

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Thursday, July 1, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

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

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

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

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

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

EXTRAORDINARY MEDICAL EXPENSES OF INMATES PAID BY STATE BILL DRAFT

Commission counsel presented a bill draft [[10108.0100](#)] that would require the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical or health care expenditure paid by that facility which exceeds \$10,000. He said the bill draft would require the administrator of the correctional facility to provide appropriate information to the department.

Senator Potter said the goal of the bill draft was to place the state in the role of reinsurer for extraordinary medical expenses incurred by counties.

In response to a question from Representative Ruby, commission counsel said the \$10,000 threshold was chosen because of previous testimony from the North Dakota Association of Counties that the amount was the level used by a private insurer.

Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, provided written testimony ([Appendix B](#)) on the bill draft. He said the bill draft was not practical in its current form. He said the bill draft merely shifts the problem of uncertainty as to medical costs from the county to the Department of Corrections and Rehabilitation. He said the most important issue the bill draft should address is the uncertainty of medical costs. He said a fund that covered both the Department of Corrections and Rehabilitation and county extraordinary medical expenses would be best. He provided the examples of the probationer violation transportation fund under North Dakota Century Code Section 12-65-08. He said this fund reimburses state

or county costs for law enforcement to return a probationer that has been allowed to transfer or travel out of state. He said the probationer violation transportation fund is mandatory. He said the special operations team reimbursement fund under Section 54-12-23 is used to reimburse the direct cost of training and dispatching tactical law enforcement teams throughout the state. He said the special operations team reimbursement fund is voluntary, and the contribution from counties ranges from \$200 from Slope County to \$1,000 from Richland County.

In response to a question from Senator Anderson, Mr. Traynor said private insurance for medical costs that exceed \$10,000 was 58 cents per inmate per day a few years ago. He said he expected the costs to be 60 cents to 63 cents per inmate per day at present. He said if the cost were paid by the state, there would not be a need for a profit and these amounts would be reduced.

In response to a question from Mr. Frye, Mr. Traynor said a state special fund for extraordinary inmate medical costs may need to purchase reinsurance.

In response to a question from Representative Wrangham, Mr. Traynor said a special fund for extraordinary inmate expenses appears more analogous to the probationer violation transportation fund than the special operations team reimbursement fund. He said the new fund could be administered by the Department of Corrections and Rehabilitation or the Risk Management Division of the Office of Management and Budget.

Senator Potter said the bill draft appears to be a simple solution to unexpected costs that drive up property taxes. He said creating a special fund creates complexity.

In response to a question from Senator Potter, Mr. Traynor said transferring a cost that is difficult for the counties to budget to the Department of Corrections and Rehabilitation makes the department's budgeting more difficult. He said a special fund is better than an agency's budget as a source of funding for extraordinary inmate medical costs.

Senator Potter said the bill draft requires the Department of Corrections and Rehabilitation to plan, as it already does, in its budget for these costs with the fallback provision of a deficiency appropriation.

In response to a question from Representative Ruby, Mr. Traynor said medical costs for counties

attributable to inmates are approximately \$1.5 million. He said there were three situations last year in which the cost per inmate exceeded \$10,000. He said in two of the situations, the cost was \$20,000 to \$30,000. He said in one situation the amount was much more.

Mr. Dave Krabbenhoft, Director of Administration, Department of Corrections and Rehabilitation, presented written testimony ([Appendix C](#)) in opposition to jail inmate medical costs in excess of \$10,000 being paid by the department. He said the fiscal impact of medical care for inmates is not known, and budgeting for it is very difficult. He said less than 5 percent of prisoners in the state system consume over 90 percent of the payments to doctors and hospitals in the department's medical budget. He said the bill draft would need a distinction to exclude federal or out-of-state inmates being housed in corrections facilities.

In response to a question from Senator Potter, Mr. Krabbenhoft said there are out-of-state inmates in correctional facilities at this time.

In response to a question from Senator Anderson, Mr. Krabbenhoft said the issue of medical costs of prisoners has become even more difficult to determine due to the increase in the use of methamphetamines.

In response to a question from Senator Anderson, Mr. Krabbenhoft said a special fund may work. He said he does not support placing the administration of a special fund with the Department of Corrections and Rehabilitation. He said the administration would require the review of medical billing. He said the department does not have this expertise. He said the Risk Management Division would be more appropriate because the special fund would be similar to insurance.

