

## **ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS - BACKGROUND MEMORANDUM**

### **STATUTORY FRAMEWORK FOR COMMISSION**

The Advisory Commission on Intergovernmental Relations occupies a unique status among committees with legislative membership. The commission differs from usual Legislative Management interim committees in its membership, its permanent status, and its statutory authority to determine its own study priorities.

The powers and duties of the commission are provided in North Dakota Century Code Section 54-35.2-02. Under this section, the commission is free to establish its own study agenda and to accept suggestions from groups or individuals for study.

Under this section, the commission specifically is required to:

1. Serve as a forum for the discussion of resolution of intergovernmental problems.
2. Engage in activities and studies relating to the following subjects:
  - a. Local governmental structure.
  - b. Fiscal and other powers and functions of local governments.
  - c. Relationships between and among local governments and the state or any other government.
  - d. Allocation of state and local resources.
  - e. Interstate issues involving local governments, including cooperation with appropriate authorities of other states.
  - f. Statutory changes required to implement commission recommendations.
3. Present reports and recommended legislative bills to the Legislative Management for consideration in the same manner as interim Legislative Management committees.
4. Prepare model ordinances or resolutions for consideration by officials of political subdivisions.

In conjunction with Section 54-35.2-02(4), Section 54-40.3-03 provides a political subdivision entering a joint powers agreement may file a copy of the agreement and the explanatory material with the commission to assist other political subdivisions in exploring cooperative arrangements.

In addition to its statutory powers and duties, the Legislative Management assigned the commission the responsibility to study during the 2013-14 interim:

- Feasibility and desirability of making political subdivision budget information accessible on the state budget database website and finding better ways to inform taxpayers regarding political subdivision budget or levy deliberations and legislative property tax relief.
- Whether political subdivisions can become more efficient and effective to reduce costs to taxpayers.

Under Section 54-35.2-01(1), the commission consists of 12 members:

- The North Dakota League of Cities Executive Committee appoints two members.
- The North Dakota Association of Counties Executive Committee appoints two members.
- The North Dakota Township Officers Association Executive Board of Directors appoints one member.
- The North Dakota Recreation and Park Association Executive Board appoints one member.
- The North Dakota School Boards Association Board of Directors appoints one member.
- The Governor or the Governor's designee is a member.
- The Legislative Management appoints four members of the Legislative Assembly as members.

The Legislative Management designates the Chairman of the commission. All members of the commission serve a term of two years.

## LEGISLATIVE HISTORY

In 1989 the Legislative Assembly enacted Chapter 54-35.2, which provides for the commission. In 1991 the Legislative Assembly enacted Section 54-35.2-02.1, which provided for administration by the commission of local government efficiency planning grants. In 1991 the Legislative Assembly also provided an appropriation of \$250,000 for these grants. The commission spent the majority of its time during the 1991-92 interim developing guidelines and procedures, reviewing grant requests, and monitoring grant projects. The commission approved grant awards for 15 grant projects in the total amount of \$198,558.34, leaving \$51,441.66 unexpended from the \$250,000 appropriated for grants for the 1991-93 biennium.

In 1993 the Legislative Assembly amended Section 54-35.2-02.1, changing the objects for which grants could be provided, allowing the commission to directly expend all or a portion of the appropriated amount for research and studies, and providing unexpended grant funds that are returned are to be deposited in the state aid distribution fund. The Legislative Assembly also provided an appropriation of \$51,400 to the commission for distribution in local government efficiency planning grants. During the 1993-94 interim, the commission received final reports from grant recipients from the previous interim and returned \$1,466.14 in unexpended grant funds to the state from grant recipients that had completed their grant projects. The commission also authorized two grants of \$24,999 each.

In 1995 the Legislative Assembly did not appropriate any funds for continuation of the local government efficiency planning grant program.

In 1997 the Legislative Assembly did not appropriate any funds for the continuation of the local government efficiency planning grant program.

