

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Friday, June 7, 2002
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Scot Kelsh, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Scot Kelsh, Kim Koppelman; Senator Herb Urlacher; Citizen Members Randy Bina, Bob Frantsvog, Les Korgel, Maxine Olson-Hill, Devra Smestad

Members absent: Senator Dennis Bercier; Citizen Members Donny L. Malcomb, Jon Martinson; Governor John Hoeven

Others present: Wayne Entze, Mercer County Commission, Zap

Kathleen Mangskau, State Department of Health, Bismarck

Terry Traynor, North Dakota Association of Counties, Bismarck

Wade Williams, North Dakota Association of Counties, Jamestown

Connie Sprynczynatyk, Jerry Hjelmstad; North Dakota League of Cities, Bismarck

David Sprynczynatyk, Dave Leftwich; Department of Transportation, Bismarck

Doug Friez, North Dakota Emergency Management, Bismarck

Pam Crawford, Department of Human Services, Bismarck

Sandy Clark, North Dakota Farm Bureau, Bismarck

Commission counsel reported that the minutes of the previous meeting referred to Mr. John Hoganson as the state paleontologist. He said although Mr. Hoganson is a paleontologist, he is employed as a geologist by the North Dakota Geological Survey.

It was moved by Representative Koppelman, seconded by Citizen Member Smestad, and carried on a voice vote that the minutes of the April 29, 2002, meeting be approved as corrected.

TOBACCO CESSATION PROGRAMS

Chairman Kelsh called on Ms. Kathleen Mangskau, State Department of Health, for comments regarding tobacco cessation programs. Ms. Mangskau submitted written testimony and documents relating to the pilot tobacco cessation program undertaken by the city of Minot, copies of which are on file in the Legislative Council office. She said tobacco use is a leading preventable cause of death and disability in North Dakota and costs the state \$193 million annually in direct medical expenditures

and \$158 million annually in smoking attributable productivity costs. She said 2001 Senate Bill No. 2380 appropriated \$250,000 from the community health trust fund to fund grants to cities and counties on a dollar-for-dollar matching basis for city and county tobacco education and cessation programs. She said three entities--the city of Minot, Barnes County city and county employees, and the city of Fargo--have implemented programs addressing tobacco cessation. In addition, she said, Grand Forks County and Stutsman County have applied for funding for programs for city and county employees. She said those applications are under review. She said the pilot programs provide a variety of approaches to cessation, including a web-based approach in Grand Forks and a comprehensive model in Minot. She said many communities are planning to use a portion of their community health grant program funds to train individuals in tobacco cessation and to begin providing services within the next year. She said the Dickinson City Commission decided to use fines generated by violators of the new youth smoking ordinance to provide funding for cessation programs for youth.

Ms. Mangskau said the first quarter report from the Minot program is showing a high success rate in terms of quitting. She said 43 clients were enrolled in the program that includes individual and group counseling sessions, pharmacological therapy, self-help sessions, and telephone followups. She said the program provides for a certified nicotine dependence counselor to complete health and tobacco assessments as well as a followup physician visit. She said the program reported a 98 percent quit rate at the end of the first quarter.

Ms. Mangskau said by implementing recommendations shown to be effective, policymakers and health care and public health providers can help their communities increase tobacco use cessation while using community resources efficiently. She said the task force on community preventive services strongly recommends multicomponent tobacco use cessation interventions that include telephone support and multicomponent programs, including a provider reminder system plus provider education program with or without patient education with the minimum effective combination being that of proactive telephone support plus patient education materials. She

said pharmacological treatment of nicotine addiction can provide cessation rates of 20 to 25 percent per year.

