ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

North Dakota Century Code 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. During the 1999-2000 interim, the commission focused on 12 areas of interest as headlined in this report.

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, 1999. Commission members were Senators Elroy N. Lindaas (Chairman), Tim Mathern, and Darlene Watne; Representative Earl Rennerfeldt; League of Cities representatives Bob Frantsvog and Mel Jahner; Association of Counties representatives Les Korgel and Maxine Olson-Hill; Township Officers Association representative Ken Yantes; North Dakota 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 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

PARK DISTRICT MILL LEVY CONSOLIDATION

Background

Between 1981 and 1993, each Legislative Assembly 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 the taxing district's base year. The bill defined "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 did not allow optional levy increases for taxable years after 1996 and allowed 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 would have 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 mills that may be levied by cities, counties, and park districts would have been tied to the consumer price index. The 1997 Legislative Assembly also considered, but did not enact, Senate Bill No. 2022, which would have eliminated all mill levy limitations for a period of two years for cities, counties, and park districts.

During the 1997-98 interim, the Advisory Commission on Intergovernmental Relations received testimony from local government officials requesting the commission to consider proposing legislation similar to the 1997 legislation that would either eliminate or suspend the mill levy limitations. Although the commission members generally supported the concept of either suspending mill levies or consolidating mill levies, the commission members were reluctant to recommend legislation because of inadequate time to consider the idea during the interim.

In 1999 the Legislative Assembly considered, but did not enact, Senate Bill No. 2346, which would have suspended for two years all statutory mill levy limitations that affect the amount that may be levied by cities, counties, and park districts.

Testimony

A representative of the North Dakota Recreation and Park Association requested that the commission recommend a bill based on 1997 Senate Bill No. 2021, but which would consolidate certain park district mill levies to allow for growth of the 222 park districts throughout the state. Testimony was received that a total of 40 mills could be consolidated and established as a cap for general park district operations, with mills for other uses being left out of the consolidation. A representative of the Tax Department suggested the commission consider changing the language of the proposed bill draft to make changes such as simplifying the transition to the new system.

Recommendation

The commission recommends House Bill No. 1031 to consolidate the park district mill levies for recreation, pest control, insurance, forestry, facilities, handicapped programming, and health insurance with the park district general fund levy. The bill provides for a simplified transition so the amount of a park district general fund levy is based on the sum of the amounts levied in property taxes for the consolidated mill levies.

COMMISSION MEMBERSHIP

The commission considered the issue of membership on the commission. A representative of the North Dakota School Boards Association expressed concern that the membership does not include representation of the North Dakota School Boards Association. A reported benefit of including school board representation on the commission is the importance of encouraging cooperation and communication between the schools and state and local governments. Testimony indicated the North Dakota School Boards Association is not represented at the state level, as the Department of Public Instruction does not always have the same agenda as school boards.

The commission was aware that in 1987 the Governor appointed an executive Advisory Commission on Intergovernmental Relations, which included representation from school boards, but ultimately this representative was not included when the commission was statutorily established in 1989. Although there was discussion regarding increasing the commission membership to include a representative from the North Dakota School Boards Association when the enabling legislation was considered, action was not taken to implement this change.

Recommendation

The commission recommends House Bill No. 1032 to increase the Advisory Commission on Intergovernmental Relations membership from 11 members to 12 members to include a representative of the North Dakota School Boards Association.

TOBACCO EDUCATION AND CESSATION

The commission considered the issue of state funding of city and county public employee tobacco education and cessation programs. The commission received testimony that the city of Minot has been plagued with increasing employee health insurance costs. Two years ago, Minot started a self-funded health plan, and as part of this health plan, the city is using incentives to improve employee health. When Minot considered creating a tobacco education and cessation program for city employees, the city discovered there are no state matching funds available to help fund the program. A representative of the city of Minot suggested the commission consider funding a city and county public employee tobacco education and cessation program from a portion of the tobacco settlement trust fund. The State Health Officer reported that studies indicate employees who use tobacco have higher absentee rates and higher health care costs.

