

July 2008

COMMERCE DEPARTMENT ORGANIZATION, POWERS, DUTIES, AND EFFECTIVENESS - BACKGROUND MEMORANDUM

Section 21 of 2007 House Bill No. 1018 (attached as an [appendix](#)) provides for a study of the organization, powers, duties, and effectiveness of the Department of Commerce. The study is to include:

1. A review of the legislative history leading to the creation of the Department of Commerce, including the 1999-2000 interim activities of the Legislative Council's interim Commerce and Labor Committee;
2. A review of the legislative and executive branch expectations in the creation of the Department of Commerce and whether those expectations are being met;
3. Evaluation of the effectiveness of the North Dakota Economic Development Foundation in providing a nonpartisan, private sector perspective to the department's approach to the department's duties;
4. Evaluation of the organizational structure of the Department of Commerce, including whether the department should include a division of science and technology; and
5. Evaluation of the strategic planning process of the Department of Commerce and its effectiveness.

BACKGROUND

1999-2000 Interim Study

The Department of Commerce was established by the 2001 Legislative Assembly. The legislation creating the department was the result of an interim study conducted by the Commerce and Labor Committee. That committee was directed to study the economic development efforts in the state, including the provision of economic development services statewide and related effectiveness, the potential for privatization of the Department of Economic Development and Finance, and the appropriate location of the North Dakota Development Fund, Inc., including potential transfer of the fund to the Bank of North Dakota.

During the 1999-2000 interim, the Commerce and Labor Committee reviewed the functions of the Department of Economic Development and Finance, the Division of Community Services, other state departments and agencies engaged in economic development activities, local economic development entities, and other groups and entities engaged in economic development activities in the state. With respect to the Department of Economic Development and Finance, the testimony from the study indicated the three goals of the department were to develop a shared vision for economic development efforts in the state, build the local capacity and ability of

communities to secure successful investment outcomes, and promote the state to create awareness and to generate leads for successful investment outcomes. The roles of the Department of Economic Development and Finance included business assistance, business recruitment, business finance, minority business development, opportunity fund, program support, and special industry assistance. Testimony from the study indicated that areas in which the department did not provide services included community development assistance, entrepreneurial development, and international trade and investment. The study also found that economic development services were lacking in program support in policy and planning, special industry assistance and telecommunications, state development strategic planning, technology development and transfer, and workforce preparation and development. The testimony indicated that although the department was improving services provided, there was a need to address globalization and international growth.

The Commerce and Labor Committee reviewed information regarding the funding of the department and information comparing the department's funding to the funding of development agencies of other states. The committee also reviewed the National Association of State Development Agencies' biennial report comparing development agencies and services provided across the country.

With respect to the Division of Community Services, the committee received testimony that the division's primary involvement in economic development was through community block grant funds. The testimony indicated the division worked closely with regional planning councils and the Department of Economic Development and Finance.

The Commerce and Labor Committee also received testimony with respect to privatization and consolidation privatization of state economic development services. Factors given to support privatizing economic development services included removing economic development from politicians, which results in continuity between administrations; providing greater expertise as economic development gets more complicated; dealing better with the private sector elements of economic development; allowing greater flexibility in responding to market changes; and getting the private sector to be involved and help fund economic development.

The executive director of the Department of Economic Development and Finance testified in opposition to complete privatization of the state's economic development efforts in part because of the need for public accountability if public funds are

involved. However, the committee received testimony suggesting globalization might be a good example of an area that would benefit from private/public partnerships.

A representative of the Department of Economic Development and Finance testified that some potential benefits of private/public partnerships could include:

- Improved leadership roles in economic development;
- Improved vision and a strategic plan to guide the state's economic development;
- Reduced role of politics in economic development;
- Increased consistency in state development efforts;
- Leveraged public sector funds with private sector funds for economic development;
- Reduced state costs for economic development;
- Improved performance and accountability of economic development;
- Improved quality and professionalism of state development staff;
- Increased flexibility in how state economic development organizations manage resources;
- Reduced size of state government;
- Improved responsiveness of economic development in meeting the needs of business;
- Improved effectiveness of state, regional, and local economic development;
- Improved coordination of resources at all levels of economic development;
- Improved dialogue between private sector, executive, and legislative branches;
- Increased continuity in state development efforts when governors and legislators change;
- Increased use of private sector leaders as development ambassadors;
- Improved responsiveness by state development economic changes and business needs; and
- Improved information to better support state development.

