

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Wednesday, April 2, 2014
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Brenda Heller, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representative Brenda Heller; Senators Dwight Cook, Jessica K. Unruh; Citizen Members Katie Andersen, Don Frye, Vicki Kubat, Larry Syverson

Members absent: Representative Ron Guggisberg; Citizen Members Jon Martinson, Scott Ouradnik, Mike Schwartz; Governor's designee Brandi Pelham

Others present: Donald Schaible, State Senator, Mott
See [Appendix A](#) for additional persons present.

It was moved by Senator Cook, seconded by Ms. Andersen, and carried on a voice vote that the minutes of the November 20, 2013, meeting be approved as distributed.

STATE AUDITOR

Chairman Heller called on Mr. Robert R. Peterson, State Auditor, for information on the feasibility of requiring a uniform chart of accounts for political subdivisions. Mr. Peterson said the North Dakota Association of Counties will have to comment on use of a uniform chart of accounts, but he discussed the idea with officials of Grand Forks, Cass, and Burleigh Counties. He said the officials he contacted were not opposed but had questions. He said Cass County was specifically concerned with how difficult it would be to create a uniform chart of accounts. He said in Minnesota the uniform chart of accounts is governed by the State Auditor. He said the Minnesota State Auditor audits all political subdivisions as well as provides training. He said in North Dakota his office does 28 percent of county audits. He said he has a neutral position on the concept.

Senator Cook asked if there was any benefit from the State Auditor's perspective from creating a uniform chart of accounts for political subdivisions. He also asked if it would make it easier to provide information to legislators. Mr. Peterson said right now his office understands how political subdivisions are doing their accounting. He said there is not that big of a variance among political subdivision accounting methods, so any benefit to the State Auditor's office would not be significant. He said changes to the general ledger could cause some resistance because costs associated with training and education would be necessary. He said there could be some benefit to have a single system in training new audit staff.

Senator Cook asked when an audit of counties is done whether all of the various accounts and funds are considered. Mr. Peterson said all of the funds can be reviewed. Senator Cook asked if Mr. Peterson could provide a list of all the different accounts the counties have and the end balances of each. Mr. Peterson said he could provide such a list but the information is not readily available. Senator Cook said that is the challenge. He said that is the information the legislature wants to have, but it is not readily available. Mr. Peterson said it is not readily available because the information all comes to him on paper rather than electronically. Senator Unruh said any information that could be provided would be helpful.

Senator Cook asked if any of the information should be required to be available electronically and if that would be useful to the public and the legislature. Mr. Peterson said it would be useful to the public and legislature to have access to information, but he is not sure if the capability exists for all political subdivisions.

Senator Unruh asked if political subdivisions are asked for their ending fund balances when they report to the county to request a mill levy. Mr. Peterson said he does not know. Senator Unruh asked if he saw those balances during the audit process. Mr. Peterson said if they are under the county umbrella he does, but some political subdivisions are separate from the county. Senator Cook asked what the term "umbrella" represented. Mr. Peterson said a lot of counties will add smaller political subdivisions to their audit because it is less expensive to pay for one audit. He said a lot of times the counties also want the information.

Ms. Andersen said Mr. Casey Bradley, Auditor/Chief Operating Officer, Stutsman County, is present and can comment on this topic. Senator Cook asked Mr. Bradley if Stutsman County audits for all of the various subdivisions in Stutsman County. Mr. Bradley said Stutsman County has a unique situation because within the city of Jamestown there is a joint library board, so the library has its own audit. He said Stutsman County waits for the library audit to be completed, and it is then added to the county audit. He said the weed board and water districts are included in the county audit. He said the airport authority has an independent audit. Senator Cook asked whether the housing authority was included. Mr. Bradley said it was not because it is a totally separate entity and not involved in the county budget.

Ms. Andersen asked what Mr. Bradley sees as obstacles in creating a uniform chart of accounts. Mr. Bradley said the biggest hurdle is the change itself. He said Stutsman County recently completely changed its chart of accounts to follow the Minnesota method. He said across the state, different organizations have different needs and structures, and there may be some resistance to changes.