In response to a question from Senator Potter, Mr. Krabbenhoft said the department does not purchase reinsurance for extraordinary medical expenses of prisoners. He said the state has more of a managed care system in which it hires physicians, dentists, and other medical personnel to provide medical care. He said if the department goes over budget, the department requests a deficiency appropriation.

PAYMENTS OF INMATE MEDICAL CARE LIMITED TO MEDICARE RATE BILL DRAFT

At the request of Chairman Potter, commission counsel presented a bill draft [[10061.0100](#)] that would prohibit a medical or health care provider from billing the cost of care at a rate that exceeds the federal Medicare payment rate. In addition, he said, the bill draft defined adequate medical care and clarified the definition of inmate.

Senator Potter said the second "the" on page 3, line 6, should be removed.

In response to a question from Senator Anderson, commission counsel said inmate funds come from work performed by the inmates.

In response to a question from Representative Ruby, commission counsel said the suggested changes came from the North Dakota Association of Counties, including the removal of the administrator's notice to the inmate of a withdrawal from the inmate's account.

Representative Ruby said it may be an unintended consequence of limiting payment to Medicare rates that there would be fewer providers.

Senator Potter said Medicare rates were given a boost in recent federal health care legislation. He said Medicare rates are not as low as Medicaid rates. He said sometimes there is difficulty in finding a provider for Medicaid patients.

Representative Wrangham said there is not any reason to include the new language to the definition of inmate. He said the language is redundant.

In response to a question from Senator Potter, commission counsel said although North Dakota Century Code Section 12-44.1-12.1(3)(a) and (b) were not moved to Section 3 of the bill draft, these subdivisions appear redundant after examining the new language in Section 3. He said most of the overstruck language in Section 12-44.1-12.1 was moved to Sections 3 and 4 of the bill draft.

As part of his previous written testimony, Mr. Traynor provided testimony in support of the bill draft. He said the definition of inmate creates a conflict between medical and correctional facilities. He said sometimes a person sentenced to home detention goes to a medical provider and directs the medical provider to bill the county. He said although the county has never paid these bills, and the definition of inmate does not include home detention, especially saying it does not include home detention would provide an easy answer for the correctional facility administrator to provide the health care provider. He said he shared the bill draft with medical and hospital lobbyists. He said a suggestion for the bill draft from these lobbyists was that medical and health care providers do not bill at the federal Medicare payment rate but bill their costs. He said the sentence on page 3, line 5, might be clearer if it read "If the inmate does not have health insurance coverage and it is determined that the inmate's medical costs are the responsibility of the correctional facility, that facility is not obligated to pay those medical costs at rates that exceed those paid under the federal Medicare program."

In response to a question from Senator Potter, Mr. Traynor said he has not heard of an arrested individual being released from custody at the hospital and rearrested at the time of release from the hospital to avoid county liability for medical expenses. He said some coverage may go away upon arrest, so there may be a motive to not arrest until released from the hospital.

In response to a question from Senator Potter, Mr. Traynor said the general rule of the bill draft is that inmates are responsible for their own medical expenses, but the county pays for necessary medical care as a payer of last resort.

In response to a question from Senator Potter, Mr. Traynor said inmate accounts are created if the inmate has a job in the facility. He said the bill draft would continue to allow funds in these accounts to be used for medical care.

In response to a question from Representative Ruby, Mr. Traynor said inmates might earn \$2 a day. He said generally inmates do not stay longer than a year in a correctional facility. He said most stay less than 30 days. He said the amount of money in inmate accounts is very minimal.

In response to a question from Senator Anderson, Mr. Traynor said it appears that an inmate on work release from a correctional facility is an inmate.

In response to a question from Senator Potter, Mr. Traynor said most inmates do not have health insurance and lose any health insurance after being in a correctional facility because they are not able to pay for it.

Chairman Potter directed commission counsel to make changes in the bill draft in accord with the testimony and through working with the North Dakota Association of Counties.

PUBLIC IMPROVEMENT CONSTRUCTION THRESHOLD BILL DRAFT

At the request of Chairman Potter, commission counsel presented a bill draft [[10063.0100](#)] relating to an increase in the public improvement construction threshold. Commission counsel said the bill draft would raise the threshold to \$135,000 and provide for an adjustment on an annual basis by the consumer price index for all urban consumers.