The Commerce and Labor Committee received information from representatives of the National Association of State Development Agencies regarding privatization of state economic development services and associated trends. The committee was informed that the trend in privatization was more frequently implemented through a targeted approach, whereby privatization deals with one particular niche, versus a broad approach in which the privatization is general purpose. Typically, the targeted approach provided for a private, nonprofit board that oversees the activities of the public economic development agency. With a private advisory board, typically the Governor chooses the board members, and the Governor and the Legislative Assembly choose how to appropriate funds for economic development.

The Commerce and Labor Committee received testimony indicating that four of the primary objectives of states that privatize economic development services were:

1. Assisting in leveraging support of the private sector, primarily in the form of in-kind support versus financial support;
2. Creating a forum to get advice and counsel from the private sector;
3. Increasing the level of buyin from the private sector; and
4. Increasing the private sector's acceptance of state economic development programs.

A representative of the Bank of North Dakota testified that if economic development services were to be privatized, it would be necessary to reevaluate which organization should be in control of finances, and it is possible the Bank of North Dakota's role would be larger under those circumstances.

The Commerce and Labor Committee received testimony from a representative of the National Association of State Development Agencies which indicated that trends in economic development include the move toward centralization or creation of a mechanism to facilitate unification, such as creation of an economic development cabinet; unification through a single economic development budget; and proliferation of economic development at regional and local levels, whereby even if the state has some degree of control over centralization, it is difficult for a state to control or centralize at the local and regional levels.

The Commerce and Labor Committee conducted a survey of state agencies to determine which agencies were providing economic development services and the financial resources dedicated to these services. The results of the survey indicated a mixed response to cooperating in the survey and indicated economic development services were provided by a broad range of state agencies.

The National Association of State Development Agencies surveyed state agencies regarding the provision of economic development services within the state and submitted the report *NASDA Report to North Dakota on Potential Fine Tuning of State Economic Development Program*. The Department of Economic Development and Finance received high marks across the board in the survey, and negative observations indicated that perhaps there were too many economic development service providers within the state, and there did not appear to be a mechanism to coordinate the state economic development services. The report encouraged the state to:

- Establish a central cabinet-level department of commerce to create more synergy among the state's economic development programs;
- Set up a regional network to support local economic development activities;
- Create a commerce cabinet to maximize cooperation and collaboration among the

various state-funded entities that retain some economic development responsibilities;

- Create a unified economic development budget that would include all agencies that expend state funds for economic development and which would be submitted through the department of commerce; and
- Establish a private, nonprofit foundation to serve as an advisory panel for the department of commerce, which would oversee strategic planning and goal setting to guide the state's efforts to strengthen its economy, and which would set benchmarks with which to assess the effectiveness of the state's programs.

The committee received testimony suggesting that if the committee considered consolidation of economic development services, existing state agencies could be consolidated into a larger agency, an entirely new agency could be created, or a combination of these two approaches could be used.

The director of the Department of Economic Development and Finance testified that creation of a department of commerce could increase efficiency, improve customer service, and provide coordination of economic development services and planning. A representative of the Bank of North Dakota testified that it was not realistic to have "one-stop" shopping for all economic development services.

The Commerce and Labor Committee received a recommendation from the Economic Development Association of North Dakota which proposed the creation of a North Dakota Department of Commerce, including the North Dakota Department of Economic Development and Finance, Tourism Department, Division of Community Services, Labor Department, and the North Dakota Workforce Development Council.

2001 Senate Bill No. 2032

As a result of its deliberations, the Commerce and Labor Committee recommended Senate Bill No. 2032 (2001). The bill provided for the creation of a department of commerce by consolidating the Division of Community Services, Department of Economic Development and Finance, and Tourism Department. The bill proposed that the new department would be administered by a commissioner of commerce. The bill provided for the creation of five specific divisions within the department--a division of community services, a division of economic development and finance, a division of tourism, a division of international trade, and a division of workforce development. The bill provided for the establishment of a North Dakota commerce cabinet and allowed for the creation of a privately funded North Dakota development foundation.

