

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Thursday, August 10, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Scot Kelsh, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Scot Kelsh, Chuck Damschen; Senators Dwight Cook, Constance Triplett; Citizen Members Mary Lee Nielson, Greg Sund, Ken Yantes

Members absent: Citizen Members Randy Bina, Karin Boom, Barry Cox, Jon Martinson; Governor John Hoeven

Others present: See attached appendix

It was moved by Senator Cook, seconded by Ms. Nielson, and carried on a voice vote that the minutes of the March 23, 2006, meeting be approved as distributed.

TOWNSHIP LEVY LIMITATION INCREASE

Mr. Yantes presented written testimony on the funding of townships. He said funding for township services has not kept up with the inflation of the costs of the services provided by the townships. He said the township officers have asked for an increase to 30 mills for the general mill cap levy of 18 mills. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Cook, Mr. Yantes said counties have not seen an increase of funding equivalent to the increased valuation of agricultural property.

In response to a question from Representative Damschen, Mr. Yantes said most of the townships that are using excess levies under North Dakota Century Code Chapter 57-17 are located around major cities.

In response to a question from Representative Damschen, Mr. Yantes said the excess levy is limited to 50 percent over the general mill levy limitation.

In response to a question from Senator Triplett, Mr. Yantes said the average cost for graveling a mile of road is between \$2,500 and \$3,000.

In response to a question from Senator Cook, Mr. Yantes said approximately 56,000 miles of township roads in this state must be improved and certified to the county auditor to be considered a township road. He said township roads do not include a farm trail but could include a dirt road.

In response to a question from Representative Damschen, Mr. Yantes said a minimum maintenance road must be maintained once every two years.

Senator Triplett said Grand Forks County subsidizes the maintenance of township roads.

Representative Damschen said the township for which he is the township clerk operates on a \$7,500 budget. He said the township does not have enough money, but residents of the township do not want to pay more taxes.

DEVELOPMENT IMPACT FEES BILL DRAFT

At the request of Chairman Kelsh, commission counsel presented a bill draft [\[70026.0300\]](#) to allow for development impact fees. He said this is the second draft of the bill draft. He said this bill draft adds to the previous bill draft by allowing counties to use the process in the bill draft and by including more requirements and suggestions for what is in an impact fee ordinance.

In response to a question from Senator Cook, commission counsel said legislation is not required for an impact fee ordinance in home rule cities. He said home rule cities generally have general authority in the city's home rule charter to make ordinances which encompass an impact fee ordinance.

In response to a question from Senator Cook, Mr. Sund said the city of Dickinson does very little upfront work as part of imposing impact fees. He said the developer does most of the work so the city does not charge administrative fees. He said the bill draft assumes the city will have major involvement in the development. He said there have been no challenges to the impact fees in Dickinson because of the good relationship between developers and the city.

In response to a question from Representative Damschen, commission counsel said there are no specific legislative limitations on impact fees; however, there may be constitutional or tangential statutes that affect impact fees.

Senator Cook said there have not been any complaints about impact fees because developers have had input in the beginning and have a successful partnership with the cities that impose impact fees. He said he does not want to tamper with the successful partnership that is now in place.

Mr. Mike Williams, Fargo City Commissioner, presented written testimony in support of impact fee legislation. He said a city acts as a banker for new development when special assessments are used to fund development. He said with special assessments

the city provides risk capital for developers. He said impact fees place the increased costs on the people causing the increase. He said engineering and design costs incurred by developers are around 11 percent in other states. He said special assessment administrative fees may be as high as 35 percent. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Cook, Mr. Williams said the developers in the Fargo area do not like impact fees and support special assessments.

In response to a question from Senator Cook, Mr. Williams said the limitation on administrative fees of 15 percent is an arbitrary level placed in the bill draft so there is no unlimited taxing authority.

In response to a question from Senator Cook, Mr. Williams said there are administrative costs that should be recouped so the bill draft allows some level of administrative fees.

In response to a question from Senator Cook, Mr. Sund said Dickinson does not charge administrative fees but charges actual costs. He said he is hesitant to support the bill draft because it may make ambiguous the authority of home rule cities to impose impact fees, which they already may do. He said the bill draft may solve a problem that does not need to be solved. He said most states have home rule authority that says that a home rule city may do anything, except what is specifically listed. He said the North Dakota statutes list what a home rule city may do and the city of Dickinson interprets that to include impact fees.

Mr. Williams said he sees the bill draft as enabling legislation that does not restrict present activities of cities. He said the legislation was offered to provide uniformity and authority to cities that are not home rule.

Senator Triplett said the bill draft could be amended to clarify Mr. Williams' intentions.

Mr. Jerry Hjelmstad, North Dakota League of Cities, Bismarck, testified in favor of the bill draft. He said the bill draft should be amended to include public facilities owned or operated by a park district as well as a city.

Ms. Doreen Riedman, North Dakota Association of Builders, Bismarck, presented testimony in opposition to the bill draft. She said impact fees are becoming less popular in other cities. She said impact fees make development difficult for small developers. She said impact fees affect the affordability of housing. She said impact fees should be dealt with at the local level because each community is different. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Senator Triplett, Ms. Riedman said although it would appear that the cost of a special assessment would be transferred to the purchase price of a house through impact fees, costs have increased in places that have gone to impact fees. She said impact fees would affect the number of people qualifying for mortgages. She said

impact fees are an unknown variable that have not produced a positive effect on development in other states.

