

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Wednesday, September 7, 2011
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Lawrence R. Klemin, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Lawrence R. Klemin, Ron Guggisberg, Brenda Heller; Citizen Members Don Frye, Shawn Kessel, Scott Ouradnik, Richard Riha, Kenneth Yantes

Members absent: Representative Kathy Hawken; Citizen Members Ron Bieri, Jon Martinson; Governor Jack Dalrymple

Others present: See [Appendix A](#)

At the request of Chairman Klemin, commission counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

After introduction of the members of the commission, Chairman Klemin said this commission may set its study agenda. He said the commission is required to meet semiannually but may meet more if necessary. He said the commission will meet at least four times during the interim, and the next meeting is not likely to be until early December. He said the Legislative Management has directed the commission to study motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. Because bills have been introduced in the recent legislative sessions to repeal the commission, he said, it is important that the commission be productive and examine any major issues that are affecting local governments and state government while not duplicating studies being undertaken by other interim committees. He said the commission may limit itself to studying motor vehicle permit fees or it may expand its work, examine other issues, and find solutions to intergovernmental problems.

At the request of Chairman Klemin, commission counsel reviewed a background memorandum entitled [Advisory Commission on Intergovernmental Relations - Background Memorandum](#).

Chairman Klemin said he had requested the Legislative Council staff to send the background memorandum to the members of the commission in advance of the meeting so that the members could review the previous work of the commission and identify potential areas of study. He requested each member of the commission to identify three issues and forward those issues to commission counsel by November 15. He requested commission counsel to send to each of the members of the commission a list of the issues identified so that the commission can set

a study agenda at its next meeting. He said additional information regarding previous studies of the commission is available on the legislative branch website under Council Reports for each biennium. In reviewing those reports, he said, it appears that many studies were conducted which resulted in no recommendations. He said conducting studies and making no recommendation seems to be unproductive. In reviewing the minutes for last interim, he said, it appears one member appointed to the commission attended only one of the six commission meetings. If a member is unable to attend the meetings, he said, the member should request that another individual be appointed who can attend meetings and provide input.

MOTOR VEHICLE PERMIT FEES STUDY

At the request of Chairman Klemin, commission counsel presented a memorandum entitled [Motor Vehicle Permit Fees - Background Memorandum](#).

In response to a question from Chairman Klemin, commission counsel said it appears that 17 counties in the western portion of the state operate under a joint powers agreement to cooperatively issue overweight or overwidth vehicle permit fees. He said he will attempt to obtain additional information regarding the joint powers agreement for the next meeting of the commission and invite a representative of the counties involved to attend a meeting of the commission.

Chairman Klemin said various provisions in North Dakota Century Code Chapter 39-12 seem inconsistent with respect to the authority to impose overwidth and overweight vehicle permit fees. He said Section 39-12-02 does not limit the ability to impose permit fees to home rule counties or cities, but Section 39-12-08 refers to home rule counties or any city. In addition, he said, the penalty provisions are not entirely clear. He said the ambiguities should be addressed by the commission. He said Chapter 39-12 should specify where each type of fee will be deposited. He said the study directive provides for a study of motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. Thus, he said, there must be other permit fees charged. He said the commission may desire to get further information regarding the number of cities and counties that may have home rule authority to impose motor vehicle permit fees,

which cities and counties charge or impose permit fees, and what types of ordinances are in place regarding the charging or imposition of the fees. He said the commission should attempt to get copies of the various ordinances and permit application forms so that consideration may be given to the development of a uniform or model ordinance and application form. In addition, he said, the commission should get information regarding the amount of the fees imposed, how much money has been deposited in the various funds for the payment of the violations, and the impact of the changes in the law made by the Legislative Assembly in 2011.

Mr. Ouradnik said the permit fees collected by counties may be retained by the counties, but any fee obtained for a violation of an ordinance or statute must go to the state highway fund.

