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HOUSE REPUBLICAN STAFF ANALYSIS

Bill: House Study Bill 103
Committee: Economic Growth
Date: February 20, 2011
Staff: Louis Vander Streek (1-3626)
Member: Rep. Lukan

Department of Economic Development Re-Organization

House Study Bill 103 is the Governor's proposal for the re-organization of the Department of Economic Development. The bill creates three new entities, the Partnership for Economic Progress, the Economic Progress Authority, and the Economic Progress Corporation. The new organizations will take over for the existing Department of Economic Development.

Summary of Action

Passed Economic Growth Committee x-y

Section by Section Analysis

Division I – Iowa Partnership for Economic Progress and Economic Progress Authority

Section 1 – Findings and Purpose

This section states that economic development is an important public purpose to be shared by both the public and the private sectors. The section goes on to say that it is in the interest of the state to enter into a collaboration between government and the private sector to those ends. The collaboration will involve the Partnership for Economic Progress, the Economic Progress Authority, and the Economic Progress Corporation.

Section 2 – Definitions

This section adds definitions referencing the new Authority, the new Corporation, the new Partnership, and others.

Section 3 – Definition Change

This section changes the definitions of ‘board’ and ‘director’ to reference the new seven person board of the Authority and the new Director of the authority, respectively.

Section 4 – Definition

This section strikes the definition referencing the Iowa Department of Economic Development.

Section 5 – Partnership for Economic Progress

This section creates the new Partnership for Economic Progress. The Partnership will serve as an advisory body within state government and will function so as to study and recommend solutions and policy alternatives for issues arising in the area of economic development.

The section states that the Partnership will consist of seven (7) members, who are to be appointed to two year terms by the governor, and who are actively employed in the private, for-profit sector of the economy or who otherwise have substantial expertise in economic development.

The section states that a quorum will be four (4) members of the partnership. Action taken by the partnership takes the affirmative vote of a majority of the appointed members. This majority shall not include a member who has a conflict of interest. The section stipulates that a statement by a member of a conflict of interest shall be conclusive for that purpose. The section states that all members of the Partnership shall give bond as required for public officers in chapter 64.

The section states that the Governor or Lieutenant Governor shall serve as the chairperson of the Partnership. However, members will elect a vice chairperson and secretary biannually. The section states that meetings shall be held at least quarterly, and by the call of the chairperson or when four or more members of the Partnership so request.

Section 6 – Duties and Powers of the Partnership

This section lists the duties and powers of the Partnership. These include the ability to call and hold meetings, the ability to create and maintain records of the Partnership’s activities and recommendations, and the ability to develop a strategic vision, which shall be submitted to the Authority and the General Assembly each year.

Section 7 – Economic Progress Authority

This section creates the Economic Progress Authority. The Authority is to be considered a public instrumentality and agency of the state with the intent to undertake programs which implement economic development policy and to undertake finance programs. The Authority will have a Board, which will contain seven (7) voting members. These members will be appointed by the Governor and approved by the Senate to four year terms. The section also stipulates that there will be four (4) ex officio, nonvoting legislative members. Two will be from the Senate. One will be appointed by the President of the Senate in consultation with the Majority Leader and one appointed by the Minority Leader. The other two will be from the House. One member is appointed by the Speaker and one is appointed by the Minority Leader. It is the intent that these members also be actively employed in the private, for-profit sector of the economy or who otherwise have substantial expertise in economic development.

The section stipulates that a quorum consists of four (4) members of the Authority. It also states that the affirmative vote of a majority of the appointed members is necessary for any action taken by the

Authority. This majority shall not include a member who has a conflict of interest. The section stipulates that a statement by a member of a conflict of interest shall be conclusive for that purpose. The section states that all members of the Authority and the Director shall give bond as required for public officers in chapter 64.

The section states that meetings of the Authority shall be held at the call of the chairperson or when two members so request. Members will elect a chairperson and vice chairperson annually, and the Director shall serve as the secretary to the Authority.

The section also stipulates that the net earnings of the authority beyond that necessary for retirement of its notes, bonds, or other obligations, or to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. The section goes on to stipulate that upon termination of the existence of the Authority, the title to all property owned by the Authority shall vest in the state. The section also states that the State reserves the right to alter, amend, repeal, or change the structure, organization, programs, or activities of the Authority, including the power to terminate the Authority.

The section also stipulates that the Authority shall be the successor entity to the Economic Development Board and the Department of Economic Development, which are eliminated. The section states that the Authority shall assume all duties and responsibilities of the Board and the Department.

