



Committee Report, Vol. 16, No. 2

**Department of Economic Development's
Job Training Grant Program: Statutory
Compliance**

Legislative Audit Office

November 2009

Performance Audit Committee

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Grant Program: Statutory Compliance**

November 2009

Prepared by
Stephanie Meese
Dana McNeil

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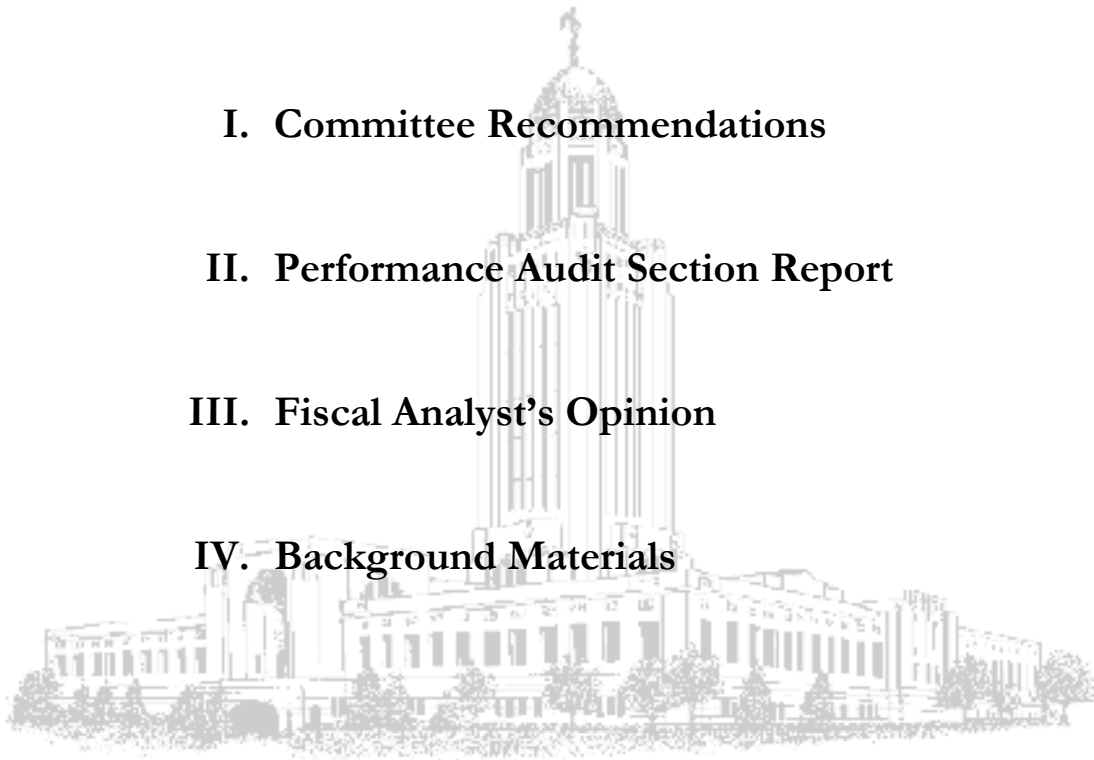


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I. Committee Recommendations

Committee Recommendations

Audit Summary

The Department of Economic Development (DED) awards job training grants from the Job Training Cash Fund, which was created by LB 305 in 1989. In 1995, the Legislature adopted LB 326, which added requirements that increased program accountability including: (1) businesses applying for job training grants submit detailed plans to DED regarding the nature of the business and the jobs to be created or retrained; businesses that received such grants submit annual and final performance reports to DED; and (3) required that DED monitor the projects, including site audits and review of business records as necessary.

In FY2005-06, the Legislature more than doubled the balance of the Job Training Cash Fund with a \$15M transfer from the Cash Reserve Fund, and in the following two fiscal years transferred an additional - \$5M per year to the Fund. In 2008, the Legislature adopted LB 956 which required DED to submit annual reports to the Legislature and give priority consideration to training services offered by community college areas.

The audit staff found that DED is in compliance with statutory requirements requiring development of the job training grant and grant repayment process. DED has also developed required processes for monitoring grant recipients and is following those processes. However, DED is not compliant with substantive provisions of a requirement for an annual report, and some of the program's regulations should be updated.

We also found that in FY2008-09, 44 percent of the grant-recipient businesses used a community college for at least part of their job training. We are unable to determine whether this amount meets the Legislature's goal for increasing the involvement of community colleges in this process because the statute contains no target amount. We also found that DED may be able to take some additional steps to encourage businesses to use the community colleges but that the colleges themselves may also need to conduct additional outreach.

The following are the Performance Audit Committee's specific recommendations for this report.

Section II: Department of Economic Development's Statutory Compliance with Grant Reporting, Monitoring, Administrative and Repayment Requirements

Finding #1: The Department of Economic Development (DED) is compliant with the statutory requirement that it promulgate rules and regulations; however the existing regulations are out-of-date.

Discussion: DED's existing regulations for this program were promulgated on November 23, 1996 and do not reflect subsequent statutory changes and, in some instances, DED's current practice.