During the standing committee hearing for 2001 Senate Bill No. 2032, there was additional testimony regarding the purposes of the proposed creation of the Department of Commerce. The chairman of the interim Commerce and Labor Committee testified that

in light of a stagnant economy, it is necessary to provide an increased state commitment to economic development which focuses resources and establishes structure, assurances, and programs that provide confidence to investors and legislators. The chairman testified that there was support for additional resources for economic development, but some concern with centralization. In addition, he stated there was substantial agreement on having a central cabinet and an economic development foundation, but skepticism regarding a unified economic development budget. The standing committee and conference committee testimony indicates that one of the greatest concerns with the bill was the inclusion of the Tourism Department within the Department of Commerce.

Standing committee testimony with respect to the creation of an economic development foundation indicated the main purposes of the foundation would be to develop a strategic economic development plan and to provide accountability with respect to economic development.

Senate Bill No. 2032, as adopted by the 2001 Legislative Assembly, consolidated the Division of Community Services, Department of Economic Development and Finance, and Tourism Department in the newly created Department of Commerce. The bill required the Governor, with the advice and counsel of the North Dakota Economic Development Foundation, to appoint the Commissioner of Commerce to administer the department. The bill provided that the department must consist of a Division of Community Services, a Division of Economic Development and Finance, a Division of Tourism, a Division of Workforce Development, and any other division determined to be necessary by the commissioner. Under the bill, after delayed implementation dates, the commissioner was required to appoint the division directors.

Senate Bill No. 2032 (2001) created a North Dakota commerce cabinet composed of the directors of each of the department's divisions and of the executive heads or other authorized representatives of the State Board for Vocational and Technical Education (now named the State Board for Career and Technical Education), the State Board of Higher Education, the Bank of North Dakota, the Department of Agriculture, the Workers Compensation Bureau (now named Workforce Safety and Insurance), the Department of Transportation, Job Service North Dakota, the Game and Fish Department, and any other state agency appointed by the commissioner. Under the bill, the cabinet was required to coordinate and communicate economic development and tourism efforts of the agencies represented and develop and make available before each regular session the Legislative Assembly a list that identifies economic development money included in the budget requests of the cabinet agencies.

Senate Bill No. 2032 (2001) created the North Dakota Economic Development Foundation composed of at least 15 members, but not more than

30 members, appointed by the Governor. The bill provided that the purpose of the foundation would be to serve in an advisory role to the commissioner; develop a strategic plan for the development of value-added agriculture; develop a strategic plan for economic development in the state; and set accountability standards, measurements, and benchmarks to evaluate the effectiveness of the department in implementing the economic development strategic plan.

The duties of the Commissioner of Commerce, as set out in 2001 Senate Bill No. 2032 and codified as North Dakota Century Code (NDCC) Section 54-60-03, include:

1. Serving as chairman of the commerce cabinet.
2. Preparing the cabinet's list identifying economic development money included in budget requests of cabinet agencies.
3. Managing the operations of the department.
4. Assuming central responsibilities to develop, implement, and coordinate a working network of commerce service providers.
5. Advising and cooperating with departments and agencies of the federal government and of other states; private businesses, agricultural organizations, and associations; research institutions; and with any individual or other private or public entity.
6. Reporting to the Legislative Assembly on the department's goals and objectives, activities and measurable results, and benchmarks.

Department of Commerce Division Duties

Although 2001 Senate Bill No. 2032 consolidated the Division of Community Services, the Department of Economic Development and Finance, and the Tourism Department into the new Department of Commerce, the duties of those divisions and the officials supervising those divisions did not change.

Division of Economic Development and Finance

The mission and duties of the Division of Economic Development and Finance and the duties of the director of the division are set forth in NDCC Chapter 54-34.3. Under Section 54-34.3-01, the mission of the division is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing;
3. Promote increased productivity and value-added products, processes, and

services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;

4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the board of higher education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the Myron G. Nelson Fund, Incorporated, the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and
6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

Other statutory duties of the director of the Division of Economic Development and Finance include administering the finance office and implementing a certification program through which the division may provide training to assist local economic developers in meeting the needs of businesses.