Ms. Mangskau said tobacco dependence is a chronic disease that often requires repeated intervention. She said treatments involving person-to-person contact are consistently effective and the effectiveness increases with treatment intensity. She said smoking cessation has been called the gold standard of cost-effective interventions and cost-effective analyses have shown that smoking cessation compares favorably with routinely reimbursed medical interventions such as treatment of hypertension and preventive screenings such as mammography and pap smears. Tobacco dependence treatment, she said, is valuable in preventing a variety of associated medical risks, including heart disease, cancer, and pulmonary disease.

In response to a question from Representative Koppelman, Ms. Mangskau said a variety of approaches are being used to prevent tobacco use among youth. She said 17 local programs are funded through grants which amount to approximately \$4.7 million for the biennium. She said 40 percent of the money is used to target prevention programs for youth. In addition, she said, 40 percent of the grant money is used for community programs to provide public education. She said the State Department of Health will evaluate the success of the funded programs in the future to determine which programs are successful in achieving significant reductions in tobacco use. She said the more comprehensive the program, the more likely the program will be successful.

In response to a question from Senator Urlacher, Ms. Mangskau said the calculations of the cost to the state of tobacco use are prepared by using a complex formula from the Centers for Disease Control and Prevention.

In response to a question from Representative Koppelman, Ms. Mangskau said the Centers for Disease Control and Prevention recognize tobacco addiction as a chronic disease. Because there are complicated dependencies in the brain, she said, one approach to tobacco cessation does not work for everyone. She said cessation programs must be individualized.

Citizen Member Olson-Hill said it is appropriate that tobacco addiction be classified as a chronic disease. She said in her position as a county recorder, she sees tobacco use listed as a contributing factor on a large number of death certificates.

In response to a question from Citizen Member Olson-Hill, Ms. Mangskau said she is somewhat disappointed that more counties have not yet applied for grants to address tobacco cessation. She said she has heard that the required dollar-for-dollar match may be a problem for some political subdivisions.

Citizen Member Frantsvog said the Minot program pays approximately \$800 per employee in the

program and the local share is funded through the city's self-funded health program. He said two months appears to be the critical time period for success.

In response to a question from Representative Kelsh, Ms. Mangskau said although the tobacco cessation programs generally address smoking, the Minot program has had success with chewers. She said entities implementing programs are encouraged to address chewing tobacco.

In response to a question from Senator Urlacher, Ms. Mangskau said there is generally no cost to the political subdivision employee for participation in the cessation programs. Although the cost of a tobacco cessation program is often what prevents many people from enrolling, she said, there may be a greater sense of dedication if the individual has some financial investment in the program. She said the department is examining methods through which cessation programs may be made more affordable to all persons.

In response to a question from Representative Kelsh, Ms. Mangskau said the entity operating the cessation program usually makes decisions regarding the priority of relapsing individuals. She said evidence shows that most smokers need repeated attempts before they are able to quit smoking. She said Medicaid will provide coverage twice during a lifetime for tobacco cessation programs and Blue Cross Blue Shield of North Dakota is working with the State Department of Health to develop a program with coverage.

CULTURAL AND PALEONTOLOGICAL DISCOVERIES WITHIN LOCAL ROAD PROJECTS STUDY

Chairman Kelsh called on Mr. Wayne Entze, Mercer County Commissioner, for comments regarding the commission's study of the feasibility and desirability of creating cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources within local road projects. Mr. Entze said a county generally plans a road project three to five years in advance. He said Mercer County ran into a problem on a county road project a few years ago after cultural artifacts were discovered. He said the county contracted for a "walk through" study to determine if artifacts were present. He said the study cost approximately \$1,500 per mile. He said the study indicated more exploration was necessary and a dig found artifacts at the site. Because the county was advised that it could cost over \$100,000 to either move the bridge or do a significant dig, he said, the project was stopped. He said the county already had about \$15,000 invested in archaeological studies as well as the design costs of the project. Therefore, he said, the county spent \$30,000 to \$40,000 to do nothing.

