireless Internet as well.

Representative Onstad said wireless service providers in rural areas of the state claim there are not enough people to justify creation of new towers. He said the sales tax exemption may have the unintended consequence resulting in more providers in urban areas but not affecting rural areas. He said he does not think this incentive does what it is intended to do.

Representative Dosch said he supports adding a four-year expiration date on Section 4 of the bill draft relating to sales tax exemptions for tourism equipment and wireless service providers.

Mr. Goettle said the business incentive study indicated that the beginning entrepreneur income tax exemption has not been used in recent years.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to limit the definition of wireless service providers to the service providers providing service in the state on the effective date of the bill and to provide a four-year expiration date for the sales tax provision.

Tenth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [\[70200.0100\]](#). Committee counsel

said the bill draft creates a tax credit for businesses for expenses associated with recruitment for hard-to-fill employment positions, creates an internship employment tax credit, and creates a business investment tax credit. She said these items relate to the key issues of workforce and attracting and retaining young people and young families, specifically the action items of marketing and incentives for tourism facilities.

Mr. Walstad provided details on the provisions of the bill draft. He said under Section 1 of the bill draft, creating the workforce recruitment credit for hard-to-fill employment positions, the tax credit is available for specified direct costs to the taxpayer associated with recruiting employees for hard-to-fill employment positions. He said the credit is limited to 5 percent of the direct costs incurred by the taxpayer during the taxable year and allows for a carryforward for up to four years. He said the bill draft includes the definition of direct costs and hard-to-fill employment positions. He said as this section of the bill draft is written, it is difficult to estimate the fiscal impact.

Mr. Walstad said Section 2 of the bill draft creates an internship employment tax credit for an employer in the state for qualified compensation paid to a college intern employed by a private taxpayer. He said the credit is limited to 10 percent of the stipend or salary paid to a college intern employed by that taxpayer. He said the tax credit applies to a stipend or salary for no more than five interns employed by the employer at the same time and provides an additional credit to a taxpayer for employment of an individual who previously served as an intern. He said this additional tax credit is equal to 2 percent of the new employee's salary during the first 12 months of full-time permanent employment.

Mr. Walstad said Section 4 of the bill draft creates a new chapter to the North Dakota Century Code, providing for a tax credit for investments in or contributions to qualified tourism businesses. He said this chapter is modeled on the seed capital investment tax credit law.

In response to a question from Representative Ruby, Representative Berg said a primary difference between the seed capital investment credit and the qualified business tourism tax credit is that the seed capital investment tax credit requires the qualified business be a primary sector business, whereas tourism businesses find it nearly impossible to be designated as a primary sector business and therefore generally do not meet the requirements to be a qualified business under the seed capital investment tax credit law.

Representative Berg said he is concerned Section 4 of the bill draft creating the qualified tourism business tax credit is more expansive than he intended.

Representative Ruby said Section 1 of the bill draft creating the workforce recruitment credit for hard-to-fill employment positions may be too broad and he would like to amend it to be narrower.

Representative Berg said he supports Sections 1 and 2 of the bill draft creating the workforce recruitment credit for hard-to-fill employment positions and the internship employment tax credit.

In response to a question from Representative Onstad, Mr. Walstad said he is not aware of a statutory definition of the term internship.

Representative Berg said the language in Section 2 of the bill draft creating the internship employment tax credit may be imperfect but is a very good step forward in being responsive to the internship needs raised during the interim.

Representative Ruby said he supports limiting internships to those internships relating to the students' fields of studies. Representative Dosch said he supports this limitation of internship tax credits being limited to interns who work in a field in their area of study.

Representative Thorpe agreed there may be some fine-tuning required in the internship employment tax credit language, but he supports taking some action to support internships. However, he said, he supports narrowing the program to require the internship be related to the student's course of study.

Representative Berg said for purposes of the internship employment tax credit, he would like the credit to be more than 10 percent but would like to create a lifetime cap for each employer at \$3,000. Additionally, he said, he would support removing the 2 percent tax credit for continued employment.

Representative Kasper said if the continued employment provision remains, he would like the statutory language to clarify the ongoing employment must physically take place in the state.

Representative Clark said if the committee's intent is to provide an incentive to start using an internship program, the language of this bill draft also gives a break to businesses that are already using internships.

Representative Berg said under Section 1 of the bill draft creating a workforce recruitment credit for hard-to-fill employment positions, he would like to change the language so the direct costs would not include salaries and expenses of dedicated recruitment staff. Additionally, he said, he would like to provide some type of cap on this tax incentive.