Mr. Traynor presented written testimony ([Appendix D](#)) in support of the bill draft. He said the bill draft would create a process for increasing the threshold so that the threshold would not have to be debated on a regular basis by the Legislative Assembly. He said the bill draft gives those affected by the bill draft less to disagree about over time.

In response to a question from Representative Ruby, Mr. Traynor said if the bill draft were amended, he would support a threshold of \$100,000 increased by the consumer price index.

In response to a question from Senator Potter, Mr. Traynor said the United States Department of Labor publishes the consumer price index. He said the bill draft places the burden on the Office of Management and Budget to publish the appropriate consumer price index applied to the threshold. He said the Office of Management and Budget does similar tracking and publishing with travel and publication rates.

In response to a question from Representative Ruby, Mr. Traynor said the rate should go down if

there is deflation, and the term "increased" on page 2, line 10, should be "adjusted".

Mr. Jerry Hjelmstad, Assistant Director, North Dakota League of Cities, presented testimony in support of the bill draft. He said the changes in the bill draft make the threshold easier to find. He said building in the consumer price index makes the administration of increases to the threshold easier.

Ms. Bonnie Staiger, Construction Leaders Association, presented testimony in opposition to the bill draft. She said although the threshold needs to be adjusted from time to time, the Legislative Assembly should make a change at that time.

Senator Potter said the Legislative Assembly always retains the authority to change the amount. He said the bill draft allows the change to occur if everything is working well.

In response to a question from Senator Potter, Ms. Staiger said the formula could be confusing.

Mr. Jeffrey Volk, American Council of Engineering Companies of North Dakota, Moore Engineering, Inc., West Fargo, and a member of the Construction Leaders Coalition, provided proposed legislation ([Appendix E](#)) to amend Section 48-01.2-02 to separate thresholds for bids from those for design professionals and to make the latter dependent upon public health, safety, and welfare, instead of solely a dollar amount. He said his legislative proposal requires a design professional if the cost of the public improvement is estimated to cost in excess of \$150,000 or if public safety requires, based upon the type of the building and the size of the alteration. He said whether to use a design professional is a different issue than whether to use public bidding. He said whether to use a design professional is based upon public health, safety, and welfare. He said whether to have public bidding is based on economics and fiduciary issues. He said small changes may affect safety and costly changes, for example, new carpet, do not affect safety.

Mr. Volk said he prefers the fixed bidding threshold. He said the threshold is examined by the Legislative Assembly periodically--every two to three sessions. He said a threshold is used by many units of government, and indexing it to the consumer price index creates confusing changes every year.

In response to a question from Representative Ruby, Mr. Volk said his legislative proposal creates a higher monetary threshold but requires a design professional at lesser dollar values if other criteria apply.

In response to a question from Representative Ruby, Mr. Volk said there may be unique examples where a design professional is required under his proposal but is not needed, for example, a sidewalk. He said there is more danger in not having a design professional when needed than having a design professional when not needed. The danger in the former is a disaster, and the danger in the latter is an additional cost. He said he tried to keep the proposal simple, but exclusions may be necessary.

In response to a question from Mr. Frye, Mr. Volk said many units of government rarely do construction. He said a changing threshold may be more confusing than a static number. He said a static number would be easier to use.

Mr. Frye said if the number is tied to the consumer price index and there is a yearly increase, an educated guess as to the threshold will be easy to determine.

Senator Potter said Mr. Volk was contradicting himself in saying that the threshold needs to be fixed so it is simple but offers a legislative proposal that requires the building code and an understanding of the building code to apply as the threshold for design professionals.

Mr. Jack McDonald, North Dakota Newspaper Association, presented written testimony ([Appendix F](#)) in opposition to the bill draft. He said advertising for bids is good government because it informs the public and businesses of government action. He said there have been recent projects at universities in which the projects were manipulated to be below the threshold. He said increasing of the threshold makes this problem worse. He said the consumer price index will add up quickly, like compounded interest, and the threshold will get quite high over time. He said there is not any good reason for the change besides the argument that it has not been changed in awhile. He said if a change needs to be made, the Legislative Assembly can make the change for a good reason.

Representative Wrangham said there have been multiple extreme abuses of the bidding process, and he does not favor tying the threshold to the consumer price index.

IN-HOUSE ENGINEER FOR CITY OR COUNTY FOR STORAGE BUILDING BILL DRAFT

At the request of Chairman Potter, commission counsel presented a bill draft [[10064.0100](#)] relating to the use of a staff engineer by a city or county for certain storage buildings.

