

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, October 27, 2009
Harvest Room, State Capitol
Bismarck, North Dakota

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

Members present: Senator Tracy Potter; Representatives Dan Ruby, Dwight Wrangham; Citizen Members Jane Amundson, Don Frye, Shawn Kessel, Jon Martinson, Linda Svihovec, Ken Yantes; Governor's Designee Nick Hacker

Members absent: Senator Arden C. Anderson; Citizen Member Randy Bina

Others present: See [Appendix A](#)

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

SOLID WASTE MANAGEMENT STUDY

Mr. Jeff Heintz, Service Operations Director, Public Works, city of Bismarck, made a presentation ([Appendix B](#)) on recycling, biomass, and methane recovery.

In response to a question from Mr. Hacker, Mr. Heintz said the single-sort method of recycling is when everything is placed in one container. He said presently the single-sort method waste goes to Minneapolis and is sorted through a mechanical sorter. He said the sorting is expensive as well as the transportation. He said the two-sort method has a container for cardboard and paper and another container for glass. He said the two-sort method allows smaller communities to have recycling programs.

In response to a question from Mr. Kessel, Mr. Galen Bren, Recycling Specialist, Public Works, city of Bismarck, said recycled goods are sold by the load and need to be sold when full because of the lack of storage. He said this subjects the recycled goods to the volatile recycled goods market.

In response to a question from Representative Ruby, Mr. Bren said Bismarck does not have to store loads because there are two vendors that take loads from Bismarck. He said Bismarck does more manual labor on the recycled goods than other suppliers so it is not difficult to contract with vendors.

In response to a question from Mr. Kessel, Mr. Bren said Bismarck has not worked with communities on the travel route to fill loads because Bismarck has enough recycled goods to fill loads.

In response to a question from Mr. Frye, Mr. Heintz said Bismarck is studying the lifespan of the landfill.

He said a few years ago the estimated lifespan was 50 years, but he thought the study would show there is approximately 25 years of lifespan.

In response to a question from Senator Potter, Mr. Heintz said the cost of recycling in Bismarck includes manpower, fuel costs, and the cost for the recycling trailers parked around Bismarck. He said he does not pay for rent because retailers want the recycling containers on their property.

In response to a question from Senator Potter, Mr. Heintz said there is a different price for commercial waste than the cost of residential waste. He said the amount of commercial waste is rising while residential waste is staying relatively level because of the increase in commercial buildings.

In response to a question from Senator Potter, Mr. Bren said there has not been a big push to recycle glass. He said there is not enough quantity to use in roads, but the city has investigated using glass for decorative purposes.

In response to a question from Senator Potter, Mr. Bren said paper should be kept separated from cardboard because they are different recyclable goods.

In response to a question from Mr. Kessel, Mr. Heintz said there has been a spike in old televisions and computer screens being brought to the landfill. Mr. Bren said there is no markup on the cost for leaving electronic waste at the landfill. He said commercial accounts use the service when computer screens are changed.

In response to a question from Senator Potter, Mr. Bren said there is more recycling in the eastern part of the state. He said there are more recyclers in the eastern part of the state.

In response to a question from Mr. Hacker, Mr. Bren said Bismarck has worked with small communities in bringing recyclables from the small communities to Bismarck.

In response to a question from Representative Ruby, Mr. Heintz said the Bismarck fee system is based on weight rather than volume. He said the largest volume in waste is grass clippings and leaves. He said because commercial haulers pay by weight, commercial haulers have an incentive to recycle heavy waste and not waste that has a large volume. He said there is more of a market for large volume waste than heavy waste, i.e., cardboard more than glass.

In response to a question from Senator Potter, Mr. Heintz said the volume of waste does not compress over time because Bismarck uses a compactor that compresses the waste to the density of a garbage baler.

Representative Ruby said Minot once had a yardage fee. He said it is difficult to charge on volume because reporting to governmental entities is required by the ton.

At the request of Chairman Potter, commission counsel presented information ([Appendix C](#)) on a Montana legislative study to evaluate methods for increasing recycling and solid waste recovery within the state of Montana.

STUDY OF PUBLIC IMPROVEMENT BIDDING

Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, presented written testimony ([Appendix D](#)) on concerns involving public improvement bidding.

In response to a question from Representative Ruby, Mr. Traynor said it is difficult for a county not to take the lowest bidder even though the standard is lowest responsible bidder.

