

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, April 6, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Tracy Potter, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Tracy Potter, Arden C. Anderson; Representatives Dan Ruby, Dwight Wrangham; Citizen Members Randy Bina, Don Frye, Shawn Kessel, Jon Martinson, Ken Yantes

Members absent: Citizen Members Jane Amundson, Linda Svihovec; Governor's Designee Nick Hacker

Others present: Senator David O'Connell, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

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

PRISONER MEDICAL COSTS

Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, provided written testimony ([Appendix B](#)) on jail inmate medical costs. He said two changes in state law could have significant impact on inmate medical costs. He said the first would be a requirement that health providers bill and accept rates identified for services under Medicare or Medicaid. He said the other change is that the statutory requirement to cover medical costs be limited specifically to those inmates who are in the physical custody of the correctional or jail facility. He said this would clearly exclude those supervised through electronic monitoring or home detention. He said many jails have this policy but the issue is a point of contention between counties and medical facilities.

In response to a question from Senator Potter, Mr. Traynor said under North Dakota Medicaid rules, an individual may be on Medicaid out of the physical custody of a jail, but not if in custody.

In response to a question from Senator Potter, Mr. Traynor said the Grand Forks jail has purchased insurance in the past for 55 cents per inmate per day. He said the insurance covered medical costs in excess of \$10,000 per inmate. He said the insurance company then took charge of billing and negotiations with medical facilities. He said in reaction to the insurance, the medical providers in

Grand Forks agreed to offer the Medicare rate if the jail directly billed expenses.

In response to a question from Senator Potter, Mr. Traynor said there is difficulty in having providers take more Medicaid patients, especially as to dental services.

Senator Potter said he envisions two potential bill drafts. He said the first bill draft would have the state put together a risk pool with the risk shared between the state and jails. He said the second bill draft would have a state plan that would cover anyone in a North Dakota jail.

In response to a question from Representative Ruby, Mr. Traynor said although jails could group together to purchase catastrophic insurance, it is difficult to find insurers. He said there is only one provider of catastrophic medical insurance for inmates and it is a seller's market.

In response to a question from Representative Wrangham, Mr. Traynor said most of the people in jail are in jail for a violation of state law, the violation of which is at least a misdemeanor. He said the responsibility is of the county to house and provide medical care for these convicts. He said if a person commits a felony, the person generally is sent to the State Penitentiary. He said the Penitentiary may contract with a county but the state still is responsible for the costs of housing and medical care.

In response to a question from Representative Wrangham, Mr. Traynor said medical expenses at the Penitentiary are paid through the Department of Corrections and Rehabilitation budget. He said because of the number of inmates at the Penitentiary, the Penitentiary has medical staff onsite. He said most jails do not have medical staff beyond a screening by a nurse.

In response to a question from Senator O'Connell, Mr. Traynor said the law allows for a per day rate for work release to cover the jail costs.

In response to a question from Senator O'Connell, Mr. Traynor said in a single county jail, the sheriff is the administrator and has the authority to allow work release. He said in a multicounty jail, the members of the boards of county commissioners from the multiple counties administer the jail and can set the work release policy.

In response to a question from Senator Potter, Mr. Traynor said in earlier testimony he provided the premium for extraordinary expenses and estimated it

to be \$10,000 to \$15,000 per year for Grand Forks. He said this appears like a large sum to a small jail that may be paying only \$500 per year in medical care.

In response to a question from Mr. Kessel, Mr. Traynor said dental care must be provided to inmates. He said if the dental problem causes serious pain and affects the ability to eat, not fixing the problem is cruel and unusual punishment. He said generally vision care is not provided by the jail.

In response to a question from Mr. Kessel, Mr. Traynor said the costs for dental care is fairly small in relation to other medical expenses and is not broken out in the figures he provided.

In response to a question from Mr. Kessel, Mr. Traynor said dental care costs are not a priority but it is acceptable if they are included within any legislation.

Senator Potter said Medicare rates may work better than Medicaid rates for the amount provided; however, Medicare rates do not include dental care rates.

In response to a question from Representative Ruby, Mr. Traynor said the larger the pool, the better the rates.

