

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

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, in addition to completing assigned studies.

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 of local government issues and to accept suggestions from groups or individuals for study.

In conjunction with Section 54-35.2-02(4), Section 54-40.2-03 provides that a political subdivision entering a joint powers agreement may file a copy of the agreement and the explanatory material with the commission to serve as a resource for other political subdivisions in exploring cooperative arrangements.

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 Parks Association Board of Directors 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.

The Legislative Management assigned to the commission the study directed in 2013 House Bill No. 1132, which provides for a study of the 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 regarding legislative property tax relief. In addition, the Legislative Management assigned to the commission the study provided by Senate Concurrent Resolution No. 4023, which provides for a study of whether political subdivisions can become more efficient and effective to reduce costs to taxpayers.

The commission members were Representatives Brenda Heller (Chairman) and Ron Guggisberg; Senators Dwight Cook and Jessica K. Unruh; North Dakota League of Cities representatives Katie Andersen and Don Frye, who served until he did not seek reelection, and Chris West who was appointed to replace Mr. Frye; North Dakota Association of Counties representatives Vicki Kubat and Scott Ouradnik; North Dakota Township Officers Association representative Kenneth Yantes, who served until Larry Syverson was appointed to replace Mr. Yantes; North Dakota Recreation and Parks Association representative Mike Schwartz; North Dakota School Boards Association representative Dr. Jon Martinson; and Governor's designee Brandi Pelham.

POLITICAL SUBDIVISION BUDGET INFORMATION AND PROPERTY TAX RELIEF

Section 1 of 2013 House Bill No. 1132 directed a study of making political subdivisions budget information accessible on the state budget database website and finding better ways to inform taxpayers regarding political subdivision budget or levy deliberations and better ways to inform taxpayers regarding property tax relief. House Bill No. 1132 as introduced would have required enhanced information to be provided in property tax statements. The amendment to House Bill No. 1132, directing the study, incorporates consideration of an issue raised by 2013 House Bill No. 1256, which, as introduced, would have required political subdivisions to submit budget information for inclusion on the state budget database website.

State Budget Database Website Use

The objective of 2013 House Bill No. 1256 was to expand the searchable state budget database. The proposed expansion would have included annual budget information on the state website so that citizens could access the budget of a city, county, or any other political subdivision to understand how their tax dollars were being spent. House

Bill No. 1256 failed to pass. Late in the 2013 legislative session, an amendment was added to House Bill No. 1015, which, as enacted, created a new subsection to Section 54-44.1-18 providing as follows:

The governing body of each political subdivision may submit the annual budget adopted by the governing body to the director of the budget. The director of the budget shall include on the office of management and budget website any information submitted by a participating governing body of a political subdivision. The official who submits the annual budget to the director of the budget may not submit any information that is confidential under state or federal law. In lieu of submitting the annual budget adopted by the governing body to the director, any participating governing body may provide to the director a publicly accessible internet link on which the annual budget adopted by the participating governing body is available.

Informing Taxpayers of Budget and Levy Meetings and Property Tax Relief

Senate Bill No. 2036 was amended late in the 2013 legislative session to incorporate property tax reform issues that had been discussed in connection with several other bills during the session. The common objective of much of the legislative session discussion was providing taxpayers access to more understandable information on how property taxes are determined and to encourage discourse between political subdivision governing bodies and taxpayers in the budget and levy public hearings process. The property tax reform amendments added to Senate Bill No. 2036 related primarily to assessment increase notices, property tax levy notices, and information contained in real estate tax statements.

