

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Friday, January 28, 2000
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Elroy N. Lindaas, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Elroy N. Lindaas, Tim Mathern, Darlene Watne; Representative Earl Rennerfeldt; Citizen Members Bob Frantsvog, Les Korgel, Ken Yantes; Governor's representative Carter Wood

Members absent: Citizen Members Randy Bina, Mel Jahner, Maxine Olson-Hill

Others present: Barbara Norby, North Dakota School Boards Association, Bismarck

Bryan Hoime, North Dakota Township Officers Association, Edmore

Jerry Hjelmstad, North Dakota League of Cities, Bismarck

Bill Wocken, City of Bismarck, Bismarck

Larry Maslowski, Insurance Department, Bismarck
Douglas Friez, Division of Emergency Management, Bismarck

Mark Johnson, Terry Traynor; North Dakota Association of Counties, Bismarck

Jack McDonald, North Dakota Cable Television Association, Bismarck

Mel Kambeitz, U S West, Bismarck

Rick Clayburgh, Tax Commissioner, Bismarck

It was moved by Senator Mathern, seconded by Senator Watne, and carried on a voice vote that the minutes of the October 19, 1999, meeting be approved as distributed.

CENSUS 2000

Chairman Lindaas called on Mr. Nelse Grundvig, Research Analyst, Job Service North Dakota, for comments regarding the year 2000 census and possible areas of state and local government interest. Mr. Grundvig provided each commission member with a *United States Census 2000 Info Kit*, which includes material regarding the importance of the upcoming census. A copy of this information kit is on file in the Legislative Council office.

Mr. Grundvig reported that the census numbers are used at the federal, state, and local government levels. He said the community block grant program is an example of a federally funded program that is based on census figures.

Mr. Grundvig said the 2000 census is unique because the federal government did not include

funding for a recount or revision of the census figures. In previous years, he said, it was possible to challenge census figures, but it appears this is not going to be available with the 2000 census. He said two classifications on which communities should focus are college kids, who are counted in the community they attend school, and snowbirds, who are counted in North Dakota if they spend at least six months per year in the state.

Mr. Grundvig said there will be two types of written census forms used to gather information. He said five out of six people will receive the short form, and one out of six will receive a longer form.

In response to a question from Senator Lindaas, Mr. Grundvig said traditionally North Dakotans are good at responding to surveys; however, in the past there has not been an organized effort to count snowbirds.

In response to a question from Senator Watne, Mr. Grundvig said college students are counted in their college community because these students live there at least six months out of every year.

In response to a question from Representative Rennerfeldt, Mr. Grundvig said American Indians are classified as a hard-to-count population. He said in a new effort to more accurately count American Indians, each reservation will have a tribal liaison who will help coordinate census efforts.

In response to a question from Senator Mathern, Mr. Grundvig said the North Dakota Legislative Assembly's role in the upcoming census is to encourage constituents to fill out the census forms.

In response to a question from Citizen Member Frantsvog, Mr. Grundvig said in order to be classified a metropolitan statistical area, a community must have a population of 50,000. He said census figures indicate that Minot is not a metropolitan statistical area. If there is an interest in changing the definition of metropolitan statistical area, he said, individuals should contact their federal delegation.

In response to a question from Senator Lindaas, Mr. Grundvig said a census form will be mailed to every home, and if there is not a response from a household, a census worker will go to that household and perform an onsite interview. Census information gathering will begin April 1, 2000, and census workers will be in the field until mid-May 2000. He said it will

take at least six months to make an initial tabulation of the census information, and by January 1, 2001, the President will receive the first census draft. Hopefully, he said, final census results will be distributed by January 1, 2002.

COMMISSION MEMBERSHIP

Chairman Lindaas called on commission counsel to present a bill draft relating to the membership of the Advisory Commission on Intergovernmental Relations. Commission counsel said under the bill draft the commission would increase from 11 members to 12 members as a result of the North Dakota School Boards Association Board of Directors appointing one member to the commission. She pointed out that if this bill were to be enacted, the commission would be composed of an even number of members.

