

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

North Dakota Century Code (NDCC) Chapter 54-35.2 establishes the Advisory Commission on Intergovernmental Relations. The commission is directed by law to study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any other government, allocation of state and local resources, and interstate issues involving local governments. The commission also is directed by law to administer grants to political subdivisions for projects to improve efficiency of local governments.

In addition to the statutory required study areas, the Legislative Council requested the commission to study the feasibility and desirability of restructuring county government as described by Senate Concurrent Resolution No. 4014. Senate Concurrent Resolution No. 4014 provided that the study include an examination of examples of consolidation of services to determine the cost-effectiveness and transferability of those consolidations and an examination of methods through which the state may be able to provide affordable technical assistance to counties choosing to consolidate, merge, or share services and a review of the effect of 1993 Session Laws Chapter 401.

North Dakota Century Code Section 54-35.2-01 establishes the membership of the commission as four members of the Legislative Assembly appointed by the Legislative Council, two citizen members appointed by the North Dakota League of Cities, two citizen members appointed by the North Dakota Association of Counties, one citizen member appointed by the North Dakota Township Officers Association, one citizen member appointed by the North Dakota Recreation and Park Association, and the Governor or the Governor's designee. The Legislative Council designates the chairman of the commission. All members of the commission serve a term of two years beginning July 1 of each odd-numbered year. Members whose terms began July 1, 1997, are Senators Tony Grindberg (Chairman) and Jerry Klein; Representatives Leonard J. Jacobs and Jim Torgerson; League of Cities representatives Jeff Fuchs and Bill Sorensen; Association of Counties representatives Erling Karlsbraaten and Stan Lyson; Township Officers Association representative Ken Yantes; Recreation and Park Association representative Randy Bina; and Governor's designee Carter Wood.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

COUNTY REORGANIZATION STUDY

Background

The 1993 Legislative Assembly passed House Bill No. 1347 (Session Laws Chapter 401), which included what is now codified as NDCC Chapters 11-10.2 and 11-10.3. Chapter 11-10.2 allows a county, without requiring the county to be a home rule county, to combine an elective county office with one or more functionally related elective or appointive county offices, separate an elective county office into two or more elective or appointive offices, or redesignate an elective county office as an appointive office or an appointive office as an elective office. Section 11-10.2-01 provides that the option to combine, separate, or designate county offices is in addition to, or in lieu of, other county structural options authorized under Title 11, unless a specific mandate for combining or separating particular county offices is otherwise provided by law.

1. Chapter 11-10.3 allows a county to combine any county elective office with one or more elective offices of one or more other counties for the purpose of sharing that combined office for the performance of functions and the provision of services among those counties. Section 11-10.3-01 provides that a proposal for combining county elective offices may be accomplished by the boards of county commissioners of the affected counties by entering a joint powers agreement or by initiative of the electors of the affected counties petitioning to request the boards of county commissioners to submit to the electors the question of adopting such a plan. A joint powers agreement entered between counties for combining the functions of a county elective office may be referred to the electors of an affected county by a petition protesting the agreement signed by at least 10 percent of the total number of qualified electors of the county voting for Governor at the most recent gubernatorial election. If a petition is filed and the board of county commissioners does not terminate the agreement, the board must submit the question to a vote of the qualified electors of the county at the next regular election.
2. Section 11-10.3-03 provides that a proposal for combining appointive offices of two or more counties, appointive offices of a county and another political subdivision, or appointive offices of two or more political subdivisions that are not counties may be implemented through a joint powers agreement. The proposal to combine appointive offices is not subject to a referendum under Chapter 11-10.3. A proposal for combining both elective and appointive offices of two or more counties, between a county and another political subdivision, or between two or more political subdivisions which are not counties is subject to the referendum provision procedures under Chapter 11-10.3 only in the county or other political subdivision of the elective office.
3. Section 40-01.1-02, which was also included in House Bill No. 1347, allows the governing body of a political subdivision to

establish an advisory committee to study the existing form and powers of the political subdivision for comparison with other forms and powers available under laws of the state. The local advisory study committee may be established by a majority vote of the governing body or by a petition signed by 10 percent or more of the total number of qualified electors of the political subdivision voting for Governor at the most recent gubernatorial election. Section 40-01.1-02 also provides that an election on the question of establishing a five-member advisory study committee for a county or city must be held at the next regular election in the county or city if five years have elapsed since the later of:

1. August 1, 1993;
2. The date of the most recent election held on the question of establishing an advisory study committee; or
3. The date of issue of a written report prepared for a comprehensive study and analysis of the cooperative and the restructuring options available to the county or city conducted by the governing body, an advisory study committee, a home rule charter commission, or through another study process for which a written report was prepared.