TAX DEPARTMENT

Chairman Heller called on Ms. Jolene Vidal, Property Tax Specialist, Tax Department, for a presentation ([Appendix B](#)) of information on statewide property taxes levied in dollars in 2012 compared to 2013 and county-by-county property taxes in dollars levied in 2012 and 2013 for the county, cities, school districts, city park districts, and townships.

Senator Cook asked why there was such a substantial increase in rural ambulance service district taxes in Morton County as shown on page 14 of the handout. He asked if it was safe to assume a rural ambulance service district was just created. Ms. Vidal said yes. Senator Cook asked whether the Morton County Soil Conservation District increase in tax collections was a mill increase. Ms. Vidal said it could also be based on an increase in valuation. She said soil conservation districts can only levy one mill, so keeping the levy at one mill with a change in valuation would increase the tax collections.

Ms. Andersen asked how it was determined which political subdivisions were included in the handout. Ms. Vidal said the subdivisions and funds listed are those that were requested.

Chairman Heller called on Ms. Linda Leadbetter, State Supervisor of Assessments, Tax Department, for a presentation ([Appendix C](#)) of information of samples of various county tax statements. Ms. Leadbetter said state law requires the format of statements to be prescribed by the Tax Commissioner. She said this year the Tax Department reviewed the statutory language to assure the required specifics were satisfied, but because varied formats are used, it was not feasible to adjust every format for each county within the time given. She said the differences in formats of the statements she distributed indicate the potential for confusion of taxpayers receiving statements from two or more counties. She said trying to require a change in software would not be economical, and she does not know how quickly it could be done. She said the working group on this issue will have its first meeting on Monday, April 7, 2014. She said the group will review all statements and programs used as well as the information required by law in order to develop a plan that creates a uniform format software vendors can duplicate.

Chairman Heller called on Ms. Kathy Strombeck, Research Analyst, Tax Department, for a presentation ([Appendix D](#)) of information relating to the fiscal impact of the 2013 elimination of the financial institutions tax (FIT) for political subdivisions. Ms. Strombeck said the financial institutions tax replaced the old business privilege tax. She said FIT broadened the definition of financial institutions and was used in lieu of all other state and local income taxes. She said it was primarily a local tax with 5 percent being distributed to counties. She said each county's percent of total distribution was fixed from 1993 to 2011, when it was repealed. She said counties also established a share the political subdivisions received between 1994 and 1998. She said a county survey revealed counties distributed 40 to 50 percent of FIT to schools. She said on average total FIT distributions were \$11 million.

Ms. Strombeck said the state aid distribution fund share to political subdivisions was increased to offset the local government revenue loss from elimination of FIT. She said school districts do not receive a share of state aid distribution fund allocations, so they were left out of the offset funding.

Senator Cook asked if a report showing the losses experienced by the school districts and cities due to this change could be created. Ms. Strombeck said there may be some problems, but the Tax Department can try to provide the comparison. She said the Tax Department only surveyed a handful of counties for this meeting.

Ms. Andersen asked why the old FIT no longer worked. Ms. Strombeck said the business privilege tax had been in place since before the Vietnam War. She said the tax was repealed for everyone except banks, and the tax was their version of income tax. She said the financial institution tax was created because at the time banks did not have branches and felt they had local community ties, and local tax distribution made sense. She said FIT had

become difficult to administer, so the Tax Department and banks agreed it was time to change.

Ms. Andersen asked if all financial institutions are treated equally. Ms. Strombeck said not all financial institutions are equally taxed because credit unions are exempt from income tax. She said all other financial institutions are taxed under income tax rates.

Chairman Heller asked if financial institutions received a net tax reduction in the change from FIT to the current method. Ms. Strombeck said there was a \$3 million windfall for financial institutions to move into the corporate income tax structure.