Representative Gulleon said some businesses in the state are already using internship programs because they know how to implement the program and recognize the value of having internships. She said providing this incentive may help other businesses take this first step in creating an internship program. Generally, she said, she does not mind providing an incentive to a business that is already using an internship program, but she supports adding a per business cap on these credits.

Representative Kasper said he would support the workforce recruitment credit for hard-to-fill employment positions and the internship employment tax credit, with amendments, and suggested the bill

draft be amended to remove the qualified tourism business tax credit section.

Ms. Korrine Lang, Job Service North Dakota, stated it might be helpful for Job Service North Dakota to have clarification on what qualifies as a hard-to-fill position for purposes of the workforce recruitment credit for hard-to-fill employment positions. For example, she said, market wages could be determined on a statewide basis or a regional basis.

In response to a question from Senator Warner, Chairman Berg said his intent all along has been for the committee to recommend a single bill draft, but he is open to committee discussion.

Senator Warner said combining all the bill drafts into a single bill draft seems awkward.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to limit internships to those related to the students' fields of studies, to cap the internship tax credit at \$3,000 per employer, to remove the internship future employment provision, to remove the tourism business tax credit provision, to remove salary and expenses of staff from direct costs for the recruitment tax credit, and to cap the recruitment tax credit at \$25,000.

Eleventh Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70182.0100]. Committee counsel said Section 1 amends the covenant not to compete prohibition; Section 2 clarifies the State Board of Higher Education rules may provide for open records exemptions of certain licensing agreements; Section 3 provides for innovation grants for innovative science, technology, or innovation for kindergarten through grade 12; Section 4 amends the confidentiality law applicable to trade secret information, proprietary information, commercial information, and financial information; Section 5 creates the Department of Commerce Division of Innovation and Technology; Section 6 requires the Division of Innovation and Technology to advise the Governor and the Commissioner of Commerce in matters of innovation, science, and technology; Section 7 amends the research and expenditure tax credit law; Section 8 modifies the requirements of the Department of Commerce 2007-08 Target Industry Report to the Legislative Council; and Section 9 provides for a \$45,000 appropriation for the innovation grants. She said the bill draft addresses the key issue of higher education, including recommendations from the Department of Commerce and the State Board of Higher Education study of commercialization of new technology and intellectual property, and the key issue of workforce.

Mr. Goettle said the open records provisions of the bill draft are in response to the recommendations of the study of commercialization of new technology and intellectual property. He said he appreciates the effort taken to prepare this language but he requests the committee remove the open records language from

the bill draft. He said the interested parties can use this open records language to hold forums for public discussion on the issue. He said he expects this issue will be addressed during the upcoming legislative session.

Senator Syverson said if the covenant not to compete language is retained in the bill draft, the provision should require a contract to specify a date and a specific geographic area.

Representative Thorpe questioned whether the committee heard from businesses that the law relating to covenants not to compete needs to be amended.

Representative Berg said the covenants not to compete language and the open records language in the bill draft is in response to the recommendations made in the Department of Commerce and State Board of Higher Education study of commercialization of new technology and intellectual property.

In response to a question from Representative Kasper, committee counsel said in order to enforce a covenant not to compete, absent a specified alternative dispute resolution requirement in the contract, the parties may be faced with litigating the validity of the covenant.

Representative Berg suggested the committee remove Section 1 from the bill draft. He said he thinks this issue should be addressed in a more limited manner so that the covenant not to compete language is only extended to research-specific employment.

Mr. Goettle said the creation of the Department of Commerce Division of Innovation and Technology is another provision of the bill draft that is meant to be in response to the study of commercialization and technologies and intellectual properties. He said North Dakota is one of three states in the country which does not have a state agency addressing this topic. He said the three states which do not have such an agency are North Dakota, Montana, and South Dakota.

In response to a question from Representative Ruby, Mr. Goettle said he is not certain whether the innovation grant would be available to homeschooled children.

Representative Gulleson questioned whether it is necessary to create an entire division under the Department of Commerce and whether it might be possible to provide the services under an existing division or by creating an office within an existing division.

Mr. Goettle said although it might be possible to provide these services through an existing division, the most appropriate existing division would be the Division of Economic Development and Finance. However, he said, he is not supportive of expanding the scope of the Division of Economic Development and Finance at this time. He thinks it is important the Division of Economic Development and Finance focus resources on its current charge.