Mr. Frye said the problems associated with having a large number of overweight and overwidth vehicles also is being seen in the central part of the state due to traffic going to the western portion of the state. He said overweight vehicles are causing significant damage to roads and the problem is serious.

Mr. Ouradnik said the uniform permit procedure established through the joint powers agreement could help farmers throughout the state as well as commercial truckers.

Chairman Klemin said the commission should examine the amounts of fees charged and whether the permit fees are related to the cost of the use of the road. In addition, he said, the commission should examine what local authorities in other states do with respect to the issuance of overweight vehicle permits and collection of fees. He said the fees should relate to the use of the road and should not be used as a revenue source to support government.

Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, submitted written testimony ([Appendix B](#)) regarding the commission's study of vehicle permit fees. He said revenue is generated in three ways as a result of overweight vehicles operating on highways. He said revenue is generated by the issuance of permits to operate overweight vehicles, through enforcement of violations for operating an overweight vehicle without a permit, and through the collection of civil penalties for the operation of overweight vehicles. He said permit fees may be retained by the jurisdiction issuing the permit. He said revenue generated from enforcement of violations must be deposited in the common schools trust fund. Although an Attorney General opinion issued in 2009 addressed overweight vehicle permit fees and the enforcement of local ordinances, he said, it remained unclear how the revenue generated through civil penalties should be handled. He said the 2011 legislation was intended to clear up the ambiguities in the statute and questions resulting from the Attorney General opinion.

Mr. Birst said the Association of Counties supports local control. He said civil penalties should go toward enforcement and help maintain local roads. He said

the 17 western counties that operate under a joint powers agreement generate approximately \$1.7 million per year in permit fees. He said overweight fees collected through the civil process amount to between \$600,000 and \$1 million per year. He said those amounts are not significant considering the damage done to roads due to overweight vehicles.

In response to a question from Representative Klemin, Mr. Birst said the \$100 fee in Section 39-12-08 has been the source of litigation. He said the state Supreme Court has indicated that if a person is penalized for some sort of conduct, the penalty is considered a fine and must go to the common schools trust fund. However, he said, if the fee is imposed for the purposes of reimbursement, the fee is not considered a fine that must go into the common schools trust fund. He said it appears the \$100 fee in Section 39-12-08 is considered punishment and therefore must be deposited in the common schools trust fund. He said the civil fees imposed for extraordinary use of the highways are compensation for damage done to the roads. He said 2011 House Bill No. 1042 would have provided that all fees collected except for the \$100 penalty fee would stay with the political subdivisions. However, he said, that bill failed, and 2011 Senate Bill No. 2044 only allowed cities and counties to retain the fee for permits issued. He said Chapter 39-12 still has ambiguities and problems with the terminology. When the operator of an overweight vehicle is stopped and does not have a permit, he said, the local state's attorney will commence forfeiture proceedings, and the operator will either pay the \$100 fee or the extraordinary weight fee depending on how much in excess of the road limit the load was. However, he said, some counties will simply allow the owner or operator of the overweight vehicle to purchase a permit and will not go through the forfeiture proceeding. If the forfeiture proceeding is begun, he said, the owner of the vehicle will likely post the required bond and the state's attorney will often work to settle the matter. If the matter is not settled, he said, the state's attorney will file a civil action to retain the forfeiture and the money that is forfeited goes to the state highway fund.

Chairman Klemin requested commission counsel to provide the members of the commission copies of the Attorney General opinion and the constitutional provision regarding the deposit of fines in the common schools trust fund.

POTENTIAL AREAS OF STUDY

Chairman Klemin said he recently attended a flood recovery conference at which individuals from Iowa provided information regarding recovery in that state from disasters in 2008, including flooding and tornados. He said a Rebuild Iowa Advisory Commission was formed by an executive order and later statutorily established to help formulate recovery and rebuilding activities. He said Iowa received some information regarding recovery from disasters from officials from Grand Forks after the 1997 flood. He

said a similar entity in this state could be used to set up a resource bank to help aid in recovery actions.