In response to a question from Representative Ruby, Mr. Traynor said it would be useful to be able to designate a type of trademarked product so that the electronics in the product will speak natively with existing products. If this were allowed, he said, there may be an incentive to lowball the first bid to get subsequent bids.

In response to a question from Mr. Kessel, Mr. Traynor said since the \$100,000 bidding threshold was created, there has been inflation of 78 percent.

In response to a question from Mr. Hacker, Mr. Traynor said allowing publication in a builder's exchange instead of in the newspaper would be a good idea from a cost perspective. He said there is a strong interest from local papers to provide the information and receive the income from the advertisements.

Mr. Hacker said in Fargo contractors do not look at the newspaper but the local builder's exchange for projects on which to bid.

Senator Potter said allowing requests for a trademarked product restricts innovation.

In response to a question from Senator Potter, Mr. Traynor said Cass County had an issue with electronic door locks that had to be removed and new ones installed because of the inability of the locks to integrate with existing software.

At the request of Chairman Potter, commission counsel presented a background memorandum entitled [Concessions Bidding](#).

In response to a question from Senator Potter, commission counsel said the provisions on concessions bidding relate to food.

In response to a question from Mr. Hacker, commission counsel said the language in the

concessions bidding law is broad in its application to governmental entities, except for the specific exceptions.

Mr. Ron Henke, Director, Office of Project Development, Department of Transportation, provided written testimony ([Appendix E](#)) on the department's design-build pilot projects.

In response to a question from Senator Potter, Mr. Henke said there may be some user savings or construction savings with the design-build method.

In response to a question from Representative Ruby, Mr. Henke said savings would be more apparent on large projects.

In response to a question from Representative Ruby, Mr. Henke said the pilot projects are a box culvert and a signal light because there can be near identical projects run through both methods.

In response to a question from Representative Ruby, Mr. Henke said the pilot projects will not measure savings as much as be an evaluation of the process.

In response to a question from Representative Ruby, Mr. Henke said the I-35 bridge in Minnesota was bid to the highest-price bidder. He said there was a time savings which was important for the project.

In response to a question from Representative Wrangham, Mr. Henke said the goal is to bid for the box culvert next year. He said the legislation on the pilot project sunsets in 2013. He said the department is trying to find the right projects that are similar in nature. He said there most likely will be a comparison of methods for the box culvert by the 2011 legislative session.

In response to a question from Mr. Kessel, Mr. Henke said the department will get environmental clearance and right of way before tracking the design-build method.

In response to a question from Senator Potter, Mr. Henke said if design-build were used for transportation projects there would still need to be engineers at the Department of Transportation to review the projects to keep the integrity of the system.

In response to a question from Senator Potter, Mr. Henke said the negative of the design-build method of smaller firms not being able to compete can be addressed by smaller firms partnering together.

Mr. William G. Peterson, Vice President and Public Affairs Officer, CNA Surety Corporation, provided written testimony ([Appendix F](#)) to the commission. He said there are three types of construction bonds:

1. Bid bonds.
2. Performance bonds.
3. Payment bonds.

Mr. Peterson said bonds are a form of consumer protection. He said only five states have a threshold higher than \$100,000. He said since 2006 there has been an increased failure rate of 20 percent for contractors. He said there has been a 5- to 10-fold increase in contractors that want to bid on public contracts. He said bonding prequalifies contractors for government contracts. He said a bid bond is the

surety saying the individual is prequalified to get a performance and payment bond. He said bid bonds are relatively inexpensive to contractors--\$50 to \$100. He said surety companies look at the financials, ability, and experience of the contractor before issuing a bond. He said it is in the best interest of the surety to have contractors grow and not pay claims on bonds. He said bonds are protection to subcontractors, laborers, material suppliers, and taxpayers.

In response to a question from Representative Ruby, Mr. Peterson said the bid bond is a first step to issuing a performance bond.

In response to a question from Senator Potter, Mr. Peterson said contractors are reviewed for every bond. He said the surety company looks at the capacity of the contractor.

In response to a question from Senator Potter, Mr. Peterson said there is a long tail on claims. He said the 20 percent increase of general contractor failures will affect his company in 2010.

In response to a question from Mr. Hacker, Mr. Peterson said a bond is a barrier to entry and the issuance of bonds has become more conservative in recent history.

