

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Friday, June 30, 2000
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Elroy N. Lindaas, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Elroy N. Lindaas, Tim Mathern; Representative Earl Rennerfeldt; Citizen Members Randy Bina, Bob Frantsvog, Les Korgel, Maxine Olson-Hill, Ken Yantes

Members absent: Senator Darlene Watne; Citizen Member Mel Jahner; Governor Edward T. Schafer

Others present: See attached appendix

It was carried on a voice vote that the minutes of the January 28, 2000, meeting be approved as distributed.

LEADERSHIP INITIATIVE FOR COMMUNITY STRATEGIC PLANNING

Chairman Lindaas called on Ms. Dina Butcher, Director, Division of Community Services, for comments regarding the status of the North Dakota Leadership Initiative for Community Strategic Planning project.

Ms. Butcher provided the commission members with a written description of the *North Dakota Leadership Initiative for Community Strategic Planning*, a copy of which is on file in the Legislative Council office and available at www.state.nd.us/dcs/comdev/planning.html. She explained the initiative evolved through the efforts of a variety of people, including representatives from local, state, and federal government and the private sector. She said several of the people responsible for the evolution of the initiative signed the *Memorandum of Understanding to Create a Statewide Strategic Planning Process for North Dakota*. A copy of the memorandum is on file in the Legislative Council office.

Ms. Butcher said although the initial strategic planning pilot project was limited to the cities of Stanley and Steele and Cavalier County, several communities have contacted the Division of Community Services requesting strategic planning assistance. She said in addition to the pilot project appropriation, there are additional sources of funding for providing strategic planning services. She distributed a document outlining the funds available for community strategic planning, a copy of which is on file in the Legislative Council office. As part of the planning initiative, she said, the Governor is sponsoring a leadership

conference on Thursday, September 21, 2000, at the Bismarck Civic Center exhibit hall. She provided an agenda for the September conference, a copy of which is on file in the Legislative Council office. She said the leadership conference coincides with the League of Cities convention in Bismarck.

TOBACCO EDUCATION AND CESSATION

Chairman Lindaas called on Citizen Member Bob Frantsvog to present a tobacco education and cessation bill draft. He explained the bill draft would amend state law that allocates 10 percent of the state's tobacco settlement trust fund for community-based public health programs. He said the bill draft provides that 10 percent of the money set aside for community-based public health programs be available to cities and counties to fund city and county employee tobacco education and cessation programs.

Citizen Member Frantsvog said he is familiar with the tobacco education and cessation efforts undertaken by Minot. Minot, he said, has been plagued with increasing employee health insurance costs. He said two years ago Minot started a self-funded health plan. As part of this health plan, he said, Minot is being proactive and is using incentives to improve employee health. He said health professionals work with city employees to improve health. He said one year ago the city addressed the problem of tobacco use and decided to provide tobacco counseling services under the health plan; however, the plan requires that the employee pay prescription medication costs.

Citizen Member Frantsvog said when Minot initially looked at creating a tobacco education and cessation program, the city inquired of the State Health Officer whether state matching funds might be available to help fund the program. At the state level, he said, funds are not available to fund Minot's tobacco program.

In response to a question from Senator Lindaas, Citizen Member Frantsvog said Minot has 250 employees in the self-funded plan and has 600 to 750 members in the plan if family members are included.

Chairman Lindaas called on Mr. Murray G. Sagsveen, State Health Officer, State Department of Health, for comments regarding the tobacco education and cessation bill draft. Mr. Sagsveen provided

written testimony, a copy of which is on file in the Legislative Council office. He said when Minot inquired whether the State Department of Health could provide funding for a city employee tobacco education and cessation program, the city was informed the state does not have funds authorized for this use.

Mr. Sagsveen said he submitted a proposal to the Legislative Council interim Budget Committee on Health Care on February 24, 2000, to establish a community health grant program with the entire 10 percent of the tobacco settlement payments allocated to the community health trust fund. He said the proposed plan includes three components--healthy schools, healthy families, and healthy communities. He provided a copy of the February 24, 2000, testimony, a copy of which is on file in the Legislative Council office.

