

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Thursday, September 9, 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 Jane Amundson, Randy Bina, Don Frye, Shawn Kessel, Ken Yantes

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

Others present: See [Appendix A](#)

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

INMATE MEDICAL COSTS

At the request of Chairman Potter, commission counsel presented the second draft [[10061.0200](#)] of a bill draft that would limit a correctional facility's responsibility for an inmate's medical or health care costs to rates paid under the federal Medicare program. He said the second draft clarified language and did not make substantive changes. In addition, he provided a handout ([Appendix B](#)) of copies of statutes from Idaho, Maryland, and Oklahoma that cap reimbursement rates at Medicaid reimbursement rates. He said Idaho provides that if the service is not on the Medicaid reimbursement schedule, the appropriate facility pays the reasonable value of the service.

In response to a question from Representative Ruby, commission counsel said the bill draft should result in savings to political subdivisions.

Senator Potter said it would be difficult to get reimbursement at Medicare rates because some medical providers do not take Medicaid patients. He said there may be no Medicare rates for things covered by Medicaid, for example, childbirth costs. He said Medicaid may be the more appropriate fee schedule.

Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, provided testimony in support of the bill draft. He said when considering the legislative proposal that was the basis of this bill draft, the association considered Medicaid and Medicare rates. He said Medicare rates were used because that is what the Grand Forks County used with an agreement with local hospitals. He said Medicaid would save more money, but there

would be more resistance from medical professionals. He said it may be wise to provide for reasonable expenses when an expense is not on the Medicare schedule.

In response to a question from Senator Potter, Mr. Traynor said the bill draft will provide some relief from high rates and is a good start.

It was moved by Representative Ruby, seconded by Mr. Yantes, and carried on a roll call vote that the bill draft to limit the correctional facility's liability for inmate's medical costs to Medicare rates be approved and recommended to the Legislative Management. Senators Potter and Anderson, Representatives Ruby and Wrangham, and Citizen Members Amundson, Bina, Frye, and Yantes voted "aye." No negative votes were cast.

At the request of Chairman Potter, commission counsel presented a second draft [[10108.0200](#)] of a bill draft relating to the payment of extraordinary medical expenses of correctional facility inmates by the Department of Corrections and Rehabilitation.

Senator Potter said the Department of Corrections and Rehabilitation was against this bill draft. He provided a handout ([Appendix C](#)) of an article in *The Forum* of an inmate costing the county in excess of the jail's entire medical budget of \$300,000.

Representative Ruby said the commission talked about high-risk pools, reinsurance, and special funds. He said his preference was for the counties to pay into a fund for extreme cases. He said he opposed the bill draft because it shifts the burden from the county to the state.

Senator Potter said the state is more capable of managing the risk because of the size of the state budget in comparison to county budgets. He said counties pay for extraordinary inmate medical expense through property taxes. He said the state uses a number of taxes. He said the largest taxation concern he hears from citizens is property taxes.

In response to a question from Ms. Amundson, Representative Ruby said \$10,000 is an arbitrary number, but it is an easy number to use in a budget. He said the number will have to be adjusted throughout time.

Ms. Sophia Preszler, citizen, Bismarck, said big government does not make sense and government should be kept at the local level.

Mr. Jerry E. Jurena, President, North Dakota Hospital Association, testified on the bill draft. He said he was a chairman of a health maintenance

organization which did not have secondary insurance and which had patients with \$300,000 and \$500,000 bills within one year. As a result of that experience, he said, the analogous solution should be a self-insurance program with secondary coverage above a certain amount.

Mr. Traynor testified in opposition to the bill draft. He said it was not prudent for counties to shift county problems to the Department of Corrections and Rehabilitation. He said he supports a risk pool. He said there is only one carrier of insurance and it is costly. He said Grand Forks County has been purchasing this insurance, and other counties have not been purchasing this insurance. He said he will work independently with the Department of Corrections and Rehabilitation to create a legislative proposal.

In response to a question from Senator Potter, Mr. Traynor said the reason this has become an issue is because of the increased cost of medical care and what has to be covered by correctional facilities. He said his understanding is that there is only one carrier for extraordinary inmate medical expenses nationwide.

Senator Potter said he was hesitant to support legislation that requires counties to purchase insurance from a single provider.

In response to a question from Senator Potter, Mr. Traynor said the state would be the ideal insurer.

Senator Potter said the commission would not be able to change the bill draft to address the issues raised. He said the legislative proposal presented would require counties to pool resources with the Department of Corrections and Rehabilitation. He said the state would be responsible, and each county would buy in. He said the state could buy reinsurance as needed.

In response to a question from Senator Potter, Mr. Traynor said requiring counties to participate may be more than some counties want.

Senator Anderson said the commission should approve the bill draft and have amendments during the legislative session.

Representative Ruby said the bill draft should not be recommended to the Legislative Management, and the counties should work within the association to bring a clean bill next legislative session.