During the 1997-98 interim, the commission found although the local government efficiency planning grant program served an important purpose, the program probably would not receive funding in the future. The commission recommended, and the Legislative Assembly enacted, 1999 legislation to eliminate the local government efficiency planning grant program.

In 2003 the Legislative Assembly considered House Bill No. 1333, which would have eliminated the commission. As passed by the House of Representatives, the bill retained Chapter 54-35.2 but removed the commission's authority to recommend proposed legislation to the Legislative Council. The bill failed to pass the Senate.

In 2009 the Legislative Assembly considered House Bill No. 1462, which would have eliminated the commission. The bill failed to pass the House.

In 2011 the Legislative Assembly considered House Bill No. 1336, which would have eliminated the commission. The bill passed the House by a vote of 58 to 36 but failed by a vote of 41 to 5 in the Senate.

## HISTORICAL AREAS OF STUDY

During the 1999-2000 interim, the commission studies included:

1. Park district mill levy consolidation. The commission recommended House Bill No. 1031 (2001), which consolidated park district levies for the general fund, insurance reserve fund, employee health care program, public recreation system, forestry, pest control, and handicapped persons' programs and activities. The bill replaced the levies with a general fund levy equal to the number of mills levied by a park district for those purposes in taxable year 2000, or up to 35 mills if approved by the electors of the park district.
2. The membership of the commission. The commission recommended House Bill No. 1032 (2001), which added a representative of the North Dakota School Boards Association to the commission.
3. Tobacco education and cessation. The commission recommended Senate Bill No. 2024 (2001) which failed to pass the Senate. The bill would have allowed cities and counties to use community health trust fund money to provide matching funds for city and county public employee tobacco education and cessation programs and would have required 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.

4. Clarification of definition of institutions of public charity exempt from property taxation. The commission recommended Senate Concurrent Resolution No. 4001 (2001), which the Legislative Council did not prioritize for study.

During the 2001-02 interim, in addition to the assigned study of the feasibility and desirability of creating cost-sharing mechanisms for the unexpected discovery of cultural and paleontological resources within local road projects, the commission studies included:

1. County mill levy consolidation. The commission recommended House Bill No. 1024 (2003), which was enacted and allowed a county to increase its general fund levy limitation from 23 mills to 134 mills by consolidating into the general fund levy several separate levies for special purposes. This provision is now codified as Section 57-15-06.10.
2. Revenue sharing and personal property tax replacement. The commission recommended House Bill No. 1025 (2003), which adjusted allocation of sales, use, and motor vehicle excise tax revenues through the state aid distribution fund to counties and cities to reflect population changes as determined under 2000 census results.

During the 2003-04 interim, the commission studies included:

1. Mill levy consolidation. The commission recommended House Bill No. 1025 (2005), which failed to pass the House. The bill would have revised the county general fund levy under Section 57-15-06.10, removing from the consolidated general fund the specific mill levies for the industrial development organization, county parks and recreation, library fund, weed board and weed control, and weather modification; decreasing the maximum general fund levy from 134 mills to 118 mills; and removing the general fund levy increase limitations that are based on the consumer price index.
2. Delinquent property tax. The commission recommended House Bill No. 1026 (2005), which failed to pass the House. The bill would have decreased from approximately five years to approximately three years the period of time in which foreclosure will take place for delinquent property taxes and would have allowed a board of county commissioners to waive all or part of the penalties or interest on delinquent real estate taxes if a board determines the reduced period for foreclosure of tax liens creates a hardship for similarly situated taxpayers.
3. Document preservation fund. The commission recommended Senate Bill No. 2024 (2005), which removed the expiration date of the document preservation fund and continued the additional fees that had been imposed for the purpose of funding the document preservation fund.