Mr. Sagsveen said he also submitted a proposal to the Legislative Council interim Budget Committee on Health Care on June 28, 2000, concerning appropriation of the interest accumulating on the community health trust fund moneys. He provided written testimony from June 28, 2000, a copy of which is on file in the Legislative Council office.

Mr. Sagsveen said as the State Health Officer, he is a member of the board of the Public Employees Retirement System. At his request, he said, the board is considering a smoking cessation program that could be offered to all public employees covered by the Public Employees Retirement System during the upcoming biennium. If approved and funded, he said, the grant program proposed in the bill draft the commission is considering could duplicate the comprehensive program under consideration by the board of the Public Employees Retirement System. He suggested a funding source for a local governmental tobacco education and cessation program might be the interest earned on the tobacco settlement trust fund.

In response to a question from Senator Mathern, Mr. Sagsveen said the board of the Public Employees Retirement System is considering the costs and effectiveness of tobacco education and cessation programs, including counseling and prescription drugs.

In response to a question from Citizen Member Frantsvog, Mr. Sagsveen said the issue of tobacco education and cessation programs is controversial. He said studies indicate employees who use tobacco have higher absentee rates and higher health care costs. The question, he said, is how to use and where to get available funding.

In response to a question from Senator Mathern, Mr. Sagsveen said the 10 percent of tobacco fund settlement moneys being directed for community health services is consistent with the executive branch administrative policy. He said the State Department of Health will not be pursuing an increase in this amount.

In response to a question from Senator Lindaas, Mr. Sagsveen said other incentives to stop employee tobacco use might include increasing the portion of the health insurance paid by the employer if the employee certifies a healthy lifestyle. He said one problem with this type of program is related to enforcement.

In response to a question from Citizen Member Olson-Hill, Mr. Sagsveen said the Centers for Disease Control and Prevention recommends a multifaceted approach to decrease tobacco use. He said the recommendation he made to the board of the Public Employees Retirement System provides for a multifaceted approach. An example of one element of a multifaceted approach, he said, would be to provide a student health program geared to decreasing tobacco use. Citizen Member Olson-Hill said the system appears to spend a large amount of money on treating tobacco use, but the system does not put enough consideration on wellness.

In response to a question from Senator Lindaas, Mr. Sagsveen said the Centers for Disease Control and Prevention funds State Department of Health programs for tobacco-related programs, and some of these programs are more effective than others.

In response to a question from Citizen Member Yantes, Mr. Sagsveen said each of the 50 states is implementing a different program for using tobacco settlement trust funds.

In response to a question from Senator Lindaas, Mr. Sagsveen said under the department's proposed healthy schools program, money would flow through a local public health unit to the schools. He said this system would provide local control by the school boards and the public health units.

Senator Mathern said he is concerned that not enough of the state's resources are being used for health programs. Citizen Member Frantsvog said the smoking education and cessation bill draft would not increase resources but would instead use existing resources in a particular way at the local level. Senator Mathern suggested the commission consider increasing the amount of moneys going to the community health trust fund to prevent robbing one health program to fund another health program. Citizen Member Korgel agreed with Senator Mathern's suggestion. Senator Lindaas said perhaps the 10 percent of the tobacco settlement trust fund being used for community health-related issues is not large enough, considering the source of the settlement money is related to health issues.

Commission counsel was requested to draft a second version of the tobacco education and cessation bill draft as a commission bill draft to provide the same amount of funding provided to cities and counties as provided in the first bill draft, without decreasing the amount of tobacco settlement trust fund moneys transferred to the community health trust fund.

MUNICIPAL COURT FINE COLLECTION

Chairman Lindaas called on Mr. Jeff Balentine, Commander of Communication, Minot Police Department, Minot, for comments regarding problems cities are encountering collecting municipal court fines. Mr. Balentine said as of June 2000, Minot had accounts receivable for fines of \$129,554. He said in 1996 the amount was \$124,446; in 1997, \$144,359; in 1998, \$181,680; and in 1999, \$127,624. In 1999, he said, the city judge ordered all fines that were turned over to the collection agency and determined to be uncollectible be struck from the budget. He said the amount written off was \$74,324. Of the \$105,694 Minot has turned over to the collection agency, only \$6,154 has been collected. Because of this low return, he said, the city may end its relationship with the collection agency.