Section 57-12-09 provides if an assessor increases true and full valuation of any parcel by \$3,000 or more and 10 percent or more of the last assessment, written notice of the amount of increase must be sent to the property owner. Senate Bill No. 2036 added two new subsections providing:

2. The form of notice prescribed by the tax commissioner must require a statement to inform the taxpayer that an assessment increase does not mean property taxes on the parcel will increase. The notice must state that each taxing district must base its tax rate on the number of dollars raised from property taxes in the previous taxable year by the taxing district and that notice of public hearing will be mailed to the property owner if a greater property tax levy is being proposed by the taxing district. The notice may not contain an estimate of a tax increase resulting from the assessment increase.
3. The assessor shall provide an electronic or printed list including the name and address of the addressee of each assessment increase notice required under this section to each city, county, school district, or city park district in which the subject property is located, but a copy does not have to be provided to any such taxing district that levied a property tax levy of less than one hundred thousand dollars for the prior year.

Section 57-15-02.1 provides a taxing district may not impose a property tax levy in a greater number of mills than the zero increase number of mills without publishing newspaper notice of the intended tax increase. Senate Bill No. 2036 added a requirement that at least seven days before a public hearing on a property tax levy for more than a zero increase number of mills, the governing body must provide mailed notice to each property owner in the taxing district who received notice of an assessment increase for the taxable year under Section 57-12-09. The bill also provided an adjustment for taxable year 2013 for determining the zero increase number of mills for a school district, to reflect the property tax relief provided to reduce mill levies of school districts.

Section 57-20-07.1 was amended by Senate Bill No. 2036 to require the real estate tax statement sent by the county treasurer to provide information identifying the property tax savings provided by the state and to include a line item entitled "legislative tax relief" to identify the dollar amount of property tax savings realized by the taxpayer from property tax relief provided by the Legislative Assembly under Chapter 15.1-27 and Section 57-20-07.2. The amendment also created a provision that the form of the real estate tax statement to be used in every county must be prescribed and approved for use by the Tax Commissioner.

Testimony and Discussion

State Website Database

The commission was informed that 30 counties have provided the Office of Management and Budget some form of their budget that now appears on the state website. Space is provided for other political subdivision budgets, but counties have been the only political subdivision to provide the information. The commission was informed that although information is provided, it is very diverse in format and usability. The information is not searchable and each budget does not contain the same information or the same format. The commission received information that traffic to the website has not yet been tracked by the Office of Management and Budget, although some counties have tracked website hits and thus far traffic has been very low. The commission was informed that not all counties filed budgets on the state website because financial responsibilities have increased and some counties are overwhelmed with duties.

Property Tax Assessors

The commission received information from a representative of the Tax Department that there are 1,340 organized townships in the state and counties perform assessing duties for 508 of the townships and that townships perform their own assessment duties for the other 832 townships with 511 assessors. Of the 356 incorporated cities, counties perform the assessing duties for 147 cities and cities perform their own assessments for 209 cities with approximately 140 assessors.

The commission reviewed a bill draft under consideration by the interim Taxation Committee to require all assessors to be certified and to impose uniform training requirements for all certified assessors. The bill draft would require 180 hours of instruction in assessment issues to obtain certification as an assessor, which would be a substantial increase in the amount of training required for township assessors and assessors of cities under 5,000 population.

The commission received testimony from supporters of the bill draft that increased standards were necessary to ensure fair and uniform assessing across the state and were informed that current assessor training requirements differ depending on the four levels of certification. Current training for township assessors and Class II requires 24 hours of instruction. A Class I city assessor must complete 150 hours of instruction, and a county tax director must complete 180 hours of instruction.

Proponents of the bill draft said improving the assessment system is essential to improving fairness of the property tax. They said the best improvement to the assessment system would come from better training for assessors. Comments on the bill draft expressed concern over the ability to find assessors willing to obtain the new certification and the costs for political subdivisions associated with increased assessor training.

Tax Statements

The commission was informed that county tax statements are prepared in differing formats by different counties, which results in confusion among taxpayers receiving statements from more than one county. Some counties show the 2011 legislative property tax credit when comparing taxes from one year to the next, while other counties do not. The commission was informed that a working group assembled by the Tax Department staff and including auditors from across the state developed a standardized tax statement during this interim to be used by all counties for the 2015 tax statements. The statements are not uniform in appearance because of the different software vendors used by counties, but the standardized statements will include the same basic information across all counties.

