

## **JOB DEVELOPMENT AUTHORITIES STUDY - BACKGROUND MEMORANDUM**

### **INTRODUCTION**

Section 3 of 2007 Senate Bill No. 2149 provides for a Legislative Council study of job development authorities to determine the economic impact created by the authorities, to examine funding mechanisms used by job development authorities when expending resources for economic development purposes, and to determine whether job development authorities serve a viable purpose. A copy of Senate Bill No. 2149 is attached as [Appendix A](#).

The Legislative Council has charged the interim Workforce Committee with performing the job development authorities study. Additionally, under Section 20 of House Bill No. 1018 the committee is charged with studying the state's system for addressing workforce needs through a workforce system initiative, under House Concurrent Resolution No. 3025 the committee is charged with studying possible methods of growing North Dakota's population and increasing the available workforce in the state, and under a Legislative Council chairman directive with studying the means by which the University System fulfills North Dakota's workforce needs. The details of these three studies are addressed in separate background memorandums.

### **LEGISLATIVE BACKGROUND**

As introduced, Senate Bill No. 2149 would have expanded the authority of county job development authorities to include taking equity positions in, proving loans to, or using other innovative financing mechanisms to provide capital for new or expanding businesses in this state or for businesses relocating to this state. The bill was passed as amended by the Senate to expand similarly the authority of city job development authorities and to provide for this Legislative Council study.

The legislative history indicates the bill was introduced to address a letter opinion of the Attorney General dated May 9, 2007, opining a county job development authority lacks express or implied statutory authority to take an equity position in a private company. A copy of Letter Opinion 2006-L-16 is attached as [Appendix B](#).

Minutes of the Senate Political Subdivisions Committee hearing on Senate Bill No. 2149 indicate the study was added to the bill in recognition that over the years a broad range of economic development tools have been added to the tool chest and perhaps some of these tools are no longer needed and could be eliminated. Specifically, the committee recognized the low rate of unemployment and questioned whether there is still a need to create more jobs in the state.

### **PREVIOUS STUDIES**

Although the 2003-04 and 2005-06 interim Economic Development Committees studied the system of state and local economic development programs, neither committee specifically addressed job development authorities.

### **STATE LAW**

#### **County Job Development Authorities**

North Dakota Century Code (NDCC) Chapter 11-11.1 authorizes counties to create job development authorities, create joint job development authorities, and contract with industrial development organizations to perform the functions of job development authorities or joint job development authorities. Chapter 11-11.1 was enacted in 1985. Section 11-11.1-03 provides the objective of a job development authority or joint job development authority is to use its financial and other resources to encourage and assist in the development of employment and promotion of tourism within the county or counties.

#### **City Job Development Authorities**

North Dakota Century Code Chapter 40-57.4 authorizes cities to create city job development authorities, create joint job development authorities, and contract with industrial development organizations to perform the functions of city job development authorities or joint job development authorities. Chapter 40-57.4 was enacted in 1987. Section 40-57.4-03 provides the objective of a city job development authority is to use its financial and other resources to encourage and assist in the development of employment within the city.

#### **Powers**

The powers of city and county job development authorities are provided under NDCC Sections 11-11.1-03 and 40-57.4-03 and are nearly the same for both types of authorities. In fulfilling the job development's objective, the authority may:

1. Sue and be sued.
2. Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. Hire professional personnel skilled in seeking and promoting new or expanded opportunities within the authority.
4. Make, amend, and repeal resolutions consistent with the provisions of this job development authority law as necessary to carry into effect the powers and purposes of the authority.

5. Acquire by gift, trade, or purchase and to hold, improve, and dispose of property.
6. Certify a tax levy as provided under the job development authority law and expend money raised by the tax for the purposes provided in the job development authority law. A county job development authority may accept and expend money from any other source.
7. Insure or provide for insurance of any property in which the authority has an insurable interest.
8. Invest any funds held by the authority.
9. Cooperate with political subdivisions in exercising any of the powers granted under the power granting section.
10. Loan, grant, or convey any funds or other property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by the job development authority law.
11. Use existing uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.
12. Take an equity position in, provide a loan to, or use other innovative financing mechanisms to provide capital for new or expanding businesses in the state or for businesses relocating to the state.
13. Exercise any other powers necessary to carry out the purposes and provisions of the job development authority law.