TOWNSHIP ZONING

Chairman Heller called on Mr. Walstad for presentation of a bill draft [[15.0078.02000](#)] regarding recovery of zoning authority by a township that previously unilaterally transferred its zoning authority to the county. He said at the previous meeting, the commission considered a 1999 Attorney General opinion concluding that North Dakota Century Code Section 11-33-20, enacted in 1955, allowed townships to unilaterally transfer zoning authority to the county. He said in 1982 the Constitution of North Dakota was amended to provide that a political subdivision may by mutual agreement transfer to the county any of its powers and may in like manner revoke the transfer. He said the Attorney General opinion concluded that a township that unilaterally transferred its zoning authority to the county between 1955 and 1982 has no statutory provision to recover that zoning authority. He said the Attorney General opinion concluded that a township that unilaterally transferred zoning authority could enter a joint powers agreement with the county to recover zoning authority. He suggested to the commission that it would be simpler to provide by statute that a township that unilaterally transferred zoning authority to the county may reacquire the zoning authority by mutual agreement with the county. He said the bill draft provides for that kind of agreement. He said the bill draft also repeals Section 11-33-20, which permits unilateral transfers, because those transfers are apparently no longer valid after the 1982 constitutional amendment.

CERTIFICATION OF ASSESSORS

Chairman Heller called on Mr. Walstad for presentation of a bill draft [[15.0039.01000](#)] relating to certification of assessors. He said the bill draft would require all assessors to be certified and would impose the same training requirements for all certified assessors. He said the bill draft would require 180 hours of instruction in assessment issues. He said the hours of training requirements would represent a substantial increase in the amount of training required for township assessors and assessors of cities under 5,000 population.

Chairman Heller called on Ms. Leadbetter for comments on the proposed changes to assessor certification. Ms. Leadbetter said the Tax Commissioner supports the need for increased education and standards. She said she has been meeting with the North Dakota Association of Assessing Officers regarding the proposed changes and has been reviewing standards of surrounding states.

Senator Cook asked why 180 hours of instruction was selected as the training requirement. Ms. Leadbetter said it was based on the current requirements for county tax directors of equalization.

COMMENTS FROM INTERESTED PERSONS

Chairman Heller invited comments by interested persons in attendance.

Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, provided written comments ([Appendix E](#)) on the bill draft for assessor certification. He said consideration should be given to eliminating local boards of equalization for jurisdictions that contract with counties for assessing services. He said if counties are establishing values, the county board of equalization should address any protests.

Senator Cook asked if the counties would be asking for money if this bill is enacted. Mr. Traynor said it appears that somewhere the revenue is missing to make this method work. Senator Cook asked what the average contract price is for the townships that pay the county to do their assessing. Mr. Traynor said it is relatively low at about \$500.

Mr. Walstad asked what is included in assessment automation. Mr. Traynor said it is a computerized mass appraisal system. He said a lot of larger counties and cities use assessment automation to keep track of all parcel records and to be more precise in value adjustments. He said not all counties have it because the initial costs are relatively expensive.

Mr. Don Flaherty, Director of Tax Equalization, Dickey County, provided written comments ([Appendix F](#)). He said Dickey County has 9,000 parcels requiring assessment and 14 assessors to complete the work. He said this

is an overwhelming amount of work, and he strongly supports the proposed legislation. He said it is likely none of the assessors in Dickey County will continue serving if the legislation passes, but that may ultimately lead to improvements if the result is better training and more experience. He said the county will take over additional assessing duties, and assessments will be more consistent and efficient. He said he believes local equalization boards need to remain in place because adjustments should be made within the jurisdiction that applies.

Mr. Frye asked what will happen to the number of assessors immediately following the passage of the bill. Mr. Flaherty said there will be a reduced number of assessors, and there will potentially be a bottleneck in completing assessment duties for a few years. He said an option could be allowing a township or small city to phase in a temporary certification allowing completion of a period of education to become certified.