North Dakota Century Code Section 54-27-25 addresses distribution of the tobacco settlement trust fund, and provides that the community health trust fund receives 10 percent of the total annual transfers from the tobacco settlement trust fund, the common schools trust fund receives 45 percent, and the water development trust fund receives 45 percent.

The State Health Officer reported that although the 56th Legislative Assembly did not appropriate any money from the community health trust fund for the 1999-2001 biennium, the Legislative Council's interim Budget Committee on Health Care was studying the issue of the use of funds from the community health trust fund. The State Health Officer's recommendation to the Budget Committee on Health Care was to use approximately $2 million of the funding for the healthy schools program, $2 million of the funding for the healthy families program, and $1 million of funding for the healthy communities program. As reported in the report of the Budget Committee on Health Care, that committee is recommending augmenting the revenue to the community health trust fund by returning community health trust fund interest to the community health trust fund and by depositing water development trust fund interest in the community health trust fund. The State Health Officer testified that under the community health trust fund program, cities and counties will be provided resources that could be used for public employee tobacco education and cessation programs; however, the program will leave the specific use of the community health trust fund to local control.

Recommendation

The commission recommends Senate Bill No. 2024 to clarify that cities and counties may use community health trust fund money to provide matching funds for city and county public employee tobacco education and cessation programs and to provide that the community health trust fund be augmented by returning community health trust fund interest to the community health trust fund and by depositing water development trust fund interest in the community health trust fund.

INSTITUTIONS OF PUBLIC CHARITY PROPERTY TAX EXEMPTION

The commission considered the issue of whether there is a need for clarification of the law regarding what organizations are institutions of public charity and therefore exempt from paying property taxes. Testimony was received that nursing homes have been known to sponsor a variety of services that are something less than nursing home services. As a result, there is uncertainty at the local level whether medical services and housing services that are sponsored by nursing homes should be taxed or whether the entities that provide these services are institutions of public charity and therefore exempt from paying property tax. As a result of this uncertainty, there may be a lack of uniformity in the application of the property tax exemption for institutions of public charity providing medical services and housing services.

Testimony indicated there is not a statutory definition of institutions of public charity, and therefore the Tax Department looks to Attorney General opinions and court cases to help define the term.

Recommendation

The commission recommends Senate Concurrent Resolution No. 4001 to provide for a study of property tax exemptions for institutions of public charity that provide medical services and housing services.

MUNICIPAL COURT FINE COLLECTION

The commission received testimony regarding problems cities are having in collecting municipal court fines. The testimony indicated that collection of fines is very time-consuming for city employees, and tracking outstanding debt is a never-ending task for city employees. The amount of uncollected municipal court fines seems to be increasing and seems to be a problem occurring across the country.

A North Dakota League of Cities report indicated that uncollected municipal fines as of July 2000 for the following cities were:

- Dickinson $29,246;
- Fargo $696,224;
- Grand Forks $495,919;
- Mandan $44,500;
- Minot $133,991;
- Valley City $33,445; and
- Williston $143,828.

State statutes appear to provide municipal courts with the same fine collection tools as district courts. These collection tools include contempt proceedings, probation conditions, imprisonment, and bail provisions. Additionally, municipal courts have the power to convert an order for a fine into a civil judgment in favor of the city. It was reported that the problem is the actual collection, and the collection problem is not unique to cities because there is nonpayment in every type of business. North Dakota Century Code Section 12.1-32-05 provides that an individual may be put in jail for up to 30 days for nonpayment of a fine if that person has the ability to pay. Suspension of driving privileges and of occupational licenses is a possible tool; however, the ability-to-pay issue remains. If an offense is not related to traffic, a person's inability to pay would prevent suspension of driving privileges.

Recommendation

The commission recommends the commission chairman send a letter to interested parties, including the League of Cities, court administrator of the North Dakota Supreme Court, North Dakota Municipal Courts, and the Attorney General, encouraging improved communication between the parties regarding the collection of municipal court fines.

DISASTER RELIEF

The commission considered the issue of creating a disaster relief fund, received reports on the status of Devils Lake flooding, and reviewed the status of disaster relief programs available in the state.