Mr. Ouradnik said the emergency manager in his county has been strongly encouraged from outside sources to establish a multihazard mitigation plan.

Mr. Kessel said the Federal Emergency Management Agency has been an excellent resource but has established certain requirements for governments to follow in order to receive funding, such as establishing mitigation and recovery plans.

Representative Klemin said representatives from Iowa looked at gaps in coverages of needs and how those unmet needs could be addressed.

Mr. Yantes said township officers are very concerned with disaster recovery issues. He said Mr. Greg Wilz, Director, Division of Homeland Security, Department of Emergency Services, has spoken with township officers about future plans for recovery and has been very helpful.

Chairman Klemin requested commission counsel to contact Mr. Wilz regarding presenting information at the next meeting of the commission with respect to mitigation planning and recovery and gaps in coverage.

Mr. Frye said Foster County has developed a multihazard mitigation plan. He said the impetus for the development of the plan came from the Division of Emergency Management. However, he said, due to a lack of resources to prepare the plans, many smaller local governments have had difficulty in preparing the plans. He said the Association of Counties and the North Dakota League of Cities have been involved in discussions regarding the preparation of plans. Although the preparation of plans has been strongly recommended, he said, there has been no state mandate and there have been no financial incentives provided to develop such a plan.

In response to a question from Representative Klemin, Mr. Frye said the Foster County plan is very specific and identifies agencies that may play roles in recovery efforts.

Representative Guggisberg said the Fargo Fire Department works with businesses during inspections of the businesses to provide information about business continuity plans. He said the department also provides information on how to prepare for disasters. He said the National Fire Protection Agency has conducted needs assessments for fire services, and the 2001 and 2005 assessments ranked North Dakota last in its training of firefighters.

In response to a question from Representative Klemin, Representative Guggisberg said the deficit in training is generally related to financial issues. He said there is one statewide fire school per year in the state, and it is difficult to find the time and the resources to send firefighters to the statewide school. He said there has been an examination of the feasibility of providing regional training schools.

Mr. Frye said another problem in training firefighters is related to the fact that firefighters in most cities in the state are volunteer firefighters.

Mr. Riha said an examination of bidding statutes could be a potential area of study for the commission. He said it is always difficult to advise local governments on bidding issues because there are such a variety of statutes throughout the code relating to public bidding. He said consolidation of the provisions into one area of the code would help provide a consistent source of information for local governments.

Chairman Klemin said the commission could work to establish a list of bidding statutes and look at the feasibility of consolidating the statutes or developing a uniform bidding process. He requested Mr. Riha to work with commission counsel to review the various bidding provisions and present the commission with additional information at a future meeting.

Mr. Birst submitted written comments ([Appendix C](#)) regarding the possibility of studying quiet rail during the interim.

Ms. Connie Sprynczynatyk, Executive Director, North Dakota League of Cities, said examining disaster response is an excellent subject for study. She said it is very costly for local governments to fight floods or plow excessive amounts of snow, and there are gaps in coverage. She said the state has done a good job administering individual assistance programs for the Federal Emergency Management Agency. However, she said, it is necessary to look at requirements for mitigation and planning, the ability to fund disaster response, and the ability to fund disaster recoveries. She said 55 percent of businesses impacted by a disaster close within three years after the disaster, in part because there are no programs to assist businesses other than Small Business Administration loans.

Mr. Kessel said another issue that may be a potential area for study is the taxation of crew camps. He said the Tax Department has been asked for clarification on issues relating to sales and occupancy taxes imposed on crew camps, but has not provided any clarification yet.

Chairman Klemin said the Legislative Assembly will hold a special session in November, and as a result of the session, other issues may be brought up that could generate potential areas of study by this commission.

No further business appearing, Chairman Klemin adjourned the meeting at 11:10 a.m.

John Bjornson
Commission Counsel

ATTACH:3