Recommendation: DED should update regulations regarding the job training grant program to reflect current practice.

Finding #2: DED is compliant with statutory requirements regarding the job training grant process.

Finding #3: DED is compliant with statutory requirements regarding monitoring of business grant recipients.

Finding #4: DED has processes in place that comply with the statutory requirements, although no instances requiring the repayment of grants have occurred to date.

Recommendation: None.

Finding #5: We found DED to be noncompliant with the annual report requirement based on the lack of content in its 2008 report; however, DED stated that they did not believe the report was due until the following year.

Discussion: As stated previously, DED has assured us that they "will make every effort" to comply with the statutory requirements regarding their annual report in the future.

Recommendation: DED should ensure that future annual reports contain the statutorily required information.

Section III: The Use of Community Colleges for Job Training Grant Projects

Finding #6: The language of Neb. Rev. Stat. § 81-1204.01 requires DED to prioritize consideration of community colleges to provide job training; however, DED is limited in the extent to which it can do so.

Finding #7: Of businesses that received grants in FY2008-09, 44% utilized a community college for at least a portion of their job training.

Finding #8: We cannot determine whether the 44% use of community colleges to provide job training meets the Legislature's intent of prioritizing that use, since the statute provides no specific amount of training to be done by the colleges.

Finding #9: DED provides information regarding community college training programs to prospective businesses.

Finding #10: DED may be able to take additional steps to encourage businesses to use community colleges to provide job training; however, the colleges themselves may also need to take additional initiative if they want to provide additional job training.

Discussion: Without more specific statutory requirements, DED can only encourage businesses to use community colleges for their job training under Neb. Rev. Stat. § 81-1204.01. If the Performance Audit Committee (Committee) is satisfied with the current use of community colleges under this program, no changes are necessary. If the Committee is not satisfied, however, additional statutory changes may be needed.

Recommendation: DED should consider notifying community colleges that businesses may be locating in their area earlier in the process where possible. DED should also consider providing a direct link to area community college Web sites from the DED job training Web site.



II. Performance Audit Section Report

Legislative Audit Office Report

**Department of Economic Development's Job Training
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Stephanie Meese
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INTRODUCTION

Funding job training in Nebraska has been a priority of the Legislature since 1989, when the Job Training Cash Fund was established.¹ Recently, questions concerning the administration of this fund have been presented to the Legislature, in part because a 2005 statutory change that resulted in large transfers from the Cash Reserve Fund to finance the grants.

In May 2009, the Legislative Performance Audit Committee (Committee) directed the Legislative Audit Office (Office) to conduct a performance audit of job training grants, focusing on statutory requirements for the Department of Economic Development (DED) in administering this program and specifically, the requirement that DED give the community colleges priority consideration for provision of training services to businesses receiving job training grants. Specifically, the Committee directed the Office to answer the following questions:

- 1) Statutory Compliance: Is DED compliant with the grant reporting, monitoring, and administrative requirements, as set forth in Neb. Rev. Stat. §§ 81-1203, 81-1205, 81-1206, and 81-1210, and the grant repayment requirements as set forth in Neb. Rev. Stat. §§ 81-1207 through 81-1209?
- 2) Community College Provisions:
 - Has DED taken adequate steps to provide community colleges priority consideration as required by Neb. Rev. Stat. § 81-1204.01?
 - From the perspective of DED and the community colleges, what can be done to further encourage the use of community colleges by businesses that receive job training grants?

Section I of this report gives an overview of the funding sources for the Job Training Grant Cash Fund. Sections II and III answer the specific questions posed for this audit.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The methodologies used are described briefly at the beginning of each section, with further detail included in the appendix.

We appreciate the cooperation and assistance of DED and the Nebraska Community College's personnel during the audit.

Notes

¹ LB 305 (1989).

SECTION I: Job Training Grants in Nebraska

In this section, we give a brief overview of the history of the Job Training Grant Cash Fund (Fund), as well as the funding and administration of the grant program.

Creation and Funding of the Job Training Grant Cash Fund

In 1989, the Legislature created the Job Training Cash Fund with the adoption of LB 305. The bill's purpose was to support "job training activities of new businesses or businesses which were expanding in [Nebraska] . . ." and the Legislature made the Department of Economic Development (DED) responsible for administering the Fund.¹

The initial source of revenue for the Fund was transfers from the Employment Security Special Contingent Fund. Under LB 305, transfers may be made at the Legislature's discretion.² From 1989 to 1995, \$1.6 million was transferred from the Employment Security Special Contingent Fund into the Job Training Cash Fund.³

In 2005, the Legislature adopted LB 427, which allows the Legislature to transfer money to the Job Training Cash Fund from the state's Cash Reserve Fund.⁴ In FY2005-06, the Legislature transferred \$15 million to the Fund, and \$5 million each fiscal year in FY2006-07 and FY2007-08.⁵

Statutes Governing Job Training Grants

Neb. Rev. Stat. §§ 81-1201.21 through 81-1210 establish the Fund and lay out the requirements for grants given from it. DED is required to use the Fund to reimburse businesses for job training activities and thereby encourage the development of new businesses in Nebraska and the training of existing Nebraska workers.⁶

We discuss the requirements of these sections, as well as DED's compliance with the requirements, in Section II and III.