Disaster Relief Fund

A representative of the Township Officers Association suggested the commission study the establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster areas. Counties and townships are dealing with slowly occurring disasters such as flooding, and something needs to be done to help these counties and townships deal with maintaining infrastructure.

The 56th Legislative Assembly adopted Senate Concurrent Resolution No. 4049, which directed the Legislative Council to study the establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster areas; however, the Legislative Council did not prioritize this resolution for study.

The commission received information regarding how other states have addressed the issue of disaster relief. States that adopt emergency management trust fund legislation most often focus on supplementing existing state and local government emergency management budgets. The funds are most often used to reduce the effect and prevent future losses from natural disasters through: Providing proactive mitigation and reactive mitigation; Preparing communities to respond to disasters; Establishing state programs of disaster assistance available if the federal government is not involved; and Providing matching funds for federal disaster aid programs.

Possible funding sources for an emergency management trust fund include: General fund appropriations; Emergency management fees; Property title surcharges collected at the point of property title registration; Insurance surcharges; Insurance premium taxes; Civil penalties and fines for violating environmental and land use planning statutes; Public utility assessments; State lottery proceeds; and Donations and grants.

The current insurance premium tax is 1.75 percent of property and casualty insurance premiums; however, foreign insurance companies typically pay a higher tax rate due to the fact that North Dakota retaliates against companies domiciled in other states if the foreign state charges a higher rate of tax than North Dakota and requires North Dakota insurance companies to pay this higher rate. The end result is that increasing the premium has the effect of negatively impacting domestic insurance companies.

Another possible insurance funding mechanism is to impose an insurance policy surcharge, and this approach may avoid the issues invoking retaliation. A representative of the insurance industry testified that if a disaster relief fund is funded through an insurance premium tax or an insurance policy surcharge, this would likely be considered retaliatory and therefore negatively impact domestic insurance companies.

The commission considered bill drafts that would have funded a disaster relief fund through a property insurance premium tax or a property insurance surcharge and would have provided financial relief to taxing districts or to taxpayers. In the case of the bill draft that would have provided financial relief to taxpayers, the commission considered a tax credit similar to the homestead tax credit.

Disaster Relief Status

The commission received a disaster relief status report on the impact of Devils Lake flooding on real property. Research indicates Devils Lake has flowed into the Sheyenne River at least twice in the last 4,000 years. Since 1940 Devils Lake has been on a rising phase, and this increase accelerated in 1993. From February 1993 to August 1999, the lake rose 24.7 feet, and flood damages in the basin exceeded $300 million. In terms of land flooded, Devils Lake has increased from 45,000 acres in 1993 to 120,000 acres in 2000. Most of the 75,000 acres flooded since 1993 have been pastureland and hayland; however, a large portion of the land above the lake's current elevation is cropland, which has a much higher value and tax base, which means the impact to agriculture may increase significantly as the lake rises.

Testimony was received that the State Water Commission is working on creating an outlet for Devils Lake. The State Water Commission is a local sponsor for a permanent outlet that would be built by the United States Army Corps of Engineers and is also in the preliminary design phase of a temporary outlet in the Twin Lake area which could be built to provide short-term relief before the corps project is built.

The Federal Emergency Management Agency, through the flood insurance program, has reimbursed property owners for losses to structures. State and federal highways have been raised several times, largely with federal dollars. Additionally, many township and county roads have also received federal funds, although local funds are being stretched to pay the nonfederal cost-share portion.

Testimony was received that a significant gap in aid is in the area of damages to land. Most landowners around Devils Lake have received very little help because most existing programs exclude flooded land. Benson and Ramsey Counties have reclassified almost 70,000 acres from agricultural land to wasteland, and this reclassification reduces the taxes collected to only a fraction of the original amount but keeps the land on the tax rolls.

Disaster Relief Programs

The commission received disaster relief program reports from representatives of the Division of Emergency Management, Bank of North Dakota, and Municipal Bond Bank.