Township Zoning

The Township Officers Association requested consideration of a simplified means for a township to reacquire zoning authority that was previously transferred to the county. A 1982 constitutional amendment provided that a political subdivision may, by mutual agreement, transfer to the county any of its powers and may, in like manner, revoke the transfer. The opinion concluded that a township that unilaterally transferred its zoning authority to the county between 1955 and 1982 had no specific statutory provision to recover that zoning authority, but could enter a joint powers agreement with the county to recover zoning authority.

The commission considered a bill draft to allow a township that unilaterally transferred its zoning authority to the county before 1982 to enter a mutual agreement with that county to reacquire the zoning authority. The bill draft also repeals Section 11-33-02, which permits unilateral transfers, because those transfers are no longer valid after the 1982 constitutional amendment.

Park District Purchases

The Recreation and Parks Association requested consideration of bidding requirements imposed for park districts, which sometimes interfere with attempts to save money by joint purchasing of equipment with a city. The commission was informed that park districts must seek bids for acquisition of equipment and other nonbuilding purposes over \$25,000. Cities and other political subdivisions must seek bids for building projects exceeding \$100,000, but there is not a statutory bid requirement for equipment purchases by the city. The commission was informed that it appears cities are free to set bid requirements for equipment by ordinance. After further discussion among member park districts, the Recreation and Parks Association suggested that these concerns could be resolved without legislation.

Bond Issue and Excess Levy Elections

The commission reviewed a bill draft under consideration by the interim Taxation Committee to provide 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. It was suggested the option of calling for special elections to increase property taxes or considering bond issues often results in elections with low voter turnout and little public awareness.

A representative of the North Dakota School Boards Association expressed the association's opposition and said the change would be an infringement on local control. It was also pointed out that the 2014 primary election had a lower turnout than recent special elections.

Notice to Taxpayers

The commission reviewed a bill draft under consideration by the interim Taxation Committee, which would eliminate the requirement of newspaper publication of notice of budget hearings if greater than a zero increase tax rate is being considered. The bill draft requires notice to be provided to every taxpayer by personal delivery, mail, or by electronic mail, if the owner consents to receive notice by electronic mail. The bill draft provides that a consolidated notice be allowed for an individual or entity owning more than one parcel of taxable property. Existing law requires notice by the governing body in the newspaper and to taxpayers by mail if the taxpayer received a notice of an assessment increase, and the fact that only some taxpayers receive notice has been a source of confusion.

The commission reviewed a bill draft under consideration by the interim Taxation Committee, which would provide that, at any point, when a property's assessment is increased more than 10 percent and \$3,000 from the prior year, the entity that made the increase, including a city, township, or county board of equalization, must notify the property owner. The bill draft provides that, if the local board of equalization is considering an increase that would make the assessment 15 percent or more above the previous year's assessment, the board must provide reasonable advance notice and opportunity to appear for the property owner. Current law requires notice to property owners at the same threshold of a 10 percent increase of more than \$3,000, but that notice is required only if the assessor makes the increase and no notice is required if a local board of equalization makes an assessment increase above the threshold.

Unelected Boards

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. The commission reviewed a bill draft under consideration by the interim Taxation Committee, which would have allowed the city or county governing bodies to specify what information must be submitted with a levy request. The bill draft provides that levies requested by unelected governing bodies should use uniform terminology to ensure each such governing body provides necessary information and a request for a levy, but the final authority to make the levy belongs to the elected board of county commissioners or city governing body. The bill draft also provides that a public hearing on each levy request must be held by the city or county.

Financial Reports

The commission considered a study resolution draft to study the financial reports political subdivisions are required to provide to determine whether reports are being used or if reports should be used, consolidated, or eliminated. It is difficult to compare current reports because each county compiles reports in a different format.

Electric Transmission Reports

The commission was informed that there is no statutory reporting requirement for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. The commission considered a bill draft under consideration by the interim Taxation Committee which provides statutory language to require electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties to be filed at the time transmission and distribution company reports are required to be filed.