In response to a question from Representative Damschen, Ms. Riedman said although limits on city impact fees may be good, the limit should be placed at the local level. She said there are a number of funding mechanisms that could be investigated besides the development impact fees, e.g., community development districts. She said the bill draft could encourage cities to adopt impact fees without working with developers to address problems as the problems arise.

JAIL ADMINISTRATION

At the request of Chairman Kelsh, commission counsel presented a bill draft [\[70118.0100\]](#) allowing boards of county commissioners to provide for the administration of county jails.

Senator Triplett provided testimony in support of the bill draft. She said her concern was with Grand Forks County, which has had a separate sheriff and jail administrator for the last 20 years. She said there was an Attorney General's opinion that approved of having an administrator for the jail who is not the sheriff when the separate positions were created by the county. She said a recent Attorney General's opinion calls into question the practice of having a separate administrator and sheriff in Grand Forks County. She said the bill draft would address any potential conflict.

Mr. Scott Busching, North Dakota Sheriffs and Deputies Association, Williston, presented testimony in opposition to the bill draft. He said the association is not against what Grand Forks County is doing but other counties are against the bill draft. He said politics should not be a part of running a correctional facility. He said giving a board of county commissioners authority to remove the duty of administering a correctional facility from a sheriff allows for improper influence. He said there was recently a constitutional measure to make the sheriff an elected official and the people overwhelmingly supported the idea. He said the people want sheriffs to be reactive to the people.

In response to a question from Senator Triplett, Mr. Busching said if a sheriff does not get along with the commissioners, the commissioners should not be able to hold jail administration over the sheriff to influence the sheriff.

Mr. Steve Berg, Sheriff, Burleigh County, Bismarck, presented testimony on the bill draft. He said he agreed with Mr. Busching. He said county commissioners are not educated in corrections as well as the sheriff and the sheriff needs to control programs and staffing. He said the combination of the county jail with the sheriff's department provides cost-savings. He said the bill draft will give the county commissioners too much authority.

Senator Triplett said there are no qualifications for a person to run for the office of sheriff.

In response to a question from Ms. Nielson, Senator Triplett said a regional jail may hire an administrator who is not a sheriff. She said a regional jail is made through a joint powers agreement.

In response to a question from Senator Cook, Mr. Busching said one solution for Grand Forks is to form a regional jail.

Mr. Sund said he found it interesting that two counties can agree to exclude the sheriff from being the administrator of a jail but one county may not.

COORDINATION OF EFFORTS TO DISCOURAGE DESTRUCTIVE BEHAVIOR

Mr. Lee Erickson, State Coordinator, North Dakota Students Against Destructive Decisions (SADD), Hillsboro, provided written testimony on recent activities on SADD attempting to obtain state funding. He said SADD is not actively pursuing an initiated measure because the Governor's office has offered support for a general fund appropriation. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Kelsh, Mr. Erickson said the assurance of a general fund appropriation did not include an assurance of a specific dollar amount.

In response to a question from Senator Cook, Mr. Erickson said an appropriation could go to the Prevention Advisory Committee because of its similarity to the Responsible Choices Commission. He said SADD would want a \$1 million per year general appropriation to be used for multiple purposes, including funding SADD.

Mr. Jacob Holm, SADD member, Maple Valley, provided testimony on the importance of SADD. He said the activities of SADD in his area have changed the general attitude of the youth in regard to destructive behavior.

Ms. Megan Jury, SADD member, New Rockford, presented testimony on the importance of SADD. She said North Dakota's SADD works on a small budget and accomplishes great things. She said the drinking rates of teens are reducing in this state.

Mr. Sund said he has a philosophical problem with using a tax on beer to support programs that discourage drinking.

Ms. Nielson said she supports funding SADD with a general fund appropriation.

At the request of Chairman Kelsh, commission counsel provided updated information on the survey of agency alcohol, drug, tobacco, and risk-associated behavior programs. He said agencies were requested to provide information on money that goes to local chapters of SADD and to modify the table by removing treatment programs and focusing on prevention programs. He said the tentative result shows that approximately \$196,000 goes to SADD on the state and local levels in this state and overall funding for prevention programs is approximately \$25 million, not approximately \$85 million as previously reported when treatment programs were included in the survey. He said all but \$150,000 for prevention programs comes from federal and special funds. He said the \$150,000 in general fund money goes to the North Dakota Higher Education Consortium for Substance Abuse Prevention to coordinate and support the prevention efforts on each campus. He said a copy of the updated survey will be mailed to committee members and placed on file in the Legislative Council office.

CHARITABLE ORGANIZATIONS' PROPERTY TAX EXEMPTION

At the request of Chairman Kelsh, commission counsel presented a memorandum entitled [Charitable Organizations' Property Tax Exemption](#).

Mr. Sund said another issue is development of university campuses that extend the exemption for the educational use beyond what seems to be the original intent of the exemption.

It was moved by Mr. Yantes, seconded by Mr. Sund, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and to present the report to the Legislative Council.

No further business appearing, Chairman Kelsh adjourned the meeting at 11:50 a.m.

Timothy J. Dawson
Commission Counsel

[ATTACH:1](#)