

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Thursday, September 25, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Brenda Heller, Chairman, called the meeting to order at 10:00 a.m.

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

Members absent: Representative Ron Guggisberg; Citizen Member Scott Ouradnik

Others present: See [Appendix A](#)

It was moved by Senator Cook, seconded by Mr. Severson, and carried on a voice vote that the minutes of the July 9, 2014, meeting be approved as distributed.

STATE AUDITOR

Chairman Heller called on Mr. Augie Ternes, Review Specialist, State Auditor's office, for information relating to the audit process of political subdivisions. Senator Cook referenced the memorandum entitled [Political Subdivisions](#). Mr. Ternes said the classifications in the "Audit Requirements" column are designated with either an S, N, or C. He said an "S" means the political subdivision files a separate audit, the "N" means the political subdivision is not required to have an audit, and the "C" means the political subdivision is a component unit of the city or county so the subdivision is audited as part of the city or county audit report. He said the multicounty social service districts are audited through the county. He said the Northwest Area Water Supply District is audited through the State Water Commission. He said the regional education associations are not required to have an audit through the State Auditor although they do have a separate audit. He said regional planning councils are nonprofit but are required to provide an audit to the State Auditor.

Senator Cook asked if there are common criteria or a test used to determine which political subdivisions are required to file a separate audit. Mr. Ternes said during the course of an audit all of the entities within a political subdivision are reviewed to determine whether they qualify as a component unit. He said many factors are considered including levy authority and any other authority the governing board may have.

Ms. Andersen asked if the audit requirements for airport authorities are different based on whether they are joint authorities. Mr. Ternes said regional authorities are required to have a separate audit, but often component districts will have their own audit that is then incorporated with the county audit. He said each board has the option to have an audit even though that particular political subdivision may be a component unit.

Senator Unruh asked whether an audit for a political subdivision as a component unit is as detailed as an audit would have been if the audit was done individually. Mr. Ternes said audits as component units would likely not be as detailed as a separate audit because there are a limited number of transactions that are tested.

Senator Cook asked whether there is a standard set of questions asked during each audit. Mr. Ternes said standards are followed and the auditor's office has multiple different programs tailored to each entity.

Ms. Andersen said the column regarding "Levy Authority" on the memorandum is deceiving because not all of the entities listed as having levy authority actually have the specific authority to do so. Mr. Walstad said the column was created to identify the entities for which there was a specific statutory provision, although most of them go through the city or county for final approval.

UNIFORM CHART OF ACCOUNTS

Chairman Heller called on Ms. Kramer for information relating to various state uniform charts of accounts. Ms. Kramer said the National Conference of State Legislatures provided information relating to which states have

some type of uniform system. She said currently, Arizona, Florida, Michigan, Minnesota, Ohio, Pennsylvania, Utah, and Washington all have some version of a uniform chart of accounts.

NORTH DAKOTA ASSOCIATION OF COUNTIES

Chairman Heller called on Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, for a presentation ([Appendix B](#)) of information relating to the creating of a uniform chart of accounts and the use of the state website. Mr. Traynor said last session the legislature passed a bill directing the Office of Management and Budget to provide a space on its website for local governments to submit their budgets. He said thus far, only 30 counties have provided their budgets on the website. He said they are quite varied in detail and organization. He said some of the counties provided links to their own websites where the budgets were located, whereas other counties provided PDF copies of their budget. He said traffic to the website has not yet been tracked although some counties have tracked the numbers and thus far they have been very low.

Senator Cook asked whether ending fund balances were included in the budgets posted online. Mr. Traynor said he spoke with Cass County officials, who agreed the ending fund balance would be valuable information, but it is not currently available online. He said he has only seen ending fund balances on copies of printed budgets. Senator Cook said to make the website effective, we need information that is detailed as far as cost per citizen like the information for schools compiled by the Department of Public Instruction, which break down the budget to cost per student.

Chairman Heller asked why all of the counties are not reporting. Mr. Traynor said as time progressed and the financial responsibilities of counties have increased, they are overwhelmed. He said it was one more duty that was not mandated.

Mr. Traynor said the Association of Counties began compiling audits in 1985 and have contracted analysis of that information to use in testimony for some time. He said the Association of Counties has looked at the the big four and big ten in numerous different ways based on the intention of the committees. He said it is possible to provide uniform county information with current systems, but the drawback is the data is old. He said there is a concern that if we move to a whole new method it will be difficult to get the history. He said there is also concern about the cost, programming, and staff time. He said it will be expensive to move the six or seven current software companies all into the same place, and the long-term concern is that it will not solve the variation problem unless there is a mechanism for consistency and a strong training and technical assistance component. Senator Cook said the key as we define our goals and move forward is communicating with the people in the counties and listening to their concerns.