Senator Potter said his suggestion that inmates be covered under the Public Employees Retirement System (PERS) health insurance was merely brainstorming. He said the idea would not work because all the inmates' care must be covered and the PERS plan only covers a percentage. He said politically the idea is dead on arrival.

Mr. Kessel said including inmates under the PERS health insurance may have the unintended consequence of inflating costs for state employees.

Senator Potter requested a bill draft on inmate medical costs to be drafted in cooperation with the North Dakota Association of Counties.

CONCESSION BIDDING

Mr. Ron Merritt, President, North Dakota Recreation and Park Association, and Director, Minot Park District, presented written testimony ([Appendix C](#)) on concession bidding requirements. He said the threshold of \$500 for public bidding for concession services is too low.

In response to a question from Senator Anderson, Mr. Merritt said he supports raising the threshold to \$25,000, the same as for other park district contracts. He said any increase would be an improvement.

In response to a question from Mr. Martinson, Mr. Merritt said the advertisement should be for two weeks instead of three weeks so that it would match the advertising requirement for other park district contracts. He said most of the contracts are seasonal and if a contractor needs to be changed mid-season, three weeks is too long.

In response to a question from Senator Potter, Mr. Merritt said many concessions are open for a limited time for large events.

In response to a question from Senator Potter, Mr. Merritt said the concessions for the golf course in Minot had only one bid the last two times it advertised for bids.

In response to a question from Mr. Kessel, Mr. Merritt said most bids are for separate concessions and not grouped for all or groups of concessions within a district because of different seasons for different concessions. He said the concessions are difficult to bid because there is not a steady stream of revenue.

In response to a question from Mr. Kessel, Mr. Merritt said if the park district is unable to receive a bid, the park district allows user groups to run the concessions.

Mr. Bina said in Bismarck the park district calls for bids at various sites separately. He said the district tried grouping the sites but it was too difficult to get vendors. He said the district is lucky to get two bids for a site. He said another issue with the statute is determining what is deemed to be \$500. He said it is unclear whether this is gross sales, commission, contract price, or other value.

Senator Anderson said the threshold is permissive and a park district could ask for bidding if the amount were less than the threshold.

In response to a question from Senator Potter, Mr. Merritt said current vendors may do \$120,000 of business but only make a couple thousand dollars.

Mr. Bina requested a bill draft to address concession bidding to be drafted in cooperation with the North Dakota Recreation and Park Association.

Senator Potter said whether the advertising is for two weeks instead of three weeks is an issue that may be contentious with the North Dakota Newspaper Association.

Mr. Bina said two weeks is consistent with the \$25,000 bid threshold.

Representative Ruby said in most cases, the vendor is contacted by the district so there is no problem with a shorter advertisement time.

As for defining \$25,000, Representative Wrangham said, the commission should look at other laws and if no guidance is given, receive comments from the North Dakota Recreation and Park Association as to what would work best.

Mr. Bina said if the \$25,000 were gross sales, then the term should be estimated gross sales.

In response to a question from Senator Anderson, Mr. Merritt said the amount of the threshold should be based on the value to the park district. He said concessions are weather-dependent and sales change with the weather. He said Minot contracts are a monthly rental plus a percentage of gross sales. He said the park district has a rough idea what the gross sales will be.

In response to a question from Senator Potter, Mr. Martinson said the threshold has not been a problem with schools.

CITY PARK DISTRICT CREATION, CONSOLIDATION, AND DISSOLUTION

At the request of Chairman Potter, commission counsel presented a memorandum entitled [City Park District Creation, Consolidation, and Dissolution](#). In addition, commission counsel provided a page ([Appendix D](#)) from the March 2010 *City Scan* magazine from the North Dakota League of Cities.

