

POLITICAL SUBDIVISIONS EFFICIENCY STUDY - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4023 (2013) directs the Legislative Management to study whether political subdivisions can become more efficient and effective to reduce costs to taxpayers. The resolution states North Dakota ranks first among states in the number of local government elected officials and units of local government. The resolution states on the basis of governmental units per 10,000 population, North Dakota has over six times the governmental units of Minnesota, over three times the governmental units of Montana, and almost two times the governmental units of South Dakota. The resolution states an appropriate balance must be determined between the desire for accessibility of local government and the cost taxpayers are willing to bear to maintain the current level of governmental units and officials. The resolution states local government representatives should have a forum to suggest measures to make local government more efficient and effective to reduce costs to taxpayers.

INTERGOVERNMENTAL COOPERATION

Political subdivisions are created under authority of state law and have only those powers specifically provided to them by state law. To enter an agreement with another political subdivision to jointly exercise powers to achieve efficiency requires specific statutory authorization. Among the specific provisions of law allowing cooperative efforts are:

1. North Dakota Century Code Section 11-35-01 allows the governing boards of counties, cities, and organized townships to cooperate to form a regional planning and zoning commission.
2. Section 48-04-01 allows joint ownership and use of public buildings and grounds by townships and cities if approved by three-fourths of the voters of each political subdivision.
3. Section 54-40-01 allows any two or more governmental units having in common any portion of their territory or boundary to exercise jointly their powers to acquire, construct, and maintain any building for their joint use. This section specifies any political subdivision, any state government, and the United States government may be included in the agreement. This section also allows any combination of cities or counties to jointly acquire road equipment or to jointly issue bonds.
4. Section 40-38-01 allows establishment of public library service in cooperation with the State Library or with one or more cities or counties.
5. Section 40-33.2-03 allows cities to establish jointly and operate a municipal power agency.
6. Section 40-33.3-01 allows any two or more cities each of which is over 40,000 population to establish jointly and operate a municipal pipeline authority.
7. Chapter 54-40.1 provides for establishment of regional planning councils.
8. Section 54-40.2-02 allows one or more political subdivisions to enter agreements with one or more tribal governments to perform any function.
9. Section 61-16.1-11 allows two or more water resource districts to exercise jointly or cooperatively any power that is authorized by law.

Provisions regarding joint exercise of political subdivision powers are also contained in Sections 2-02-01, 5-01-05.4, 11-10.1-05, 11-10.1-07, 11-28-12, 11-33-19, 15.1-09-33, 23-30-02, 24-10-05, 40-05-01, 40-22-06, 40-34-05, 40-38-11, 54-21.3-05, 54-40.1-03, 57-15-60, 58-03-13, 61-12-31, 61-21-34, 61-26-01, and 61-26-03. Many other sections also include provisions relating to joint efforts.

In addition to specific provisions for joint exercise of governmental powers, two provisions of law provide general authority for cooperative efforts of political subdivisions. The general grants of authority are contained in Article VII, Section 10, of the Constitution of North Dakota, and in Section 54-40.3-01.

Article VII, Section 10, of the Constitution of North Dakota, provides:

Agreements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer.

The statutory provision providing general authority for joint exercise of governmental powers is contained in Section 54-40.3-01, which provides as follows:

54-40.3-01. Joint powers agreements - General authority.

1. Any county, city, township, city park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into an agreement with any other political subdivision of this state for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them. Any political subdivision of this state may enter into a joint powers agreement with a political subdivision of another state or political subdivision of a Canadian province if the power or function to be jointly administered is a power or function authorized by the laws of this state for a political subdivision of this state and is authorized by the laws of the other state or province. A joint powers agreement may provide for:
 - a. The purpose of the agreement or the power or function to be exercised or carried out.
 - b. The duration of the agreement and the permissible method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of any property upon the partial or complete termination.
 - c. The precise organization, composition, and nature of any separate administrative or legal entity, including an administrator or a joint board, committee, or joint service council or network, responsible for administering the cooperative or joint undertaking. Two or more political subdivisions which enter into a number of joint powers agreements may provide a master administrative structure for the joint administration of any number of those agreements, rather than creating separate administrative structures for each agreement. However, no essential legislative powers, taxing authority, or eminent domain power may be delegated by an agreement to a separate administrative or legal entity.
 - d. The manner in which the parties to the agreement will finance the cooperative or joint undertaking and establish and maintain a budget for that undertaking. The parties to the agreement may expend funds pursuant to the agreement, use unexpended balances of their respective current funds, enter into a lease-option to buy and contract for deed agreements between themselves and with private parties, accumulate funds from year to year for the provision of services and facilities, and otherwise share or contribute property in accordance with the agreement in cooperatively or jointly exercising or carrying out the power or function. The agreement may include the provision of personnel, equipment, or property of one or more of the parties to the agreement that may be used instead of other financial support.
 - e. The manner of acquiring, holding, or disposing of real and personal property used in the cooperative or joint undertaking.
 - f. The acceptance of gifts, grants, or other assistance and the manner in which those gifts, grants, or assistance may be used for the purposes set forth in the agreement.
 - g. The process to apply for federal or state aid, or funds from other public and private sources, to the parties for furthering the purposes of the agreement.
 - h. The manner of responding for any liability that might be incurred through performance of the agreement and insuring against that liability.
 - i. Any other necessary and proper matters agreed upon by the parties to the agreement.
2. Any county, city, township, city park district, school district, or other political subdivision of this state may enter into an agreement in the manner provided in subsection 1 with any agency, board, or institution of the state for the undertaking of any power or function which any of the parties is permitted by law to undertake. Before an agreement entered into pursuant to this subsection is effective, the respective governing body or officer of the state agency, board, or institution must approve the agreement and the attorney general must determine that the agreement is legally sufficient.
3. An agreement made pursuant to this chapter does not relieve any political subdivision or the state of any obligation or responsibility imposed by law except to the extent of actual and timely performance by a separate administrative or legal entity created by the agreement. This actual and timely performance satisfies the obligation or responsibility of the political subdivision.

SUMMARY

In addition to specific statutory authorization for certain types of governmental cooperation, political subdivisions are granted very broad constitutional and statutory authority to jointly perform any function that they may individually perform under law. The number of statutory provisions providing for joint functions of political subdivisions may raise some questions of interpretation, but it appears there are very few restraints on the authority of political subdivisions to jointly perform functions. Home rule authority gives cities and counties options to perform functions that are not provided by law.

It appears the Legislative Assembly has provided ample legal authority for cooperative agreements for joint action among political subdivisions. It appears consideration should be given to how to encourage local officials to look into the possibilities for cooperation that can provide reduced tax burdens. In this area, the Advisory Commission on Intergovernmental Relations can play a significant role. By gathering information on successes and problems in local government cooperative efforts and disseminating that information to other local officials, the commission or the associations represented on the commission might take the lead in encouraging cooperation. The 1987-88 interim Political Subdivisions Committee, which recommended the legislation that created the commission, stated in its final report:

The committee finds that existing constitutional and statutory law provides adequately for cooperative or joint functions of political subdivisions. The committee recommends that the Advisory Commission on Intergovernmental Relations make this issue a standing concern and attempt to provide information and encourage cooperative efforts among political subdivisions.