During the 2005-06 interim, the commission was assigned the study of the feasibility and desirability of establishing an organization or ombudsman to support and coordinate governmental and private efforts to discourage destructive behavior. In addition to the assigned study, the commission considered:

1. Charitable organizations' property tax exemptions.
2. Tax levy authority. The commission considered, but did not recommend, a bill draft that would have allowed a taxing district to increase the amount levied in dollars in the base year as adjusted by the consumer price index.
3. Township levy limitation.
4. City and county development impact fees. The commission considered, but did not recommend, a bill draft that would have allowed for city development impact fees.
5. Legal services for the indigent.
6. Uniform Environmental Covenants Act.
7. Extraterritorial zoning jurisdiction.
8. Jail administration. The commission considered, but did not recommend, a bill draft that would have allowed a board of county commissioners to provide for the administration of county jails.

During the 2007-08 interim, the commission was assigned the study of the extraterritorial zoning authority of cities. The commission recommended Senate Bill No. 2027 (2009), which failed to pass. However, the Legislative Assembly adopted House Bill No. 1554 (2009), which provided for joint zoning and subdivision authority between a city and the other political subdivision that previously exercised zoning and subdivision

authority in the outer one-half of the extraterritorial zoning authority of the city. The bill provided land within the area of joint jurisdiction for which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and regulations in effect on May 1, 2009, unless otherwise changed. The bill provided procedures for negotiation and mediation of decisions made by the political subdivisions within areas of joint jurisdiction. In addition to the assigned study, the commission considered:

1. Zoning of feedlot operations.
2. Increasing from four-tenths to five-tenths of one cent the amount of sales tax that is deposited in the state aid distribution fund.
3. Funding for rural township and county roads and bridges.
4. Exempting charitable property from taxation.
5. Replacing references to mills in the North Dakota Century Code with dollar amounts.
6. Providing state's attorney services in counties without a resident state's attorney.

During the 2009-10 interim, the commission was assigned two studies. Section 1 of House Bill No. 1338 (2009) directed a study of solid waste management and state or regional siting of landfills. Section 1 of Senate Bill No. 2401 (2009) directed a study of public improvement and capital construction bid requirements, plans and specifications, and the employment of architects and engineers. The commission made no recommendation as a result of the study of solid waste management. The commission recommended Senate Bill No. 2026 (2011) to centralize the public improvement construction threshold of \$100,000 in one section of the North Dakota Century Code and to provide the threshold for procuring plans, drawings, and specifications from an architect or engineer for the construction of a public improvement is \$100,000. The bill was adopted by the Legislative Assembly. The commission also recommended Senate Bill No. 2027 (2011) to allow a governing body to specify certain materials in a request for bids for the remodeling or expansion of an existing building that contains the specified material. The Legislative Assembly amended the bill to provide a governing body may not specify a copyrighted brand or name in a request for bids or a product of any one manufacturer for the remodeling or expansion of an existing building unless otherwise provided by the law requiring preference for North Dakota bidders. The bill was adopted as amended. The commission recommended, and the Legislative Assembly adopted, Senate Bill No. 2025 (2011) to raise the bid threshold for concession bidding to annual estimated gross sales of \$25,000.

During the 2009-10 interim, the commission also considered:

1. Inmate medical costs. The commission discussed the concept of a bill draft that would have the state establish a risk pool with the risk shared between the state and jails. The commission also discussed the concept of a bill draft that would have inmates covered under the Public Employees Retirement System health insurance. The commission recommended Senate Bill No. 2028 (2011) to require the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical expenditures paid by the facility which exceed \$10,000. No reimbursement would be made for federal or out-of-state inmates being housed in corrections facilities. The bill passed the Senate but failed in the House. The commission recommended Senate Bill No. 2024 (2011) to limit the correctional facility's liability for inmates' medical costs to Medicare rates. The bill was amended by the Legislative Assembly and adopted to provide the definition of "inmate" does not include an individual who is under the supervision of a correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in a correctional facility. The bill also provided that, except for an intake health care assessment and related testing for examinations made at the request of a correctional facility, an inmate is responsible for the costs of medical and health care. The bill allowed a correctional facility to seek reimbursement from the inmate for the total amount of incurred medical or health care costs and provided an inmate's right to adequate medical care means necessary treatment for a medical or health condition for which serious pain or hardship would occur if care is not given. The bill prohibited a correctional facility from denying adequate medical care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.
2. Social services financing. The commission was informed that \$33 million per year from property taxes is spent on counties' social services. Although a board of county commissioners does not have much control over social services expenses, the commission determined a study of social services financing would be a major study related to taxation which would be better addressed by another committee.