MUNICIPAL LANDFILL STUDY

At the request of Chairman Potter, commission counsel presented House Bill No. 1338 (2009), as introduced, which would have created a state landfill siting board. He said under House Bill No. 1338, if a city wanted a landfill, the city could place the landfill in an area over which the city has zoning jurisdiction or the city could place the landfill in an area that the city does not have zoning jurisdiction if the state landfill siting board approves a permit upon application. He said the board must issue the permit if the site is compatible, there is a need for the landfill, and there are proper mitigation measures. He said the two legal impediments to siting a landfill are the vote by a county and zoning. He said the main issues with the bill were eminent domain and site selection. He said it was argued that the city should not be able to exercise eminent domain outside the jurisdiction of the city and there should be a prohibition on eminent domain in the bill. He said some argued that the city should not be able to choose the site. The sites could be chosen within the region using the state landfill siting board based on legal exclusion areas, transportation costs, mitigation efforts, and scientific and social compatibility. He said one suggestion was to have the city choose three locations and the siting board choose the best.

Representative Wrangham said landfills are regional and should not be called city landfills. He said there may be a process in place that allows the regional siting of landfills based on previous testimony. He said in the Grand Forks area, a possible site was chosen in Nelson County by the State Department of Health and Nelson County said no to the landfill. He said the commission should receive more information on what happened between Nelson County and the City of Grand Forks.

Mr. Steve Tillotson, Assistant Director, Division of Waste Management, State Department of Health, provided information to the commission. He said the Legislative Assembly used to require regional planning for landfills. He said in the past, the Legislative Assembly has appropriated money for regional planning. He said Nelson County looked like a favorable place for a landfill at that time. He said there were problems with the hauling distance. He said Nelson County owned a facility and pulled out of the planning. He said at that time, the Grand Forks landfill sites had positive factors. He said the

Grand Forks landfill was the regional landfill. He said problems with the Nelson County landfill included aquifer and drainage systems located by locals after identifying the site as a possible regional landfill. He said the State Department of Health did not have authority to place the landfill in Nelson County and Nelson County made a rational decision.

In response to a question from Senator Potter, Mr. Tillotson said nationwide there has been a move to resource recovery and recycling. He said it is shocking how much stuff is buried. He said resources need to be conserved and recycling saves energy. He said landfills in this state are doing more to recycle and for resource recovery and pointed to Fargo and Bismarck as examples. He said a major problem in this state is the lack of infrastructure in the counties. He said small cities in this state cannot go outside the jurisdiction to sight a landfill. He said emergencies may require more infrastructures than is available and provided the examples of Northwood and the recent electrical pole damage. He said there is no adequate capacity for the refuse created by these emergencies around the state.

Mr. Frye said he is concerned with being proactive. He said the time it takes to site a landfill using the Grand Forks experience is 15 years to 20 years. He said Fargo has 12 years to 15 years left on the landfill. He said the site work needs to be done well in advance of the need for the landfill.

In response to a question from Senator Potter, Mr. Tillotson said the State Department of Health has the knowledge to site landfills but siting landfills may create a conflict. He said the conflict would be because the State Department of Health is the regulator of landfills and if the department sited landfills, the department would be a proponent of the site and a regulator of the permit.

Mr. Frye said being proactive can lower the cost of mitigation measures because development can be limited around future landfill sites.

Senator Potter said landfills are not dumps and are not always bad neighbors. He said landfills can be good neighbors, especially for industrial concerns--for example, Cargill in Fargo.

Mr. Tillotson said it is important to extend the life of landfills. He said many states do not allow yard waste in landfills. He said some states place limits on cardboard in landfills. He said there are markets for cardboard and landfills have the capabilities to manage yard waste for compost. He said the Legislative Assembly has prohibited appliances, oil, and batteries in landfills. He said some inducement to limit yard waste in landfills may be useful. He said these changes might extend the life of a landfill for a significant time.

In response to a question from Senator Potter, Mr. Tillotson said the State Department of Health recommended volume-based services in 1995. He said the department is a resource for landfills in

developing pay-as-you-go programs or save money and reduce trash (SMART) programs.

Mr. Frye said some people in rural areas are still burning and burying trash. He expects this practice to be prohibited in the future.

In response to a question from Mr. Frye, Mr. Tillotson said the burning of garbage in a barrel releases toxins because of the low heat.

In response to a question from Senator Potter, Mr. Tillotson said the conflict created by having the State Department of Health issue the permit and recommend the siting could be addressed by having some logical barrier between the two functions.

