

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS**

Wednesday, July 9, 2014  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Jessica K. Unruh, Vice Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representative Ron Guggisberg; Senators Dwight Cook, Jessica K. Unruh; Citizen Members Katie Andersen, Vicki Kubat, Jon Martinson, Mike Schwartz, Larry Syverson; Governor's Designee Brandi Pelham

**Members absent:** Representative Brenda Heller; Citizen Members Scott Ouradnik, Chris West

**Others present:** See [Appendix A](#)

Mr. Walstad reported that the North Dakota League of Cities has appointed Mr. Chris West, Mayor, Grafton, as a representative on the commission, replacing Mr. Don Frye, Mayor, Carrington, who did not seek reelection. He said Mr. West is unable to attend today's meeting.

**STATE AUDITOR**

Vice Chairman Unruh called on Mr. Robert R. Peterson, State Auditor, for a presentation ([Appendix B](#)) of information compiled to show county fund activity, balance sheets, and information on political subdivisions that are subject to audit.

In response to a question from Vice Chairman Unruh, Mr. Peterson said the balance sheets provided are just for the counties. Senator Cook said information that can be used by a layperson is needed, such as the ending fund balance of the weed board. He asked where that information would be located. Mr. Peterson said an interested person would need to request the weed board's audit. Senator Cook asked if the State Auditor's office could help to simplify the information contained in the audit to make it user-friendly. Mr. Peterson said that would take quite a bit of effort. He said it would require all the information to be online and have every political subdivision using the same general format, which would require money and training.

Senator Cook asked if the process could be started with just the counties. He said school districts' information has been developed into a uniform system and is available in the *School Finance Facts* publication of the Department of Public Instruction. Mr. Peterson said his office does not require particular reporting methods because it only performs the audits.

Vice Chairman Unruh asked if any research had been done as to methods used in other states. Mr. Peterson said he did not do any additional research; however, he would suggest looking at Washington, Ohio, and Pennsylvania for examples of uniform accounting systems for political subdivisions.

Vice Chairman Unruh asked how many county audits are completed by the State Auditor. Mr. Peterson said his office performs approximately 23 audits.

Dr. Martinson asked where to find the ending fund balance on the documents provided. Mr. Peterson said the ending fund balance is listed under government funds.

Mr. Walstad asked whether the amount listed as an ending fund balance is unobligated. Mr. Peterson said his office just sees the ending fund balance. He said some of that amount may be committed or saved for a major purchase or road construction. He said you do not see any of the detail on the tables, just a gross number.

Senator Cook said many suggestions have been made that online information on political subdivisions' budgets should be available. He said it seems logical that uniform accounting should be a first step toward that objective, so the viewer can compare information among different subdivisions.

Ms. Andersen said some subdivisions have many separate funds to manage. She said in some cases, subdivisions have consolidated some of those funds. She said Jamestown consolidated one special fund into its general fund. She said variations of which funds are used could create challenges for implementing a uniform chart of accounts requirement.

Vice Chairman Unruh said a lot of the balances for unelected boards are substantial and not necessarily required to be reported anywhere. Senator Cook said this becomes a property tax question of whether to lower mills levied when a political subdivision could reduce its levy to two mills because of the balance on hand but continues to levy the statutorily allowed four mills. Ms. Andersen said most counties levy in buckets as guided by the North Dakota Century Code. She said it would be easiest for counties to use a uniform chart of accounts.

Senator Cook asked Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, how the North Dakota Association of Counties can help in encouraging uniformity of county budget data. Mr. Traynor said it is a fairly large task that has been discussed many times. He said he does not believe there is a resistance, just a concern about time, training, and cost. He said the school districts have achieved a uniform system because the legislature and Department of Public Instruction made it a requirement. He said it would be a monumental task but something the Association of Counties is willing to work to accomplish. Senator Cook said there are some accounts that would be easier to make uniform first. He asked if it would be possible to do the easier ones first and gradually reach the more difficult political subdivisions. Mr. Traynor said it is possible. He said the challenge is if we want the information to be available and timely, the information would need to be immediately extracted from the accounting systems rather than waiting for the completed audit. He said that would require either significant staff time or changing the programs used. He said he understands this is a priority and will be working hard to accomplish the task.

### MEMORANDUM ON POLITICAL SUBDIVISIONS

Vice Chairman Unruh called on Ms. Kramer for presentation of a memorandum entitled [Political Subdivisions](#).