### Legislative History

#### Enactment

The legislative history of the 1985 legislation creating the county job development authority law indicates supporters of the legislation testified:

- County job development authorities would assist rural communities to diversify their economic bases so the communities would be less dependent on agriculture as the base of the communities' economies.
- The law would allow counties to levy a tax to provide full-time economic development programs to provide day-to-day activities instead of relying on "bird in the hand" activities.
- The law would allow counties to levy a tax to contract with existing local economic development organizations to provide full-time economic development programs, thereby avoiding duplication of services.
- New jobs were necessary to keep youth in the communities.

The legislative history of the 1987 legislation creating the city job development authority law indicates supporters of the legislation testified:

- The law would allow cities to levy a tax for a city job development authority without burdening the rural communities in the county.

- The law would allow cities to levy a tax to pay full-time professional economic developers.

#### Amendments

Since the enactment of the job development authority laws in 1985 and 1987, the general trend has been to expand the powers of the authorities. For example:

- 1991 House Bill No. 1177 provided city and county job development authorities may loan, grant, or convey any funds or property held by the authorities to carry into effect the objective of the authorities.
- 1993 Senate Bill No. 2021 provided city and county job development authorities may guarantee loans or make other financial commitments to enhance economic development.
- 1993 House Bill No. 1483 authorized the creation of joint county job development authorities and the creation of economic growth districts in counties that are part of a joint job development authority.
- 1993 Senate Bill No. 2537 provided county job development authorities may accept and expend money from any source.
- 1995 Senate Bill No. 2353 authorized the creation of joint city job development authorities.
- 2003 Senate Bill No. 2173 expanded the objective and taxing authority of county job development authorities to include promotion of tourism.
- 2007 Senate Bill No. 2149 provided city and county job development authorities may take equity positions in, provide loans to, or use other innovative financing mechanisms to provide capital for new or expanding businesses.

### CURRENT STATUS

The 2006 *Property Tax Statistical Report* published by the state of North Dakota Tax Commissioner's office indicates the following 35 counties levied a tax for county job development for a statewide total of \$2,198,600:

1. Adams;
2. Barnes;
3. Benson;
4. Bottineau;
5. Burke;
6. Burleigh;
7. Cavalier;
8. Dickey;
9. Divide;
10. Dunn;
11. Foster;
12. Golden Valley;
13. Grand Forks;
14. Grant;

15. Hettinger;
16. McHenry;
17. McIntosh;
18. McKenzie;
19. Morton;
20. Mountrail;
21. Nelson;
22. Pembina;
23. Pierce;
24. Ransom;
25. Renville;
26. Richland;
27. Rolette;
28. Sargent;
29. Slope;
30. Stark;
31. Steele;
32. Stutsman;
33. Traill;
34. Walsh; and
35. Wells.

In 2006 the following 19 counties had a city that levied a tax for city job development for a statewide total of \$146,056.86:

1. Adams;
2. Cass;
3. Divide;
4. Emmons;
5. Foster;
6. Grand Forks;
7. McHenry;
8. McIntosh;
9. Mercer;
10. Morton;
11. Nelson;
12. Pembina;
13. Ramsey;
14. Renville;
15. Richland;
16. Rolette;
17. Sargent;
18. Ward; and
19. Wells.

### STUDY PLAN

The study charge sets out three elements of the study:

1. To determine the economic impact created by the authorities;
2. To examine funding mechanisms used by job development authorities when expending resources for economic development purposes; and
3. To determine whether job development authorities serve a viable purpose.

The minutes of the Senate Political Subdivisions Committee hearing on 2007 Senate Bill No. 2149 indicate the motivation for adding the study to the bill was to determine whether the state and local

communities still need job development authorities as economic development tools to create more jobs.

To further the study charge, the committee may wish to contact the North Dakota Association of Counties, the North Dakota League of Cities, the North Dakota Economic Development Association, Job Service North Dakota, and the Department of Commerce to gather information regarding:

- Which communities have job development authorities and whether this distribution indicates authorities may be better suited for communities with specified characteristics;
- Whether there are any state trends regarding the creation or termination of job development authorities;
- Unemployment and wage statistics of communities with job development authorities;
- Whether all communities with job development authorities levy a tax to support the activities of the authorities;
- How job development authorities use funds, including records of business incentives granted by job development authorities as provided under NDCC Section 54-60.1-08;
- The range of activities of job development authorities; and
- Whether other state or local economic development tools overlap or complement the activities of job development authorities.

In planning the study approach, the committee may consider whether to coordinate this job development authority study with any of the other studies, such as the committee's workforce system initiative study, or whether to conduct this study separately from the committee's other three studies. Either approach would seem to be appropriate.