In response to a question from Mr. Hacker, Mr. Peterson said CNA Surety Corporation specializes in small to medium bonds for projects under \$1 million.

In response to a question from Mr. Kessel, Mr. Peterson said the decision to issue a bond is not based on hard and fast rules but on the relationship between the surety company and the contractor.

In response to a question from Mr. Kessel, Mr. Peterson said if a bond is issued, it is proof of a responsible bidder.

Mr. Traynor said although the thresholds for bidding and bonding are the same they are two different things. He said the bid threshold could be changed without changing the bond threshold.

Mr. Russ Hanson, Executive Vice President, Associated General Contractors of North Dakota, provided written testimony ([Appendix G](#)) on the Construction Leaders Coalition and the design-build method.

Mr. James Devine, J2 Studio Architecture Design, Bismarck, provided a handout ([Appendix H](#)) as the basis of describing the design/bid/build method. In addition, he provided a handout ([Appendix I](#)) on project delivery terms. He said the positives of the design/bid/build method is that the system has been in existence for a long time and documents are available for the method. He said it is the most widely used for public projects. He said it is good for uncomplicated projects and projects that do not have to be done quickly. He said the negatives are that it is difficult for smaller contractors because of the large specification books. He said it is difficult to make scope changes. He said there is the perception that the contractor is being teamed up against by the owner and architect

because of the late arrival of the contractor to the system.

Mr. Tracy Tooz, Tooz Construction, Dickinson, provided written testimony ([Appendix J](#)) on the agency construction management and construction manager at-risk methods.

Mr. Jeffry Volk, President and CEO, Moore Engineering, West Fargo, provided a handout ([Appendix K](#)) on which his testimony on design-build was based.

In response to a question from Senator Potter, Mr. Volk said the owner will need to put in the effort at the beginning of the design-build system to know what the owner will receive at the end of the project.

In response to a question from Senator Potter, Mr. Volk said the design-build system can be controlled at the beginning through the request for proposals issued by the owner.

In response to a question from Representative Ruby, Mr. Volk said political subdivisions are sophisticated owners with staff that can act as an adviser to the "owner" of the building. He said the design-build method is mainly used in the private sector for constructing buildings.

In response to a question from Representative Ruby, Mr. Volk said there is always a competitive market in the building trade. He said in the design-build system there needs to be a team of architects, engineers, and contractors. He said in the design/bid/build system, the owner hires a contractor and the architect has to take whomever the owner hires. He said because of the need for teamwork in the design-build project, it lowers the possible combinations of team members and might reduce competition.

Representative Wrangham said public bidding is used so that there is a prudent use of tax dollars. He said in the private sector, the owner is spending the owner's money. He said in the public sector, the governing body is spending the public's money. He said of the three models, the design-build method has the least transparency.

Mr. Hacker said open book is important for the design-build method.

In response to a question from Representative Wrangham, Mr. Volk said in private construction, building codes govern the construction and these codes are less restrictive than what is addressed in public projects, which want a high level of addressing health, safety, and welfare.

In response to a question from Mr. Hacker, Mr. Volk said the design-build method can be less costly, but it depends on the owner.

In response to a question from Mr. Frye, Mr. Volk said different governmental agencies have different rules that may require a certain project delivery method. He said if the lowest bid is required by law, then the public entity cannot use the design-build method.

In response to a question from Mr. Frye, Mr. Volk said if the design-build method is allowed for public

improvements, the use of the design-build method may need to be limited in the beginning so public entities develop a track record and experience with the method.

Representative Ruby said he did not like the perception of the private sector building to the minimum standard and the public sector building to the maximum standard. He said there are opportunities for savings with the design-build method. He said the main concern is it will exclude some small companies, but that could lead to opportunities.

Senator Potter said sometimes government entities want to choose the contractor with whom they have experience and not have public bidding, but that should not be allowed in the public sector.

In response to a question from Mr. Hacker, Mr. Hanson said the goal of the Construction Leaders Coalition is to have legislation on the design-build method for the 2011 legislative session.

SUGGESTED AREAS OF STUDY

At the request of Chairman Potter, commission counsel provided a memorandum entitled [State Aid Distribution Fund History](#).

Mr. Traynor presented written testimony ([Appendix L](#)) of suggested areas of study from the North Dakota Association of County Board of Directors. He said the main areas of suggested study include social services financing, infrastructure, local government structure, government costs and revenues, state government organization, and property tax. He said the list of things to be studied is not a recommendation for change. He said \$33 million per year goes to social services from counties. He said this is paid for by property tax and the board of county commissioners does not have much control over social services expenses.

