

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Thursday, February 25, 2010
Walnut Room, Best Western Doublewood Inn
Fargo, North Dakota

Senator Tracy Potter, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Tracy Potter, Arden C. Anderson; Representatives Dan Ruby, Dwight Wrangham; Citizen Members Don Frye, Ken Yantes

Members absent: Citizen Members Jane Amundson, Randy Bina, Shawn Kessel, Jon Martinson, Linda Svihovec; Governor's Designee Nick Hacker

Others present: Donald L. Clark, State Representative, Fargo

Eliot Glasheim, State Representative, Grand Forks

Jim Kasper, State Representative, Fargo

LeahRae Amundson, Todd Feland; City of Grand Forks, Grand Forks

Bob Graveline, Utility Shareholders of North Dakota, Bismarck

Scott A. Radig, State Department of Health, Bismarck

Bonnie Johnson, Cass County, Fargo

Terry Traynor, Aaron Birst; North Dakota Association of Counties, Bismarck

Bethany Kurz, Energy and Environmental Research Center, Grand Forks

Terry Ludlum, City of Fargo, Fargo

It was moved by Representative Ruby, seconded by Mr. Frye, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

STUDY OF PUBLIC IMPROVEMENT BIDDING

Ms. Bonnie Johnson, Cass County Administrator, Fargo, made a presentation ([Appendix A](#)) on issues with public improvement contracts, including defining "lowest responsible bidder," increasing the \$100,000 threshold, supporting the bid bond, and allowing specifying brands or patented articles in bids. She said there should be criteria added to define "responsible" so that cities and counties do not have to litigate the term or receive threats of litigation. She said the threshold for bidding should be increased and indexed to inflation. She said more projects should be able to be completed with a request for proposal. She said a bid bond encourages serious bids and is good for large projects. She said there needs to be a few exceptions for specifying brands and patented

articles. She said fire systems, security systems, and air-handlers are the types of items that continuity and compatibility are of extreme importance.

In response to a question from Representative Ruby, Ms. Johnson said although the county has never recovered on a bid bond, the fact that contractors must go through the bid bond process ensures that they are serious. She said the bid bond removes the fly-by-night contractors. She said the reason that there has not been any recovery on bid bonds is that the board of county commissioners has chosen not to pursue legal action.

In response to a question from Senator Anderson, Ms. Johnson said transparency in the bidding process is important. She said there needs to be exceptions in the cases of public safety, i.e., security in a jail.

In response to a question from Senator Potter, Ms. Johnson said in the request for proposal process the county sends the request to two to six vendors. She said the requests are not advertised.

In response to a question from Senator Potter, Ms. Johnson said for a shingling project, the county put out a request for proposals to four companies and received estimates from \$60,000 to \$80,000. She said the county selected a responsible company. She said when the company began the project the company discovered the base of the roof was 103-year-old concrete. She said an engineer was required to be hired to determine the best way to cover the concrete. She said the county had to pull the project because of the extra cost of the engineer which placed the project over \$100,000. She said this slowed the project down and required the project to be delayed through the winter. She said more damage is occurring because of the delay.

In response to a question from Senator Potter, Ms. Johnson said the request for proposal process benefits local contractors.

In response to a question from Representative Wrangham, Ms. Johnson said the request for proposal process allows the preselection of qualified bidders and more flexibility.

In response to a question from Mr. Frye, Ms. Johnson said a political subdivision could advertise requests for proposals and advertising should be determined on a case-by-case basis. She said this provides more flexibility.

In response to a question from Senator Potter, Ms. Johnson said three weeks of advertising is not a

problem, the main issue is with the qualification of bidders.

Mr. Frye said the three weeks of advertising are a problem in a small community because it can take up to four weeks to open bids. He said four weeks can be a significant delay.

In response to a question from Senator Potter, Ms. Johnson said the possibility of favoritism in the request for proposal system is not that great in a larger community because of the adequate number of qualified contractors.