North Dakota Century Code Section 54-34.3-04 establishes the duties of the director of the Division of Economic Development and Finance. Those responsibilities include:

1. Assuming central responsibility to develop, implement, and coordinate within state government a comprehensive program of economic development consistent with the mission of the division.
2. Coordinating the program of economic development with all other appropriate state and local government departments, agencies, institutions, and organizations that perform research, develop and administer programs, gather statistics, or perform other functions relating to economic development.
3. Advising, and cooperating with, departments and agencies of the federal government and of other states, private business and agricultural organizations and associations, research institutions, and any individual or other private or public entity, and calling upon those entities or individuals for consultation and assistance in their respective fields of endeavor or interest in order that the division and the state may benefit from up-to-date technical advice, information, and assistance.

4. Cooperating with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential sources of funding.

North Dakota Century Code Section 54-34.3-13 requires the Department of Commerce to manage and administer the rural growth incentive program.

Division of Tourism

The duties of the director of the Division of Tourism are included in NDCC Section 54-34.4-02. Under that section, the director is required to:

1. Implement the state's tourism policy.
2. Prepare and update annually a tourism master plan for the development of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a five-year plan for activities of the division.
3. Measure and forecast visitor volume, receipts, and related social and economic impacts.
4. Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways and parks.
5. Organize and coordinate programs designed to promote tourism to, and within, the state through various means.
6. Participate in travel shows.
7. Supervise and administer visitor information centers that receive funding from the state.
8. Develop opportunities for professional and technical education and training in the visitor industry.
9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism.
10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state.
11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism.
12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their actions on travel to, and within, the state, and if necessary recommend programs or policy changes to those agencies.

Division of Community Services

The responsibilities of the Division of Community Services are set forth in NDCC Chapter 54-44.5. Section 54-44.5-04 requires the division to:

1. Provide relevant information on pertinent topics and issues which relate to public policy development, interpretation, modification, and implementation.

2. Research, analyze, and recommend public policy for the Office of Management and Budget and the executive office.
3. Coordinate public policy implementation within the state.
4. Develop state energy conservation policy and manage federal energy conservation program activities between all levels of the public and private sectors regarding the prudent and efficient use of energy resources.
5. Develop, implement, and administer federal categorical and block grant programs assigned to the division.
6. Advise, coordinate, and assist cities, political subdivisions, and the state in all phases of state and local planning for the physical development of the state.
7. Render financial assistance to any government planning agency within federal law or regulation.
8. Advise, consult, coordinate, assist, and contract with or on behalf of the various planning agencies in developing and harmonizing planning activities of the state.
9. Implement a state facility energy improvement program.

2003 Legislation

The 2003 Legislative Assembly made only one significant change that affected the structure adopted in 2001 Senate Bill No. 2032. Senate Bill No. 2393 (2003) added to the responsibilities of the North Dakota Economic Development Foundation by requiring the foundation to recommend state and federal legislation relating to strengthening the state's economy and increasing the state's population, monitor state and federal legislation and initiatives that may impact the state's economy and population, and serve as a source of expertise for developing public and private initiatives to strengthen the state's economy and increase the state's population. The bill also required the Division of Workforce Development to actively monitor local, regional, and national public and private workforce development initiatives.

2005 Legislation

The 2005 Legislative Assembly adopted legislation addressing economic development accountability, the structure of the Division of Economic Development and Finance and the Division of Community Services, and additional duties of the commissioner and the department.

House Bill No. 1203 (2005) defined a business incentive and required recipients of business incentives to enter a business incentive agreement with each grantor of the incentive. The bill required the business incentive agreement to include a description of the incentive, a statement of the public purpose of the incentive, goals for the incentive, a description of the financial obligation of the recipient if the goals are not met, a commitment by the recipient

to continue operations in the jurisdiction in which the incentive is used for five years or more after the benefit date, the name and address of the parent company of the recipient, a list of all financial assistance by all grantors for the project, and the recipient's obligation if the recipient does not fulfill the business incentive agreement. The bill required the Department of Commerce to create state grantor recipient report forms and provided that before April 1, 2007, and each April 1 thereafter, each state agency that has granted a business incentive within the last five calendar years must file an annual state grantor report with the Department of Commerce. The bill required the Department of Commerce to publish a compilation and summary of the results of the state grantor reports for each calendar year beginning in 2007. The bill also required political subdivisions to maintain records of business incentives provided to recipients and to prepare an annual political subdivision grantor report.