In response to a question from Senator Potter, Mr. Tillotson said the State Department of Health makes an effort to have hearings as close as possible to the facility.

Mr. Jerry Hjelmstad, North Dakota League of Cities, said the current law could be changed to add a hearing requirement on whether to have an election in the county for the issuance of a landfill permit. He said presently the board of county commissioners can call for an election, but there is no hearing requirement.

Mr. Larry Syverson, North Dakota Township Officers Association, said the association was in favor of House Bill No. 1338. He said when there is need for a landfill, there needs to be a procedure that is more amicable than the procedure used in Grand Forks. There should not be the use of eminent domain.

STUDY OF PUBLIC IMPROVEMENT BIDDING

Ms. Bonnie Staiger, Chairman, Construction Leaders Coalition, provided information to the commission. She said the design-build concept is in uncharted territory in this state. She said the coalition is in the drafting stage on design-build. She said the coalition is still in the discussion phase in relation to the commission's study.

Mr. Traynor provided written testimony ([Appendix E](#)) requesting changes of the North Dakota Century Code. He said Section 48-01.2-02 should be amended to allow an engineer employed by a city or county to prepare the plans for a building in use or to be used by the city or county for the storage or housing of road materials or machinery, equipment, or tools. He said Section 48-01.2-02.1 should be created to tie the bidding threshold to the annual consumer price index for all urban consumers and be set at \$135,000 as a base amount. He said Section 48-01.2-03 should be amended to allow the specification of a brand in bidding when remodeling or expanding an existing building already containing the specified brand. He said Section 48-01.2-04 should be amended to require the advertisement for bids through publishing for two consecutive weeks, instead of as at present three consecutive weeks, if the first publication is at

least 15 days before the date, instead of as at present 21 days, before the date of the opening of bids. He said he did not address defining the lowest responsible bidder. He said if the consumer price index was applied to \$100,000 in 1997, the amount would be \$133,698 today. He said it may be advantageous to have a state agency publish the index. He said six counties have engineers.

In response to a question from Representative Ruby, Mr. Traynor said local government, including counties, are creatures of the state. He said a home rule county could set a bidding threshold.

In response to a question from Mr. Kessel, Mr. Traynor said the intent of the language was to include an employee engineer and the language was duplicative of language in the law relating to the Department of Transportation. He said the language should not include a consultant.

In response to a question from Senator Potter, Mr. Traynor said currently the Department of Human Services uses the consumer price index for reimbursement to counties.

In response to a question from Senator Anderson, Mr. Traynor said the consumer price index is determined monthly and annually and is available on the web.

In response to a question from Mr. Kessel, Mr. Traynor said most county engineers are civil engineers. He said the language allows the engineer to make the plans for a storage building. He said a civil engineer must pass a series of tests and those tests should qualify the engineer to build a storage building.

Mr. Jack McDonald, North Dakota Newspaper Association, presented written testimony ([Appendix F](#)) on the bidding process. He said the present threshold should stay and there is no reason for a change. He said advertising bids through the local newspaper serves several functions. He said it informs the public and gives the public an opportunity to voice opinions. He said the public and some contractors would not hear of the bids if only published in trade journals. He said most projects take a long time from beginning to end. He said using the consumer price index would require the index to be applied at a certain time in the process which is not defined in the proposal.

In response to a question from Senator Potter, Mr. McDonald said three weeks allows more time for the public and contractors to react to the request for bid.

Mr. Frye gave two examples of allowing specified brands being an advantageous choice. He said Carrington is building a new water plant next to the old water plant and is retrofitting the old plant. He said if there are two different systems, there needs to be seven spare parts required for each system. He said the cost of the seven parts is \$200,000. He said money could be saved if the systems were the same. He said the operators of road graders prefer

a steering wheel to a joystick and the preference of the operator needs to be addressed.

Representative Ruby said some governing bodies should figure out the consumer price index on a yearly basis and publish that index so it is consistently applied if tying the bidding threshold to the consumer price is adopted.

No further business appearing, Chairman Potter adjourned the meeting at 1:30 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:6