PRISONER MEDICAL COSTS

Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, Bismarck, provided written testimony ([Appendix B](#)) on jail medical costs. He said the denial of medical care is a constitutional violation if a prison or jail deliberately is indifferent to a substantial risk of serious harm. He said for an injury to be considered sufficiently serious, the harm must significantly change the prisoner's quality of life. He said 3 jails may hold prisoners up to 96 hours; 7 jails may hold prisoners up to 30 days; and 16 jails, classified as Grade 1, can hold prisoners up to one year. He said Medicaid benefits are lost once a person is in jail. He said because of the size of most jails, it is difficult to maintain medical staff beyond nursing staff. He said counties have investigated private insurance, and a statewide health insurance contract for all jails would cost over \$215,000 for an annual premium.

In response to a question from Senator Potter, Mr. Traynor said there has not been any recent lawsuit filed by a prisoner against a jail.

In response to a question from Senator Potter, Mr. Traynor said it sounds reasonable to assume the state may be able to receive discounted rates more so than individual counties. He said the first \$150 of medical costs is paid by the state for state inmates in county facilities.

In response to a question from Senator Anderson, Mr. Traynor said most counties have not been hit by a catastrophic expense over \$10,000. He said the problem with medical costs includes all costs, not just catastrophic costs.

In response to a question from Mr. Frye, Mr. Traynor said Georgia and Minnesota have taken action to address catastrophic medical expenses.

STATE ASSISTANCE TO COUNTIES FOR MAJOR TRIALS

Mr. Aaron Birst, legal counsel, North Dakota Association of Counties, Bismarck, presented written testimony ([Appendix C](#)) on state assistance to counties for major trials. He said the state provides assistance to state's attorneys through direct financial support through the Attorney General's office for witness reimbursement fees. He said generally witness fees exceed the budgeted amount and the Attorney General seeks additional funds from the

Emergency Commission. He said the Attorney General's office provides nonfiscal support through supplying an assistant attorney general when requested by a state's attorney. He said this typically occurs when there is a significantly time-consuming trial where the assistant attorney general has some expertise. He said the Attorney General's office provides significant indirect support to state's attorneys by maintaining a well-functioning State Crime Laboratory. He said the North Dakota Association of Counties has supported an additional full-time employee for the Attorney General's office for a prosecutor of sexual offenses and will continue to support this position in the future.

In response to a question from Senator Potter, Mr. Birst said the issue is about funding and reimbursement and is not substantive. He said aid from the Attorney General's office to state's attorneys is critical.

MUNICIPAL JUDGES AND COURTS

Mr. Birst said municipal courts are not courts of record. He said municipal courts have limited jurisdiction to traffic violations and first and second driving while under the influence offenses. He said municipal courts may hear Class B misdemeanors. He said there is a right to appeal anew to district court from municipal court. He said in cities under 5,000 in population, a municipal judge does not have to be law-trained. He said of the 73 municipal judges in this state, 19 are law-trained. He said municipal judges must have 18 hours of training every three years and go through a mentoring system with district court judges.

MUNICIPAL SOLID WASTE STUDY

Ms. Bethany Kurz, Senior Research Manager, Energy and Environmental Research Center, Grand Forks, made a presentation ([Appendix D](#)) on municipal solid waste disposal and an overview of emerging technologies. She said the current solid waste management practices include landfills, incineration, composting, and recycling. She said landfill gas typically contains 45 percent to 60 percent methane with the majority of the remainder being carbon dioxide. She said methane is natural gas. She said landfill gas is the single largest source of manmade methane emissions in the United States, contributing to almost 40 percent of methane emissions each year. She said methane is 25 times more problematic than carbon dioxide with respect to climate change. She said there are four categories of new technologies, including thermal conversion, digestion, hydrolysis, and fiber recovery. She said the thermal conversion process includes gasification, pyrolysis, and plasma arc. She said digestion is the reduction of solid waste materials through decomposition by microbes, accompanied by the evolution of liquids to gases. She said digestion may occur anaerobically or aerobically. She said

hydrolysis is the conversion of the cellulosic fraction of municipal solid waste to ethanol or other chemicals. She said fiber recovery is the mechanical recovery of fiber used in papermaking. She said the life of a landfill may be extended through recycling, composting, and leachate recirculation, alternative daily cover, shredding, and compacting.

In response to a question from Senator Potter, Ms. Kurz said the creation of ethanol out of cellulosic waste may become economical in this state.