TAX DEPARTMENT

Chairman Heller called on Mr. Joe Morrisette, Deputy Tax Commissioner, Tax Department, for a presentation ([Appendix C](#)) of information relating to an update on efforts to establish a uniform property tax statement among counties. Mr. Morrisette said the working group came up with a tax statement that is not exactly uniform, but it is consistent with the required location of the data that is contained in the statement. Chairman Heller asked if the working group has finished. Mr. Morrisette said the working group has completed its work because the counties requested the statement be finalized by the end of July to be able to use the new statement for the upcoming tax year. Chairman Heller asked who decides which taxing districts are shown on the statement, citing the example of one county statement that shows the park district on a separate line. Mr. Morrisette said that is a local decision, not a decision made by the working group. Senator Cook said at the interim Taxation Committee meeting, the committee asked if any legislation was needed to make this concept work, and the answer was that legislation is not necessary. Chairman Heller asked if political subdivisions that levy should be listed on the statements as a matter of uniformity. Senator Cook asked whether legislation is needed to accomplish that goal. Mr. Traynor said the current statutory language is broad, giving the Tax Department the authority to create the format so a county would need to follow whatever is created. Senator Cook asked whether the statement could include lines for political subdivisions for the 2015 statements. Mr. Traynor said probably not because the programming is mostly completed.

Mr. Walstad asked for a status update on the concept of a user manual to accompany tax statements explaining how to apply the mill rate to property value. Mr. Traynor said the information has been communicated; however, because the format is essentially frozen, the consensus is the concept may not be possible this time.

STUDY RESOLUTIONS

Chairman Heller called on Mr. Walstad for a presentation of a study resolution [[15.3024.01000](#)] relating to reports from political subdivisions required by law. Mr. Walstad said as background, the commission has statutory authority to undertake studies it deems appropriate that relate to subdivision issues. He said this resolution is one that would be considered during the legislative session and directs the Legislative Management to study this issue.

He said if the Legislative Management approved the study, it could then assign this study to any interim committee, not necessarily this commission. He said this study resolution addresses some of the topics addressed this morning and each whereas clause addresses background information. He said the idea behind the study is to provide some transparency and inform the public because there is a concern that a lot of the reports being prepared are not being utilized to the extent intended. He said it is difficult to compare the reports because each county puts the information together in different formats. He said this study resolution calls for an interim study on financial reports, to study whether they are being used or if they should be used, consolidated, or eliminated.

Chairman Heller asked for discussion on the resolution. She said this topic is one that would benefit from a study because of the reasons stated in the resolution.

It was moved by Senator Cook, seconded by Senator Unruh, and carried on a roll call vote that the study resolution [15.3024.01000] relating to reports from political subdivisions be approved and recommended to the Legislative Management. Representative Heller, Senators Cook and Unruh, Citizen Members Andersen, Kubat, Martinson, Schwartz, Syverson, West, and Governor's Designee Pelham voted "aye." No negative votes were cast.

Chairman Heller called on Ms. Kramer for a presentation of a study resolution [15.3007.01000] relating to statutory use of references to political subdivisions. Ms. Kramer said this study resolution is also one that would be considered during the legislative session. She said the idea behind the study resolution is to examine the various different references to political subdivisions currently in law and consider whether it is possible to create more specific definitions and references based on whether the governing body of a political subdivision is elected or appointed. She said currently there is the potential for confusion, and distinguishing those with policymaking authority from those with only administrative authority may clarify the lines of authority among political subdivisions. She said this interim study would also examine which statutory provisions require clarification.

It was moved by Ms. Andersen, and seconded by Senator Cook, and carried on a roll call vote that the study resolution [15.3007.01000] relating to statutory use of references to political subdivisions be approved and recommended to the Legislative Management. Representative Heller, Senators Cook and Unruh, Citizen Members Andersen, Kubat, Martinson, Schwartz, Syverson, West, and Governor's Designee Pelham voted "aye." No negative votes were cast.