Senator Cook asked who audits the political subdivisions with audit requirements. Mr. Walstad said he will invite someone from the State Auditor's office to address that at the next meeting. Senator Cook said it is important to make sure those political subdivisions with levy authority are getting audited.

Senator Cook asked whether the subdivisions with elected boards have a separate line item identifying their tax levies on property tax statements. Ms. Linda Leadbetter, State Supervisor of Assessments, Tax Department, said they do not in all cases.

### TAX DEPARTMENT

Vice Chairman Unruh called on Mr. Joe Morrisette, Deputy Tax Commissioner, Tax Department, for information on the revenue impact for each school district from the 2013 elimination of the financial institutions tax (FIT). Mr. Morrisette said FIT started in 1997 as a replacement to the business privilege tax, which was a 6.5 percent tax, 1.5 percent of which stayed with the state and the remainder was allocated within the county. He said FIT distributions were based on how the business privilege tax had been distributed. He said no state entity has data as to how this was done. He said the Tax Department performed a survey and determined 50 percent of FIT revenue on average went to school districts. He said allocations in the past few years have been fairly consistent with the amount districts had been receiving from FIT. He said the fiscal note in 2013 assumed about \$11 million would be the amount of local revenue needed to replace FIT allocations. He said to make up for that, the state aid distribution fund portion was increased from 8 to 8.7 percent, but state aid distribution funds only get distributed to counties and cities based on a formula that does not include school districts. He said at the same time this took effect, there was a major change to the school funding formula. He said another unexpected occurrence was the jump in FIT allocation in 2014 from \$11 million of allocations to \$18 million.

Senator Cook asked what the actual dollar amount lost by each school district was. Mr. Morrisette said that information would have to be collected. Senator Cook provided the commission with information ([Appendix C](#)) from Dr. Aimee Copas, Executive Director, North Dakota Council of Educational Leaders, relating to the specific dollar amount lost by each school district. Senator Cook asked whether the Department of Public Instruction was including the FIT money in the school funding formula. Mr. Morrisette said the Department of Public Instruction was aware of the allocation, but it was not part of the calculation of other revenue. Senator Cook asked if the actual loss to the schools would have been closer to 25 percent had the FIT allocation been included in the funding formula. Mr. Morrisette said that would be an accurate estimate.

## BILL DRAFT ON ASSESSOR CERTIFICATION

Vice Chairman Unruh called on Mr. Walstad for presentation of a bill draft [\[15.0039.03000\]](#) providing for assessor certification and training. He said the Taxation Committee has amended and recommended this draft. He said the amendment was to extend the compliance deadline for enhanced training to 2017.

## TAX DEPARTMENT

Vice Chairman Unruh called on Ms. Leadbetter for a presentation ([Appendix D](#)) on assessor training standards in surrounding states. Mr. Syverson asked what the cost to the townships will be. Ms. Leadbetter said unfortunately we do know. She said the cost will depend on staffing, technical issues, and programming.

Mr. Syverson asked how many counties would be able to provide this service locally or will need to bring in outside help. Ms. Leadbetter said that is an unknown. Mr. Syverson asked whether past annual training seminars would be included in the new hours requirement for certification. Ms. Leadbetter said those seminars would need to be evaluated before hours would be awarded.

Ms. Andersen asked whether townships could contract with different counties. Ms. Leadbetter said everyone is responsible for having the assessments completed whether they contract for the service to be provided or provide it themselves.

Representative Guggisberg asked if there was any testimony in the Taxation Committee on additional costs to political subdivisions. Senator Cook said there is nothing in the bill draft about reimbursements. He said the issue has been discussed, but nothing has been added at this point regarding funding the improvements. Ms. Andersen said it may cost more, but political subdivisions are already paying for it at some level.

**It was moved by Ms. Andersen, seconded by Senator Cook, and carried on a roll call vote that the bill draft [\[15.0039.03000\]](#) be approved and recommended to the Legislative Management.** Representative Guggisberg, Senators Cook and Unruh, Citizen Members Andersen, Kubat, Martinson, and Schwartz, and Governor's Designee Pelham voted "aye." Citizen Member Syverson voted "nay."

## SUPERINTENDENT OF SCHOOLS

Vice Chairman Unruh called on Ms. Sharon Young, Nelson County Superintendent of Schools, for a presentation ([Appendix E](#)) relating to the role of the county superintendent of schools. Ms. Andersen asked how Ms. Young splits her time between her emergency management duties and superintendent of schools duties. Ms. Young said she works 28 percent of her time as county superintendent of schools and 72 percent of her time as emergency manager.