Testimony and Commission Considerations

The commission cooperated with the North Dakota Association of Counties for a survey regarding county and community services. The survey focused on four main areas:

1. The quality of services provided by counties;
2. The cost of those services;
3. The issues of consolidation without loss of quality; and
4. The opinions of respondents relating to the structure and organization of county government.

The survey indicated that approximately 55 percent of the respondents believe that the quality of county services was average or poor. However, most respondents of the survey also indicated that the level of spending on the services provided by counties was just about right. Sixty-three percent of the respondents indicated that their county could combine services with another county or political subdivision without losing quality. Respondents in urban areas were more likely to believe that consolidation could be accomplished without losing quality. Fifty-one percent of respondents in rural counties with a population below 2,500 indicated the consolidation could not occur without losing quality. The survey also indicated that when faced with the option of higher taxes or combining services over 75 percent of the respondents would prefer to combine services. With respect to the structure of county governments, approximately 49 percent of the respondents replied that they were satisfied with the current structure of their county government. However, a great majority of the respondents opposed replacing elected officials with appointive positions.

The commission received testimony from representatives of rural electric cooperatives regarding restructuring of several rural electric cooperatives in North Dakota. Because many rural electric cooperatives have service boundaries based on county boundaries and have a structure and elected boards similar to county government, the methods used in successfully consolidating cooperatives could be applicable to counties when attempting to consolidate services. The planners for the electric cooperatives emphasized that it was important to provide strategic and technical assistance and a process through which grassroots support may be established when proposing a restructuring or consolidation. Restructuring or consolidation efforts generally have been successful when the cooperative members were shown that rates would be lowered and services enhanced as a result of the restructuring or consolidation. Although concerns are often expressed regarding the loss of employees, the closing of offices, and the loss of local control of the cooperative, the efforts to restructure have been successful if guarantees are made that no current employees would lose their jobs, that business offices would not be closed, and that the cooperatives would make investments in local economic development efforts. An important factor in successful consolidations has been the leadership of the elected officials to demonstrate that the consolidation is in the best interests of the cooperative members.

The commission received testimony from local government officials regarding cooperative agreements entered by political subdivisions. Proponents of consolidation testified that many political subdivisions have entered innovative partnerships that have allowed the political subdivisions to provide services more efficiently and with less cost. A representative of county social service agencies testified that county social service agencies have been a ripe area for consolidation and sharing of services. The proponents of consolidation indicated that it is sometimes easier politically for local officials to not pursue consolidation.

A local government official testified that the cost of consolidation of services in counties often exceeds the cost of the county providing the service by itself. In addition, it was contended that consolidation of services in rural counties results in less service to county residents, the loss of employees, and ultimately a reduction in county population.

The commission received testimony from city and county officials regarding the advisory study process required by NDCC Section 40-01.1-02. The North Dakota Association of Counties, in cooperation with the North Dakota State University Extension Service and the United States Department of Agriculture Rural Development office, established a three-phase process to be used by counties in implementing the advisory study process. Phase 1 is gathering and presenting information to the participants regarding the demographics of the county so that the participants may make informed decisions. In Phase 2, the strategic

planning portion of the process, facilitators assisted the participants in identifying the needs of the citizens of the county and in developing recommendations to address those needs. Phase 3 is the implementation phase.

Representatives of the Association of Counties presented a report reviewing the results of the advisory study process conducted in 18 counties. The structure and extent of the study process in each county varied; however, very few counties had completed the three-phase process. According to a representative of the Association of Counties, there was a general lack of public input during the advisory study committee processes in the various counties and the processes did not uncover a great deal of information that will make a significant difference in the future. However, the process was valuable in that it provided a forum through which local governmental officials and citizens were able to meet to discuss important issues.

Conclusion

The commission makes no recommendation with respect to its study of restructuring of county government.

LIABILITY SHIFT FROM STATE TO POLITICAL SUBDIVISIONS

Representatives of local governments expressed concern to the commission regarding the shift of liability from the state to political subdivisions when political subdivisions contract with state agencies. North Dakota Century Code Section 32-12.2-13 states that a contract between the state and a political subdivision may not contain a provision that requires one party to assume the liability of the other or the liability of a third party or to bear the costs of defense of actions against the other or against a third party, unless the agreement was entered in good faith and was set forth in a separate writing signed by both parties and supported by adequate consideration. The commission received testimony indicating that this provision reduces the instances where liability is shifted from the state to political subdivisions to unique circumstances. According to the director of the Risk Management Division of the Office of Management and Budget, the state requires a political subdivision to sign an agreement shifting the risk only when:

1. The benefit to the contracting political subdivision is much greater than to the state;
2. It would be an inappropriate use of state taxpayers' funds to pay costs associated with claims arising from the agreement;
- or
3. The state has no control over the activities of the political subdivision or its agents related to the agreement.

Representatives of state agencies testified that risk-shifting agreements are used very rarely and that state agencies will attempt to work with political subdivisions to avoid placing overly burdensome insurance requirements on political subdivisions.