In response to a question from Senator Urlacher, Mr. Entze said archaeological experts determine

which discoveries of artifacts are significant. He said there is a tremendous amount of flint in the Mercer County area. Because they are never certain what the archaeological costs may be on a project, he said, it is difficult for the county to conduct local road projects where cultural or paleontological resources may be present.

In response to a question from Representative Kelsh, Mr. Entze said because it is important to address artifacts and burial sites, the best solution to this problem would likely be to have the state provide some assistance to counties so that counties would not have to absorb the entire cost of remediation of a site where cultural or paleontological resources are discovered.

Senator Urlacher said because paleontological and cultural finds are of value to the entire state, the state should participate in some level of cost-sharing.

Representative Kelsh said he agrees that the state should help in addressing this issue because counties have limited resources and the state benefits from significant discoveries of cultural or paleontological resources.

Citizen Member Korgel said cost-sharing is reasonable for a Stage 2 or Stage 3 dig because the costs of such an undertaking are so unpredictable.

Citizen Member Frantsvog said the commission should receive further information from the State Historical Society and paleontologists regarding the various stages of digs and discoveries before addressing what cost-sharing is reasonable at the various stages.

Citizen Member Olson-Hill said responsibility for addressing cultural and paleontological finds should be shared by the state and local governments.

Chairman Kelsh requested the Legislative Council staff to invite representatives of the State Historical Society and the State Geological Survey to provide additional information regarding the various stages of discoveries and digs at the August meeting of the commission.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT

Chairman Kelsh called on Mr. Douglas Friez, State Director, North Dakota Division of Emergency Management, for comments regarding homeland security and emergency management. Mr. Friez submitted a written report, a copy of which is on file in the Legislative Council office. He said the Governor decided to use the existing emergency management structure in the state as the state's organizational base for executing homeland security efforts rather than creating a new organization and adding staff. In addition to the state emergency management efforts, he said, local governments have existing emergency management plans. Although the state and local governments are doing more now with respect to security, he said, more must be done. He said the state must encourage the enhancing of security

efforts throughout the state. He said the Division of Emergency Management has not made demands on private facilities with respect to security but has assumed that organizations have enhanced security to protect their facilities and products. He said it is important that North Dakota not be the weakest link in homeland security. Therefore, he said, airport security is tight and the state was on the leading edge with respect to border security. He said the federal government has recently taken over all border security. Because the need for additional security must be balanced with freedom, he said, individuals, businesses, and local governments must make important decisions regarding homeland security.

Mr. Friez said the state, local governments, and businesses must continue planning with respect to security issues because the state could be a target. He said North Dakota could be on the fringe of a bioterrorism attack because of the mobility of individuals. He said the State Department of Health will be receiving federal funds to address bioterrorism issues. Another area of concern, he said, is animal-borne diseases. He said the Agriculture Commissioner and the State Department of Health will be cooperating to address those issues. He said the Information Technology Department is working to address issues with respect to information technology terrorism. He said another area of great concern is enhancing the capabilities of first responders.

In response to a question from Senator Urlacher, Mr. Friez said although security at Garrison Dam is tighter now than before September 11, 2001, the potential for destruction of the dam is low. He said a greater concern is the loss of power at the dam.

In response to a question from Representative Kelsh, Mr. Friez said health care providers are receiving training to recognize symptoms of bioterrorism. However, he said, those efforts must be expanded and enhanced. He said the State Department of Health has been very proactive in addressing bioterrorism.

Mr. Friez said the state had 11 presidential disaster declarations between 1993 and 2001. Of those declarations, he said, only four have been closed. He said the Division of Emergency Management continues to work with local governments and the Federal Emergency Management Agency to address issues resulting from the federal aid received pursuant to the disaster declarations.

In response to a question from Citizen Member Olson-Hill, Mr. Friez said although most local governments are being very proactive in addressing disasters, some communities are unable to afford the necessary efforts. He said more progress is needed in implementing mitigation plans to prevent losses due to disasters.