Mr. Balentine said the cities are threatening to suspend the driver's license of an individual who does not pay municipal fines and are issuing bench warrants for people who do not pay these fines. He said the current tools available to the cities are not effective in collecting municipal court fines.

In response to a question from Senator Mathern, Mr. Balentine said he does not have any data indicating the demographics of nonpayers; however, in determining how to deal with a nonpayer, a municipal court judge has a certain amount of discretion. He said the likely composition of nonpayers is younger people who do not have sufficient income or regular income.

In response to a question from Representative Rennerfeldt, Mr. Balentine said the municipal court judges in Minot allow more time to pay municipal court fines. He said collection of fines is very time-consuming for city employees, and tracking outstanding debt is a never-ending task.

In response to a question from Citizen Member Bina, Mr. Balentine said he is not certain whether the collection of municipal court fines is a statewide phenomena, but he does know that Dickinson has begun using a collection agency.

In response to a question from Citizen Member Olson-Hill, Mr. Balentine said he is not aware of effective collection models that could be implemented, except he would support removal of driving privileges.

Chairman Lindaas called on Ms. Ronasa Shaia, Minot Police Department, Minot, for comments regarding the issue of municipal court fines collection. Ms. Shaia said in Minot some outstanding fines are over a year old. She said the average fine is \$150, and some people have multiple, unpaid fines.

In response to a question from Citizen Member Korgel, Mr. Balentine said typically the outstanding fines are criminal fines and not parking fines.

In response to a question from Citizen Member Yantes, Mr. Balentine said he is not certain what percentage of fines go uncollected, but he did say the number of uncollected fines is growing.

In response to a question from Senator Mathern, Mr. Balentine said alternative sentencing options include community service, and this is being used in Minot.

In response to a question from Citizen Member Olson-Hill, Mr. Balentine said drivers' licenses are renewed every four years, and he recommends the collection remedy of suspending driving privileges.

Representative Rennerfeldt said before the commission recommends suspension of driving privileges, the commission should receive testimony regarding whether suspension of driving privileges is an incentive that works.

In response to a question from Citizen Member Olson-Hill, Mr. Balentine said it is probably not legal for a city to charge interest on uncollected fines.

Chairman Lindaas suggested the commission receive testimony from the North Dakota League of Cities regarding what other cities are doing to collect municipal court fines. Citizen Member Frantsvog said he will try to provide the commission with updated information regarding whether the collection of municipal court fines is a problem statewide.

Chairman Lindaas called on Citizen Member Korgel for comments regarding the issue of municipal court fine collection. He provided written testimony, a copy of which is on file in the Legislative Council office.

Citizen Member Korgel said that as county treasurer, he processes the payments for district court fines. He explained the typical procedure for collecting a district court fine and said cities and counties face similar collection problems. He said any remedy the commission might recommend would have to allow a municipal court fine schedule to remain low so as not to punish those who pay their fines on time while at the same time being an incentive to get nonpayers to get their fines paid.

In response to a question from Senator Mathern, Citizen Member Korgel said it might be possible for cities to use the district court system to collect municipal court fines; however, depending on whether there is an agreement between the city and the district court, up to 100 percent of the collected fines may be kept by the district court.

In response to a question from Senator Lindaas, Citizen Member Korgel said garnishment of wages is available in district court for fine collection, but he does not think cities have this power.

Chairman Lindaas called on Mr. Jerry Hjelmstad, North Dakota League of Cities, for comments regarding the issue of municipal court fine collection. Mr. Hjelmstad said municipal court judges are elected officials who serve four-year terms. He said cities have the choice of whether to have municipal court violations heard in district court.