Notes

¹ Legislative History, LB 305 (1989), committee hearing remarks by Senator Bill Barrett, March 1, 1989, pg. 2.

² The source of revenue for the Employment Security Fund is penalties paid by businesses that are or have been delinquent on unemployment insurance payments. Legislative History, LB 305 (1989), committee hearing remarks by Sen. Bill Barrett, March 1, 1989, pg. 2.

³ Legislative Fiscal Office, "Transfers to Job Training Cash Fund," received March 26, 2009.

⁴ LB 427 (2005), Fiscal Note. Additionally, prior to the amendment, in FY94-95, the Legislature transferred \$6 million from the Cash Reserve Fund into the Job Training Cash Fund. Legislative Fiscal Office, "Transfers to Job Training Cash Fund," received March 26, 2009.

⁵ Legislative Fiscal Office, “Transfers to Job Training Cash Fund,” received March 26, 2009; Neb. Rev. Stat. § 84-612.
⁶ Neb. Rev. Stat. § 81-1201.21(2).

SECTION II: Department of Economic Development's Statutory Compliance with Grant Reporting, Monitoring, Administrative and Repayment Requirements

In this section, we report the results of our analysis of the Department of Economic Development's (DED's) statutory compliance with grant reporting, monitoring, administrative and repayment requirements. Our evaluation is based on interviews with DED staff, our review of DED administrative regulations and relevant statutes, information obtained from the DED Web site, and DED's annual report to the Legislature dated January 14, 2009.

Administrative Requirements

By law, DED must promulgate rules and regulations to carry out the provisions of the job training grant statutes and we found that DED has done so. However, we also found that the existing regulations were promulgated on November 23, 1996 and do not reflect subsequent statutory changes and, in some instances, DED's current practice.¹

FINDING: DED is compliant with the statutory requirement that it promulgate rules and regulations; however the existing regulations are out-of-date.

Job Training Grant Process

As stated in Section I, DED must use the Job Training Cash Fund (Fund) to reimburse businesses for job training activities, including pre-employment training, on-the-job training, and training equipment costs.² Both new and expanding businesses are eligible for these grants.³

The job training grant process is not competitive, as the process is an open cycle, with no due dates or deadlines.⁴ To apply for a job training grant, an applicant business must submit a business plan to DED containing the number of jobs that will be created or positions to be retrained; the nature of the business and the type of jobs that will be created or retrained; the estimated wage levels of these positions; and a job training program schedule.⁵

DED compares the proposed business plan to a number of statutory criteria, including that the wage levels of the newly created jobs meet the local prevailing rate, the goods or services produced will be export-oriented, and 75% of the jobs will be full-time positions.⁶ In ad-

dition, DED cannot approve a grant that exceeds certain per-position dollar thresholds.

DED over-commits—that is, commits to potential job training grant projects a higher amount than is in the Fund—a certain percentage of money because: (1) some companies will not choose to locate in Nebraska; (2) others will not use all of the funds allocated; and (3) the job training grants are disbursed over a period of time, rather than all at once. As of April 2009, DED was overcommitted by 10%. Since a certain portion of the job training grant funds are always committed for future disbursement, there is always a balance in this account.⁷

DED Grant Process Compliance

In assessing statutory compliance, we conducted a file review of job training grant recipient files from FY2007-08 and FY2008-09. A total of 30 grants were awarded in this time period and we reviewed each of those files.

Based on this file review, as well as interviews with DED staff, we found that DED is awarding grants for job training activities within the statutory dollar limitations, requiring businesses to submit business plans, and awarding grants exclusively for jobs that fit certain thresholds.

<p>FINDING: DED is compliant with statutory requirements regarding the job training grant process.</p>

Grant Monitoring

Once a grant is approved, recipient businesses must file annual performance reports to DED and a final performance report upon completion of the project.⁸ Additionally, DED is required to monitor the progress of job training projects.⁹ In order to do so, statute authorizes DED to conduct site audits as necessary, including the review of business records.¹⁰ According to DED staff, DED is more likely to do a site visit if the grant was large or if the business is requesting more money for job training.¹¹

DED regulations explain the monitoring process and these monitoring and audit requirements are included in each contract with a business receiving a job training grant, as well as referenced on the DED Web site.¹² DED staff also stated that they audit each grant every time they receive a request for reimbursement from the business. These audits consist of checking each request for accuracy, duplication of social security/unique employee ID numbers, reasonableness

of the hours of training during the period for which reimbursement is requested, and validation of calculations for reimbursement.¹³

Of the 30 files we reviewed, five had evidence of monitoring and each contained annual performance reports from the recipient business, as well as final performance reports for those files that were closed. Taking into account each method of monitoring that DED performs, we found DED to be compliant with grant monitoring requirements.

FINDING: DED is compliant with statutory requirements regarding monitoring of business grant recipients.