Vice Chairman Unruh called on Ms. Jodi Johnson, Ward County Superintendent of Schools, for a presentation ([Appendix F](#)) relating to her role as county superintendent of schools.

Vice Chairman Unruh called on Ms. Linda Schlittenhard, Pembina County Superintendent of Schools Designee, for information relating to her role as a designee. Ms. Schlittenhard said she does not hold a degree and was first appointed in 2009. She said she also serves as the county auditor and treasurer. Senator Cook asked whether the current process requiring a board of county commissioners to determine whether there should be a superintendent of schools could be simplified. Ms. Schlittenhard said she does not know the background for establishing the current requirements.

## MISSOURI RIVER EDUCATIONAL COOPERATIVE

Vice Chairman Unruh called on Mr. Lyle Krueger, Coordinator, Missouri River Educational Cooperative, for a presentation ([Appendix G](#)) relating to the formation and function of the regional education association. Mr. Krueger said the Missouri River Educational Cooperative (MREC) is one of eight regional education associations in the state. He said the associations started as groups of schools getting together to create efficiencies. He said the association acts as a supportive agency. He said the associations do not regulate as they only provide assistance in five areas--professional development, technology, technological support, data systems, and curriculum enrichment.

Ms. Andersen asked how the associations are funded. Mr. Krueger said MREC receives .002 percent of the foundation aid payment to school districts. He said the MREC is mostly funded through grants. Ms. Andersen asked if that percentage is the same as the other associations in the state. Mr. Krueger said the amounts vary depending on the size and number of students. He added that districts are charged \$500 a year for membership in the MREC.

Ms. Andersen asked if the MREC is a nonprofit organization. Mr. Krueger said no. He said school districts act as the fiscal agent for all regional education associations.

Representative Guggisberg asked who composes the board for the MREC. Mr. Krueger said the board consists of representatives from each geographic section, a representative from the grade school, and one at-large member, and five superintendents sit on the board in an advisory role. Ms. Andersen asked who determines the funding provided through the foundation aid formula. Ms. RaeAnn G. Kelsch, North Dakota Council of Educational Leaders, said the regional education associations are recognized in state law and have certain rules to abide by and certain services the associations are required to provide. She said the regional education association organizations are created by joint powers agreements. She said it would be appropriate now to allow them to stand alone.

### BILL DRAFTS

Vice Chairman Unruh called on Mr. Walstad for review of a bill draft [[15.0020.04000](#)] on notice of assessment increases. Mr. Walstad said the Taxation Committee has approved and recommended this bill draft to the Legislative Management. He said the bill draft was revised from the previous version to make uniform provisions for city, township, and county boards of equalization and make clear that at any point when a property's assessment is increased 10 percent and \$3,000 from the prior year, the entity that made the increase must notify the owner. He said if the local board of equalization is considering an increase that would make the assessment 15 percent or more above the previous year's assessment, the board must provide reasonable advance notice and opportunity to appear for the owner. He said it was suggested by a county tax director that these changes should be made to make the equalization process uniform, which is not the case under current law.

Vice Chairman Unruh called on Mr. Walstad to review a bill draft [[15.0095.02000](#)]. Mr. Walstad said the bill draft has been approved and recommended to the Legislative Management by the Taxation Committee and relates to notice to taxpayers of a budget hearing for a greater than zero increase in tax rate. He said existing law requires notice by the governing body in the newspaper and to taxpayers by mail if the taxpayer received a notice of an assessment increase, if the governing body is considering more than a zero increase in the number of mills to be imposed for the upcoming tax year. He said the bill draft amends that section to provide for elimination of newspaper publication of notice and that written notice of greater than a zero increase tax rate must be provided to every taxpayer by personal delivery, mail, or electronic mail if the owner consents to receive electronic mail. He said the bill draft provides that a consolidated notice be allowed for an individual or entity owning more than one parcel of taxable property.

Vice Chairman Unruh called on Mr. Walstad for presentation of a bill draft [[15.0094.02000](#)] relating to reports of electric transmission, distribution, and generation companies. Mr. Walstad said the committee reviewed this bill draft at the previous meeting. He said the bill draft was suggested by Tax Department staff when it was discovered there is no statutory reporting requirement for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. He said the bill draft adds statutory language to require these reports at the time transmission and distribution company reports are required to be filed. He said the bill draft also corrects a reference to the June reporting date of the information. He said the bill draft is effective beginning in 2016 because 2015 legislation would not take effect early enough to require the reports in 2015. He said the bill draft was approved and recommended to the Legislative Management by the Taxation Committee.