Section 8 – Conflicts of Interest

This section states that if a member or employee of the Authority other than the Director has a direct or indirect interest in a contract that the Authority is acting on, that the interest shall be disclosed to the Authority in writing and that it be set forth in the minutes. This member with the conflict of interest shall not participate in any action of the Authority with respect to that contract. The section stipulates that a violation of this provision is misconduct in office under section 721.2 (nonfelonius misconduct in office, a serious misdemeanor). The section also defines ‘action of the Authority with respect to that contract’ to mean only an action directly affecting a separate contract, and does not include an action which benefits the general public or which affects all or a substantial portion of the contracts included in a program of the Authority.

The section also states that the Director shall not have an interest in a bank or other financial institution in which the funds of the Authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the Authority is a party. The section further stipulates that the Director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for his/her role as Director.

Section 9 – General Powers of the Authority

This section states that the Authority has any and all powers necessary and convenient to carry out its purposes and duties. These powers include, but are not limited to the ability to:

- issue negotiable bonds and notes to finance its programs
- sue and be sued in its own name
- have and alter a corporate seal
- make alter bylaws for its management
- make and execute agreements and contracts
- adopt procedures relating to competitive bidding
- the Authority is exempt from existing state laws or rules which require competitive bids

- acquire, hold, improve, mortgage, lease, and dispose of real and personal property
- procure insurance against loss
- fix and collect fees and charges for its services
- invest or deposit moneys
- accept appropriations, gifts, grants, loans, or other aid from public or private entities
 - a record of all gifts or grants stating the type, amount and donor is required in the Annual Report
- provide technical assistance and counseling related to the Authority's purpose
- conduct research studies, develop estimates, gather and compile data
- enter into agreements with other governmental entities to undertake economic development activities in the state of Iowa
- own or acquire intellectual property rights including copyrights, trademarks, patents, etc.
- make, alter, and repeal rules
- form committees or panels to facilitate the Authority's duties
- establish funds within the state treasury, which shall not revert to the general fund
- select projects to receive assistance
- exercise all powers typically exercised by private enterprises engaged in business pursuits

The section also stipulates that the purchase or lease of real property shall require written notice from the Authority to the Government Oversight committees of the General Assembly and the prior approval of the Executive Council. The section states that other departments, boards, commissions, and other agencies of the state shall provide reasonable assistance and services to the Authority upon the request of the Director in order to conduct the Authority's affairs.

Section 10 – Specific Program Powers

This section further lists the powers the Authority has in order to carry out its programs. These powers include the ability to:

- undertake more extensive research
- establish a nonprofit corporation for the purposes of receiving and disbursing funds from public or private sources
- provide export documentation to Iowa businesses if no other government entity is doing so
- delegate, except for an essential government function, to the corporation the performance of the following functions:
 - marketing and promotional activities
 - policy research
 - economic analysis
 - expansion of international markets for Iowa-produced or Iowa-based products
 - consulting services, except for in relation to an application for financial assistance under any program administered by the Authority

Section 11 – Director – Responsibilities

This section lays out the responsibilities of the Director. The section states that the Board shall appoint a Director of the Authority, who shall serve at the pleasure of the Authority Board. The section stipulates that the Director is forbidden from exerting influence to induce any other officers or employees of the state to adopt a political view or to favor a political candidate for office. The section directs the Director to advise the Authority and act on the Authority's behalf to carry out directives from the Authority Board.

The section allows for the Director to designate certain employees as 'key professional personnel' and to classify and fix the compensation of said personnel. The Director shall also employ other personnel as

necessary. These nonprofessional employees shall be consistent with chapter 8A. Professional employees, however, shall be exempt from the provision of chapter 8A and chapter 20. The Director, in consultation with the Authority board, may also establish incentive programs for employees of the Authority.

Section 12 – Bonds and Notes

This section gives the Authority the ability to issue negotiable bonds and notes in principal amounts as are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the Authority needed to carry out its powers and purposes.

The section stipulates that the bonds and notes issued by the Authority are payable solely and only out of the moneys, assets, or revenues of the Authority. The section states that these bonds and notes are **not** obligations of the state or any political subdivision other than the Authority. The section describes these bonds and notes as special obligations of the Authority. The section states that the Authority may **not** pledge the credit or taxing power of the state or any political subdivision other than the Authority or make its debts payable out of any moneys except those of the Authority.