In response to a question from Citizen Member Smestad, Mr. Friez said the first effort in addressing homeland security is in the area of public health. He said the second effort will be improving first

responders' training and capabilities. He said he is not sure what type of funding will be available for the second effort. He said the plan for State Radio Communications is to update its equipment which would likely cost \$30 million to \$60 million. He said a decision needs to be made whether the current system is good enough or if the state and local governments can afford the proposed changes.

TOOL CHEST UPDATE

Chairman Kelsh called on Mr. Wade Williams, North Dakota Association of Counties, for comments regarding structural changes in counties as a result of 1993 House Bill No. 1347. Mr. Williams submitted written comments, a copy of which is on file in the Legislative Council office. He said House Bill No. 1347 is commonly referred to as the "tool chest" for local government. He said the legislation streamlined the joint powers process, clarified home rule powers, created procedures for reorganizing local government, and established a citizens' advisory process to encourage the periodic examination of local governmental structure and service delivery. He said advancements to local government that have been facilitated by the legislation include cross-county sharing of staff, statewide joint powers agreements for purchasing services and equipment, agreements between different types of local governments to access broader authority, and expanded citizen involvement in local government planning.

Mr. Williams said the state's changing demographics, legislative restructuring, and the evolving service demands of county government have prompted the consideration of structural changes at the county level. Through limited use of home rule powers and more extensive use of powers to change the structure of local government, he said, 22 counties have implemented some form of structural change since 1993. He said 17 counties are anticipating the redesignation of elected offices as appointed or the combining of formerly separately elected offices, and five counties are using the "tool chest" provisions to separate statutorily combined positions or to recreate elected positions that were eliminated by the Legislative Assembly. Although restructuring has provided that 246 individuals will be responsible for the duties formerly assigned to 354 elected or appointed individuals, he said, it is unlikely there has been a reduction of 108 employees or officers. He said one of the strengths of the "tool chest" legislation was providing the ability to local governments or the voters to easily reverse or modify any changes that are implemented if the changes are found to be less efficient than originally planned.

MILL LEVY CONSOLIDATION

Chairman Kelsh called on Mr. Terry Traynor, North Dakota Association of Counties, for comments regarding mill levy consolidation. Mr. Traynor submitted written testimony, a copy of which is on file

in the Legislative Council office. He said the commission has for several years examined the issue of mill levy consolidation and proposed legislation. He said the most recent attempt to consolidate mill levies was the consolidation of park district mill levies in 2001. Because of that success, he said, the North Dakota Association of Counties is proposing that an optional consolidated general fund levy be established that would provide an option for counties to keep the current mix of levies or opt for the consolidated general fund levy. He said the proposed consolidated general fund levy would combine the seven parts of the current general fund and 30 special levies and would be limited by statute to 140 mills. He said a county commission could implement the consolidated general fund levy through the passage of a preliminary resolution to replace the existing levies with the consolidated general fund levy. He said the electors of the county should be given the authority to petition to place the issue on the ballot and delay implementation of the consolidated levy until a vote is held. If a petition were submitted, he said, the commission could be authorized to rescind the preliminary resolution or hold a special election on the issue. He said if a petition were not submitted within 90 days, the commission could be given the authority to revisit the issue, consider all comments received, and either pass a final resolution implementing the consolidated levy for the next tax year or rescind the original resolution. He said the commission or the electors of the county could reverse a decision to consolidate the levies and reestablish the original mixture of levies.

In response to a question from Representative Kelsh, Mr. Traynor said the Association of Counties has not discussed the proposal with the farm groups that were opposed to levy consolidation during previous attempts to implement consolidation.

In response to a question from Senator Urlacher, Mr. Traynor said consolidation would provide flexibility to county commissioners to prioritize funding depending upon the unique needs faced each year.

In response to a question from Citizen Member Bina, Mr. Traynor said the proposal could include provisions limiting annual growth until the county levy reached the total maximum number of mills authorized.