Grant Repayment

By law, a grant recipient must repay a portion of the grant if it creates fewer jobs than stated in its business plan or relocates, abandons or sells its business.¹⁴ Any funds reimbursed to DED under these circumstances must be remitted to the State Treasurer for credit to the Job Training Cash Fund.¹⁵

DED staff stated that repayment penalties have not been imposed, primarily because DED only reimburses a business *after* it has proven to DED's satisfaction that the training provided for in the grant contract has, in fact, occurred. Since payments are made on a reimbursement basis only, DED would not use the repayment provisions unless it determined that a business had deliberately misstated the number of positions it intended to create. DED has encountered circumstances in which a business failed to create the number of positions stated in its business plan due to unplanned circumstances.¹⁶ In that case, DED amended its contract with the business, decreasing the number of positions to be created and eliminating further grant reimbursements.¹⁷

Although repayment as set out in the statute has never occurred, the provisions of Neb. Rev. Stat. § 81-1207 are included in each grant contract with recipient businesses and are referenced as "penalties for nonperformance" on the DED Web site.

FINDING: DED has processes in place that comply with the statutory requirements, although no instances requiring the repayment of grants have occurred to date.

Annual Report to Legislature

In 2008, the Legislature adopted LB 956, which added a requirement that DED file an annual report on the Job Training Grant Program

with the Legislature by December 1 of each year.¹⁸ For each active grant, DED must provide the following information to the Legislature:

- number of positions to be trained;
- whether new or existing employees are to be trained;
- length of time each project has been active;
- amount of funding committed to each project;
- amount of funding paid out to date for each project; and
- the projected completion date for each project.¹⁹

For each closed grant, DED must provide the following information:

- total number of employees trained;
- whether new or existing employees were trained;
- total project expenditures; and
- the duration of each project.²⁰

The report must also include a summary of the use of the community college areas to provide training services, a list of the projects where the community colleges are providing all, or a component of, the training services and in cases where private or in-house training is used, the name of the private or in-house training service and its qualifications.²¹

2008 Annual Report

The annual report requirement went into effect in 2008, and DED's first report was due December 1, 2008.

Although DED did submit an annual report in 2008, we found that the only information included in DED's 2008 report which met the statutory requirements was the total amount of funding committed to each active grant project and each closed grant project.²² These were reported as the "contract amount." DED also included a brief summary of its efforts to promote the use of community colleges for job training by Nebraska businesses, but did not include the number or percentage of times community college services were used by businesses.

When asked about the information not included in the report, a DED representative told us that they did not believe they were required to do the report because they would not have had a full fiscal year's worth of information in December 2008. DED stated that when they were asked by the Legislature in early December 2008 to provide a report, they put one together with information they already had available.²³ DED stated that they "will make every effort" to comply with the statute regarding their annual report in the future.²⁴

FINDING: We found DED to be noncompliant with the annual report requirement based on the lack of content in its 2008 report; however, DED stated that they did not believe the report was due until the following year.

Notes

¹ Neb. Rev. Stat. § 81-1210. NAC Title 85, Ch. 1, is also incorporated by reference in all contracts with recipient businesses.

² Neb. Rev. Stat. § 81-1201.21(2).

³ *Ibid.*

⁴ Meeting with Department of Economic Development (DED) staff, May 7, 2009.

⁵ Neb. Rev. Stat. § 81-1203.

⁶ Meeting with DED staff, May 7, 2009.

⁷ Meeting with DED staff, April 9, 2009.

⁸ Neb. Rev. Stat. § 81-1205.

⁹ Neb. Rev. Stat. § 81-1206.

¹⁰ *Ibid.*

¹¹ Meeting with DED staff, May 7, 2009.

¹² NAC Title 85, Ch. 1, 001.06A.

¹³ E-mail from DED staff, September 8, 2009.

¹⁴ Neb. Rev. Stat. § 81-1207 specifies a schedule for repayment based on the number of jobs actually created. If less than 50% of the jobs are created, full repayment of the grant is required; if 50% to 70% of the jobs are created, 50% of the grant must be repaid; if 70% to 90% of the jobs are created, then 25% of the grant must be repaid. If 90% or more of the jobs are actually created, no repayment is required. Neb. Rev. Stat. § 81-1208 states that if a business relocates or abandons its site during the grant reimbursement period, all grant disbursements must be repaid to DED immediately. In the case of the sale of a business, complete reimbursement of all grant money must occur unless the new business agrees to carry out the terms and conditions of the business plan.

¹⁵ Neb. Rev. Stat. § 81-1209.

¹⁶ An example of such a circumstance was the purchase of software which increased the productivity of existing employees, thus making the creation of additional positions unnecessary.

¹⁷ Meeting with DED staff, April 9, 2009.

¹⁸ Neb. Rev. Stat. § 81-1205.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Additionally, the report was not submitted until January 14, 2009 and was sent to the Clerk of the Legislature rather than the Appropriations Committee, as directed by statute.

²³ Meeting with DED staff, June 23, 2009.