The section also describes the bonds in detail, stating that they must:

- state the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to the principal and interest solely out of the assets of the Authority, constitute an indebtedness of the Authority, and do not constitute an indebtedness of the state or any political subdivision
- be registered to the principal, and issued in denominations as the Authority prescribes, fully negotiable instruments under the laws of the state, contain certain signatures, be payable as to the principal at times over a period not to exceed fifty (50) years, and other stipulations

The section also allows the Authority to issue its bonds for the purpose of refunding any bonds or notes of the Authority then outstanding. The section allows the Authority to issue negotiable bond anticipation notes. The section stipulates that each pledge agreement by or to the Authority shall be filed with the Secretary of State.

Section 13 – Economic Progress Corporation

This section establishes the Economic Progress Corporation. The Corporation is established as nonprofit corporation organized under chapter 504 and that qualifies as a 501(c)(3) as an organization exempt from taxation. The section states that the Corporation shall be established for the purpose of receiving and disbursing funds from the public or private sources to be used to further the overall development and economic well-being of the state.

The section also stipulates that the Corporation shall collaborate with the Authority, but that it shall **not** be considered an agency, department, or administrative unit of the state. The section also states that the Corporation shall **not** receive appropriations from the General Assembly. Nor shall the Corporation be required to comply with any requirements that apply to a state agency, department, or administrative unit and shall not exercise any sovereign power of the state. Further, the Corporation does **not** have the Authority to pledge the credit of the state, and the state shall not be liable for its debts or obligations.

The section states that the Articles of the Corporation shall provide for its governance and its efficient management. It further states that the Articles must address:

- a Board of Directors to govern the corporation, composed of seven members initially appointed by the Governor and thereafter selected by a majority vote of the Authority Board
- the appointment of a CEO by the Board
- the delegation of powers and responsibilities to the CEO
- the employment of personnel necessary
 - these employees are to be considered employees of a private, nonprofit corporation and are exempt from personnel requirements imposed on state agencies, departments, and administrative units
- the financial operations of the corporation

The section states that the Board of Directors of the Corporation and the CEO shall act to ensure that the Corporation:

- review and implement the strategic plan developed by the Partnership
- prepare an annual budget
- prepare an annual report for the Authority on the Corporation's activities each year
- prepare or causes to be prepared a financial audit

Lastly, the section states that the Corporation shall keep confidential all information disclosed to it by the Authority as part of a contract executed pursuant to section 15.106B (Specific Program Powers).

Section 14 – Duties and Responsibilities of the Corporation

This section states that the Corporation's Board of Directors and the CEO shall determine the activities and priorities of the Corporation. Further, the Corporation shall also:

- perform any functions delegated by the Authority
- encourage, stimulate, and support the development and expansion of the state's economy
- develop and implement effective marketing and promotional programs
- formulate and pursue programs for encouraging the location of new business in the state and for retaining and fostering the growth of existing businesses
- solicit the involvement of the private sector, including support and funding, for economic development initiatives in the state
- coordinate the economic development efforts of other state and local entities in an effort to achieve policy consistency
- collect and maintain any economic data and research that is relevant to the formulation and implementation of effective policies
- encourage the expansion of trade and export of Iowa products and services to national and international markets
- cooperate with and provide information to state agencies, local governments, community colleges, and the regents universities on economic development matters, including the areas of workforce development and job training
- work in consultation with the Iowa Innovation Council to formulate policy ideas and further innovation within the state's economy

Section 15 – Annual Reporting Requirements

This section requires an Annual Report be submitted by the Director to the Authority Board. The report is to describe the activities of the Authority during the preceding fiscal year. The report must contain:

- targeted small business procurement activities by DAS
- certifications of targeted small businesses by Department of Inspections and Appeals
- targeted small business financial assistance program summary by the Authority
- a list of procurement goals for the targeted small business marketing and compliance manager

and the performance of each agency in meeting the goals

Section 16 – Removal of Subsection

This section strikes the paragraph in existing Code that described a primary responsibility of the Department of Economic Development to provide assistance to the previous corporation to receive and disburse funds.

Section 17 – Repeal

This section repeals existing Code that allowed for the creation and ongoing operations of a corporation under the Iowa Development Commission.

Section 18 – Continuing Validity of Department Rules

This section states that all rules promulgated by the Department of Economic Development shall remain in effect after the elimination of the Department. The section further states that revised rules shall be adopted as soon as practicable.

Section 19 – Transition of Employees

This section states that all employees of the Department of Economic Development shall be considered employees of the Economic Progress Authority. The section further states that these employees shall suffer no loss in years served, sick leave and vacation time accrued, or other benefits of their current employment.