Division of Emergency Management

The Division of Emergency Management has 20 full-time employees, and at the county level each county has an emergency manager. Funding for the division includes $500,000 of general revenue and equal federal matching money, and the division receives some funding as a result of the hazardous chemical fee. Testimony was received that the day-to-day emergency management needs are being met by the state's appropriation; however, local government may wish to seek funding for day-to-day management needs. Funding for local government emergency response and disaster recovery is provided through the Bank of North Dakota. North Dakota is unique because with a state bank, local governments are able to receive loans for disaster recovery.

State and local governments have received $600 million from the federal government in disaster relief funding since 1993. In a typical year, the state receives between $55 million to $60 million of federal funding. Federal money typically comes with a matching requirement that varies from disaster to disaster.

Bank of North Dakota

The commission received information on disaster relief loans available through the Bank of North Dakota. The Bank planned on providing assistance in the following areas due to the year 2000 flooding in the Red River Valley: Business assistance; Agricultural assistance; Residential assistance; Student loan deferment; North Dakota State University assistance; and City of Fargo assistance.

Municipal Bond Bank

The commission received information on the loans available through the Municipal Bond Bank to political subdivisions in cases of emergencies or disasters. The purpose of the Municipal Bond Bank is to make low-cost loans to North Dakota political subdivisions at favorable interest rates. The Municipal Bond Bank is a self-supporting state agency that receives no money from the state general fund. The two loan programs available through the Municipal Bond Bank are the capital financing program and the state revolving fund program. A third loan program is being established by the Municipal Bond Bank to address school construction.

Conclusion

The commission makes no recommendation with respect to its review of disaster relief.

LEADERSHIP INITIATIVE FOR COMMUNITY STRATEGIC PLANNING

The commission received a report on the status of the Leadership Initiative for Community Strategic Planning. The Leadership Initiative for Community Strategic Planning was formed as a result of a November 1998 meeting of federal, state, and nonprofit agencies. The purpose of the initiative is to assist communities by assisting in a single strategic planning process that will reduce the need for communities to complete a strategic plan for every agency requiring a plan for funding purposes. The initiative services were initially offered to two communities as a pilot project, but the initiative is expanding its scope to provide services statewide.

Conclusion

The commission makes no recommendation with respect to its review of the Leadership Initiative for Community Strategic Planning.

GOVERNMENTAL SERVICES

The commission received information from the Child Support Enforcement Division of the Department of Human Services, the North Dakota Supreme Court, and the Driver and Vehicle Services Division of the Department of Transportation.

Child Support Services

The commission received a report on the status of the child support state disbursement unit and the provision of child support services at the local level. Conversion to the state disbursement unit began in November 1998, and court-ordered conversion has essentially been completed.

Testimony was received that implementation of the state disbursement unit has had an impact on services at the local level. At current staffing levels and with location at a single site, the state disbursement unit cannot deliver the personal services previously provided by the clerks of court; however, the state disbursement unit is able to provide consistent service and quick turnaround of child support funds.

Judicial Services

The commission received a report on the provision of judicial services at the local level. The statutory requirement to decrease the number of district court judges has resulted in the provision of a reduction of judicial services at the local level. Testimony was received that the natural result of decreasing the number of judges is to locate judges in larger communities because that is where a larger number of cases are located, and the decrease in judges may result in communities relying more heavily upon municipal judges, who are not necessarily law-trained.

Motor Vehicle Registration Services

The commission received a report on the provision of motor vehicle registration services at the local level. Although all motor vehicle registration services can be performed by mail, there are 13 privatized motor vehicle registration service branches throughout the state. The Bismarck office performs seventy percent of the operations, and the branch offices perform thirty percent of the operations. Testimony indicated this distribution of labor may change as a new computer system is implemented, which will allow branch offices to key data directly into the system.

Conclusion

The commission makes no recommendation with respect to its review of the provision of governmental services at the local level.