²⁴ *Ibid.*

SECTION III: The Use of Community Colleges for Job Training Grant Projects

In this section we report the results of our analysis of whether the Department of Economic Development (DED) has taken adequate steps to provide community colleges priority consideration as required by statute. We also include suggestions from the community colleges regarding steps DED could take to further encourage the use of community colleges by businesses that receive job training grants. Our evaluation is based on interviews with DED and community college staff, our review of DED administrative regulations and relevant statutes, information obtained from the DED Web site, including the business application form, a review of relevant DED files, and DED's annual report to the Legislature dated January 14, 2009.

Job Training and the Community Colleges

When the Legislature created the Job Training Cash Fund in 1989, Senators discussed the possibility of training funds going to community colleges. For example, Senator Scott Moore stated that the bill would allow DED “to work with the community colleges and others on helping ... provide training to those new businesses when they come to Nebraska.”¹ However, the Legislature did not include any provisions requiring or encouraging those receiving grants to use community college training.

LB 956 (2008)

With the passage of LB 956 (2008), the Legislature added a requirement that DED give priority consideration to training services offered by the community colleges “whenever practicable.”² The introducer of the bill stated that her purpose in introducing this legislation was to encourage “the Department of Economic Development to give priority consideration to training services offered by community colleges.”³ Other portions of the legislative history for the bill indicate that the Legislature wanted to foster greater communication between DED and the community colleges, with the hope that this would result in new or expanding businesses utilizing training offered by community colleges more frequently.⁴

However, we found that, in practice, DED is limited in the extent to which it can prioritize use of community colleges to provide job training. DED can and does encourage applicant businesses to use community colleges (as described in more detail below); but ultimately each business, not DED, decides who will provide the training.

FINDING: The language of Neb. Rev. Stat. § 81-1204.01 requires DED to prioritize consideration of community colleges to provide job training; however, DED is limited in the extent to which it can do so.

Current Use of Community Colleges for Job Training Grant Projects

DED reported, and we verified in our file review, that of the 16 grants given in FY2007-08, prior to the statutory change, eight, or 50%, utilized a community college for at least a portion of their training needs. In FY2008-09, seven of the 16 grantees, or 44%, used a community college.⁵ However, because the statute sets no specific amount of job training that the Legislature wants the community colleges to perform, we cannot determine whether these percentages meet the Legislature's intent for prioritization of community colleges in the grant process.

FINDING: Of businesses that received grants in FY2008-09, 44% utilized a community college for at least a portion of their job training.

FINDING: We cannot determine whether the 44% use of community colleges to provide job training meets the Legislature's intent of prioritizing that use, since the statute provides no specific amount of training to be done by the colleges.

DED's Efforts to Involve Community Colleges

DED notifies the local community college as soon as an applicant business's contract is approved, and again when the contract is signed by the business.⁶ This was verified by those community colleges that have provided training under this program.⁷

In their annual report to the Legislature, DED summarized its efforts to involve the community colleges this way:

The Department has taken an active role in promoting the use of the Community College system in the acquisition of training for companies applying for training dollars. The manager of this program has: met with all of the community college presidents both individually and as a group; done numerous presentations with the community colleges promoting the program and the use of the community college's training resources; included a statement in the program description and application encouraging the use of the community colleges in the acquisition of training; and notified

the local community college when an application has been approved for funding.⁸

The majority of community colleges confirmed that they had met or had some type of contact with DED at the state level regarding this grant program, in addition to contact at the local level.⁹

Additionally, DED has the following statement on their Web site under the link for customized job training information: “The Nebraska Department of Economic Development encourages businesses that are interested in applying for grant funds to work with their local community college in application preparation and development of their training plan.”¹⁰ The same statement is repeated on the top of the downloadable job training grant application.¹¹

<p>FINDING: DED provides information regarding community college training programs to prospective businesses.</p>
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We discovered an issue with this statutory requirement that has affected community college expectations when we interviewed staff from all six community colleges in Nebraska, as well as the Executive Director of the Nebraska Community College Association.¹² Several of these individuals stated that when LB 956 was passed, they believed that all job training under this program would *be required* to be provided by the community colleges. The individuals stated that it came as a shock to many of the community colleges when they later discovered that businesses could decide how the job training was to be delivered, whether in-house, via a community college, or from another outside source.¹³

Increasing the Use of Community Colleges in the Future

We asked representatives from each community college how DED might further encourage the use of community colleges by businesses receiving job training grants. Most said that DED could let them know earlier in the process about potential relocation or expansion of businesses in their area.¹⁴

Currently, DED notifies a local community college only after a contract has been issued to a business, and then again once the contract has been signed. Both the community college representatives and DED agree that by this point, most of the recipient businesses have already decided how the job training will be provided. Many of the community college representatives stated that if DED involved the community colleges earlier in the recruitment process, they could get involved in the initial grant meetings with the business and increase their chances of ultimately providing the training.¹⁵

Several of the community college representatives also recognized some fault on the behalf of the community colleges themselves, rather than DED, stating that the community colleges need to take the initiative to be more involved in the recruitment of businesses in order to get a larger share of the job training grant projects. These individuals stated that the community colleges need to improve their marketing strategies in order to make businesses aware of their services.¹⁶

FINDING: DED may be able to take additional steps to encourage businesses to use community colleges to provide job training; however, the colleges themselves may also need to take additional initiative if they want to provide additional job training.