BILL DRAFTS

Chairman Heller called on Mr. Walstad to review a bill draft [15.0078.02000] relating to a township's zoning authority. Mr. Walstad said under current law once a township has given its zoning authority to the county, it is rather difficult for the township to get that authority back. He said a 1984 constitutional amendment provides that a political subdivision may by mutual agreement revoke the transfer. He said an opinion by the Attorney General provides that a joint powers agreement is the only way in current law for a township to get the zoning authority back. Chairman Heller asked what happens when a county does not want to give the authority back. Mr. Walstad said that is the issue, the county is not required to give it back after the 1984 constitutional amendment. Chairman Heller asked if this bill draft clarifies the constitution. Mr. Walstad said this would create a statutory provision to implement the constitutional amendment. Chairman Heller asked what is being repealed in Section 2 of the bill draft. Mr. Walstad said that is the old section of law that says the township or city can unilaterally give its zoning authority to the county, which is not in compliance with the constitution.

Chairman Heller asked for commission discussion. Mr. Syverson and Ms. Andersen said they would prefer the township to be able to unilaterally take the zoning authority back without needing an agreement, but this bill draft meets the needs while remaining within constitutional authority.

It was moved by Mr. Syverson, seconded by Senator Cook, and carried on a roll call vote that the bill draft [15.0078.02000] regarding township zoning authority be approved and recommended to the Legislative Management. Representative Heller, Senators Cook and Unruh, Citizen Members Andersen, Kubat, Martinson, Schwartz, Syverson, West, and Governor's Designee Pelham voted "aye." No negative votes were cast.

Chairman Heller called on Mr. Walstad to review a bill draft [15.0075.01000] relating to voter approval of bond issues and property tax increases to be placed on the primary or general election ballot. Mr. Walstad said this bill draft provides that elections held by political subdivisions that would put before the voters any question of increasing property taxes or debt must be held in conjunction with a primary or general election. Chairman Heller asked if this bill draft includes schools. Mr. Walstad said the bill draft includes all political subdivisions with authority to seek voter approval for a levy increase.

Chairman Heller asked for discussion from the commission. Mr. Martinson said the North Dakota School Boards Association is opposed to the bill draft as the association believes it would result in an infringement on local control if passed. He said one of the reasons for bringing this bill draft forward was a concern about low voter turnout in special elections. He said the article ([Appendix D](#)) he provided to the commission explains that voter turnout for special elections was higher in some areas than the primary election. Chairman Heller said people turn out when it has to deal with taxpayer dollars.

Ms. Andersen said from a city's perspective, the concern is about the timing of projects for infrastructure that could create a lot of additional costs. She said it is more cost-effective for cities to hold elections with a primary or general election whenever possible.

Senator Cook said this issue is before the commission because there are a lot of citizens concerned with the status of special elections for these issues and have communicated with legislators. He said a lot of the concern is lower voter turnout and that the ability to have a special election is being abused. He said the other concern is schools having special elections and auditors being held responsible for those special elections.

Mr. Schwartz said as a park board member the effect would filter down to the park district making it difficult to get projects done.

TAX DEPARTMENT

Chairman Heller called on Mr. Myles Vosberg, Director, Tax Administration Division, Tax Department, for information regarding the application of city sales taxes for products and services delivered outside the city. Mr. Vosberg said in North Dakota the point of taxation is determined using destination sourcing on sales, meaning the purchaser is taxed where the purchaser takes possession of the goods. He said if the goods are delivered somewhere, that delivery point is the point of taxation. He said the only exception is telecommunications service, which is taxed at the point of primary use, which is a home or business address. He said the Tax Department has developed a database that can be used by retailers and individuals to determine their tax rate based on zip code. Chairman Heller asked how someone can find out the last four digits after the basic five-digit zip code. Mr. Vosberg said the Tax Department's website has a link to the postal service where those four digits are accessible.

Mr. Syverson provided the commission with a table ([Appendix E](#)) containing the addresses of citizens being taxed incorrectly. He said some of the citizens are being taxed in a township that they do not live in. Mr. Vosberg said this is the first time he has seen the document, but he will do his best to correct the issue. Senator Cook asked how an incorrect tax is returned to a customer. Mr. Vosberg said under the sales tax law, the customer would need to get a refund from the retailer and the retailer would then get a refund.

Chairman Heller thanked the members of the commission for their service. She said she appreciated the hard work of the commission during the interim.

It was moved by Senator Cook, seconded by Mr. Syverson, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the commission and to present the report and recommended bill drafts to the Legislative Management and that the commission be adjourned sine die. Representative Heller, Senators Cook and Unruh, Citizen Members Andersen, Kubat, Martinson, Schwartz, Syverson, West, and Governor's Designee Pelham voted "aye." No negative votes were cast.

No further business appearing, Chairman Heller adjourned the meeting sine die at 12:00 p.m.

Samantha E. Kramer
Counsel

John Walstad
Legal Division Director

ATTACH:5