

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Monday, September 23, 2002  
Pembina State Museum, 805 Highway 59  
Pembina, North Dakota

Representative Scot Kelsh, Chairman, called the meeting to order at 11:00 a.m.

**Members present:** Representatives Scot Kelsh, Kim Koppelman; Senator Herb Urlacher; Citizen Members Bob Frantsvog, Les Korgel, Donny L. Malcomb, Jon Martinson, Devra Smestad

**Members absent:** Senator Dennis Bercier; Citizen Members Randy Bina, Maxine Olson-Hill; Governor John Hoeven

**Others present:** Wayne W. Tieman, State Representative, Cavalier

Sandy Clark, North Dakota Farm Bureau, Bismarck

Wade Williams, North Dakota Association of Counties, Jamestown

Dave Leftwich, Department of Transportation, Bismarck

John Hoganson, Geological Survey, Bismarck

Dorothy Robinson, North Dakota County Auditors Association, Pembina

#### WIND ENERGY FACILITY SITING

Chairman Kelsh called on Mr. Matthew Brown, National Conference of State Legislatures, for a presentation regarding the siting of wind energy and other power facilities. Mr. Brown submitted written documents relating to his presentation, copies of which are on file in the Legislative Council office. He said the electric industry has changed through deregulation and must be looked at more from a regional perspective than in the past. He said there has been a significant increase in the amount of power sold on the open market and nonutility sales account for about 40 percent of the total amount of electric sales.

In response to a question from Representative Kelsh, Mr. Brown said deregulation affects North Dakota even though the state is not open for retail sales of electricity. He said the regional nature of the industry is illustrated by the fact that power plants serve customers a great distance away from the plants and the people who receive the benefit of a power plant are often not those living near it.

In response to a question from Representative Koppelman, Mr. Brown said electricity is transmitted through a grid system and there is little interconnection between the east and the west. He said power is generally bought and sold from pools and North

Dakota is relatively constrained with respect to transmission without a large investment in the power grid. Although wind generation on a large scale is not a problem based on location, he said, transmission is the issue that must be addressed. He said it is important to have detailed project analyses regarding transmission when siting wind energy generation projects.

In response to a question from Senator Urlacher, Mr. Brown said in addition to the lack of interconnection between the electric grids, the east and west grids are off cycle.

Mr. Brown said California began developing wind power in the 1980s through a highly subsidized program. He said if the transmission system were available and the resource were managed, North Dakota could serve 250 million people with electricity generated through wind.

In response to a question from Senator Urlacher, Mr. Brown said environmental concerns were part of the driving factor in the development of wind power in California. He said the development of wind power in Texas was driven through environmental concerns, economic development, and a desire to be less dependent on imported energy.

In response to a question from Representative Kelsh, Mr. Brown said most of the new electric plants coming on-line are gas facilities because of the lower cost to construct.

Mr. Brown said utilizing wind resources is vital. He said an increase in wind speed increases the power generated by cube and costs decrease.

In response to a question from Senator Urlacher, Mr. Brown said there has been significant monitoring of wind resources in North Dakota so that a developer can make a preliminary decision on siting before doing micrositing.

Citizen Member Korgel said he is aware of 50 pilot projects measuring wind data.

In response to a question from Citizen Member Frantsvog, Mr. Brown said a 100 to 130 megawatt wind facility is considered to be a large-scale facility.

In response to a question from Representative Kelsh, Mr. Brown said the structure of a regulatory siting process is generally established by legislation. He said when proposing a project it is important to address siting issues early so that a developer is

forced to perform community outreach and address concerns of the public.

In response to a question from Representative Koppelman, Mr. Brown said the presence of wind turbines is usually the greatest concern expressed by the public due to the visual effect and avian concerns.