Mr. Dustin Bakken, Director of Tax Equalization, Stutsman County, said in Stutsman County, his office does the assessing for 17 of 64 townships and eight small cities. He said 21 local assessors cover the rest of the county. He said he asked the assessors in his office who would stay if the new training requirements were enacted, and only one person said she would. He said it showed that assessing is not being considered as important as it should be. He said he supports the proposed legislation. He said improving the assessment system should be the starting point to improve fairness of the property tax.

BOND ISSUE AND EXCESS LEVY ELECTIONS

Chairman Heller called on Mr. Walstad for presentation of a bill draft [[15.0075.01000](#)] providing that elections seeking voter approval of political subdivision authority to increase property taxes or issue bonds must be held in conjunction with a statewide primary or general election. He said the bill draft was requested to eliminate the option for calling special elections and to require that an election to increase property taxes or issue bonds must be held in conjunction with a general election or primary election.

Chairman Heller called on Mr. Walstad for presentation of an amendment considered during the 2013 legislative session which was prepared for Representative Guggisberg. Mr. Walstad said copies ([Appendix G](#)) of the amendment were distributed to commission members. He said Representative Guggisberg is not present this meeting, so it would be best to review the amendment when Representative Guggisberg is able to be present and explain the concept. Chairman Heller said the commission would carry over consideration of the amendments.

OFFICE OF MANAGEMENT AND BUDGET

Chairman Heller called on Ms. Tammy Dolan, Budget Analyst, Office of Management and Budget, for presentation of information regarding the availability of political subdivision information on the state budget database website. Ms. Dolan said the information since the last report to the commission has not changed. She said 31 counties have their budgets available online. She provided a table ([Appendix H](#)) of information on the information submitted.

Senator Cook asked if there is any information a legislator could take from the budgets. Ms. Dolan said each budget is a little different so there would be usable information, but nothing has been compared or consolidated.

Chairman Heller asked what the status is of the counties that have not made their information available online. Ms. Dolan said the Association of Counties might be able to provide information.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Representative Heller called on Ms. Leann K. Bertsch, Director, Department of Corrections and Rehabilitation, for a presentation ([Appendix I](#)) of information on county and multicounty jails and juvenile detention facilities. Senator Cook asked if the juvenile centers are run by the state. Ms. Bertsch said the juvenile facilities are run by the counties.

Senator Unruh asked what the reasoning behind current expansion efforts is, if facilities are not at capacity. Ms. Bertsch said counties are responsible for housing those committing crimes in their counties. She said many factors are involved in determining when expansion is necessary. She said most do not want to travel long distances to transport someone to a county jail. She said a lot of the concern is based on safety. She said not all jails operate under the same financial structure. She said for some jails, the majority of their daily occupants are paying customers. Senator Unruh asked what the benefits would be for Mercer County, doubling the size of its facility when it is only at 67 percent capacity. Ms. Bertsch said counties should avoid running at 100 percent capacity or even approach full capacity. She said there is a classification system within jails which limits which offenders can be housed together. She said a jail may be at capacity for violent offenders or minimum security offenders but may not have flexibility to house certain offenders, even if not at full capacity. She said counties also look at the likely increase in the future in terms of oil industry and population growth. She said felony arrests have increased 35 percent in some counties in the last few years, and that trend may continue. She said it is also

important to consider the needs for jail space of the reservations and the federal government.

Senator Cook asked if there is any data on the cost per county for jail services. Ms. Bertsch said she could guess at the cost for some counties. She said costs are likely to be inconsistent between counties.

Mr. Walstad asked if there is any funding assistance for jails other than local property or sales tax. Ms. Bertsch said there is nothing that prohibits oil-impacted counties to pursue money for jails. She said the tide is to move away from mass incarceration and decrease the use of incarceration. She said it is necessary to start prioritizing who is imprisoned and look to alternatives.

Senator Cook requested that the Association of Counties be asked to provide information it can obtain on county-by-county costs for jails and jail services.