**It was moved by Senator Cook, seconded by Representative Guggisberg, and carried on a roll call vote that the bill draft [[15.0094.02000](#)] be approved and recommended to the Legislative Management.** Representative Guggisberg, Senators Cook and Unruh, Citizen Members Andersen, Kubat, Martinson, Schwartz, and Syverson, and Governor's Designee Pelham voted "aye." No negative votes were cast.

Vice Chairman Unruh called on Mr. Walstad for review of a bill draft [[15.0149.01000](#)]. Mr. Walstad said enactment of 2013 Senate Bill No. 2036 created a new form of property tax relief through a state-paid credit of 12 percent of property taxes levied by any taxing district. He said the credit was estimated to provide \$200 million of property tax relief, and the estimate is tracking very close to actual cost for the first year of the biennium. He said the estimated cost for the 2015-17 biennium is \$230 million, and the bill draft provides an appropriation of that amount. He said the 2013 legislation had a two-year sunset, and this bill draft does not contain a sunset clause. He said the Taxation Committee expressed the opinion that extending the credit will undoubtedly be considered in 2015, and this bill draft would initiate that legislative discussion. He said the Taxation Committee approved and recommended this bill draft to the Legislative Management.

**It was moved by Senator Cook, seconded by Representative Guggisberg, and carried on a roll call vote that the bill draft [[15.0149.01000](#)] be approved and recommended to the Legislative Management.**

Representative Guggisberg, Senators Cook and Unruh, Citizen Members Andersen, Kubat, Martinson, Schwartz, and Syverson, and Governor's Designee Pelham voted "aye." No negative votes were cast.

### **RURAL FIRE DISTRICTS**

Vice Chairman Unruh called on Mr. Raymond Lambert, State Fire Marshal, for a presentation ([Appendix H](#)) relating to rural fire protection district formation and functions. Mr. Lambert said fire departments function within city boundaries and rural fire departments function within specified boundaries. He said rural fire protection districts cover the areas outside city boundaries and are certified as such. He said the fire protection district can encompass a complete city as well as areas outside the city, unlike a city department that cannot go beyond city boundaries. He said all three types are funded and regulated differently. He said there are areas of the state that are not covered by fire protection. He said national grasslands, land along the Missouri River, an area including the city of Mandaree, and areas in Sioux County are not covered.

Ms. Andersen asked what happens to fire districts after an annexation has occurred if the district is in debt. Mr. Jonathan Byers, Assistant Attorney General, said on the date certain when the annexation happens the annexed property should be assessed for a certain portion of the debt.

Representative Guggisberg asked how departments are certified. Mr. Lambert said each department is certified annually by completing a form which is submitted to the state Insurance Department. He said the North Dakota Firefighter's Association sets forth the training firefighters should receive, but the training is not a statutory requirement. Ms. Andersen asked who governs rural fire districts. Mr. Lambert said a fire department is required to have a board of directors. He said city departments are governed by the city commission, and rural departments have elected members from the community who serve on a board. Mr. Byers said the rural boards must have at least five members.

Senator Cook asked who is responsible for a death in Mandaree when the city does not have fire protection. Mr. Byers said the incorporated city would likely be held responsible for not having taken steps to secure fire protection. Senator Cook asked whether there are buildings that require inspection. Mr. Lambert said all public and private schools, all state-owned property, aboveground fuel storage, some veterans' homes, the State Penitentiary, Grafton school, and bar inspections for liquor licensing all involve fire inspection. Senator Cook asked whether an insurance company could determine the fire protection rating of any property and adjust premiums accordingly. Mr. Lambert said that information on those ratings could be gathered through calling a local insurance agent. Representative Guggisberg said ratings consider water supply and response time.

### **NORTH DAKOTA ASSOCIATION OF COUNTIES**

Vice Chairman Unruh called on Mr. Traynor for a presentation ([Appendix I](#)) on county jail expenditures. Mr. Traynor said the Association of Counties contacted all county auditors in counties with a jail, and the majority responded. He said total 2014 county year operating costs for jails totaled more than \$36 million, and county jail facility capacity totals 1,633 for adult facilities and 90 for juvenile detention. He said jail operating costs appear to be rising in western North Dakota at about twice the rate of increase as the remainder of the state.