In response to a question from Citizen Member Martinson, Mr. Brown said the financial benefits of a wind facility include the lease payments paid to land-owners and any state and local taxes that may be generated as a result of the facility. He said a typical lease payment is about \$2,500 per turbine per year. Although the trend has been to reduce property taxes on wind facilities, he said, local governments generally collect some property taxes. He said construction and ongoing jobs are also a small benefit of a wind facility.

Representative Kelsh said one project that will soon be under construction is estimated to provide 100 construction jobs and five ongoing maintenance jobs.

In response to a question from Representative Kelsh, Mr. Brown said the relationship between local zoning requirements and state siting regulations vary from state to state. For example, he said, Wisconsin has put more authority in the hands of the state with respect to siting.

In response to a question from Citizen Member Korgel, Mr. Brown said height restrictions involved in siting a facility are more restrictive when the facility is close to an airport. In addition, he said, towers 200 feet and higher require special lighting.

### **STATE AID DISTRIBUTION FUND FORMULA**

Chairman Kelsh called on commission counsel to review two bill drafts relating to the formula for determining allocation of sales, use, and motor vehicle excise tax collections among counties [30134.0100] and cities [30135.0100].

Commission counsel said the bill drafts incorporate the changes proposed at the last meeting by representatives of the North Dakota Association of Counties and the North Dakota League of Cities. He said the bill drafts revise the allocations because of the changes in population after the 2000 federal decennial census.

In response to a question from Representative Koppelman, commission counsel said the representatives of the North Dakota Association of Counties and the North Dakota League of Cities indicated at the previous meeting there would be very little change in the actual allocations to each city and county.

### **CONSOLIDATION OF COUNTY MILL LEVIES**

Chairman Kelsh called on commission counsel to review a bill draft [30132.0100] relating to the consolidation of county special levies into a county general

fund levy. He said the bill draft provides that the consolidation would be an option that boards of county commissioners could implement after adoption of a resolution. He said the bill draft allows the voters of a county the opportunity to submit a petition to refer the resolution to the voters of the county.

In response to a question from Senator Urlacher, Mr. Wade Williams, North Dakota Association of Counties, said the consolidated levy would be capped at 140 mills. He said if all the special levies that are authorized by law were implemented by a county, the total amount of mills levied could be 144. Therefore, he said, the bill draft would reduce the total maximum levy by four mills.

Ms. Dorothy Robinson, North Dakota County Auditors Association and Pembina County Auditor, said the consolidation of levies would eliminate a significant amount of work for auditors. She said the consolidated levy does not generate new taxes but provides a county flexibility. She said the auditors would prefer that the special levy for the county emergency fund not be included with the consolidated levy because in the event of an emergency, the Federal Emergency Management Agency may look at the total consolidated levy as being available for emergency purposes rather than just the special emergency levy. She said there is also a concern with consolidating the jobs development levy because of the problems associated with cities and counties both levying for jobs development.

In response to a question from Representative Kelsh, Ms. Robinson said the North Dakota County Auditors Association supports the proposed consolidation of levies and would prefer that the emergency levy and the jobs development levy not be included in the consolidation.

In response to a question from Senator Urlacher, Mr. Williams said if the emergency and jobs development levy were removed from the consolidated levy, the consolidated levy would be capped at 134 mills.

Ms. Sandy Clark, North Dakota Farm Bureau, submitted written testimony, a copy of which is on file in the Legislative Council office. She said the Farm Bureau does not have a policy regarding consolidated levies but will be discussing the issue and generating a policy at its annual meeting in November. Although the Farm Bureau opposed a similar consolidation proposal a few years ago, she said, the Farm Bureau would like to work with representatives of the counties to discuss the issue and consider possible compromises. She said the past opposition focused on concerns that consolidated mill levies provide boards of county commissioners with an opportunity to increase the special mill levies to the maximum amount and redirect the designated funds to general expenditures. She said that results in a tax increase for the general fund without a vote of the county residents. She said the special levies are in place because voters made the choice to designate the special levies. She said there may also be concern

regarding the provisions provided for a referendum on the issue of adopting the consolidated levy. She said the voters should have an opportunity to vote on whether to implement the consolidated levy rather than have to petition for a vote after the commissioners have adopted a resolution to implement the consolidation.