Representative Berg said the provision in this bill draft amending the state's research and experimental expenditures tax credit would make North Dakota the

state with the highest tax credit for research and development. He said it is his understanding that Rhode Island would come in just behind North Dakota.

Representative Gulleon said she brought a bill draft to the committee [70064.0100] for consideration earlier in the interim. She said either version would make North Dakota unique and although she does support special incentives for small companies and rural areas, she would be comfortable with either version.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to remove the covenants not to compete language and the open records language.

Twelfth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70221.0100]. Committee counsel said the bill draft provides for statutory requirements for the required parts of the State Board of Higher Education annual performance and accountability report; creates a new program startup grant for higher education programs; requires the Department of Commerce Division of Economic Development and Finance North Dakota Trade Office to work with the State Board of Higher Education to implement international business expertise with students of higher education; and provides for the State Board of Higher Education to study implementation of services of CCbenefits, Inc., and report to the Legislative Council during the 2007-08 interim.

Committee counsel said this bill draft responds to the key issue of attracting and retaining young people and young families through recruitment by North Dakota institutions of higher education and improving demand-driven higher education.

It was moved and carried on a voice vote that the committee support this bill draft.

Thirteenth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70180.0200]. Committee counsel said the bill draft modifies the existing centers of excellence program. She said the provisions of this bill draft are in response to the key issue of higher education. Under the bill draft, she said, a distinction is provided between three types of centers of excellence--commercialization, workforce, and infrastructure. She said workforce centers of excellence are limited to receiving no more than 10 percent of the funds awarded for the biennium and infrastructure centers of excellence are limited to receiving no more than 10 percent of the centers of excellence funds awarded for the biennium and it is clarified that if the primary use of funds is infrastructure, the center of excellence must be designated as an infrastructure center.

Committee counsel said the bill draft provides the Department of Commerce provides the centers of excellence staff services, including assisting with

preaward reviews and postaward monitoring. She said the bill draft requires the commission to provide for independent, expert review of complete applications in order to establish viability and likelihood of desired economic impact. She said the bill draft requires the Centers of Excellence Commission to conduct postaward monitoring of centers for a period of 6 to 10 years. She said the bill draft requires the applicant to show due diligence in putting together the center's proposal and establish a high likelihood of viability and success. Additionally, she said, the bill draft clarifies centers of excellence funds are not to be distributed if a private sector participant stops participating.

Representative Onstad questioned whether it would be possible for high schools in the state to implement a similar centers of excellence program.

Mr. Goettle said he supports having the Department of Commerce provide administrative services for the Centers of Excellence Commission. However, he said, he would prefer to retain flexibility in awarding centers of excellence funds, regardless of whether the center is focusing on commercialization, workforce, or infrastructure. Additionally, he said, he would prefer to allow the commission discretion in determining whether to perform an independent, expert review of a complete application.

It was moved and carried on a voice vote that the committee support this bill draft.

Fourteenth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70192.0100]. Committee counsel said the bill draft provides for a Job Service North Dakota study and report to the Legislative Council regarding chronic employment and soft skills training and provides an appropriation to Job Service North Dakota for increasing the level of the web site spider program used to identify job listings available in North Dakota. She said the bill draft is in response to the key issue of workforce.

Committee counsel said she has communicated with representatives of Job Service North Dakota and understands there is some concern regarding the ability of Job Service North Dakota to report on the progress and results of the chronic unemployment demonstration project if federal funds are not awarded. However, she noted, it is anticipated the outcome of the award would be known before the 2007 legislative session begins. Additionally, she said, it has been brought to her attention that Job Service North Dakota may incur marketing costs associated with upgrading the web site program.

It was moved and carried on voice a vote that the committee support this bill draft.

Fifteenth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70193.0200]. Committee counsel said the bill draft expands the duties of the Department of Commerce Division of Workforce

Development; provides for a Department of Commerce study of workforce intelligence; and provides for a Department of Commerce study of higher education internship.

Committee counsel said the bill draft is in response to the key issue of workforce, including higher education internship. She said one issue of which the committee members should be aware is that the bill draft provides for the Division of Workforce Development to administer the followup information on North Dakota education and training (FINDET) system, and there may be additional statutory changes that would be required to accomplish this and there may be federal laws that impact the ability of the division to administer the system.

In response to a question from Representative Gulleon, Mr. Goettle said in the past there has been an individual in the Governor's office performing the role of internship services; however, the Governor's office does seem to be in support of adding more structure to the internship program.