In response to a question from Senator Potter, Mr. Traynor said federal foster care legislation requires a face-to-face meeting with children placed in foster care every 30 days. He said this creates problems with children placed outside the jurisdiction or outside of the state. He said if the child is placed in state, county social service directors are getting adjunct staff from other counties.

In response to a question from Senator Potter, Mr. Traynor said there are catastrophic expenses that can ruin a county budget. He said one of these expenses is medical care for prisoners. He said one way of addressing catastrophic expenses is through insurance. However, he said, the majority of medical expenses are between \$500 and \$1,000 and not addressed by a catastrophic insurance program. He said for catastrophic insurance to be economical, there needs to be 25 beds full at all times. He said the North Dakota Association of Counties is investigating whether a statewide plan for small jails would be economical.

Mr. Kessel said the commission should review the ability to consolidate park districts into city government.

In response to a question from Senator Potter, Mr. Traynor said the federal government requires a merit system for county social services. He said most counties use the state merit system. He said any savings by changing pay grades would be lost by a county in conducting the salary studies.

Representative Ruby said the state has taken over more and more from county governments while there has been an increase in state aid distribution.

In response to a question from Representative Ruby, Mr. Traynor said if there is a government service all citizens need, then there needs to be payment for this service by some tax, and that tax has to be right for the service.

Mr. Frye said there is a problem with people living outside the city placing garbage in commercial dumpsters inside the city. He said some small cities have padlocks on commercial dumpsters. He said garbage is everyone's problem and is a regional concern.

Mr. Yantes said the commission should investigate the tax treatment of concentrated feedlots. He said they are taxed as agricultural property and cause more damage to roads than traditional agricultural facilities.

In response to a question from Mr. Yantes, Mr. Traynor said infrastructure impact funding is important for agricultural processing facilities, unit train facilities, ethanol plants, and other industries.

Mr. Jerry Hjelmstad, North Dakota League of Cities, provided testimony to the commission. He said the consolidation of municipal court services with other courts should be investigated by the commission. He said mandates on local government should provide funding or a recommended funding source.

In response to a question from Senator Potter, Mr. Hjelmstad said most small cities have been limited in the property tax dollar amount since 1997, and the only increase in funding is from the state aid distribution fund.

In response to a question from Senator Potter, Mr. Hjelmstad said approximately one-third of cities have sales taxes, which provide a major benefit to large cities. He said most cities adopt a sales "and use" tax and the use tax could be used if an item is delivered to a small community.

Representative Wrangham said the commission should not study any new study unless there is a particular need that is not addressed by a study in another interim committee.

Senator Potter said prisoner medical care may be an area of potential study.

Representative Ruby said if mandates are studied there would need to be a list of true mandates. He said some mandates are tradeoffs and not true mandates. He said if mandates are studied, particular mandates should be suggested by counties and cities.

Mr. Hacker said one area of health care for prisoners that is an unfair cost for political subdivisions is dental care. He said a person in jail should not get dental care for the first few months of confinement. He said one solution to high health care costs would be not to provide dental care until a person has been confined for a minimum period of time.

Ms. Amundson said there are many complaints from prisoners in jail of chest pain. She said these complaints must be medically investigated. She said the investigation is expensive.

Senator Potter said political subdivisions are mainly limited to property tax and the state has a variety of taxing authority. He said the state is in a better position to absorb catastrophic losses.

Ms. Amundson said there should be statewide attorneys general that can be used by state's attorneys in big trials. She said the big trials can be a catastrophic expense and a major burden to state's attorneys who may have no expertise in the area of the trial.

Mr. Yantes said there is a federal law that requires a certain reflectivity on traffic signs. He said political

subdivisions have to comply without any funding. He said it will be very expensive to replace signs and there needs to be a united front for federal funding.

Mr. Kessel asked if there are any barriers to the consolidation of park districts into city or county government, those barriers should be removed.

Mr. Hacker said the process for siting landfills should be made more regional. He said the process should begin with the state choosing the best locations and allowing the political subdivisions to choose one of the listed locations.

Representative Wrangham said there was a bill last session to address landfill siting, and there is a desire to do something on landfill siting.

No further business appearing, Chairman Potter adjourned the meeting at 3:00 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:12