

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, July 28, 2009
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Tracy Potter, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Tracy Potter, Arden C. Anderson; Representatives Dan Ruby, Dwight Wrangham; Citizen Members Jane Amundson, Randy Bina, Don Frye, Shawn Kessel, Jon Martinson, Ken Yantes

Members absent: Citizen Member Linda Svihovec; Governor John Hoeven

Others present: See attached [Appendix A](#)

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

STATUTORY AREAS OF STUDY

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

PUBLIC IMPROVEMENT PROJECT THRESHOLD FOR BIDDING AND PROFESSIONAL DESIGN SERVICES STUDY

At the request of Chairman Potter, commission counsel presented a background memorandum entitled [Public Improvement Project Thresholds for Bidding and Architectural and Engineering Services - Background Memorandum](#). Commission counsel said the study came from a bill that as introduced would have increased the threshold from \$100,000 to \$200,000 for:

1. Public improvement contracts open to bidding.
2. Public improvement contracts that require an architect or engineer to provide plans and specifications.
3. Public improvement contracts that require a performance bond.

Commission counsel said the reasons for each threshold are different and do not necessarily have to be the same or based on a dollar amount.

Ms. Bonnie Staiger, Chairman, Construction Leaders Coalition, presented written testimony ([Appendix B](#)) on the study. She said the Construction Leaders Coalition represents the American Council of Engineering Companies, the American Institute of Architects, the Associated General Contractors of North Dakota, the National Electrical Contractors

Association, the North Dakota Builders Association, and the North Dakota Plumbing, Heating, and Mechanical Contractors Association. She said this coalition was formed during the 2005-06 interim to work with the interim Industry, Business, and Labor Committee to study procurement and delivery options allowed for public improvements in the law. She said the Industry, Business, and Labor Committee study encompassed three project delivery methods:

1. Design/bid/build.
2. Construction management.
3. Design/build.

Ms. Staiger said as a result of that study, a bill was introduced and passed that updated the law relating to two of the three procurement methods. She said the design/build method is a new method that is not used in this state but is being studied by the coalition.

In response to a question from Mr. Kessel, Ms. Staiger said the National Electrical Contractors Association is represented by a person from Bismarck.

In response to a question from Mr. Frye, Ms. Staiger said federal bidding requirements have not been reviewed as part of the coalition's study, but a review of federal bidding requirements may be useful to provide for similar processes, thereby creating efficiencies for public entities.

In response to a question from Senator Potter, Ms. Staiger said she expects the coalition to recommend a bill draft for the 2011 legislative session on design/build.

In response to a question from Representative Ruby, Ms. Staiger said there are two pilot projects using design/build with the Department of Transportation. She said one of the projects is for a box culvert and one is for a signal light. She said the department will compare the use of the design/build method with similar projects previously completed with the design/bid/build method.

Mr. Russ Hanson, Associated General Contractors, provided testimony on the study of design/build by the coalition. He said he chairs the subcommittee on the design/build method. He said the subcommittee is following the pilot projects of the Department of Transportation and hopes to use the policies and procedures used by the department as the basis for legislation. He said North Dakota is the only state that does not allow the use of design/build and other states are not uniform in the requirements to use design/build for certain projects. He said other

states vary widely in the scope of projects that are allowed to use the design/build method.

In response to a question from Senator Potter, Ms. Staiger said the bid model does not apply to professional design services because the choice is based on qualifications. She said a mini-Brooks Act is contained in North Dakota Century Code Title 54.

Mr. Bina said current law requires public bidding for concession operations worth more than \$500 for three consecutive weeks. He said "worth over \$500" is ambiguous, and the three-week notice is more stringent than other bidding requirements.

In response to a question from Senator Anderson, Ms. Staiger said \$100,000 is an arbitrary number. She said other criteria might include occupancy or the number could be tied to an escalator.

Mr. Frye said public bidding and design service requirements added 24 percent to the cost of a garage for police vehicles in his community. He said this is a significant amount of money for small communities with small budgets. He said a local lumber company had previously made three very similar garages in the area for private entities but could not build the garage for the city because of design requirements.

Ms. Amundson said her community raised money for a metal building, but the law required an architect and a plan. She said a metal building company did not qualify to make the plan but should have been able to build the building. However, she said, the courthouse needed an elevator, and professional design services were appropriate because of the expertise needed in placing an elevator in an existing building.

Senator Potter said one of the reasons for public bidding is to avoid corruption and the appearance of impropriety. He said one of the reasons for professional design services is for safe public buildings. He said there is an expense to the private sector in public bidding in that the companies that do not get the bid incur the cost to bid.

Representative Ruby said public bidding and design requirements should serve the taxpayers.