Notes

¹ Legislative History, LB 305 (1989), remarks by Senator Scott Moore, May 10, 1989, pg. 6218.

² Neb. Rev. Stat. § 81-1204.01.

³ Legislative History, LB 956 (2008), committee hearing remarks by Sen. DiAnna Schimek, January 31, 2008, pg. 37.

⁴ *Ibid.*, pg. 39.

⁵ E-mail from Department of Economic Development (DED) staff, July 7, 2009.

⁶ Meeting with DED staff, April 9, 2009.

⁷ Interviews with Nebraska Community Colleges, June 11, 2009 - July 21, 2009.

⁸ DED, *Job Training Cash Fund – Report to the Legislature*, July 1, 2005 - June 30, 2008, pg. 4.

⁹ Interviews with Nebraska Community Colleges, June 11, 2009 - July 21, 2009.

¹⁰ DED, “Customized Job Training” (Copyright 2008; accessed July 17, 2009): <http://www.neded.org/content/view/121/342/>

¹¹ DED, “Customized Job Training Application” (accessed July 17, 2009): http://www.neded.org/files/crd/2008/Customize_Job_Trng_App.doc

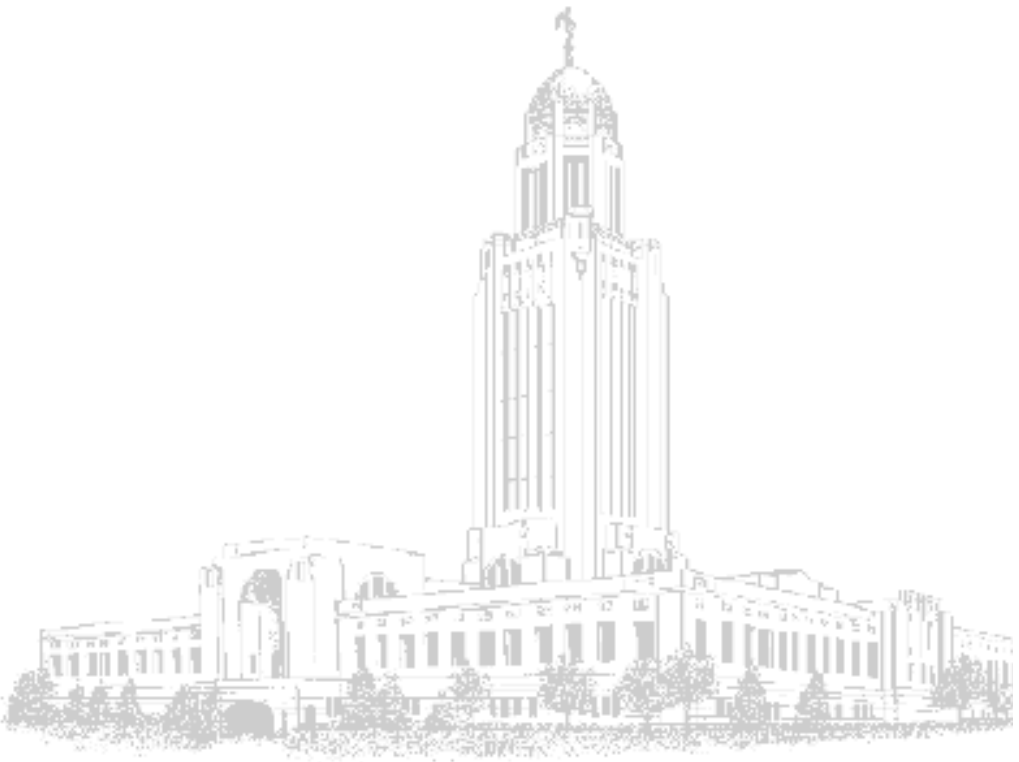
¹² All of the community colleges in the state, excluding Metropolitan Community College, are members of the Nebraska Community College Association.

¹³ Interviews with Nebraska Community Colleges, June 11, 2009 - July 21, 2009.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*



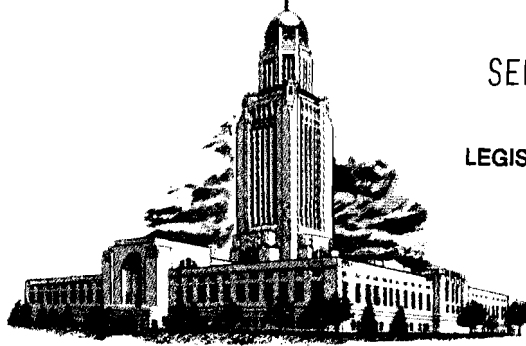
III. Fiscal Analyst's Opinion

State of Nebraska

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September 21, 2009

Martha Carter, Legislative Auditor
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Dear Martha,

The Legislative Fiscal Office has reviewed the draft report regarding the Department of Economic Development's Job Training Grant Program. It is the estimate of the Legislative Fiscal Office that all of the recommendations currently contained in the report can be carried out using the existing budgetary and staffing resources of the Department of Economic Development.

