

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS - BACKGROUND MEMORANDUM

STATUTORY FRAMEWORK FOR COMMISSION

The Advisory Commission on Intergovernmental Relations occupies a unique status among committees with legislative membership. The commission differs from usual Legislative Management interim committees in its membership, its permanent status, and its statutory authority to determine its own study priorities.

The powers and duties of the commission are provided in North Dakota Century Code Section 54-35.2-02. Under this section, the commission is free to establish its own study agenda and to accept suggestions from groups or individuals for study.

Under this section the commission specifically is required to:

1. Serve as a forum for the discussion of resolution of intergovernmental problems.
2. Engage in activities and studies relating to the following subjects:
 - a. Local governmental structure.
 - b. Fiscal and other powers and functions of local governments.
 - c. Relationships between and among local governments and the state or any other government.
 - d. Allocation of state and local resources.
 - e. Interstate issues involving local governments, including cooperation with appropriate authorities of other states.
 - f. Statutory changes required to implement commission recommendations.
3. Present reports and recommended legislative bills to the Legislative Management for consideration in the same manner as interim Legislative Management committees.
4. Prepare model ordinances or resolutions for consideration by officials of political subdivisions.

In conjunction with Section 54-35.2-02(4), Section 54-40.3-03 provides that a political subdivision entering a joint powers agreement may file a copy of the agreement and the explanatory material with the commission to assist other political subdivisions in exploring cooperative arrangements.

In addition to its statutory powers and duties, the Legislative Management assigned the commission the responsibility to study during the 2011-12 interim motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties.

Under Section 54-35.2-01(1), the commission consists of 12 members:

- The North Dakota League of Cities Executive Committee appoints two members.

- The North Dakota Association of Counties Executive Committee appoints two members.
- The North Dakota Township Officers Association Executive Board of Directors appoints one member.
- The North Dakota Recreation and Park Association Executive Board appoints one member.
- The North Dakota School Boards Association Board of Directors appoints one member.
- The Governor or the Governor's designee is a member.
- The Legislative Management appoints four members of the Legislative Assembly as members.

The Legislative Management designates the chairman of the commission. All members of the commission serve a term of two years.

LEGISLATIVE HISTORY

In 1989 the Legislative Assembly enacted Chapter 54-35.2, which provides for the commission. In 1991 the Legislative Assembly enacted Section 54-35.2-02.1, which provided for administration by the commission of local government efficiency planning grants. In 1991 the Legislative Assembly also provided an appropriation of \$250,000 for these grants. The commission spent the majority of its time during the 1991-92 interim developing guidelines and procedures, reviewing grant requests, and monitoring grant projects. The commission approved grant awards for 15 grant projects in the total amount of \$198,558.34, leaving \$51,441.66 unexpended from the \$250,000 appropriated for grants for the 1991-93 biennium.

In 1993 the Legislative Assembly amended Section 54-35.2-02.1, changing the objects for which grants could be provided, allowing the commission to directly expend all or a portion of the appropriated amount for research and studies, and providing that unexpended grant funds that are returned are to be deposited in the state aid distribution fund. The Legislative Assembly also provided an appropriation of \$51,400 to the commission for distribution in local government efficiency planning grants. During the 1993-94 interim, the commission received final reports from grant recipients from the previous interim and returned \$1,466.14 in unexpended grant funds to the state from grant recipients that had completed their grant projects. The commission also authorized two grants of \$24,999 each.

In 1995 the Legislative Assembly did not appropriate any funds for continuation of the local government efficiency planning grant program.

During the 1995-96 interim, the commission received reports from the two grant recipients from the previous interim.

In 1997 the Legislative Assembly did not appropriate any funds for the continuation of the local government efficiency planning grant program.

During the 1997-98 interim, the commission found that although the local government efficiency planning grant program served an important purpose, the program probably will not receive funding in the future; therefore, the law establishing the program was no longer necessary. As a result, the commission recommended Senate Bill No. 2028 to repeal Section 54-35.2-02.1 relating to the local government efficiency planning grant program. In 1999 the Legislative Assembly enacted Senate Bill No. 2028.