STATE AID DISTRIBUTION FUND

Chairman Kelsh called on Mr. Traynor for comments regarding proposed changes to the state aid distribution fund formula. Mr. Traynor submitted written testimony, a copy of which is on file in the Legislative Council office. He said the unpopularity of the personal property tax in the mid-1960s prompted the Legislative Assembly to repeal the tax and provide all local governments with a general fund appropriation to replace the loss of revenue. He said the appropriation was to be tied to the individual amounts collected as personal property tax before 1969, indexed with the growth in each taxing jurisdiction's

real property tax collections. Because the Legislative Assembly did not fully fund the formula over the years, he said, an initiated measure was adopted in 1978, which created the state revenue sharing fund. He said that fund redirected 5 percent of sales and income tax revenues to cities, counties, townships, and park districts on a population-based formula.

Mr. Traynor said representatives of local government opted for the creation of a state aid distribution fund in 1987 with a new mechanism to generate funds. He said six-tenths of the first cent of sales tax was to be placed in the fund, and then half was distributed by the old formula and the other half by the revenue sharing formula. By 1997, he said, it was almost universally agreed that the formula needed to change. He said counties, cities, townships, and park districts developed a proposal to work for a permanent continuing appropriation. He said the revision began with four-tenths of the first cent of sales tax, to better reflect the revenue that had actually been appropriated. He said that amount was then divided based on existing shares between the urban political subdivisions and the rural political subdivisions. He said each of the two groups then developed seven population categories with designated shares that would minimize the adverse impact to individual jurisdictions as much as possible while still moving toward a population-based formula. However, he said, it was recognized that the formula would need work in the future.

Mr. Traynor said the Association of Counties is proposing to collapse the rural categories to two, eliminating the fixed population breakpoints and using a formula that incorporates a base plus a population multiplier in each of the two categories.

Mr. Traynor submitted a proposed amendment to North Dakota Century Code (NDCC) Section 57-39.2-26.1, which incorporates the changes he discussed. The proposed amendment is on file in the Legislative Council office.

Chairman Kelsh called on Mr. Jerry Hjelmstad, North Dakota League of Cities, for comments regarding the state aid distribution fund formula. Mr. Hjelmstad submitted written testimony, a copy of which is on file in the Legislative Council office. He said the 1997 Legislative Assembly established a formula allocating 53.7 percent of the state aid distribution fund to counties and rural taxing districts and

46.3 percent of the fund to cities and taxing districts within cities. He said the share of the city allocation distributed to park districts must be equal to the percentage of the city's share that park districts receive during calendar year 1996 up to a maximum of 30 percent. However, he said, the governing boards of the city and park district may agree to a different distribution. He said the 1997 Legislative Assembly established seven population categories for distribution of the funds to attempt to prevent any city from taking a loss under the new distribution formula and ensure that cities of all sizes would share a percentage of the funds.

Mr. Hjelmstad said as a result of the 2000 census, the League of Cities is recommending several changes in the population categories. Among those changes, he said, would be a new category for cities of 80,000 or more. He said the 19.4 percent allocated to the new category reflects the fact that approximately 19.4 percent of the state's incorporated city population resides within the city of Fargo. He said the percentage adjustments to the other categories are based on cities shifting from one population category to another.

Mr. Hjelmstad submitted a proposed amendment to NDCC Section 57-39.2-26.1, a copy of which is on file in the Legislative Council office. He said the proposed amendment illustrates the changes that would have to be made to the distribution formula to implement the recommended category changes for cities.

In response to a question from Representative Kelsh, Mr. Hjelmstad said there will likely need to be additional changes to the distribution statute after the next federal decennial census due to changes in population of cities.

Chairman Kelsh said the commission will likely meet two more times, with the next meeting sometime in August.

There being no further business, Chairman Kelsh adjourned the meeting at 11:10 a.m.

John Bjornson
Commission Counsel