In response to a question from Citizen Member Smestad, Ms. Clark said because several counties are not at the limit for special levies, the consolidation would allow those counties automatic growth in levying authority.

Citizen Member Frantsvog said because the North Dakota Farm Bureau has organized bureaus in almost all the counties of the state, the local bureaus could address the consolidation issue at the local level. He said the bill draft is only permissive legislation.

In response to a question from Representative Koppelman, Mr. Williams said if a county went to the consolidated levy, it would be very difficult to go back to one of the other methods of determining its levy.

Ms. Clark said the North Dakota Farm Bureau also has an interest in wind energy. She said the Farm Bureau has hired a consultant and formed a wind energy foundation to provide a service to its member landowners.

### **LOCAL ROAD PROJECT COST-SHARING STUDY**

Mr. John Hoganson, Geological Survey, said the site the commission would be touring is a good example of the problem that brought about the cost-sharing study. He said the road is managed by the county and township and is on a site administered by the Game and Fish Department. He said fish and mosasaur remains have been found near the site and the site was a promising fossil site until it was destroyed by the road construction activity in 1996. Because the site is located on state land, he said, destruction of the site violated the Paleontological Resource Protection Act. After involvement from the Governor and the Attorney General, he said, a deal was made to provide for restitution by the county and township to provide money for educational information regarding the site.

In response to a question from Representative Koppelman, Mr. Hoganson said in most areas of the state the likelihood of finding significant fossils is small. He hopes that communication between local governments and the Geological Survey can be improved because the Geological Survey is able to provide information regarding areas that are more likely to produce fossils.

In response to a question from Senator Urlacher, Mr. Hoganson said fossils that are found on state lands generally go to the state fossil collection at the Heritage Center. He said fossils discovered on private lands are owned by the landowner. He said

some of the private landowners have donated fossils to the state and others sell the fossils. He said the dinosaur collection provides fossils to local museums as well as providing exhibits at the Heritage Center.

Chairman Kelsh recessed the meeting and the commission traveled to the paleontological site west and north of Walhalla.

In response to a question from Citizen Member Smestad, Mr. Hoganson said if the county and township had delayed the project so that the site could be further investigated, a significant fossil resource would not have been destroyed. He said it is important that communication between local governments and the Geological Survey be enhanced so that other paleontological resources are protected. He said the problems associated with the discovery of resources are more acute with archaeological resources because of the federal laws involved. He said it is likely there will be federal paleontological protection laws in the future.

In response to a question from Senator Urlacher, Mr. Hoganson said the Department of Transportation has some flexibility dealing with costs associated with the discovery of paleontological and archaeological resources.

Citizen Member Smestad said if a cost-sharing program were implemented, the question is from where the funds will come. She said if state highway funds are used for cost-sharing, other highway projects will be affected.

Mr. Hoganson said annual fossil digs are conducted at this site. He said 100 people from 10 states participated in the digs last summer. He said in addition to the important resource, the discovery of the fossils can be an aid to economic development in certain areas of the state.

In response to a question from Representative Koppelman, Mr. Hoganson said mitigation of paleontological resources is usually easy because the fossils are generally in layers.

In response to a question from Senator Urlacher, Mr. Hoganson said there are commercial fossil collectors operating in the southwest part of the state. He said he would like to see a requirement that the commercial collectors at least report their findings to the state. He said a cast of triceratops found by Bowman was valued at \$35,000. A full skeleton, he said, could be worth \$250,000. He said beyond education, the real value of paleontological resources in the state is attracting tourists. Because of the limited amount of areas of the state likely to produce fossils, he said, 75 percent of the roadwork in the state should not require an onsite inspection.

There being no further business, Chairman Kelsh adjourned the meeting at 4:00 p.m.