In response to a question from Representative Ruby, commission counsel said changing the reference to the bidding threshold from \$100,000 to the threshold established under this chapter allows for the adoption of any or none of the bill drafts, including the legislative proposal of Mr. Volk, without having to change the language.

As part of his previous written testimony, Mr. Traynor provided testimony in support of the bill draft. He said the bill draft allows engineers of cities and counties to do what is done by the Department of Transportation. He said a city or county could still hire a design professional if advisable. He said most of the buildings that are used as storage buildings are preengineered buildings. He said only 10 counties would be able to use the bill draft because of having a staff engineer. He said the number of cities would be quite low as well.

DURATION AND AMOUNT OF ADVERTISEMENT FOR PUBLIC IMPROVEMENT CONSTRUCTION BIDS BILL DRAFT

At the request of Chairman Potter, commission counsel presented a bill draft [[10065.0100](#)] relating to the duration and amount of advertising for public improvement construction bids. Commission counsel said the bill draft would reduce the advertising for bids from three weeks to two weeks and from 21 days before the opening of bids to 15 days before opening.

As part of his previous written testimony, Mr. Traynor presented testimony in support of the bill draft. He said other areas of law relating to the advertisement requirements for counties are two weeks and 15 days. He said these areas include road construction, county supplies, and erection of county buildings. He said the adoption of the bill draft promotes consistency. He said due to the short construction season, a 21-day delay can be longer due to meeting dates and can result in a large portion of the construction season being wasted on a rebid.

In response to a question from Senator Potter, Mr. Traynor said applying the bill draft only to rebids may be confusing.

As part of his previous written testimony, Mr. McDonald presented testimony in opposition to the bill draft. He said three weeks has worked well over time, and there is no reason to change that time period. He said three weeks gives the public time to act and bidders time to get bid information together. He said a consecutive week is a different seven-day time period for a daily newspaper, not necessarily a calendar week. He said for weekly newspapers the definition of consecutive weeks is not an issue. He said an extra seven days for a \$100,000 project is not that long a period of time. He said a summer construction project should be bid well in advance of the construction season.

In response to a question from Senator Anderson, Mr. McDonald said if consistency is the reason, it is not a valid reason because bidding for supplies and road construction is much different from large construction projects.

Mr. Hjelmstad provided testimony in support of the bill draft. He said the dates as a practical matter may be longer if the weekly publication date for the newspaper has recently passed.

Ms. Staiger presented testimony in opposition to the bill draft. She said it takes 21 days in most situations to get a bid completed.

In response to a question from Senator Potter, Ms. Staiger said both having time to get bids together and to complete construction are important.

In response to a question from Representative Wrangham, Ms. Staiger said there are online resources and paper publications on a weekly basis that act as a clearinghouse for bid requests so that small contractors can be aware of what is available.

Senator Potter suggested that cities and counties be required to place bids on an official website, if the city or county has a website.

In response to a question from Senator Potter, Mr. Traynor said the law requires that the bid is published in a trade publication, and he does not support publication on the website.

Ms. Connie Sprynczynatyk, Executive Director, North Dakota League of Cities, presented testimony to the commission. She said all of the parties present appear to be interested in good government and the spending of taxpayer dollars to receive the best value. She said local government wants the best value and uses the bid process to get the best value. She said adding a website publication would be a problem because some cities have websites that are not active. She said construction inflation has greatly exceeded the consumer price index.

In response to a question from Senator Potter, Ms. Sprynczynatyk said it may be a good idea for small cities to use the county website because every county has an active website.

SPECIFYING MATERIALS TO BE USED IN ANY PUBLIC IMPROVEMENT BILL DRAFT

At the request of Chairman Potter, commission counsel presented a bill draft [[10066.0100](#)] relating to allowing the specifying of materials in requesting bids if remodeling or expanding an existing building.

Senator Potter said the bill draft appears to be overly specific as to a particular brand. He said what is desirable is compatibility.

Representative Ruby said some vendors say their product is compatible but not easily compatible. He said although the bill draft creates some room for abuses by government, it solves some abuses by bidders.

Senator Potter said he is concerned that competitors be allowed to compete against a market leader, for example, as IBM was to computers in the early 1990s.

Representative Ruby said the standard of highest responsible bidder may allow for choosing specific materials that are compatible.

Senator Anderson said he supports the bill draft. He said if it cuts down on the number of keys used in locks in a city, it would be valuable.