SOLID WASTE MANAGEMENT STUDY

At the request of Chairman Potter, commission counsel presented a memorandum entitled [Solid Waste Management - Background Memorandum](#). He said the study can be separated into four areas:

1. Regional and state siting of landfills.
2. Recycling programs.
3. Methane processing.
4. New solid waste sciences.

Commission counsel said the emphasis of this study is on regional and state siting of landfills.

Mr. Steve Tillotson, Assistant Director, Division of Waste Management, State Department of Health, presented written testimony ([Appendix C](#)) on solid waste management issues in North Dakota. He said North Dakota has 13 municipal solid waste landfills that handle approximately 672,000 tons per year of

municipal waste, including approximately 110,000 tons from Minnesota. He said 10 of the 13 landfills handle over 97 percent of the waste. He said on average a person in this state produces 4.9 pounds of waste per day. He said it is not unusual for waste to be transported up to 125 miles for disposal. He said yard trimmings, paper, and cardboard make up over 45 percent of the waste in a landfill. He said plastics make up approximately 12 percent of the weight in a landfill and over 20 percent of the volume. He said this state needs adequate inert waste landfills to handle bulky construction and demolition waste and disaster debris in a cost-effective manner.

In response to a question from Senator Anderson, Mr. Tillotson said the department interprets the law to allow for a county vote of approval for a landfill in a city.

In response to a question from Senator Potter, Mr. Tillotson said there has been an 11 percent reduction in waste in municipal landfills. The goal in 1991 was a 10 percent reduction by 1995, at least a 25 percent reduction by 1997, and at least a 40 percent reduction by 2000. He said the national waste reduction level is 28 percent since 1991.

In response to a question from Mr. Kessel, Mr. Tillotson said the methane processing at the Fargo landfill has brought in money for other waste reduction and recycling efforts in Fargo. He said the city has gone to baling and that may reduce the amount of gas. He said the city might have to be careful not to reduce production too much. He said the methane processing solved an odor problem, and the Fargo landfill uses sewage sludge to produce methane.

In response to a question from Mr. Kessel, Mr. Tillotson said space in municipal waste landfills is running out. He said he expects the Minot landfill to be full in 15 to 20 years, the McDaniel landfill at Sawyer to be full in 10 to 15 years, the Dickinson landfill to be full in 25 to 30 years, and the Dakota landfill at Gwinner to be full in 15 years. He said Jamestown and Bismarck are looking at expanding.

In response to a question from Senator Anderson, Mr. Tillotson said typically no one wants a landfill nearby. He said there is typically more opposition in an urban area; however, there have been issues in rural areas, i.e., Slope County.

In response to a question from Senator Anderson, Mr. Tillotson said the siting of landfills appears to be a regional issue. He said local governments need to be involved but not the closest neighbor. He said the closest neighbor will most likely not want the landfill even though a well-run landfill is as good a neighbor as most land uses.

In response to a question from Senator Potter, Mr. Tillotson said the State Department of Health has no enticements or authority to promote recycling. He said there have been conditions on permits but there is nothing in state law that provides authority. He said grass, leaves, and cardboard take up to half the space

in a landfill and there should be a way to remove them from municipal waste landfills, especially because there are uses for these wastes.

In response to a question from Senator Anderson, Mr. Tillotson said the State Department of Health does not have any direct funding for recycling education or employees dedicated to promoting recycling. He said employees do provide presentations at events and the department does have pamphlets.

In response to a question from Mr. Kessel, Mr. Tillotson said cardboard is a commodity and is in a down cycle. He said the volatility of the market in cardboard can affect all businesses that recycle cardboard.

Representative Ruby said there are two costs in placing waste in a landfill. He said there is the cost of hauling the waste and the cost of properly disposing of the waste. He said a volume fee could reduce the use of landfills. He said cardboard recycling may still require transportation costs but may remove the costs for depositing in the landfill. He said haulers charge on tonnage and landfills charge on space. He said glass weighs a lot but does not take up much space and cardboard does not weigh much but takes up a lot of space. He said this makes cardboard more appealing to recycle if transportation costs are incurred.

In response to a question from Representative Ruby, Mr. Tillotson said there is a glass recycler in

Fargo. He said glass can be used for landscaping and there is a mobile processor in Montana that goes from community to community. He said this removes or reduces the transportation cost for the glass.

In response to a question from Senator Potter, Mr. Tillotson said there are approximately 20 to 30 businesses in this state that recycle scrap metal and the recycling industry employs between 400 and 500 people in this state.

Senator Potter said there needs to be regional solutions for recycling. Mr. Frye said small operators can be driven out of business due to the volatility of the recycled products market. Senator Potter said there needs to be a recognized savings for the entire community.

Mr. Jerry Hjelmstad, North Dakota League of Cities, offered assistance to the commission in providing information from various cities around the state.

No further business appearing, Chairman Potter adjourned the meeting at 2:35 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:3