In 2001 the Legislative Assembly amended Section 54-35.2-02 to include on the commission a member appointed by the North Dakota School Boards Association Board of Directors.

In 2003 the Legislative Assembly considered House Bill No. 1333, which as introduced would have repealed Chapter 54-35.2 and Section 54-40.3-03, with the effect of abolishing the commission. As passed by the House of Representatives, House Bill No. 1333 retained Chapter 54-35.2 but removed the commission's authority to recommend proposed legislation to the Legislative Council. The bill failed to pass the Senate.

In 2009 the Legislative Assembly considered House Bill No. 1462, which would have repealed the Advisory Commission on Intergovernmental Relations. The bill failed to pass the House.

In 2011 the Legislative Assembly considered House Bill No. 1336, which would have repealed the Advisory Commission on Intergovernmental Relations. The bill passed the House by a vote of 58 to 36 but failed by a vote of 41 to 5 in the Senate.

HISTORICAL AREAS OF STUDY

During the 1999-2000 interim, the commission focused on 12 areas of interest:

1. Park district mill levy consolidation. The commission recommended House Bill No. 1031 (2001), which consolidated park district levies for the general fund, insurance reserve fund, employee health care program, public recreation system, forestry, pest control, and handicapped persons' programs and activities. The bill replaced the levies with a general fund levy equal to the number of mills levied by a park district for those purposes in taxable year 2000, or up to 35 mills if approved by the electors of the park district.
2. The membership of the commission. The commission recommended House Bill No. 1032 (2001), which added a representative of the North Dakota School Boards Association to the commission.

3. Tobacco education and cessation. The commission recommended Senate Bill No. 2024 (2001) which failed to pass the Senate. The bill would have allowed cities and counties to use community health trust fund money to provide matching funds for city and county public employee tobacco education and cessation programs and would have required that the community health trust fund be augmented by returning community health trust fund interest to the community health trust fund and by depositing water development trust fund interest in the community health trust fund.
4. Clarification of definition of institutions of public charity exempt from property taxation. The commission recommended Senate Concurrent Resolution No. 4001 (2001), which the Legislative Council did not prioritize for study.
5. Collection of municipal court fines.
6. Creation of a disaster relief fund.
7. Status of the Leadership Initiative for Community Strategic Planning.
8. Provisions of government services at the local level, including receipt of a report from the Child Support Enforcement Division of the Department of Human Services regarding the status of the child support state disbursement unit and the provision of child support services at the local level, receipt of a report on the provision of judicial services at the local level from the Supreme Court, and receipt of a report from the Driver and Vehicle Services Division of the Department of Transportation regarding vehicle registration services in branch offices.
9. Funding of maintenance of local roads.
10. Census 2000 and areas of possible state and local government interest.
11. History of revenue sharing and personal property tax replacement.
12. Status of taxing e-commerce.

During the 2001-02 interim, in addition to the assigned study of the feasibility and desirability of creating cost-sharing mechanisms for the unexpected discovery of cultural and paleontological resources within local road projects, the commission focused on eight areas of interest:

1. County mill levy consolidation. The commission recommended House Bill No. 1024 (2003), which allowed a county to increase its general fund levy limitation from 23 mills to 134 mills by consolidating into the general fund levy several separate levies for special purposes.
2. Revenue sharing and personal property tax replacement. The commission recommended House Bill No. 1025 (2003), which adjusted allocation of sales, use, and motor vehicle excise tax revenues through the state aid

distribution fund to counties and cities to reflect population changes as determined under 2000 census results.

3. Tobacco education and cessation.
4. Homeland security.
5. E-commerce taxation.
6. Public school funding and taxation.
7. Tool chest legislation update.
8. Wind energy.