Senator Lindaas said the legislation creating the Advisory Commission on Intergovernmental Relations was recommended by the Legislative Council's Political Subdivisions Committee during the 1987-88 interim. He said including a representative from the North Dakota School Boards Association was considered by the interim committee, but no action was taken to add this representation at that time. Commission counsel said legislative history from the 1989 legislative session indicates there was discussion regarding increasing the commission membership to include a representative from the North Dakota School Boards Association; however, action was not taken to amend the bill.

Chairman Lindaas called on Ms. Barbara Norby, North Dakota School Boards Association, for comments regarding the bill draft. Ms. Norby said although the North Dakota School Boards Association Board of Directors has not seen the bill draft, she believes the board would be in full support of the bill draft. She said it is important for school boards to have a voice on the commission and it is good for the schools to cooperate with the local and state government representatives.

DISASTER RELIEF

Chairman Lindaas called on commission counsel to present information regarding how other states use disaster relief trust funds. The 1999 Legislative Assembly enacted Senate Concurrent Resolution No. 4049, which directed the Legislative Council to study the establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster areas; however, the Legislative Council did not prioritize this resolution for study.

Commission counsel distributed two documents published by the National Conference of State Legislatures, *Emergency Management - A Legislator's Guide* and *Emergency Management Proposed Legislation - A Framework for Action*. A copy of these publications is on file in the Legislative Council office.

She said according to the National Conference of State Legislatures, emergency management trust funds are typically designed to supplement existing state and local government emergency management budgets. The funds, she said, are typically used to reduce the effect and prevent future losses from natural disasters. She said this is done through proactive mitigation and reactive mitigation, preparing communities to respond to disasters, establishing state programs of disaster assistance available if the federal government is not involved, and providing matching funds for federal disaster aid programs.

Commission counsel said several states have considered creation of an emergency management trust fund, including Florida, Iowa, Massachusetts, and Nevada. She said possible funding sources for an emergency management trust fund include general revenue appropriations, emergency management fees, a property title surcharge collected at the point of property title registration, an insurance surcharge, an insurance premium tax, the use of civil penalties and fines for violating environmental and land use planning statutes, public utility assessments, a portion of state lottery proceedings, and donations and grants received from any source.

Chairman Lindaas called on Mr. Larry Maslowski, Assistant Senior Property and Casualty Analyst, Insurance Department, for comments regarding funding an emergency management trust fund through an insurance product. Mr. Maslowski provided a written summary of his testimony, a copy of which is on file in the Legislative Council office.

Mr. Maslowski said one possible insurance funding source for an emergency management trust fund would be to increase the property and casualty insurance premium tax. He said the tax is 1.75 percent of property and casualty insurance premiums; however, foreign insurance companies typically pay a higher tax rate due to the fact that North Dakota retaliates against companies domiciled in other states if the foreign state charges a higher rate of tax than North Dakota and requires North Dakota insurance companies to pay this higher rate. He said the end result is that increasing the premium has the effect of negatively impacting domestic insurance companies.

Mr. Maslowski said another possible insurance funding mechanism is to impose an insurance policy surcharge. He said this approach would likely avoid the issues invoking the retaliatory rule.

In response to a question from Senator Mathern, commission counsel said Florida's emergency management trust fund balance is between \$12.8 million and \$14 million.

Chairman Lindaas called on Mr. Douglas Friez, Director, Division of Emergency Management, for comments regarding creating an emergency management trust fund. Mr. Friez said the Department of Emergency Management has 20 full-time employees, and at the county level each county has an

emergency manager. Funding for the department, he said, includes \$500,000 of general revenue and equal federal matching money. Additionally, he said, the department receives some funding as a result of the hazardous chemical fee.

Mr. Friez said money in an emergency management trust fund could be used for the day-to-day emergency management services, or the funds could be used in responding to an emergency and disaster recovery. Under the current system, he said, the day-to-day emergency management needs are being met by the state's appropriation; however, local government may seek funding for day-to-day management needs. He said funding for local government emergency response and disaster recovery is provided through the Bank of North Dakota. He said North Dakota is unique because with a state bank, local governments are able to receive loans for disaster recovery. Under the current system, he said, there is executive and legislative control of disaster recovery money. One possible use for trust fund money, he said, could be to cover a local community's disaster loan interest.