Mr. Wayne Kutzer, Department of Career and Technical Education, testified regarding some of the federal limitations on the state's use of the FINDET system. He said the FINDET system is administered by the Career Resource Network, but this network has lost its federal funding and there have been discussions of moving the system into the Department of Career and Technical Education, while allowing the State Board of Higher Education to continue to administer the FINDET system.

Mr. James Hirsch, Division of Workforce Development, stated FINDET is a key element to career intelligence, but he does not have an opinion on the actual location or administration of the system.

Representative Gulleon said it seems rash to move the FINDET system without consulting with the Career Resource Network and the State Board of Higher Education.

Mr. Goettle said the issue of where to locate FINDET is less important than improving the availability of information available through the system.

Representative Berg recommended retaining the FINDET provision in the bill draft in order to facilitate discussion on this topic during the upcoming legislative session.

It was moved and carried on a voice vote that the committee support this bill draft.

Sixteenth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70191.0200]. Committee counsel said the bill draft provides for the Department of Commerce Division of Workforce Development to administer a career education and career promotion program and provides for the Department of Commerce to study career education and report to the Legislative Council. She said the bill draft responds to the key issue of workforce, specifically career education programs for kindergarten through

grade 12. She said she has received information from representatives of the Department of Commerce requesting Section 1 of the bill draft be amended to provide for at least one career counselor for each educational association governed by a joint powers agreement.

Representative Onstad said the P-16 Education Task Force addressed the issue of career education and appears to support this concept. He said there may not be a need for the study, considering the significant amount of work performed by the P-16 Education Task Force.

Representative Berg said he thinks Section 1 of the bill draft providing for career education and career promotion services moves the state forward and Section 2 providing for the study allows the Legislative Assembly to continue monitoring this movement.

Senator Syverson said the bill draft provides career promotion services are limited to students in grades 9 through 12 and perhaps it would be valuable to extend career promotion to younger students.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to provide for one career counselor for each educational association governed by a joint powers agreement.

Seventeenth Bill Draft

Chairman Berg called on committee counsel to review the bill draft [70190.0200]. Committee counsel said the bill draft provides for a Department of Commerce-administered talent attraction program and provides for a Department of Commerce Division of Workforce Development-administered program to address worker recruitment. She said this bill draft addresses the key issue of workforce.

Mr. Goettle said in November 2006, the Department of Commerce will be implementing a pilot effort to attract workers from out of state.

Senator Syverson said he supports services to attract workers from out of state.

Representative Thorpe said the bill draft language providing for services in recruitment of permanent immigrants could be changed to clarify permanent legal immigrants.

Mr. Goettle said the Department of Commerce is faced with the decision of whether to focus services on business recruitment or workforce recruitment.

It was moved and carried on a voice vote that the committee support this bill draft, as amended, to clarify the recruitment of permanent legal immigrants.

It was moved by Representative Dietrich and seconded by Senator Syverson that a single bill draft, which would be created by consolidating the 17 bill drafts, as amended, be approved and recommended to the Legislative Council.

Representative Kasper questioned whether the 17 bill drafts would remain separate or whether they would be consolidated.

Chairman Berg said it has been his intention all along to consolidate the committee's bill drafts into a single bill draft; however, he would prefer to make the decision at a later time.

The motion carried on a roll call vote. Representatives Berg, Charging, Clark, Dietrich, Dosch, Kasper, Martinson, and Onstad and Senators Syverson, Taylor, and Warner voted "aye." Representative Thorpe voted "nay."

It was moved by Representative Kasper, seconded by Representative Clark, and carried on a roll call vote that the chairman and the Legislative Council staff be requested to prepare a report and the bill draft recommended by the committee and to present the report and recommended bill draft to the Legislative Council. Representatives Berg, Charging, Clark, Dietrich, Dosch, Kasper, Martinson, Onstad, and Thorpe and

Senators Syverson, Taylor, and Warner voted "aye." No negative votes were cast.

It was moved by Representative Thorpe, seconded by Representative Dietrich, and carried on a roll call vote that the meeting be adjourned sine die. Representatives Berg, Charging, Clark, Dietrich, Dosch, Kasper, Martinson, Onstad, and Thorpe and Senators Syverson, Taylor, and Warner voted "aye." No negative votes were cast.

No further business remaining, Chairman Berg adjourned the meeting sine die at 4:00 p.m.

Jennifer S. N. Clark
Counsel

[ATTACH:3](#)