ROAD MAINTENANCE

Representatives of local government expressed concern to the commission regarding the funding of maintenance of local roads. The director of the Department of Transportation reported that North Dakota has more miles of road per capita than any other state in the nation. North Dakota receives approximately two dollars of federal highway funds for every one dollar North Dakotan drivers pay into the federal highway trust fund. Federal-aid highway projects are generally funded with 80 percent federal money and 20 percent state or local matching funds. The major sources of revenue going into the State Highway Distribution Fund are fuel taxes, motor vehicle registration fees, and the special fuels excise tax. Historically, the revenue in the state highway distribution fund has been allocated 63 percent to the Department of Transportation, 23 percent to the counties, and 14 percent to the cities. Twenty-five to thirty percent of federal funds received by the states is typically funneled to the counties and cities.

A representative of the Department of Transportation testified that the department needs to work with city, county, and township representatives to plan the future of road systems, and the department needs to work with private enterprise to address future road system needs. Cooperation and planning should allow the state to keep up with road maintenance in the state.

Conclusion

The commission makes no recommendation with respect to its review of funding of maintenance of local roads.

CENSUS 2000

The commission received testimony regarding the United States Census 2000 and areas of possible state and local government interest. The 2000 census is unique because the federal government did not include funding for a recount or revision of the census figures. Two classifications on which communities should focus are college students, who are counted in the community in which they attend school, and snowbirds, who are counted in North Dakota if they spend at least six months of the year in the state.

Conclusion

The commission makes no recommendation with respect to its review of the year 2000 census.

REVENUE SHARING AND PERSONAL PROPERTY TAX REPLACEMENT

The commission received a report from the North Dakota Association of Counties regarding the history and current status of revenue sharing and personal property tax replacement. The commission reviewed the history of revenue sharing and personal property tax replacement from 1969 to the present. In 1997 House Bill No. 1019 was introduced to address legislative concerns and also protect local governments from funding reductions. The following elements were in the bill:

Four-tenths of the first penny of sales tax would be the revenue generating formula. Local governments were, in reality, sharing about .38 of the first penny in the previous biennium.

All revenue in the fund would be allocated through a continuing appropriation so that future legislative action would not be required.

The revenue sharing and personal property replacement programs allocation formulas would be repealed, removing ties to personal property collections in 1968 and eliminating the connection between increased property taxes and increased state aid for individual jurisdictions.

Direct allocations from the state would be eliminated for all entities except counties and cities.

Counties would be required to allocate to townships and cities to park districts at the same proportion that existed under the old formula in 1996.

All revenues would go into an entity's general fund for appropriate use as directed by the governing board.

Total revenue would be split between county entities and city entities at the existing 1996 proportion, with the cities getting the University of North Dakota medical center share.

Counties would be divided into seven population groupings, each with a fixed percentage of the county allocation. Cities would be similarly divided into seven groups. Within the groupings, the revenue would be allocated strictly by relative population.

House Bill No. 1019 was enacted with a delayed effective date to minimize the impact of the new formula on the 1997-99 state budget and went into effect on January 1, 1999. A representative of the North Dakota Association of Counties testified that so far the restructured formula has been successful. Sales tax revenues were sufficient to ensure that all counties received more funding under the new program than they had received under the old program. Testimony indicated that local governments should be responsible for proposing adjustments after the 2000 census to reflect the population changes but to minimize the adverse impact to those jurisdictions that are losing population.

Conclusion

The commission makes no recommendation with respect to its review of revenue sharing and personal property tax replacement.

E-COMMERCE TAXATION

The commission received a report on the status of taxing of e-commerce. Representatives of local governments expressed concern to the commission regarding revenue issues associated with remote sales, and specifically, the growing inequity and the need to have state and local sales taxes available to pay for essential services.

Testimony was received from the Tax Commissioner regarding the status of state and federal law regarding the collection of sales and use taxes from remote sellers, which includes e-commerce and catalog sales. In 1998 Congress passed the Internet Tax Freedom Act, which placed a three-year moratorium on Internet taxes. The Advisory Commission on Electronic Commerce, which was formed under the Internet Tax Freedom Act, has requested a five-year extension on this moratorium.

Conclusion

The commission makes no recommendation with respect to its review of e-commerce taxation.