

To: Chariman Cook and members of the Senate Finance and Tax Committee
From: Sen. Mac Schneider
Re: Proposed amendments and questions concerning SB 2390 (certified technology parks)
Date: February 9, 2009

Dear Chariman Cook and members of the committee:

Over the course of the last week, the sponsors of this legislation have had several in-depth discussions with members of the North Dakota University System office as well as deans and other faculty charged with the administration and oversight of the cutting-edge research conducted at our higher education institutions. Through these conversations, we were able to more fully explain the details of SB 2390 to stakeholders and address some of their very legitimate questions about the legislation.

In recognition of these discussions, we recommend several minor changes to the legislation. I've attached the proposed amendments to this handout and have explained the rationale behind these changes below. I have also attempted to answer some of the questions raised by Vice Chancellor Krotseng in her testimony before the committee last week.

As Dr. Krotseng noted, this is a "substantial bill" and no doubt a lot to process, especially given the other substantial demands on the committee's time. However, I also believe SB 2390 is well-considered and note that it is based on a program that is up and running in another Midwestern state.

I would like to thank Chairman Cook and the members of the committee for their thoughtful evaluation of this legislation and the patience shown on this admittedly complex matter. Both are greatly appreciated.

I. Rationale behind the proposed amendments

Page 2, line 2: This change was made to clarify that the definitions of "high technology activity" listed under 40-64-01 are not meant to be proscriptive.

Page 2, lines 26: This change was made at the request of individuals in the research community who viewed the language as unnecessarily limiting.

Page 3, line 19: This change was made to clarify that universities are not to provide telecommunications services that compete with those provided through the private sector.

Page 4, line 6: This change was made to clarify that universities are not to provide telecommunications services that compete with those provided through the private sector.

Page 4, after line 11: The intent of this additional language is to allow proceeds to be used for or on an institution of higher education's facilities (located in the technology park) in which high technology research and development activities are done by the higher education institution.

Page 4, lines 26 and 27: This subdivision was struck at the request of those in the research community who raised concerns that such a provision could lead to potential conflicts with federal legislation.

Page 4, line 31: This change was made to clarify that universities are not to provide telecommunications services that compete with those provided through the private sector.

Page 5, line 5: The intent of this additional language is to enable the North Dakota University System and the higher education institution to have a say in establishment of any new criteria that the Department of Commerce might elect to make in the future.

Page 5, line 8: This language was originally inspired by the Indiana statute used as a model for this legislation, but the tenure policies referred to in this paragraph are not relevant in North Dakota.

Page 5, line 15: Typographical correction.

*Page 6, line 12: "May" was changed to "shall" in order to emphasize the mandatory nature of this paragraph.

Page 7, lines 17 and 18: The intent of this language is to specify that the institution of higher education would need to provide a letter of support for operations and activities concerning the certified technology park. A letter of support would avoid potential problems when and if a higher education institution has existing (or future) obligations to another party, such as the federal government.

II. Addressing the questions raised by the North Dakota University System

Q: Are the provisions of this bill consistent with federal laws and IRS regulations as well as with regulations of the state of North Dakota and our local communities?

A: Yes. As previously discussed with members of the committee, this legislation is based on statutes enacted by the Indiana legislature. Certified technology parks now exist in 10 communities across that state. To the best of my knowledge, no conflicts with federal laws or IRS regulations have arisen at any time during the successful expansion of this program in Indiana.

Additionally, North Dakota communities have relatively extensive experience using tax increment financing as a tool for development, and there is no indication that the provisions of this bill conflict with state or local regulations and requirements. In fact, the legislation puts the choice of pursuing a certified technology park designation into the

hands of local political subdivisions. In other words, this bill is permissive – it does not require the subdivision to pursue any course of action which would conflict with local agreements or obligations.

Q: Specifically, do the provisions of the bill enable the university to remain in compliance with federal research regulations?

A: Yes. The bill, even before the amendments, requires the adoption of an agreement between the Department of Commerce and the political subdivision making the application. Within this agreement, a university would have the opportunity to make clear that federal regulations must be respected and take precedence.

The amendments to page 7, line 17 – made at the request of individuals with extensive experience dealing with federal grants and research funding -- go even further to ensure that current or future obligations to parties such as the federal government will be addressed in the agreement governing a certified technology park.