Section 20 – Continuation of Financial Assistance

This section states that any moneys remaining in any account or fund under the control of the Department of Economic Development shall be transferred to a comparable fund or account under the control of the Economic Progress Authority. The funds shall not revert to the account or fund from which they were appropriated or transferred.

The section also states that any license, permit, or contract issued or entered into by the Department of Economic Development relating to the provisions of the Act shall continue in full force and effect.

The section states that financial assistance provided via the Iowa Values fund and financial assistance program pursuant to 15G (Grow Iowa Values Fund and Renewable Fuel Infrastructure) shall continue as provided in those agreements. The Economic Progress Authority is now charged with administering these agreements.

Division II – Miscellaneous Program Changes

Section 21 – Code Language Change

This section updates a code reference.

Section 22 – Grow Iowa Values Fund Renamed

This section renames the Grow Iowa Values fund to the Economic Progress Fund.

Sections 23 and 24 – Referential Changes

This section makes appropriate changes of Grow Iowa Values fund to Economic Progress Fund and Department of Economic Development to Economic Progress Authority.

Section 25 – Definitions

This section adds the definitions for ‘Authority’ and ‘Director’ in the Iowa Commission on Volunteer Service code section.

Section 26 – Iowa Commission on Volunteer Service

This section transfers the Iowa Commission on Volunteer Service from the purview of the Governor’s office to the Authority.

Section 27 - Volunteer Service Commission Membership

This section describes the commission membership as consisting of such Authority personnel as the Director deems best qualified. The section also states that the commission shall not be an appointive commission for purposes of chapter 69.

Section 28 – Volunteer Service Commission Administration

This section makes appropriate changes referencing the transfer of the Iowa Commission on Volunteer Service from the purview of the Governor’s office to the Authority.

Section 29 - Referential Change

This section makes an appropriate code reference change in regards to the Agriculture Assets Transfer Tax Credit and the Life Science Products.

Section 30 – Industrial New Jobs Training

This section changes language in code regarding the Industrial New Jobs Training Program. The section tasks the Economic Progress Authority with overseeing the program and expanding the departments required to consult about the program to the Department of Revenue and the Department of Workforce Development. The section requires the Authority to compile a report on the effectiveness of the program, which shall be measured by evaluating the number of jobs created by the program and by the amount of withholding taxes from employers that are used to pay for certificates issued.

Section 31 – Repeal

This section repeals the code chapter on Life Science Products.

Division III – Office of Energy Independence Transferred

Sections 32-36 - Deletions

These sections remove appropriate references concerning the Office of Energy Independence.

Sections 37-42– Definitions and Referential Changes

These sections make appropriate word changes to the Life Cycle Cost Analysis of Public Facilities and Energy Development and Conservation sections of the code.

Section 43 – Repeal

This section repeals the code section on the Iowa Climate Change Advisory Council.

Section 44 – Repeal

This section repeals the code section on Energy Independence Initiatives.

Section 45 – Code Editor Directive

This section direct the Code Editor to change the words ‘Office of Energy Independence’ to ‘Economic Progress Authority’ and ‘office’ to ‘Authority’ in numerous code sections.

Section 46 – Transition Provisions – Continuation of Grants

This section states that any moneys remaining in the account or fund under the control of the Office of Energy Independence shall be transferred to a comparable fund or account under the control of the Economic Progress Authority. The section states that any license, permit, or contract issued or entered into by the Office of Energy Independence shall continue in full force and effect.

The section also states that grants or loans **awarded** from the Iowa Power Fund shall continue as provided by the terms of the grants or loans and shall be administered by the Authority.

Section 47 – Transition Provisions – Emergency Rulemaking

This section directs the Economic Progress Authority to adopt administrative rules previously adopted by the Office of Energy Independence not later than July 1, 2011.

Section 48 – Effective Date

This section states that the sections of the Act providing for emergency rulemaking and repealing of the Iowa Climate Change Advisory Council take effect upon enactment

Division IV – Conforming Changes

Sections 49-79 – Conforming Changes

These sections relate to conforming changes within the code referencing the Partnership for Economic Progress, the Economic Progress Authority, and the Economic Progress Corporation. The sections also contain Code Editor directives to make appropriate changes throughout the code.

Amendment Analysis

H-0001 by xxx –

Lobbyist Declarations

For

IA Department of Economic Development
Alliant Energy Corporation
MidAmerican Energy Company
ABI
IA Utility Association

Against

IA Citizens for Community Improvement