Mr. Todd Feland, Public Works Director, City of Grand Forks, made a presentation ([Appendix E](#)) on the landfill siting process for Grand Forks. He said Wisconsin has state siting and Minnesota has more involvement from the counties than in this state.

In response to a question from Representative Wrangham, Mr. Feland said the city is working with landowners near the new landfill to negotiate a settlement.

Representative Wrangham said people living near the landfill should be offered prices in excess of market value because the people are being uprooted from where they want to live. He said the city is buying more than mere property.

Mr. Yantes said the political subdivisions need to work together with landowners and other political subdivisions in the siting of landfills.

In response to a question from Senator Potter, Mr. Feland said Grand Forks has curbside recycling at no charge to the property owner. He said there is approximately 30 percent usage without incentives. He said the higher the rate of recycling, the harder it gets to increase the rate of recycling.

In response to a question from Senator Potter, Mr. Feland said the site of the landfill was chosen because of ease of transportation and geology. He said eminent domain was not used by the city.

Representative Glassheim provided information on a bill he introduced during the 2009 legislative session to provide for the state siting of landfills. He said changes in federal law required small landfills to close and only large cities have the resources to operate landfills. He said these landfills have become regional landfills. He said it took 15 years to get a permit to site a landfill in Grand Forks. He said this is too long and too uncertain. He said millions of dollars were wasted because one entity has zoning and one entity issues the permit. He said an environmental impact statement is needed for zoning and is very expensive. He said the zoning may be rejected by 100 people in a township. He said the township residents can decide the fate of 100,000 people in the region who use the landfill. He said control should be at the closest level to the activity. He said the people affected by the landfill should decide on the landfill zoning. He said landfills affect a region, not one city, township, or county. He said the decision to site a landfill happens once every 20 years so a regional landfill commission may be too complex of an entity for such an infrequent decision. He said he supported

a board at the state level made up of scientists and politically accountable members.

Representative Glassheim said the state reviewed 200 sites for the Grand Forks landfill in 1991. He said the two best sites were in Nelson County, but Nelson County did not want the landfill, notwithstanding the scientific justification for siting the landfill in Nelson County. He said it is ironic that Nelson County now sends its garbage to the Grand Forks landfill.

Representative Glassheim said the Grand Forks City Commission has agreed to be more than fair for buyouts because of the displacement.

In response to a question from Representative Ruby, Representative Glassheim said the city did not have to buy anyone out, but chose to do so to be a good neighbor.

In response to a question from Senator Potter, Representative Glassheim said one resident wants to stay but is afraid that in 15 years when he wants to move he will lose money on the sale. He said he does not know of a formal method to determine future loss of value. He said the city is working with the individual.

Mr. Feland said the city is working with the individual who wants to sell the land to the city and rent back the land at a marginal cost.

In response to a question from Mr. Frye, Representative Glassheim said landfill sites should be chosen well in advance of the need of a landfill site.

In response to a question from Mr. Frye, Representative Glassheim said the bill he introduced last session preempted zoning but not eminent domain. He said eminent domain is a controversial issue.

In response to a question from Senator Potter, Representative Glassheim said regionalization is required for landfills because of the economics. He said years ago the state provided money for hiring individuals to develop regional landfills.

In response to a question from Mr. Yantes, Representative Glassheim said zoning is the crucial question. He said the only reason Grand Forks has a landfill is because of extraterritorial zoning authority. He said there is not a township that would have a landfill because of the "not in my backyard" attitude. He said if a township can veto a good plan that is scientifically sound and addresses all of the concerns of the people living around the landfill, the city will have to place the landfill in a populated area within the city's zoning jurisdiction. He said a landfill has to go somewhere, science should determine its location, and there should be reasonable accommodations to address impacts.

Chairman Potter recessed the meeting for a tour of the Fargo landfill.

Mr. Terry Ludlum, Solid Waste Utility Manager, City of Fargo, made a presentation ([Appendix F](#)) on the Fargo landfill at the Fargo landfill. He reviewed the methane gas collection system, wind energy, and solar energy used at the landfill. He said the landfill gas is sold to Cargill for thermal processes, used in

the transfer station boilers for heating, and used for the generation of electricity.

Mr. Ludlum said the current landfill has 13 years left before it is full.

No further business appearing, Chairman Potter adjourned the meeting at 1:50 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:6