Property Tax Credit

The commission considered a bill draft to provide a continuation of the 2013 state-paid credit of 12 percent of property taxes levied by a taxing district. The commission was informed the estimated cost for the 2015-17 biennium is \$230 million and an appropriation of that amount is included in the bill draft. The interim Taxation Committee also reviewed the bill draft.

Recommendations

The commission recommends a bill [[15.0039.03000](#)] requiring all assessors to be certified and to impose uniform training requirements for all certified assessors, effective August 1, 2017. The interim Taxation Committee also considered and recommended the same bill.

The commission recommends a bill [[15.0078.02000](#)] to allow a township that unilaterally transferred its zoning authority to the county to enter a mutual agreement with that county to reacquire the zoning authority.

The commission recommends a concurrent resolution [[15.3024.01000](#)] directing a study to examine the financial reports political subdivisions are required to provide.

The commission recommends a bill [[15.0094.02000](#)] to require electric transmission reports. The bill would become effective in 2016. This bill was also recommended by the interim Taxation Committee.

The commission recommends a bill [[15.0149.01000](#)] to provide a continuation of the state-paid property tax credit. This bill was also recommended by the interim Taxation Committee.

POLITICAL SUBDIVISIONS EFFICIENCY STUDY

Senate Concurrent Resolution No. 4023 (2013) directs the study of whether political subdivisions can become more efficient and effective to reduce costs to taxpayers. The resolution states North Dakota ranks first among states in the number of local government elected officials and units of local government. The resolution states, on the basis of governmental units per 10,000 population, North Dakota has over six times the governmental units of Minnesota, over three times the governmental units of Montana, and almost two times the governmental units of South Dakota. The resolution states an appropriate balance must be determined between the desire for accessibility of local government and the cost taxpayers are willing to bear to maintain the current level of governmental units and officials. The resolution states local government representatives should have a forum to suggest measures to make local government more efficient and effective to reduce costs to taxpayers.

Political subdivisions are created under statutory authority and have only those powers specifically provided to them by statute. To enter an agreement with another political subdivision to jointly exercise powers to achieve efficiency requires specific statutory authorization. In addition to specific provisions for joint exercise of governmental powers, two provisions of law provide general authority for cooperative efforts of political subdivisions. The general grants of authority are contained in Article VII, Section 10, of the Constitution of North Dakota, and in Section 54-40.3-01.

In addition to specific statutory authorization for certain types of governmental cooperation, political subdivisions are granted broad constitutional and statutory authority to jointly perform any function that they may individually perform under law. The number of statutory provisions providing for joint functions of political subdivisions may raise some questions of interpretation, but it appears there are very few restraints on the authority of political subdivisions to jointly perform functions. The 1987-88 interim Political Subdivisions Committee, which recommended the legislation that created the commission, stated in its final report:

The committee finds that existing constitutional and statutory law provides adequately for cooperative or joint functions of political subdivisions. The committee recommends that the Advisory Commission on Intergovernmental Relations make this issue a standing concern and attempt to provide information and encourage cooperative efforts among political subdivisions.

Testimony and Discussion

County Superintendent of Public Schools

The position of county superintendent of public schools can be traced back to territorial days. The Laws of the Territory of Dakota, as enacted in 1879, provided for the election of county superintendents, in the same manner as other county officials. At the time, the county superintendent of public schools was given statutory duties related to the creation of new school districts and the restructuring of existing district boundaries. Beginning in 1989, a county superintendent of schools was to be "selected" by the school board presidents of districts headquartered in the county and approved by the board of county commissioners. The county superintendent had administrative responsibility for all schools in the county, except those in districts that employed their own superintendent. That same year, counties were given the statutory authority to engage in the joint employment of a county superintendent of schools. In 1995, the board of county commissioners was given authority not to employ a county superintendent of schools and to designate someone to perform the statutory duties of the superintendent and, since 1995, 33 counties have opted to designate the statutory duties of the county superintendent.