APPOINTED BOARD TAX LEVIES

Chairman Heller called on Mr. Walstad for presentation of a bill draft [[15.0067.01000](#)] relating to property tax levies requested by unelected governing bodies. Mr. Walstad said there are numerous sections of law providing for levy by the board of county commissioners or the city governing body as requested by an unelected board or commission. He said these provisions of law were written at different times and by different drafters and are worded differently in almost every case. He said some of the wording makes it appear that the county or city has no discretion and must levy the amount requested by the unelected board or commission. He said the bill draft was prepared for the Taxation Committee, and the directive was to provide that levies requested by unelected governing bodies should use uniform terminology to assure that each such governing body provides necessary information and a request for a levy but the final authority to actually make the levy belongs to the elected board of county commissioners or city governing body. He said the bill draft also provides that a public hearing on each levy request must be held by the city or county. He said the bill draft contains a provision to encourage joint public hearings and deliberations for property tax levies proposed by taxing districts that are in one or more counties. He said the effective date of the bill draft is 2016 because it would not be feasible to apply the changes for the 2015 tax year.

Chairman Heller called on Mr. Traynor for comments ([Appendix J](#)) on the levies by appointed boards. He suggested changing the February 1 deadline in the bill draft for filing financial reports. He pointed out that the governing body for a rural ambulance district, fire protection district, and hospital district is elected at a meeting of residents of the district. He said these are elected boards and should not be included in the requirements under the bill draft.

DEPARTMENT OF TRANSPORTATION

Chairman Heller called on Mr. Bob Fode, Director of Project Development, Department of Transportation, and Mr. Terry Udland, Bridge Division Engineer, Department of Transportation, for a presentation ([Appendix K](#)) of information relating to road and stream crossing standards as applied to culvert replacement. Mr. Fode said the intent of the road and stream crossing standards is to allow water to flow naturally, minimizing the impact a roadway has on the natural discharge patterns.

Senator Unruh asked about the issues with costs to implement larger culverts in townships trying to meet the standards. Mr. Syverson said there are issues where there is a series of culverts, and one of them is rusted out. He said if it is replaced and the culverts above and below it are not, there can be downstream flooding. He said the township budget is stressed just putting in one culvert. Mr. Fode said the intent is when there is a construction project on a particular roadway, the culverts would be replaced. He said eventually all the roadways will undergo a construction project. Mr. Udland said only replacing one culvert could cause an impact downstream. He said culverts are used to maintain the natural flow of water.

COMMENTS BY INTERESTED PERSONS

Chairman Heller invited comments by interested persons in attendance.

Mr. John Paczkowski, Director, Regulatory Division, State Water Commission, said in regard to funding the replacement of culverts through the State Water Commission, the commission does not have funds for that purpose. He said the State Water Commission does cost sharing on assessment drains, which often include culverts.

COMMISSION DISCUSSION

Ms. Andersen asked for a table to be created including how many kinds of political subdivisions there are and

whether their boards are elected or unelected. She said to also include those that have special assessment districts and utility fee schedules. She also asked for other characteristics of political subdivisions to be included, such as how many of each type of political subdivision exist, reference to where the political subdivision provisions are located in the North Dakota Century Code, and audit requirements.

Senator Cook asked for the ending fund balances of counties to be requested from the State Auditor for the next meeting.

Chairman Heller asked that the bill draft pertaining to elections for approval of bond issues be updated for the next meeting to reflect suggestions received at this meeting.

Senator Unruh asked for information relating to the legal process required for the consolidation of counties. She asked for a county superintendent of schools to testify at the next meeting.

Senator Cook asked for information regarding how the elimination of FIT cost the various school districts. Ms. Andersen asked for the formulas for each city's and county's distribution of state aid distribution fund replacement funds.

No further business appearing, Chairman Heller adjourned the meeting at 3:05 p.m.

John Walstad
Code Revisor

Samantha E. Kramer
Commission Counsel

ATTACH:11