During the 2011-12 interim, the commission studies included:

1. Section 3 of Senate Bill No. 2044 (2011) directed a study of motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. Senate Bill No. 2044 also amended Section 39-12-02 to provide permit fees generated by a political subdivision must be deposited in the local authority's general fund for the support of the local road system. An Attorney General opinion issued in December 2009 addressed the ability of a county to enact an overweight vehicle ordinance. The opinion concluded a county may enact a weight restriction ordinance, issue permits under the ordinance, and retain fees for permits. However, the Attorney General concluded a county may not retain funds generated in enforcement of a violation of a weight restriction ordinance because Sections 39-12-02, 39-12-14.1, and 39-12-20 require permit and road use fees to be remitted to the state treasury for deposit in the highway fund. The commission recommended Senate Bill No. 2025 (2013) to provide extraordinary road use fees for a violation that did not occur on an interstate or state highway must be deposited in the general fund of the jurisdiction having authority over the road on which the violation occurred and must be used for the support road system of that jurisdiction. The bill was enacted by the Legislative Assembly and contains an expiration date of June 30, 2017.
2. The commission recommended House Bill No. 1025 (2013) to remove the requirement that destruction of property must be ordered by the Governor before the property owner is eligible for compensation if property is commandeered or used in management of a disaster or emergency; to expand authorized uses of the state disaster relief fund to include payment of any expenses incurred under Chapter 37-17.1; to limit immunity in disaster response activities to individuals, rather than providing immunity to the state and political subdivisions; and to eliminate immunity for property owners permitting the use of real property for emergency management activities if the property owner has been grossly negligent. As enacted, the bill allows, but does not require, compensation for property commandeered or otherwise used in management of a disaster or emergency. The bill requires a claim made against a city or county must be made within two years and may be only for actual damages. The bill creates liability for a person who voluntarily and without compensation allows that person's property to be used for emergency management activities if there is gross negligence or willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The bill clarifies when a city has constructed a temporary emergency flood control protection device that the city may maintain and remove material used in the construction of the device. The bill provides a special assessment district must be created to cover the cost incurred by the city in constructing and maintaining emergency flood protection devices. The bill provides the general requirements for obtaining engineer's reports, plans, estimates, and contract proposals for special assessment projects do not apply to temporary flood control projects or during a declared disaster or emergency.
3. The commission studied crew camp and group housing regulation in response to rapid population increases in the western part of the state. The commission considered drafting a model ordinance for regulation of crew camps and group housing facilities. Cities and counties in the western and central portion of the state were surveyed and it appeared there may not be a need for a model ordinance but there may be a need for a central repository of adopted ordinances as a reference point for cities and counties. The commission requested the Legislative Council office to maintain a file of crew camp and group housing ordinances and encourage local officials to file regulatory ordinances with the Legislative Council office. The commission recommended House Concurrent Resolution No. 3001 (2013) to provide for a Legislative Management study of issues related to development of group housing and crew camps, including infrastructure demands, health and safety requirements, regulation, and enforcement of regulatory violations. The measure was enacted, but the study directive was not given priority by the Legislative Management.
4. The commission studied fire service training needs but made no recommendation.

### **STUDY APPROACH**

Section 54-35.2-02 provides the commission is charged with serving "as a forum for the discussion of resolution of intergovernmental problems"; engaging in activities and studies relating to state, local, and any other government; and preparing "model ordinances or resolutions for consideration by officials of political subdivisions." It may be helpful for the commission to request members and representatives of local governments and other interested groups to provide suggestions of topics for consideration during this interim. However, the commission should be aware of studies undertaken by other interim committees and avoid duplication of efforts.