In response to a question from Senator Mathern, Mr. Friez said the state and local governments have received \$600 million from the federal government in disaster relief funding since 1993. In a typical year, he said, the state receives between \$55 million to \$60 million of federal funding. He said the federal money typically comes with a matching requirement that varies from disaster to disaster.

Senator Watne said there was discussion during the 1999 legislative session of creating a state "rainy day fund" which could be available for a broad range of needs, including disasters.

In response to a question from Senator Watne, Mr. Friez said typically in the case of a disaster, the Department of Emergency Management requires an assessment of the disaster situation, and this assessment is typically provided by the Red Cross.

Citizen Member Yantes said counties and townships are dealing with slowly occurring disaster such as flooding. He said something needs to be done to help these counties and townships deal with maintaining infrastructure.

Chairman Lindaas called on Mr. Bryan Hoime, President, North Dakota Township Officers Association, for comments regarding the need for an emergency management trust fund. Mr. Hoime said the 1999 study resolution was intended to deal with the narrow issue of tax relief. He said he envisions a trust fund that would allow local governments or taxpayers to access money from the fund when property is damaged by a disaster.

In response to a question from Senator Watne, Mr. Hoime said the Bank of North Dakota does assist state and local governments in cases of disaster; however, the Bank does not address the situation in which property owners need tax relief.

In response to a question from Citizen Member Yantes, Mr. Hoime said he did not have a suggestion for the funding source for an emergency management trust fund, but this issue should be discussed in future meetings.

REVENUE SHARING AND PERSONAL PROPERTY TAX REPLACEMENT

Chairman Lindaas called on Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, for comments regarding the history and current status of personal property tax replacement. Mr. Traynor provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Traynor reviewed the history of personal property tax replacement. Before 1969, he said, local governments received minimal state general fund aid and local governments taxed personal property. In 1969, he said, the Legislative Assembly repealed individual personal property taxes, and the loss of revenue was to be replaced by a portion of the revenue from a number of new statewide tax changes. This new sharing arrangement was termed the personal property replacement program. Theoretically, he said, under the statute the ratio of funding was to be 4:1; however, this level was never reached in the actual appropriation. He said under the program the appropriated dollars were distributed to each property taxing district based on the district's real property to personal property ratio in 1968, and the relative amount of real property tax levied in the district to all real property tax levied in the state. He said this formula was created to provide for additional state revenue as a district or special fund increased its local property tax revenue; however, with a fixed appropriation the result was more money for the district that raised its levy faster at the expense of those districts that increased real property taxes more slowly.

Mr. Traynor said in 1975 the Legislative Assembly restructured school district funding and removed the school districts from sharing in the personal property replacement program effective 1976. The result, he said, was a decrease in the state appropriation for the program.

Mr. Traynor said although the statutory formula provided for a ratio of 4:1, in reality by 1977, the actual ratio of real property tax to the actual personal property replacement program appropriation was 15:1. Therefore, he said, in November 1978 there was a successful statewide initiative creating the state revenue sharing program. Under this program, he said, five percent of state income sales and use taxes was dedicated to counties, cities, city park districts, and townships. This money was distributed to cities and counties based on the communities' populations and relative property tax levels.

Mr. Traynor said from 1979 to 1985 the Legislative Assembly was unable to reduce the revenue sharing

allocations without a two-thirds vote to override the initiated measure; however, the personal property replacement programs appropriations remained a legislative prerogative. During the 1985 legislative session, he said, the statutory ratio of the personal property replacement program was reduced to a ratio of 19:1.

Mr. Traynor said in 1987 the Legislative Assembly repealed the statutes that generated the revenue for both state revenue sharing and personal property replacement programs and replaced these programs with the state aid distribution fund. He said the state aid distribution fund was created to receive six-tenths of the first penny of state tax revenue. He said the theory behind this formula was that the formula would generate approximately the current funding as in 1987 but would allow state aid to grow as the state's economy grew. A distribution formula that maintained the status quo was implemented.