Coordination of committee studies could be done in a variety of ways. The workforce system initiative study will likely result in focus group meetings being held across the state. The focus group activities could be conducted in a way that the job development authority study also is addressed. For example, the focus group participant list could be designed to include job development authority representatives and the agendas for the focus groups could be designed to address issues relating to job development authorities. As an alternative, in meetings across the state to conduct the focus groups, before or after one or more of the actual focus groups the committee could arrange to hold a brief meeting limited to addressing job development authority issues.

Upon receipt of the requested information, the committee will be in a position to consider whether job development authorities serve a valuable function and whether it might be appropriate to recommend legislative changes.

ATTACH:2

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2149  
(Senators Lindaas, Olafson, Wanzek)  
(Representatives Aarsvold, Monson, Vigesaa)

AN ACT to amend and reenact sections 11-11.1-03 and 40-57.4-03 of the North Dakota Century Code, relating to powers of job development authorities to take equity positions; and to provide for a legislative council study.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 11-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**11-11.1-03. Powers and duties of job development authorities.** The job development authority or joint job development authority shall use its financial and other resources to encourage and assist in the development of employment and promotion of tourism within the county or counties. In fulfilling this objective, the authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the county or counties.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of property.
6. To certify a tax levy as provided in section 11-11.1-04 and to expend moneys raised by the tax for the purposes provided in this chapter. A job development authority may accept and expend moneys from any other source.
7. To insure or provide for insurance of any property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section, including enabling agreements permitted under chapter 54-40.
10. To loan, grant, or convey any funds or other property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To use existing uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.
12. To take equity positions in, provide loans to, or use other innovative financing mechanisms to provide capital for new or expanding businesses in this state or for businesses relocating to this state.

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

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

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

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

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

LETTER OPINION  
2006-L-16

May 9, 2006

Mr. Stuart A. Larson  
Traill County State's Attorney  
PO Box 847  
Hillsboro, ND 58045-0845

Dear Mr. Larson:

Thank you for your letter asking whether a county job development authority may take an equity position in a private company. For the reasons indicated below, it is my opinion that a county job development authority lacks express or implied statutory authority to take an equity position in a private company.

ANALYSIS

You indicate that a county job development authority (JDA) loaned money to a private company which is unable to pay off the loan. You ask whether the JDA may convert the unpaid loan to an equity position in the company. "Like political subdivisions and state agencies, a job development authority (JDA) created under N.D.C.C. ch. 11-11.1 is a creature of state statute and therefore possesses only those powers expressly granted to it by the Legislature or those necessarily implied from the powers expressly granted."<sup>1</sup>

The purpose of a county JDA is to "encourage and assist in the development of employment and promotion of tourism within the county."<sup>2</sup> County JDAs have a number of powers including the power to invest any funds held by the authority; loan, grant, or convey any funds or other property held by the authority for any purpose necessary or convenient to carry into effect the objectives of the JDA; and use existing uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.<sup>3</sup>

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<sup>1</sup> N.D.A.G. 2004-L-08 (quoting N.D.A.G. 96-L-205); accord N.D.A.G. 2000-F-01.

<sup>2</sup> N.D.C.C. § 11-11.1-03.

<sup>3</sup> N.D.C.C. § 11-11.1-03(8), (10), and (11).

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

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

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

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

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

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

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

<sup>7</sup> See N.D.A.G. 2004-L-08.

<sup>8</sup> Id.

<sup>9</sup> Id.

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May 9, 2006

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determination, it is not necessary to analyze whether a county JDA would be allowed by N.D. Const. art. X, § 18<sup>10</sup> to purchase capital stock in an association or corporation.<sup>11</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

jjf/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>12</sup>

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<sup>10</sup> N.D. Const. art. X, § 18 provides, in part, that “[t]he state, any county or city may make internal improvements and may engage in any industry, enterprise or business, . . . but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.” (Emphasis supplied.) See N.D.A.G. 93-F-02 (“Article X, Section 18 of the North Dakota Constitution does not prohibit the State of North Dakota from purchasing capital stock in an association or corporation if it does so through an industry, business or enterprise.”).

<sup>11</sup> N.D.A.G. 93-L-129 (“Thus, if there is statutory authority for a county to engage in economic development activities, such as a job development authority under N.D.C.C. ch. 11-11.1, then the county is engaging in an enterprise and is in compliance with the Article X, Section 18 of the North Dakota Constitution. 1992 N.D. Op. Att’y Gen. 57. However, while engaging in that enterprise, the county must act in accordance with its specific statutory authority or a statute from which the authority can be necessarily implied.”).

<sup>12</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).