It was moved by Senator Anderson, seconded by Mr. Yantes, and carried on a roll call vote that the bill draft to require the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical expenditures paid by the facility which exceed \$10,000 be approved and recommended to the Legislative Management. Senators Potter and Anderson and Citizen Members Amundson, Bina, Frye, Kessel, and Yantes voted "aye." Representatives Ruby and Wrangham voted "nay."

PUBLIC IMPROVEMENT BID THRESHOLD

At the request of Chairman Potter, commission counsel presented the second draft [10063.0200] of a bill draft to increase the public improvement construction threshold to \$135,000 with an annual adjustment by the consumer price index. He said the only change from the previous bill draft was to change the word "increase" to "adjustment" as it relates to the consumer price index.

Mr. Jerry Hjelmstad, Assistant Director, North Dakota League of Cities, provided a written amendment ([Appendix D](#)) to the bill draft. He said the amendment would leave the threshold at the present level at \$100,000 and consolidate the threshold into one section of law.

In response to a question from Senator Potter, Mr. Hjelmstad said he supported the concept of one section for the threshold, but did not like the uncertainty of the consumer price index adjustment. He said this is merely code revision with no substantive change. He said his amendment should be modified to have two sentences--one for the public improvement bid threshold and one for the design professional threshold.

Mr. Jeffrey Volk, American Council of Engineering Companies of North Dakota, Moore Engineering, Inc., West Fargo, provided an amendment ([Appendix E](#)) to the legislative proposal presented at the last meeting. He said the standard for using a design professional should be based on public health, safety, and welfare and not purely economic reasons. He said he recommended amending his previous proposal by removing subsections 4 through 13 and adding the end of subsection 3 "or new building construction with an occupancy rating of ten or more persons." He said this would simplify his proposal. He said his proposal should only be adopted if the threshold is raised.

In response to a question from Ms. Amundson, Mr. Volk said if the threshold is raised, it should be raised to a particular number. He said his amendment would require a design from a professional when needed for public health, safety, and welfare, if under the numerical \$150,000 threshold.

In response to a question from Mr. Kessel, Mr. Volk said the projects considered in subsections 1 and 2 that are intended to serve as four or more properties include sewer projects and other infrastructure for the community.

In response to a question from Mr. Kessel, commission counsel said the term "properties" is not defined in Chapter 48-01.2.

In response to a question from Mr. Kessel, Mr. Volk said the intent of the term "properties" was to include homes and buildings.

In response to a question from Ms. Amundson, Mr. Traynor said he supports the Volk amendments if the threshold is raised to \$150,000. He said a multiplier may be too complex. He said there is a difference between bid and design professional thresholds. He said the association was concerned

with the complexity of subsections 4 through 13. He said those subsections almost require the use of a design professional to determine if a design professional should be used.

In response to a question from Senator Potter, Mr. Traynor said both the bid and design professional threshold should be increased. Mr. Volk said his amendment only modified Section 2 of the bill draft--the design professional threshold. He said the bid and design threshold should be separated in Section 3 of the bill draft as well.

Mr. Jack McDonald, North Dakota Newspaper Association, testified in opposition to the bill draft. He said he supports the amendment to leave the threshold at \$100,000 and centralize the threshold. He said raising the threshold would produce fewer bids and would not be good public policy, especially due to recent public improvement construction problems.

In response to a question from Senator Potter, Mr. McDonald said he supports either not forwarding the bill draft to the Legislative Management or amending the bill draft to provide for centralization.

Ms. Bonnie Staiger, Chairman, Construction Leaders Coalition, said the Construction Leaders Coalition may have voted at keeping the threshold at \$100,000.

It was moved by Representative Ruby and seconded by Mr. Frye to amend the bill draft to centralize the public improvement construction threshold to create separate sentences for the bid and design professional thresholds. Senator Anderson, Representative Ruby, and Citizen Members Bina, Frye, and Kessel voted "aye." Senator Potter and Citizen Members Amundson and Yantes voted "nay."

Representative Ruby said he supports the changes of Mr. Volk, but the ideas need more time to develop. He said the threshold is good at this time, and the threshold should be set in stone, not adjusted by the consumer price index.

Mr. Kessel said he would like to see an increase to the threshold to at least \$135,000.

Mr. Frye said the Volk proposal needs to be clarified.

Representative Ruby said there may be changes to the threshold level and a split between bid and design professional thresholds during the legislative session. He said he is not averse to raising the threshold, but he has not been convinced as to a certain amount.

It was moved by Representative Ruby, seconded by Mr. Frye, and carried on a roll call vote that the bill draft, as amended to create separate sentences for the bid and design professional thresholds, relating to the public improvement construction bid and design professional thresholds be approved and recommended to the Legislative Management. Senators Potter and Anderson, Representative Ruby,

and Citizen Members Amundson, Bina, Frye, Kessel, and Yantes voted "aye." No negative votes were cast.

ADVERTISEMENT OF BIDS FOR PUBLIC IMPROVEMENT CONSTRUCTION

At the request of Chairman Potter, commission counsel presented a bill draft [10065.0100] that had been previously presented which would reduce the advertising for bids from three weeks, at least 21 days before opening, to two weeks, at least 15 days before opening.