During the 2003-04 interim, the commission focused on seven areas of interest:

1. Mill levy consolidation. The commission recommended House Bill No. 1025 (2005), which failed to pass the House. The bill would have revised the county general fund levy under Section 57-15-06.10, removing from the consolidated general fund the specific mill levies for the industrial development organization, county parks and recreation, library fund, weed board and weed control, and weather modification; decreasing the maximum general fund levy from 134 mills to 118 mills; and removing the general fund levy increase limitations that are based on the consumer price index.
2. Delinquent property tax. The commission recommended House Bill No. 1026 (2005), which failed to pass the House. The bill would have decreased from approximately five years to approximately three years the period of time in which foreclosure will take place for delinquent property taxes and would have allowed a board of county commissioners to waive all or part of the penalties or interest on delinquent real estate taxes if a board determines the reduced period for foreclosure of tax liens creates a hardship for similarly situated taxpayers.
3. Document preservation fund. The commission recommended Senate Bill No. 2024 (2005), which removed the expiration date of the document preservation fund and continued the additional fees that had been imposed for the purpose of funding the document preservation fund.
4. Motor vehicle branch offices.
5. Sheriff service of process.
6. Emergency preparedness.
7. Wind turbine siting.

During the 2005-06 interim, the commission was assigned the study of the feasibility and desirability of establishing an organization or ombudsman to support and coordinate governmental and private efforts to discourage destructive behavior. The commission was informed that Students Against Destructive Decisions was considering an initiated measure to raise the tax on beer cans and bottles to 24 cents per gallon and bulk sales to 16 cents per gallon to collect approximately \$1.3 million per year. The Legislative Assembly enacted Senate Bill No. 2276 (2007), which appropriated \$100,000 to the

Governor's Prevention and Advisory Council for grants to entities in this state to discourage impaired driving and alcohol and drug abuse by minors. In addition to the assigned study, the commission focused on eight areas of interest:

1. Charitable organizations' property tax exemptions.
2. Tax levy authority. The commission considered, but did not recommend, a bill draft that would have allowed a taxing district to increase the amount levied in dollars in the base year as adjusted by the consumer price index.
3. Township levy limitation.
4. City and county development impact fees. The commission considered, but did not recommend, a bill draft that would have allowed for city development impact fees.
5. Legal services for the indigent.
6. Uniform Environmental Covenants Act.
7. Extraterritorial zoning jurisdiction.
8. Jail administration. The commission considered, but did not recommend, a bill draft that would have allowed a board of county commissioners to provide for the administration of county jails.

During the 2007-08 interim, the commission was assigned the study of the extraterritorial zoning authority of cities. The commission recommended Senate Bill No. 2027 (2009), which failed to pass. The bill would have provided for joint jurisdiction in the entire extraterritorial zoning area. The city and the previous jurisdiction with the zoning authority would have needed to approve any changes in zoning. If unable to agree, an administrative law judge would have settled the dispute after considering a number of factors. However, the Legislative Assembly adopted House Bill No. 1554 (2009), which provided for joint zoning and subdivision authority between a city and the other political subdivision that previously exercised zoning and subdivision authority in the outer one-half of the extraterritorial zoning authority of the city. The bill provided that land within the area of joint jurisdiction for which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and regulations in effect on May 1, 2009, unless otherwise changed. The bill provided procedures for negotiation and mediation of decisions made by the political subdivisions within areas of joint jurisdiction. The bill was declared to be an emergency measure and became effective upon filing with the Secretary of State on May 5, 2009. In addition to the assigned study, the commission focused on six areas of interest:

1. Zoning of feedlot operations.
2. Increasing from four-tenths to five-tenths of one cent the amount of sales tax that is deposited in the state aid distribution fund.
3. Funding for rural township and county roads and bridges.
4. Exempting charitable property from taxation.

5. Replacing references to mills in the North Dakota Century Code with dollar amounts.
6. Providing state's attorney services in counties without a resident state's attorney.