MILL LEVY CONSOLIDATION

Between 1981 and 1993, each Legislative Assembly has enacted legislation allowing political subdivisions to increase levy authority in dollars by a specified percentage. This optional levy increase authority was established in 1981, when the property tax system was restructured, to avoid substantial increases or decreases in property tax bases which would have occurred when property was reassessed.

In 1995 the Legislative Assembly enacted Senate Bill No. 2081, which allowed a taxing district to levy up to two percent more in 1995 and up to two percent more in 1996 than was levied in its base year. The bill defines "base year" as the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year. The bill does not allow optional levy increases for taxable years after 1996 and allows taxing districts to levy only up to the amount levied in the base year after 1996.

In 1997 the Legislative Assembly considered, but did not enact, Senate Bill No. 2021, which would have eliminated several special mill levies for cities, counties, and park districts and allowed those entities to include levies for those specific purposes within their general mill levy. The bill would have allowed a growth factor through which the maximum number of mills that may be levied by cities, counties, and park districts would have been tied to the consumer price index. The Legislative Assembly also did not pass Senate Bill No. 2022, which would have eliminated all mill levy limitations for a period of two years for cities, counties, and park districts.

The commission received testimony from local government officials requesting the commission to consider proposing legislation

similar to the 1997 legislation which would either eliminate or suspend the mill levy limitations. Proponents of consolidation of mill levies contended that consolidation would provide local officials needed flexibility which may result in reduced mill levies. In addition, supporters of the idea argued that political subdivisions with stagnant or declining tax bases need the ability to increase levies if necessary to maintain the services currently provided. Although commission members generally supported the concept of either suspending mill levies or consolidating mill levies, commission members were reluctant to recommend legislation because of inadequate time to consider the idea during this interim.

LOCAL GOVERNMENT EFFICIENCY PLANNING GRANTS

In 1991 the Legislative Assembly enacted legislation that provided for local government efficiency planning grants to be administered by the commission. The grants were funded by an appropriation of \$250,000 from the state aid distribution fund. The legislation created NDCC Section 54-35.2-02.1, requiring the commission to administer the program by making up to a \$25,000 grant to any county or city government that planned to increase the efficiency of local governments through restructuring county or city governments, changing county boundaries including consolidation of counties, or consolidating county and city services. A county or city seeking a planning grant must submit a preliminary plan for consideration by the commission. In approving a planning grant, the commission could impose any conditions it deems appropriate including requiring periodic reports or furnishing of matching funds.

During the 1991-92 interim, the commission adopted guidelines to govern its deliberations on planning grant applications and to provide grant applicants notice of the standards that would be applied in evaluating grant applications. During that interim, the commission awarded local government efficiency planning grants to 15 applicants. The total amount awarded in grants was \$198,558.34. Final reports were received for two of the grant projects.

In 1993 the Legislative Assembly appropriated \$51,400 (basically, the amount remaining from the 1991-93 appropriation) to the commission for local government efficiency planning grants. The Legislative Assembly also provided that the commission be permitted to expend appropriated funds for research and studies of statewide significance. In addition, the Legislative Assembly adopted legislation providing that unexpended planning grant funds are to be returned to the state aid distribution fund.

Of the 13 grant projects pending at the end of the 1991-92 interim, 11 delivered final reports to the commission during the 1993-94 interim. One of the 13 grants went unclaimed. The other grant project was still in progress at the end of the 1993-94 interim. The recipient of that grant provided a final report to the commission in February 1996 and returned to the commission \$1,462.24 in unexpended grant funds and interest earned on those funds.

At the end of the 1993-94 interim, the commission awarded grants in the amount of \$24,999 to the North Dakota League of Cities and the North Dakota Association of Counties. The grant to the North Dakota League of Cities was for a project to establish a computer network among cities and the North Dakota League of Cities. The grant to the North Dakota Association of Counties was to establish a task force to examine automation of the process for reporting statements of full consideration and property transactions, electronic exchange of information between the state and counties to enhance the property tax data base, and the feasibility of electronic mail and other file transfers among the state Tax Commissioner, counties, and cities.

During the 1995-96 interim, the commission received periodic reports from each of those entities regarding the status of the grants. The commission requested the North Dakota League of Cities and the North Dakota Association of Counties to file final reports by February 1, 1997. At its first meeting this interim, the commission received final reports from the North Dakota League of Cities and the North Dakota Association of Counties.

Recommendation

The commission recommends [Senate Bill No. 2028](#) to repeal the local government efficiency planning grant program. The local government efficiency planning grant program has not received an appropriation since the 1993-95 biennium. Although the local government efficiency planning grant program has served an important purpose, the program probably will not receive funding in the future. Therefore, the law establishing the program is no longer necessary.