It is also worthwhile to note that one of the top institutions in the country when it comes to conducting federal research, Purdue University, is currently benefiting from a certified technology park designation. A recent expansion at park tenant Cook Biotech is one of the projects that will funnel incremental tax revenues back into Purdue's park, and is a good example of how this legislation would benefit North Dakota.

Q: What happens if a university is working with one park and another park in an adjacent subdivision wishes to be certified? Could possible conflicts of interest arise?

A: Under 40-64-03, the Department of Commerce may designate a certified technology park if the department determines that the application demonstrates 1) "a firm commitment from at least one business engaged in a high technology activity . . ." and 2) one or more of the following additional criteria listed in paragraphs "a" through "f" of subsection 1.

As a practical matter, it is unlikely that "an adjacent subdivision" could put together a competitive application for submission to the Department of Commerce if a neighboring subdivision had already received a certified technology park designation.

For example, assume the Fargo city council submitted a successful application to the Department of Commerce to create a certified technology park in that city. If West Fargo applied for a certified technology park designation a year or two later, under the terms provided in 40-64-03, that city would be unlikely to achieve "significant support from an institution of higher education" given NDSU's commitment within Fargo's existing technology park. This would weigh heavily against granting West Fargo's application – even if one or more of the other criteria in 40-64-03.1 were met.

The bottom line is that the Department of Commerce would be the final arbiter of the merit of any application for designation as a certified technology park. Since this agency

is accountable to the state, it provides a check on parochial rivalries and would result in rational decision-making regarding which parks receive certification.

Q: What does the phrase "Grants of preferences for access to and commercialization of intellectual property" mean? How would this work in practice?

A: This language has been struck in the proposed amendments.

Q: What are the impacts on a research project sponsor having first option to negotiate a license to intellectual property? Would preference be given to a tenant of the certified technology park rather than to the sponsor funding the R&D?

A: Nothing in this legislation requires a research project sponsor to have a first option to negotiate a license to intellectual property. This very legitimate question -- and others -- would be addressed in great detail by any agreement governing the certified technology park, as required by 40-64-04.

Q: What are the implications of a higher education institution providing the certified technology park tenants with preferential access to equipment and other resources? Does this conflict with the federal requirements that federally-funded equipment and resources must be used first on federal R&D projects?

A: Again, nothing would *require* a higher education institution to provide park tenants with preferential access to equipment or other resources. The requirements that federally-funded equipment and resources be used on federal projects would not be affected by this legislation. Higher education institutions could keep doing what they are doing in this regard.

Q: Are there potential liabilities to the institution if a private firm has access to university laboratory space or equipment?

I don't know the answer to this question, but there is nothing in this legislation that would require a university to provide access to laboratory space or equipment to private tenants. If this was permitted by an institution, legal rights and remedies could and should be clearly explained in a legally binding contract between the university and the private tenant. Such a contract would likely be incorporated into the agreement required by 40-64-04.

Q: Regarding the hearing for designation of an allocation area (page 9, line 12), how will the governing body reach a conclusion? What guidelines will be used?

A: After the adoption of a "resolution designating the certified technology park as an allocation area" (40-64-07.1), a statement disclosing the impact of the certified technology park will be filed with each taxing district with authority to levy property taxes in the geographic area where the certified technology park is located (40-64-07.2(b)(2)). This statement must include the estimated economic benefits and costs

incurred by the certified technology park and the anticipated impact on tax revenues of each taxing unit (40-64-07.2(b)(2)). Presumably, at the hearing required under 40-64-07.4, the political subdivision would balance these benefits against the potential costs and impacts on tax revenues and then ultimately confirm, modify, or rescind the resolution by majority vote.

Q: What is the impact on municipalities?

A: This bill has received the endorsement of the mayors of Fargo and Grand Forks because of the positive impact it would have on the ability to create high technology jobs in these communities. And again, one of the strengths of this legislation is that it puts the power to seek a certified technology park designation into the hands of locally elected leaders. If municipalities do not want to pursue the benefits of obtaining a certified technology park designation, they are certainly not forced to do so under the provisions of this legislation.