Mr. Hjelmstad said state law provides that cities can enact local ordinances that include alternative sentencing. Additionally, he said, the North Dakota League of Cities will assist in collecting data from

cities across the state regarding problems associated with collection of municipal court fines.

In response to a question from Senator Mathern, Mr. Hjelmstad said anything that will help cities collect fines is worth the commission members' time in considering.

Chairman Lindaas called on Mr. Bob Bennett, Assistant Attorney General, for comments regarding municipal court fine collection alternatives.

Mr. Bennett said on the face of the statutes, it appears the municipal courts have the same fine collection tools as district courts. He said these collection tools include contempt proceedings, probation conditions, imprisonment, and bail provisions. Additionally, he said, municipal courts have the power to convert an order for a fine into a civil judgment in favor of the city. Ultimately, he said, the tools are available; however, the problem is the actual collection, and the collection problem is not unique to cities, and there is nonpayment in every type of business.

Mr. Bennett said North Dakota Century Code (NDCC) Section 12.1-32-05 provides that an individual may be put in jail for up to 30 days for nonpayment of a fine if that person has the ability to pay. He said suspension of driving privileges and of occupational licenses is a possible tool; however, the ability-to-pay issue remains. He said if an offense is not related to traffic, a person's inability to pay would prevent suspension of driving privileges.

In response to a question from Senator Mathern regarding whether there is communication between the Attorney General's office, municipal courts, and district clerks of court, Mr. Bennett said the administrative office at the Supreme Court is the likely connection between these parties.

DISASTER RELIEF FUND

Chairman Lindaas called on commission counsel to present the disaster relief fund bill draft. Commission counsel said the bill draft creates a disaster relief fund funded through an annual fee on real property insurance policies. Under the bill draft, she said, insurance companies would collect the fee and deposit the fee in the state treasury. She said the fund would be available to taxing districts to assist in cases of emergencies or disasters. She said the Division of Emergency Management would create an application form, and the applicant would have to show there was a disaster or emergency in the area, that the disaster or emergency resulted in decreased property tax revenue from real property, and that the disaster or emergency occurred within the five years preceding application.

In response to a question from Senator Mathern, commission counsel said the five-year provision in the bill draft could be lengthened or shortened by the commission, and the choice of five years was to give property value assessments time to change.

Chairman Lindaas called on Mr. Larry Maslowski, Assistant Senior Property and Casualty Analyst,

Insurance Department, for comments regarding funding the disaster relief fund. Mr. Maslowski said there is not a mechanism in place to record from the insurance industry the number of policies written in each line of insurance; therefore, the Insurance Department did an informal survey of the insurance industry to obtain data. The survey results, he said, indicate it would be necessary to require a \$16.09 per policy fee to generate a \$3 million disaster relief fund. He provided written information regarding how these figures were derived, a copy of which is on file in the Legislative Council office.

Mr. Maslowski said an alternative method of funding a disaster relief fund would be to charge a percentage fee against a policyholder premium. He said preliminary estimates indicate a two to three percent charge on premiums would generate \$3 million per year. He provided written information regarding how these figures were derived, a copy of which is on file in the Legislative Council office.

Chairman Lindaas called on Mr. Dale L. Frink, Assistant State Engineer, State Water Commission, for comments regarding the impact of Devils Lake flooding on real property. Mr. Frink provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Frink said research indicates Devils Lake has flowed into the Sheyenne River at least twice in the last four thousand years. Since 1940, he said, Devils Lake has been on a rising phase, and this increase accelerated in 1993. From February 1993 to August 1999, he said, the lake rose 24.7 feet, and flood damages in the basin exceeded \$300 million. In terms of land flooded, he said, Devils Lake has increased from 45,000 acres in 1993 to 120,000 acres today. Most of the 75,000 acres flooded since 1993, he said, have been pastureland and hayland; however, a large portion of the land above the lake's current elevation is cropland, which has a much higher value and tax base, which means the impact to agriculture may increase significantly as the lake rises.