During the 2009-10 interim, the commission was assigned two studies. Section 1 of House Bill No. 1338 (2009) directed a study of solid waste management and state or regional siting of landfills. Section 1 of Senate Bill No. 2401 (2009) directed a study of public improvement and capital construction bid requirements, plans and specifications, and the employment of architects and engineers. The commission made no recommendation as a result of the study of solid waste management. The commission recommended Senate Bill No. 2026 (2011) to centralize the public improvement construction threshold of \$100,000 in one section of the North Dakota Century Code and to provide that the threshold for procuring plans, drawings, and specifications from an architect or engineer for the construction of a public improvement is \$100,000. The bill was adopted by the Legislative Assembly. The commission also recommended Senate Bill No. 2027 (2011) to allow a governing body to specify certain materials in a request for bids for the remodeling or expansion of an existing building that contains the specified material. The Legislative Assembly amended the bill to provide that a governing body may not specify a copyrighted brand or name in a request for bids or a product of any one manufacturer for the remodeling or expansion of an existing building unless otherwise provided by the law requiring preference for North Dakota bidders. The bill was adopted as amended. The commission recommended, and the Legislative Assembly adopted, Senate Bill No. 2025 (2011) to raise the bid threshold for concession bidding to annual estimated gross sales of \$25,000.

During the 2009-10 interim, the commission also focused on the following areas of interest:

1. The state aid distribution fund.
2. State assistance to counties for major trials.
3. Municipal judges and courts.
4. City park district creation, consolidation, and dissolution.
5. Inmate medical costs. The commission discussed the concept of a bill draft that would have the state establish a risk pool with the risk shared between the state and jails. The commission also discussed the concept of a bill draft that would have inmates be covered under the Public Employees Retirement System health insurance. The commission recommended Senate Bill No. 2028 (2011) to require the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical expenditures paid by the facility which exceed \$10,000. No reimbursement would be made for federal or out-of-state inmates being housed in corrections facilities. The bill passed the

Senate but failed in the House. The commission recommended Senate Bill No. 2024 (2011) to limit the correctional facility's liability for inmates' medical costs to Medicare rates. The bill was amended by the Legislative Assembly and adopted to provide the definition of "inmate" does not include an individual who is under the supervision of a correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in a correctional facility. The bill also provided that, except for an intake health care assessment and related testing for examinations made at the request of a correctional facility, an inmate is responsible for the costs of medical and health care. The bill allowed a correctional facility to seek reimbursement from the inmate for the total amount of incurred medical or health care costs and provided that an inmate's right to adequate medical care means necessary treatment for a medical or health condition for which serious pain or hardship would occur if care is not given. The bill prohibited a correctional facility from denying adequate medical care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.

During the 2009-10 interim, the commission considered but did not focus on these areas of study:

1. State mandates to political subdivisions. Commission discussion included that there would need to be a list of true mandates. Because some mandates are tradeoffs and not true mandates, the commission concluded this list would be difficult to make.
2. Tax treatment of concentrated feedlots. Commission discussion included that feedlots are taxed as agricultural property and cause more damage to roads than traditional agricultural facilities. However, the commission concluded this type of study would fall under the heading of agricultural infrastructure impact funding that includes impacts from agricultural processing facilities, unit train facilities, ethanol plants, and other industries, which would be a major study relating to taxation better addressed by another committee.
3. Social services financing. The commission was informed that \$33 million per year from property taxes is spent on counties' social services. Although a board of county commissioners does not have much control over social services expenses, the commission determined a study of social services financing would be a major study related to taxation which would be better addressed by another committee.

STUDY APPROACH

Section 54-35.2-02 provides that the commission is charged with serving "as a forum for the discussion of resolution of intergovernmental problems"; engaging in activities and studies relating to state, local, and any other government; and preparing "model ordinances or resolutions for consideration by officials of political subdivisions." It may be helpful for the commission to request members and representatives of local governments and other interested groups to provide suggestions of topics for consideration during this interim. However, the commission should be aware of studies undertaken by other interim committees and avoid duplication of efforts.