From 1989 to 1995, Mr. Traynor said, the state appropriated less than six-tenths of the first penny of sales tax revenue, even though collections into the state aid distribution fund continued to grow. In 1997, he said, in order to address legislative concerns and also protect local governments from funding reductions, the following elements were incorporated into proposed statutory language:

- Four-tenths of the first penny of sales tax was to be the revenue generating formula. Local governments were, in reality, sharing about .38 of the first penny in the previous biennium. This would start the new program at a more reasonable point from the legislative perspective and also provide enough new revenue to mitigate any adverse impact of a formula change.
- All revenue in the fund would be allocated through a permanent, continuing appropriation so that legislative action would not be required and legislative changes would be less likely. A mechanism identical to the very successful highway distribution fund was proposed.
- The continuing appropriation, together with a four-tenths of a penny formula, would allow state aid to grow or shrink with the state's economy and the state's ability to fund all levels of government.
- The revenue sharing and personal property replacement programs allocation formulas would be repealed, removing ties to personal property collections in 1968 and eliminating the connection between increased property taxes and increased state aid for individual jurisdictions.
- Direct allocations from the state were eliminated for all entities except counties and cities.
- Counties were required to allocate to townships and cities to park districts at the same

proportion that existed under the old formula in 1996.

- Counties and townships, as well as cities and park districts, could come to mutual agreements for other distribution mechanisms such as reduced road maintenance rates.
- All revenues would go into an entity's general fund for appropriate use as directed by the governing board.
- Total revenue would be split between county entities and city entities at the existing 1996 proportion, with the cities getting the University of North Dakota medical center share.
- Counties would be divided into seven population groupings, each with a fixed percentage of the county allocation. Cities would be similarly divided into seven groups. Within the groupings, the revenue would be allocated strictly by relative population. The groupings and fixed percentages were developed to hold harmless all jurisdictions, if possible.

Mr. Traynor said this proposed language was accepted, and legislation was enacted with a delayed effective date to minimize the impact of the new formula on the 1997-99 state budget. This legislation went into effect on January 1, 1999. He said so far the restructured formula has been extremely successful. He said the continuing appropriation has remained in place and sales tax revenues were sufficient to ensure that all counties received more funding under the new program than they had received under the old program.

Mr. Traynor said with the upcoming census, the break points and fixed percentages will need to be reviewed and possibly amended. He said it will be the responsibility of local governments to propose adjustments that reflect the population changes but minimize the adverse impact to those jurisdictions that are losing populations.

In response to a question from Citizen Member Yantes, Mr. Traynor said he was not sure of the possibility of changing the funding ratio from four-tenths to six-tenths.

E-COMMERCE

Chairman Lindaas called on Mr. Rick Clayburgh, Tax Commissioner, for comments regarding the taxing of remote sellers. Commissioner Clayburgh said the term "remote seller" includes e-commerce and catalog sales. In the last couple of years, he said, there have been various attempts to deal with the taxing of remote sellers. Two years ago, he said, the tax commissioners were close to reaching an agreement with remote sellers which would have provided for voluntary collection of sales tax; however, just before the signing of the agreement, a press release characterized the agreement as new taxes being imposed resulting in scuttling the negotiations. He said in 1998 Congress passed the Internet Tax

Freedom Act, which placed a three-year moratorium on Internet taxes. He said North Dakota recognizes two exceptions to this moratorium--telecommunications gross receipt tax and sales tax on Internet access.

Commissioner Clayburgh said the National Governors Association and the National Conference of State Legislatures are working together to create model legislation that would provide for a zero burden tax collection system. He said interested parties are meeting in Washington, D.C., on February 4, 2000, to work on language for enabling legislation for Legislative Assemblies meeting this year. He said the model legislation would allow for negotiations for zero burden tax systems.

Commissioner Clayburgh said the next meeting of the Advisory Commission on Electronic Commerce will be in March 2000. He said at this meeting the commission is supposed to make a recommendation that will be reported to Congress; however, it is unlikely the commission will have a recommendation, and the commission will probably request a two-year extension on the moratorium.

Commissioner Clayburgh said initially he was opposed to the moratorium because it was an interference with states' rights. However, he said, in hindsight he recognizes the benefit the moratorium has had in allowing parties to discuss the issue of taxing remote sellers. He said he views taxing of remote sales as an issue of fairness to Main Street businesses and an issue of convenience for consumers.