Mr. Frink said the State Water Commission is working very hard on creating an outlet for Devils Lake. He said the commission is a local sponsor for a permanent outlet that would be built by the United States Army Corps of Engineers and is also in the preliminary design phase of a temporary outlet in the Twin Lake area that could be built to provide short-term relief before the corps project is built.

In response to a question from Senator Lindaas, Mr. Frink said there is not a definitive time plan for the Twin Lake concept, and one issue remaining deals with the preservation of wetlands.

Mr. Frink said the federal government has been very generous in providing funding relief to the basin. The Federal Emergency Management Agency, he said, through the flood insurance program, has reimbursed property owners for losses to structures. He said the state and federal highways have been raised

several times, largely with federal dollars. Additionally, he said, many township and county roads have also received federal funds, although local funds are being stretched to pay the nonfederal cost-share portion.

Mr. Frink said a significant gap in aid is in the damages to land. He said most landowners around Devils Lake have received very little help because most existing programs exclude flooded land. He said Benson and Ramsey Counties have reclassified almost 70,000 acres from agricultural land to wasteland. He said this reclassification reduces the taxes collected to only a fraction of the original amount but keeps the land on the tax rolls.

In response to a question from Senator Mathern, Mr. Frink said the State Water Commission does not have a position on the disaster relief fund bill draft.

Citizen Member Yantes said 70,000 acres of farmland damage is severe. The water level, he said, does not always reflect how the productive capability of the land is affected. Mr. Frink said 70,000 acres were reclassified by counties as wasteland; however, an even larger number of acres have been affected by the flooding.

Chairman Lindaas called on Mr. Douglas Friez, Director, Division of Emergency Management, for comments regarding the disaster relief fund bill draft. Mr. Friez provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Friez said three options are provided under state law to address state and local costs related to emergency and disaster recovery:

1. Bank of North Dakota loans to state government organizations;
2. Municipal Bond Bank credit sources for local government organizations; and
3. Tax levies for emergency purposes.

Mr. Friez said in North Dakota it is extremely challenging to differentiate between normal spring maintenance and disaster-caused damages, and the proposed disaster relief fund bill draft could further complicate this task.

Mr. Friez said it is possible opponents of the bill draft would claim the bill draft results in shifting the burden of state and local emergency disaster recovery from the taxpayer to the insurance purchaser, and the proposed bill draft may be perceived as a road maintenance system disguised as a disaster program.

In response to a question from Senator Mathern, Mr. Friez said he is not aware of any opponents to the bill draft, and the possible opposition is based on speculation on his part.

Chairman Lindaas called on Mr. Tom O. Smith, Zuger Kirmis & Smith, Bismarck, for comments regarding the disaster relief fund bill draft. Mr. Smith said there are two problems with the bill draft from the point of view of the insurance industry. First, he said, the gross insurance premium tax provided for under NDCC Section 26.1-03-17 would result in taxation of

the fee provided under the proposed bill draft. He said this problem could be fixed by amending the bill draft. Second, he said, regardless of what the fee is called, it would likely be considered a retaliatory provision and would therefore negatively impact domestic insurance companies.

In response to a question from Senator Mathern regarding which of the funding methods would be the least onerous to the insurance industry, Mr. Smith said the percentage of premium charge might be less problematic; however, the retaliatory provision still remains.

Chairman Lindaas called on Mr. Bryan Hoime, President, North Dakota Township Officers Association, Edmore, for comments regarding the disaster relief fund bill draft. Mr. Hoime said the disaster relief fund bill draft should be redrafted to provide relief to property owners instead of providing relief to taxing districts. Additionally, he said, instead of providing for a grant to the taxpayer, the bill draft should provide the taxpayer with a tax credit.

In response to a question from Citizen Member Korgel, Mr. Hoime said he envisions a tax credit similar to the homestead tax credit.

In response to a question from Citizen Member Frantsvog, Mr. Hoime said with his proposed changes, the taxpayer would get a property tax credit, and the taxing district would not receive financial assistance.

Chairman Lindaas called on Mr. Barry Hasti, Tax Department, to answer commission members' questions regarding the disaster relief fund bill draft.