Senate Bill No. 2018 (2005) required the director of the Division of Economic Development and Finance to administer the International Business and Trade Office and permitted the director to contract with a third party for the provision of services for the International Business and Trade Office. The bill authorized the director to establish an International Business and Trade Office Advisory Board. The bill required the director to implement a certification program through which the division would provide training to assist local economic developers in meeting the needs of businesses. The bill established an Office of Renewable Energy and Energy Efficiency within the Division of Community Services. The bill also required the commissioner of the Department of Commerce to identify target industries to focus economic development efforts and designate one target industry as a special focus target industry. The bill required the commissioner to implement a program for use by state agencies to assist the agencies to present to the public a positive image of the state and required the commissioner to create and implement a business hotline program.

2007 Legislation

The 2007 Legislative Assembly also made structural changes to the Department of Commerce.

House Bill No. 1018 (2007) required the Division of Workforce Development to develop and implement the state's talent strategy and a statewide intelligence coordination strategy and to administer a program to increase the use of higher education internships and work experience opportunities for higher education students. The bill required the Division of Workforce Development, in developing and implementing the state's talent strategy, to develop a comprehensive, consolidated biennial statewide strategic plan for the state's system for workforce development, workforce training, and talent attraction. The bill also required the division to continuously review, identify how to improve, and implement improvements to the state's

system of workforce development, workforce training, and talent attraction. In addition, the division is required to develop and implement a system of performance and accountability measures for the state's system for workforce development, workforce training, and talent attraction.

House Bill No. 1018 (2007) required the Division of Workforce Development, in consultation with the Department of Career and Technical Education, Job Service North Dakota, and the Superintendent of Public Instruction, to develop and implement a program to assist public schools in promoting North Dakota career opportunities to students in grades 9 through 12. The bill also required the Department of Commerce to implement and administer a Beginning Again North Dakota pilot program to develop a database of skills and other assets of communities and residents to be used to advance the internal and external attitude and image of the state.

House Bill No. 1137 (2007) repealed provisions in NDCC Chapter 54-34.3 which related to the establishment of an international business and trade office, a North Dakota American Indian business development office, and a North Dakota women's business development office and reenacted similar provisions in Chapter 54-60. The bill changed the membership of the Value-Added Agriculture Promotion Board to provide that the board consists of a minimum of 9 members and maximum of 11 members and added a representative of the Agricultural Products Utilization Commission as a member of the board. The bill required that the North Dakota Economic Development Foundation Executive Committee include up to three members at large and a treasurer in addition to the chairman, vice chairman, and secretary.

House Bill No. 1019 (2007) provided that the Workforce Enhancement Council consist of the private sector members of the Workforce Development Council, the director of the Department of Career and Technical Education, and the director of the Division of Workforce Development. The bill required the Workforce Enhancement Council to recommend to the Commissioner of Commerce the approval of grants to institutions of higher education assigned primary responsibility for workforce training to be used to create or enhance training programs that address workforce needs of primary sector companies. The bill also established a workforce enhancement fund.

House Bill No. 1027 (2007), which was introduced as a result of a study during the 2005-06 interim by the Economic Development Committee, included a proposal to require the Department of Commerce to have a division of innovation and technology. Although the bill failed to pass, many of the provisions of the bill were included within 2007 House Bill No. 1018. However, the proposal to create another division within the department was not included in House Bill No. 1018.

POSSIBLE STUDY APPROACH

In conducting this study, the committee may choose to:

- Receive testimony from representatives of the Department of Commerce with respect to the organization and structure of the department.
 - Receive testimony from other interested individuals with respect to the effectiveness of the department.
 - Receive testimony regarding the activities and effectiveness of the North Dakota Economic Development Foundation.
- Receive testimony regarding the strategic planning process of the department and the results of that process.
 - Develop recommendations and legislation, if necessary to implement the recommendations, to address any proposed changes to make the department and the foundation more effective and accountable.

ATTACH:1