Mr. McDonald said he opposed the bill draft. He said three weeks is needed for contractors to have time to make a bid. He said sometimes specifications are not ready when an advertisement is published. He said lines 16 through 18 were vague.

Mr. Traynor said the purpose of the bill draft was to have one standard in the code of two weeks and 15 days. He said having another standard in lines 16 through 18 was confusing. He said the standards are minimums.

Mr. Hjelmstad said he supports the bill draft.

Ms. Staiger said the Construction Leaders Coalition is against the bill draft because of the lead time to prepare a bid package.

It was moved by Ms. Amundson, seconded by Mr. Kessel, and failed on a roll call vote that the bill draft, as amended on page 1, line 16, to remove the overstrike over "only", on page 1, line 17, to overstrike "with the first publication being at", and on page 1, line 18, to overstrike "least fourteen days before the bid opening", relating to reducing advertising for bids be approved and recommended to the Legislative Management. Citizen Members Amundson and Kessel voted "aye." Senators Potter and Anderson, Representative Ruby, and Citizen Members Bina, Frye, and Yantes voted "nay."

CITY OR COUNTY ENGINEER FOR CERTAIN STORAGE BUILDINGS

At the request of Chairman Potter, commission counsel presented a previously presented bill draft [10064.0100] that would allow cities and counties to use staff engineers for certain storage buildings.

Mr. Traynor said the North Dakota Association of Counties requested the bill draft because several counties have engineers. He said the provision of law was created when the Department of Transportation did not have any architects, and an architect was required for storage buildings. He said he was recently told that there is no need for the exception for the Department of Transportation or this bill draft because the law allows for an engineer to make the plans, drawings, and specifications. He said this engineer does not have to be a private engineer.

Mr. Volk said page 1, line 10, says "engineer" and there is no limitation on that term. He said the bill draft should strike the full sentences from lines 10 through 17.

In response to a question from Representative Ruby, Mr. Volk said preengineered buildings raise an interesting issue because an engineer is not needed for the structure but is needed for the subgrade requirements. He said preengineered building should be included within the requirement of a design professional.

Chairman Potter said the consensus of the commission is that this bill draft not be forwarded to the Legislative Management.

CONCESSION BIDDING

At the request of Chairman Potter, commission counsel presented the second draft [10062.0200] of a bill draft that raises the threshold for concession bidding to be advertised and bid from \$500 to \$25,000. In addition, he said, the bill draft bases that amount on estimated gross sales. He said the change from the previous bill draft was to remove the reduction in the advertisement for bids. He said one of the reasons that fair associations are exempt from the statute is because fair associations wanted to be able to hire churches and community groups to run concessions.

In response to a question from Representative Ruby, commission counsel said the law does not require the concessionaire to have open books; however, a prudent political subdivision would require gross sales information. He said the \$25,000 is based on an estimate at the time of letting the bid by the political subdivision and not on actual sales after the bid.

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 Representative Ruby, Mr. Bina said part of the agreement in Bismarck with a vendor requires that the books are open to determine gross sales. He said Bismarck is paid on a commission based on gross sales and requires the gross sales to be provided to the park board. He said the park board provides a history of gross sales to potential bidders. He said most concessions are seasonal or are dependent on the weather, and gross sales change from year to year.

In response to a question from Senator Potter, Ms. Schaar said present law does not require payment as a percentage of gross sales or as a permit fee. Mr. Bina said Bismarck structures payments both ways. He said some payments require

a percentage of gross sales and a flat rate for use of the space.

In response to a question from Mr. Kessel, commission counsel said because the concession may be for a period not to exceed eight years, the \$25,000 threshold should have a time element, for example, annually. He said this way the \$25,000 threshold would not be the same no matter the term of the contract. He said the annual threshold is for each year and not added together for all years. He said it appears that the \$500 threshold is annual but is unclear because the word "annually" is not used.

Senator Potter said perhaps exceeding the \$25,000 threshold in any of the eight years should cause the concession to rebid.

Senator Potter said he would prefer the concession contract be reevaluated if the gross sales actually exceeded \$25,000 in a multiyear contract.

Mr. Frye said sometimes a one-time community event, for example, a centennial, may increase sales in one year, and if a reevaluation were required, the rebidding would be burdensome.

It was moved by Senator Anderson, seconded by Mr. Frye, and carried on a roll call vote that the bill draft, as amended to have an annual threshold, relating to raising the threshold for concession bidding to \$25,000 be approved and recommended to the Legislative Management. Senators Potter and Anderson, Representative Ruby, and Citizen Members Amundson, Bina, Frye, Kessel, and Yantes voted "aye." No negative votes were cast.

It was moved by Mr. Frye, seconded by Mr. Kessel, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare a report and bill drafts recommended by the commission and to present the report and recommended bill drafts to the Legislative Management.

It was moved by Representative Ruby, seconded by Mr. Frye, and carried on a voice vote that the commission be adjourned sine die.

No further business appearing, Chairman Potter adjourned the meeting sine die at 11:10 a.m.

Timothy J. Dawson
Commission Counsel

ATTACH:5