### **MEMORANDUM ON COUNTY CONSOLIDATION**

Vice Chairman Unruh called on Ms. Kramer for presentation of a memorandum entitled [Procedure for County Consolidation](#).

### **BILL DRAFT ON PROPERTY TAX LEVIES OF UNELECTED BOARDS**

Vice Chairman Unruh called on Mr. Walstad for presentation of a bill draft [[15.0067.02000](#)] relating to property tax levies requested by unelected governing bodies. Mr. Walstad said there are numerous sections of law providing for levy by the board of county commissioners or the city governing body as requested by an unelected board or commission. He said the commission reviewed this bill draft at a prior meeting, and suggestions were made by county and city representatives for changes. He said this bill draft incorporates those suggestions, including allowing the city or county to specify what information must be submitted with a levy request, rather than the requirements of the earlier bill draft, which listed information that must be submitted in each section allowing a levy request.

### **BILL DRAFT GOVERNING ELECTIONS FOR VOTER APPROVAL OF BOND ISSUES AND PROPERTY TAX INCREASES**

Vice Chairman Unruh called on Mr. Walstad for presentation of a bill draft [[15.0075.01000](#)] providing that elections seeking voter approval of political subdivision authority to increase property taxes or issue bonds must be held in conjunction with a statewide primary or general election. He said the bill draft was requested to eliminate

the option for calling special elections and to require that an election to increase property taxes or issue bonds must be held in conjunction with a statewide primary or general election.

### **BILL DRAFT FOR TOWNSHIP TO RECLAIM ZONING AUTHORITY**

Vice Chairman Unruh called on Mr. Walstad for presentation of a bill draft [[15.0078.02000](#)] regarding recovery of zoning authority by a township that previously unilaterally transferred its zoning authority to the county. He said at a previous meeting, the commission considered a 1999 Attorney General opinion concluding that North Dakota Century Code Section 11-33-20, enacted in 1955, allowed townships to unilaterally transfer zoning authority to the county. He said in 1982 the Constitution of North Dakota was amended to provide that a political subdivision may by mutual agreement transfer to the county any of its powers and may in like manner revoke the transfer. He said the Attorney General opinion concluded that a township that unilaterally transferred its zoning authority to the county between 1955 and 1982 has no statutory provision to recover that zoning authority. He said the Attorney General opinion concluded that a township that unilaterally transferred zoning authority could enter a joint powers agreement with the county to recover zoning authority. He suggested to the commission that it would be simpler to provide by statute that a township that unilaterally transferred zoning authority to the county may reacquire the zoning authority by mutual agreement with the county. He said the bill draft provides for that kind of agreement. He said the bill draft also repeals Section 11-33-20, which permits unilateral transfers, because those transfers are apparently no longer valid after the 1982 constitutional amendment.

### **MEMORANDUM REGARDING STATUTORY DEFINITIONS OF POLITICAL SUBDIVISIONS**

Vice Chairman Unruh called on Mr. Walstad for presentation of a memorandum entitled [Use of Political Subdivisions and Other References for Units of Local Government](#).

### **MEMORANDUM ON STATE AID DISTRIBUTION FUND**

Vice Chairman Unruh called on Mr. Walstad for a presentation ([Appendix J](#)) on the state aid distribution fund allocations to cities and counties.

### **BILL DRAFT TO PROVIDE AUTHORITY TO ESTABLISH SPECIAL ASSESSMENT DISTRICTS FOR ENERGY EFFICIENCY IMPROVEMENTS**

Vice Chairman Unruh called on Representative Guggisberg for presentation of a 2013 amendment draft ([Appendix K](#)) providing authority for cities to establish special assessment districts for energy efficiency improvements in buildings. Representative Guggisberg said instead of giving grants to people to update their homes, special assessment districts could be used to allow voluntary participation by homeowners and allow the city to hire private contractors to update the homes. He said by doing this, the benefit and cost would attach to the home rather than a person using a grant and then moving after the updates are complete. He said to address the needs of low-income people, the city could consider covering the special assessments for that particular property, which would ultimately be less than the heating assistance program. Vice Chairman Unruh said a potential issue could be having a person pay for the improvements twice. She said a person would pay additional property taxes for the increased value of the home after the updates as well as any remaining special assessment balance.

No further business appearing, Vice Chairman Unruh adjourned the meeting at 3:45 p.m.

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John Walstad  
Code Revisor

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Samantha E. Kramer  
Counsel

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