As part of his previous written testimony, Mr. Traynor presented testimony in support of the bill draft. He said the bill draft allows specificity and does not require it.

Mr. Hjelmstad presented testimony in support of the bill draft. He said the bill draft balances competition and efficiency.

Senator Anderson said the bill draft allows local people to make the best decision for the community. He said if there are abuses, the problem will be quickly brought to the attention of the public.

Senator Potter said the bill draft relates to remodeling or expanding an existing building, and this may be too broad. He said the commission may wish to focus on compatibility.

Representative Ruby said compatibility for lift stations may not be addressed by the bill draft because lift stations do not appear to be buildings.

It was moved by Senator Anderson, seconded by Representative Ruby, and carried on a roll call vote that the bill draft to allow specifying materials in bids for a public improvement be approved and recommended to the Legislative Management. Senators Potter and Anderson, Representative Ruby, and Citizen Members Bina, Frye, and Yantes voted "aye." Representative Wrangham vote "nay."

THRESHOLD AND ADVERTISEMENT FOR CONCESSIONS BIDDING BILL DRAFT

At the request of Chairman Potter, commission counsel presented a bill draft [[10062.0100](#)] relating to the threshold and advertisement for concession biddings. Commission counsel said the bill draft raises the threshold for concessions bidding to be advertised and bid from \$500 to \$25,000. He said the bill draft defines the \$25,000 amount in terms of estimated gross sales. He said the bill draft reduces the advertising from one time per week for three weeks to one time per week for two weeks. He said the term highest or best bidder was changed to highest responsible bidder to be consistent with previous changes in the law relating to public improvements.

Representative Wrangham said a jump in the threshold from \$500 to \$25,000 is a large step.

Mr. Frye said those concessions are from Memorial Day to Labor Day, and the \$25,000 reflects \$800 per week.

Mr. Yantes said the amount of increase was fair.

Mr. Bina said the \$25,000 came from the president of the North Dakota Recreation and Park Association and is the amount of the threshold for bidding supplies for park districts. He said the amount needs to be increased.

Senator Potter said the previous threshold of \$500 could have been interpreted to being \$500 in profit. He said a business can do \$50,000 or more of business without \$500 profit.

Ms. Dana Schaar, Executive Secretary, North Dakota Recreation and Park Association, provided testimony in support of the bill draft.

In response to a question from Senator Potter, Ms. Schaar said \$500 is extremely low.

Mr. Bina said the change in value of the threshold is the most important issue in the bill draft. He said the change from three weeks to two weeks is for consistency with the supplies bidding statute. He said the only other statute that requires three weeks is the public improvement statute.

As part of his previous written testimony, Mr. McDonald presented testimony in opposition to

the bill draft. He said the bill draft may prohibit competition by not allowing someone who wants to start a concessions business from being able to enter the market. He said concessions are much different from supplies. He said three weeks is a good length of time because it allows the public and concessionaires time to react. He said a lower threshold, for example, \$5,000, may be reasonable. He said the phrase "in a legal newspaper published in the city at or near where the concession is located" should be changed to the language used elsewhere in the law of "official newspaper of the political subdivision in which the public improvement is or will be located".

In response to a question from Senator Potter, Mr. McDonald said the phrase "is deemed worth more than \$500" is confusing.

In response to a question from Senator Potter, Mr. Bina said it is unclear whether this \$500 means the net or gross, and the issue needs to be addressed.

Senator Anderson said he suspects that many small towns do not bid concessions and violate the law. He said the threshold should be set high to address only large profitable concessions.

Senator Potter said the language change requested by Mr. McDonald relating to "an official paper" should be made to the bill draft.

It was moved by Representative Wrangham, seconded by Representative Ruby, and failed on a roll call vote that the bill draft be amended to change the threshold from \$25,000 to \$5,000. Representatives Ruby and Wrangham voted "aye." Senators Potter and Anderson and Citizen Members Bina, Frye, and Yantes voted "nay."

It was moved by Mr. Frye, seconded by Representative Ruby, and carried on a roll call vote that the bill draft be amended to leave, as in present law, the advertisement number and duration at once a week for three consecutive weeks. Senator Potter, Representatives Ruby and Wrangham, and Citizen Member Frye voted "aye." Senator Anderson and Citizen Members Bina and Yantes voted "nay."

No further business appearing, Chairman Potter adjourned the meeting at 1:25 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:6