Commissioner Clayburgh said rural communities differ from urban communities as to how the communities are impacted by the taxing of remote sellers. He said in urban communities there is a large amount of consumer choice available locally; however, in the rural communities there is less choice on Main Street and more choice available on the Internet. He said nationwide it is estimated that remote commerce accounts for one-half of one percent of commerce activity in the country. He said this figure corresponds to the estimated impact of remote commerce on North Dakota. He said it is estimated the loss of revenue in North Dakota due to remote sales was \$2.7 million in 1999; and estimates on the impact on the state of remote commerce during the current biennium provide for a \$10 million to \$15 million loss in revenue.

Commissioner Clayburgh said e-commerce is both a national issue and a global issue. He said it is possibly "the beginning of the end of sales taxes as we currently know in the United States."

In response to a question from Senator Mathern, Commissioner Clayburgh said under North Dakota law the Tax Commissioner has broad discretion in the matter of compacts and agreements; however, if an agreement regarding the taxing of remote sellers is not made, it is difficult to answer whether state law would need to be enacted before imposing taxes on a

remote seller. He said if a sales tax rate lower than the current rate is addressed in an agreement, it would be best to have legislative oversight; however, if a five percent sales tax rate, which is the same as North Dakota's current rate, is agreed to, perhaps less legislative oversight would be required.

In response to a question from Citizen Member Frantsvog, Commissioner Clayburgh said although computer technology is improving daily which results in simplifying tax collection, the tax system throughout the nation is very complex and could be very burdensome for remote sellers.

In response to a question from Citizen Member Korgel, Commissioner Clayburgh said the Tax Department does out-of-state audits, and the department is making nexus determinations on a regular basis. He said one way to simplify collection of taxes from remote sellers is to implement a clearinghouse system such as a neutral third party to collect taxes from sellers.

In response to a question from Senator Lindaas, Commissioner Clayburgh said the Multistate Tax Commission is composed of 34 compact members and follows uniform rules. He said the Federation of Tax Administrators represents all 50 states on national issues. He said the Multistate Tax Commission and the Federation of Tax Administrators approach issues very similarly to the National Governors Association.

In response to a question from Senator Lindaas, Commissioner Clayburgh said although it is difficult to provide firm statistics on e-commerce and remote sales, remote sales are growing and the National Organization of Remote Sellers reports a 20 percent increase in catalog sales over the last year.

In response to a question from Representative Rennerfeldt, Commissioner Clayburgh said he is not familiar with the details of the European taxing system, although he does know it is an imperfect system and there is an active black market.

In response to a question from Citizen Member Frantsvog, Commissioner Clayburgh said during the next legislative session, it may be possible for the Legislative Assembly to enact enabling legislation that would allow the Tax Department to create administrative rules addressing taxation of remote sellers.

In response to a question from Senator Mathern, Commissioner Clayburgh said the Tax Department has a research analyst who is an economist, but an indepth study of the degree to which tax rates affect consumer decisions would need to be performed by a specialist. He said one trend in the area of e-commerce is a movement toward women and older people increasing their use of e-commerce. He said this new group of users is giving more thought to purchase decisions than the previously male-dominated e-commerce users; therefore, there is an increasing demand for what is called "click and brick" retailers. Click and brick retailers, he said, are

retailers that have a physical store presence, but sell items over the Internet.

COMMISSION DISCUSSION AND DIRECTIVES

It was moved by Senator Mathern and seconded by Citizen Member Korgel that the commission request that the Legislative Council staff be requested to prepare a bill draft that would create an emergency management trust fund. Senator Mathern said the trust fund could be funded through a surcharge on property and casualty insurance adequate to create a fund of \$3 million. He said this fund could be housed in the Bank of North Dakota and local governments could access the fund for the purpose of property tax replacement or abatements resulting from natural disasters. Senator Watne requested additional information in upcoming meetings regarding the impact of Devils Lake

flooding. She said the information should include the impact the flooding has had on property owners and how much damage occurs yearly as a result of the flood. **The motion carried on a roll call vote.** Senators Lindaas, Mathern, and Watne and Representative Rennerfeldt and Citizen Members Frantsvog, Korgel, and Yantes voted "aye." Governor's representative Wood voted "nay."

Citizen Member Frantsvog requested the commission consider problems associated in collecting fines from municipal court.

Chairman Lindaas adjourned the meeting at 2:20 p.m.

Jennifer S. N. Clark
Commission Counsel