If you have any questions, please contact me or Jeanne Glenn of the Legislative Fiscal Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Calvert".

Michael Calvert, Director
Legislative Fiscal Office



IV. Background Materials

BACKGROUND MATERIALS

The “background materials” provided here are materials (in addition to the Office’s report) that were available to the Committee when it issued the findings and recommendations contained in Part I of this report. They include:

- the Office’s draft findings and recommendations (provided for context);
- the agency’s response to a draft of the Office’s report; and
- the Legislative Auditor’s summary of the agencies’ response.

These are the Office's draft recommendations on which the Committee's final recommendations (in Part I) are based.

Draft Findings and Recommendations

The following are the Legislative Audit Office's findings and recommendations for each section of this report.

Section II: Department of Economic Development's Statutory Compliance with Grant Reporting, Monitoring, Administrative and Repayment Requirements

Finding #1: The Department of Economic Development (DED) is compliant with statutory requirement that it promulgate rules and regulations; however the existing regulations are out-of-date.

Discussion: DED's existing regulations for this program are effective as of November 23, 1996 and do not reflect subsequent statutory changes and, in some instances, DED's current practice.

Recommendation: DED should update regulations regarding the job training grant program to reflect current actual practice.

Finding #2: DED is compliant with statutory requirements regarding the job training grant process.

Finding #3: DED is compliant with statutory requirements regarding monitoring of business grant recipients.

Finding #4: DED has processes in place that comply with the statutory requirements, although no instances requiring the repayment of grants have occurred to date.

Recommendation: None.

Finding #5: We found DED to be noncompliant with the annual report requirement based on the lack of content in its 2008 report; however, DED stated that they did not believe the report was due until the following year.

Discussion: As stated previously, DED has assured us that they "will make every effort" to comply with the statutory requirements regarding their annual report in the future.

Recommendation: DED should ensure that future annual reports contain the statutorily required information.

Section III: The Use of Community Colleges for Job Training Grant Projects

Finding #6: The language of Neb. Rev. Stat. § 81-1204.01 requires DED to prioritize consideration of community colleges to provide job training; however DED is limited in the extent to which it can do so.

Finding #7: Of businesses that received grants in FY2008-09, 44% utilized a community college for at least a portion of their job training.

Finding #8: We cannot determine whether the 44 percent use of community colleges in to provide job training meets the Legislature's intent of prioritizing that use, since the statute provides no specific amount of training to be done by the colleges.

Finding #9: DED provides information regarding community college training programs to prospective businesses.

Finding #10: DED may be able to take additional steps to encourage businesses to use community colleges to provide job training; however, the colleges themselves may also need to take additional initiative if they want to provide additional job training.

Discussion: Without more specific statutory requirements, DED can only encourage businesses to use community colleges for their job training under Neb. Rev. Stat. § 81-1204.01. If the Performance Audit Committee (Committee) is satisfied with the current use of community colleges under this program, no changes are necessary. If the Committee is not satisfied, however, additional statutory changes may be needed.

Recommendation: DED should consider notifying community colleges that businesses may be locating in their area earlier in the process where possible. DED should also consider providing a direct link to area community college websites from the DED job training Web site.



Dave Heineman
Governor

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STATE OF NEBRASKA

OCT 05 2009

LEGISLATIVE AUDIT

September 28, 2009

DEPARTMENT OF ECONOMIC DEVELOPMENT

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Lincoln, NE 68509-4666-4945

Re: Department of Economic Development Job Training Grant Program Legislative Audit

Dear Ms. Carter:

Thank you for the opportunity to respond to the Findings of the recently completed audit of the aforementioned grant program.

First, I would like to thank Mses. Stephanie Meese and Dana McNeil of your office for their professional approach in conducting this audit. They were in contact with us throughout the process, scheduling meetings with plenty of lead time, apprising us of their progress throughout, and offering helpful suggestions.

Next, we are pleased with the outcome of this audit and not surprised that the audit didn't reveal any failure to follow the statutory requirements of the program. We have taken and will continue to take proactive steps to continuously improve the administration of this program.

Regarding Finding #1: "The Department of Economic Development (DED) is compliant with the statutory requirement that it promulgate rules and regulations; however existing regulations are out-of-date."

DED will treat this finding as an opportunity to develop and promulgate a new set of regulations for the Job Training Program. The new regulations will of course incorporate recent statutory changes, but more importantly will be a vehicle to codify (in the regulatory sense) administrative guidelines and operating practices the Department has developed over the years of administration of these statutes. While the Department will positively undertake this task of regulatory update, it should be noted that in dealing with the grant administration of 85 grantees since 2005, there has been only one instance of inquiry by an applicant about such

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Richard J. Baier, Director

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regulations. Having just 1.2% of grantees even inquire about regulations in over four years of program administration illustrates that the working administrative guidelines and practices developed by the Department for the program have been well-received and well-understood by the business recipients of these grants, irrespective of whether formal regulations were up-to-date.