In response to a question from Citizen Member Korgel, Mr. Hasti said the homestead tax credit gives a taxpayer credit on the amount of property tax owed, and funds are paid from the state to the taxing district.

In response to a question from Citizen Member Yantes, Mr. Hoime said the commission will need to consider how to fund the disaster relief fund bill draft. He said an issue the commission may want to consider is what happens if a property owner does not have insurance. He said it is possible the North Dakota Insurance Reserve Fund could deliver a tax credit. Mr. Smith said the North Dakota Insurance Reserve Fund is a self-insurance pool and not a state agency and therefore not subject to the bill draft being considered by the commission.

Chairman Lindaas called on Mr. Tom Tudor, Executive Director, Municipal Bond Bank, for comments regarding loans available to political subdivisions in cases of emergencies or disasters. Mr. Tudor provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Tudor said the purpose of the Municipal Bond Bank is to make low-cost loans to North Dakota political subdivisions at favorable interest rates. He said the Municipal Bond Bank is a self-supporting state agency and receives no money from the state general fund. He said the Municipal Bond Bank has two loan programs--the capital financing program and

the state revolving fund program--and is in the process of establishing a third program, a school construction loan program.

Mr. Tudor said a complete list of all loans made and bonds issued by the Municipal Bond Bank since it was created in 1975 is included in the Municipal Bond Bank's annual report, which is provided to the Legislative Council.

Chairman Lindaas called on Mr. Eric Hardmeyer, Senior Vice President of Lending, Bank of North Dakota, for comments regarding disaster relief loans available through the Bank of North Dakota. Mr. Hardmeyer provided a copy of a memorandum from Mr. John Hoeven, President, Bank of North Dakota, to the Industrial Commission regarding recent flooding in the Red River Valley area, a copy of which is on file in the Legislative Council office.

Mr. Hardmeyer said the Bank of North Dakota will be providing assistance in the following areas due to the flooding in the Red River Valley:

1. Business assistance;
2. Agricultural assistance;
3. Residential assistance;
4. Student loan deferment;
5. North Dakota State University assistance; and
6. City of Fargo assistance.

COMMISSION DISCUSSION AND DIRECTIVES

Tobacco Education and Cessation

Citizen Member Frantsvog requested that Legislative Council staff be requested to work with the State Department of Health to coordinate the commission's proposed program for city and county employee tobacco education and cessation with the State Department of Health's community health program.

Municipal Court Fine Collection

Senator Mathern asked whether the commission wanted to receive more information regarding municipal court fine collection or whether the commission had completed its discussion on this topic. Citizen Member Frantsvog said the information

received will be very useful; however, he is unsure whether the information received will result in a bill draft. Chairman Lindaas suggested the commission consider the issue further at the next meeting.

Disaster Relief Fund

Commission members agreed that Senator Mathern's proposed changes be made to the disaster relief fund bill draft--charge a one percent premium tax on real property insurance policies instead of \$16.09 per policy; remove the language "subject to a legislative appropriation"; provide assistance to property owners instead of taxing districts; provide a tax credit instead of a money grant; decrease the period of time after which a person may apply for assistance under the fund from five years to two years; and require that an applicant show loss of use of property.

New Issues

Senator Lindaas questioned Mr. Hasti regarding whether the definition of "tax exemptions," specifically referring to the nursing home exemption from property tax, will be dealt with during the next legislative session. Mr. Hasti said the charitable institution tax exemption issue is not being addressed by an interim committee. He said, however, there is difficulty in defining "charitable institution," and any assistance the Legislative Assembly can provide in defining that term would be greatly appreciated. Senator Lindaas said although defining the term charitable institution is an interesting topic, it may be too large for the commission to tackle at this time. Senator Mathern requested that Legislative Council staff be requested to draft a resolution urging future study of this tax issue.

No further business remaining, Chairman Lindaas adjourned the meeting at 3:05 p.m.

Jennifer S. N. Clark
Commission Counsel

ATTACH:1