Testimony from county superintendents of schools and persons designated to perform those duties regarding the current role of county superintendent of schools illustrated that each county's approaches to duties of county superintendent are slightly different. The commission was informed that some share emergency management duties and others fill other county roles to maintain either full-time or part-time employment status.

The commission received testimony from a representative of one of the regional education associations regarding the role of the eight regional education associations across the state. The commission was informed that the associations act as supporting agencies by providing professional development, technology, technological support, data systems, and curriculum enrichment. The education associations are funded through grants, a portion of the foundation aid payments to school districts, and membership fees from districts across the state.

County Jails and Detention Facilities

The commission received information from a representative of the Department of Corrections and Rehabilitation regarding county and multicounty jails and juvenile detention facilities. The commission was informed that a county is responsible for housing individuals who commit a crime in the county. Counties must consider many factors in determining when expansion of jails and detention facilities is necessary. A primary concern relates to safety, particularly relating to traveling long distances for incarceration or detention. The commission was informed that not all jails operate under the same financial structure and capacity is based on the number of inmates and the type of offender. It appears that the cost of jail and detention facilities is a cost over which counties can exert little control. When the level of incarcerations and detentions unexpectedly increases, the county has options, but all of them are based on the reality of increased cost.

Rural Fire Districts

The commission received information from the State Fire Marshal relating to rural fire protection district formation and functions. Fire departments function within city boundaries and rural fire departments function within specified boundaries. A rural fire protection district can encompass a complete city and areas outside the city. However, a city department cannot extend beyond city boundaries. The commission was informed some areas of the state are not covered by fire protection, including national grasslands, some land along the Missouri River, an area including the city of Mandaree, and areas in Sioux County.

Uniform Accounting System

The commission received a suggestion from a county auditor that North Dakota should require use of a uniform chart of accounts, or uniform accounting system, as is required in Minnesota and several other states. The commission received information that creating a uniform accounting system is feasible, but the implementation may be challenging in the smaller counties. The commission was informed that legislation would be necessary to implement a uniform accounting system and to provide the authority to enforce such a system. A representative from the State Auditor's office said a uniform system is feasible, but pointed out that substantial training would be necessary. The commission reviewed financial statements and audits from different political subdivisions and found that comparing county data is difficult. Each political subdivision has a slightly different method of accounting and documenting budgets and audits, particularly with regard to ending fund balances. The commission received information that several states across the country have implemented uniform accounting systems.

Jurisdiction and Powers of Political Subdivisions

The commission was informed that determining which political subdivisions have levy authority and which boards are appointed or elected is a complicated task. The commission received information that there are numerous different statutory references to political subdivisions within Century Code, which may lead to confusion when distinguishing those with policymaking authority from those with only administrative authority.

The commission considered a study resolution draft to examine the various different references to political subdivisions currently in law and consider whether it is possible to create more specific definitions and references based on whether the governing body of a political subdivision is elected or appointed.

Township Culverts

The commission received testimony from a representative of the Department of Transportation regarding the road and stream crossing standards as applied to culvert replacement. The commission was informed that 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. The intent is when there is a construction project on a particular roadway, the culverts would be replaced, eventually leading to all roadways undergoing construction. The commission received testimony from a representative of the State Water Commission indicating it does not have funds for the purpose of replacing culverts. The commission was informed the State Water Commission does cost-sharing on assessment drains, which often include culverts.

Energy Efficiency

The commission considered a bill draft that would have provided for cities to establish special assessment districts for energy efficiency improvements in residential buildings. The commission was informed that participation in the program would be voluntary. It was suggested that the program would address the needs of homeowners who cannot afford to finance energy efficiency improvements on their own and allow a city to encourage energy efficiency projects.

Recommendation

The commission recommends a concurrent resolution [[15.3007.01000](#)] to examine statutory references to political subdivisions to determine the feasibility of distinguishing elected and unelected governing boards and clarifying lines of authority among political subdivisions.