Regarding Finding #5: "We found DED to be noncompliant with the annual report requirement based on the lack of content in its 2008 report; however DED stated that they did not believe the report was due until the following year."

DED will of course adhere to the statutory reporting requirements. Chief among those requirements will be the timely furnishing of the required annual report to the Appropriations Committee by December 1, 2009, and each December 1st thereafter.

DED's intention is to have such annual reports reflect activity for the immediately preceding fiscal year. This, in our view, matches the statutory language which refers to "an annual report" (self-evidently covering an annual period of time, not a lesser period of time) and statutory language which refers to "the reporting year" (indicating that the required report addresses a year, not a lesser period of time).

For the report due 12/01/09, DED will be including a reporting period which covers the reporting year 07/01/08 through 06/30/09.

A difference of interpretive opinion exists between DED's view, and the Performance Audit Section's staff's view, as to when DED's obligation to submit its first report ripened. DED's position was, and remains, that since an "annual report" for a "reporting year" was due December 1, pursuant to a statute which became effective July 18, 2008, DED's initial report was and is not due until 12/01/09 because there were only 4½ months (vs. a year) between the effective date of the statute (07/18/08) and 12/01/08 (arguably, the deadline).

As a final point of clarification, the report DED submitted to the Clerk of the Legislature in January 2009, was submitted as, and intended as, a professional courtesy to the Legislature, rather than being intended to meet the reporting requirements in §4 of LB 956, now codified in §18-1205, Reissue 2008.

Regarding Finding #10: "DED may be able to take additional steps to encourage businesses to use community colleges to provide job training; however, the colleges themselves may also need to take additional initiative if they want to provide additional job training."

DED will follow the recommendations of the auditors although we have in the past and will continue to notify the community colleges as early as possible when a business is planning an activity that would require job training.

DED has already taken steps to provide a direct link to area community college websites from the DED job training website.

Finally, thank you again for the opportunity to respond to the Legislative Audit draft report.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Baier". The signature is written in a cursive style with a large, sweeping initial "R".

Richard J. Baier, Director

df/bd

LEGISLATIVE AUDITOR'S SUMMARY OF AGENCY RESPONSE

Neb. Rev. Stat. § 50-1210 requires the Legislative Auditor to “prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the Section’s report or recommendations.” On October 5, 2009, the Director of the Department of Economic Development (Director) submitted the agency’s response to a draft of the Performance Audit Section’s audit report. The Legislative Auditor’s summary of that response follows.

The Director agreed with the audit staff’s substantive findings and draft recommendations relating to the need to: (1) update the Job Training Grant program regulations; (2) file with the Legislature an annual report in December 2009 and future years, covering the program’s activities in the previous fiscal year; and (3) notify community colleges as early as possible about businesses that need job training.

Performance Audit Committee Reports: 1994 to 2009

- The State Foster Care Review Board: Authority, Conflicts of Interest, and Management Practices (December 2008)
- Personal Services Contracts: An Examination of Compliance and Oversight (October 2008)
- The Nebraska Information Technology Commission: An Examination of Statutory Compliance and the Project Review Process (November 2007)
- The Nebraska Lottery's Implementation of LB 1039 (February 2007)
- The State Department of Education's Student-based Teacher-led Assessment and Reporting System (February 2007)
- The Lincoln Regional Center's Sex Offender Services Program (August 2006)
- The Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems: An Examination of Compliance, PIONEER, and Management (August 2006)
- The Nebraska Medicaid Program's Collection of Improper Payments (May 2005)
- The Lincoln Regional Center's Billing Process (December 2004)
- Nebraska Board of Parole (September 2003)
- Nebraska Department of Environmental Quality: Administering the Livestock Waste Management Act (May 2003)
- HHSS Personal-Services Contracts (January 2003)
- Nebraska Habitat Fund (January 2002)
- State Board of Agriculture (State Fair Board) (December 2001)
- Nebraska Environmental Trust Board (October 2001)
- Nebraska Department of Roads: Use of Consultants for Preconstruction Engineering (June 2001)
- Department of Correctional Services, Inmate Welfare Fund (November 2000)
- Bureau of Animal Industry: An Evaluation of the State Veterinarian's Office (March 2000)
- Nebraska Ethanol Board (December 1999)
- State Foster Care Review Board: Compliance with Federal Case-Review Requirements (January 1999)
- Programs Designed to Increase The Number of Providers In Medically Underserved Areas of Nebraska (July 1998)
- Nebraska Department of Agriculture (June 1997)
- Board of Educational Lands and Funds (February 1997)
- Public Service Commission: History of Structure, Workload and Budget (April 1996)
- Public Employees Retirement Board and Nebraska Public Employees Retirement Systems: Review of Compliance-Control Procedures (March 1996)
- Leaking Underground Storage Tank Program (December 1995)
- School Weatherization Fund (September 1995)
- The Training Academy of the Nebraska State Patrol and the Nebraska Law Enforcement Training Center (September 1995)
- Nebraska Equal Opportunity Commission (January 1995)
- The Interstate Agricultural Grain Marketing Commission (February 1994)