

November 2005

HISTORY OF BISTATE AUTHORITY LEGISLATION

The 1996 South Dakota Legislature adopted House Bill No. 1107, which required the Executive Board of the South Dakota Legislative Research Council to appoint a legislative commission to meet jointly with a similar commission from North Dakota to study ways North Dakota and South Dakota could collaborate to provide government services more efficiently. In response to the action by the South Dakota Legislature and South Dakota Legislative Research Council, the chairman of the North Dakota Legislative Council established the North Dakota Commission. The North Dakota Commission was directed to meet during 1996 with representatives of the South Dakota Legislature. A copy of the minutes from the three meetings of the North Dakota/South Dakota Commission is attached as an appendix.

The joint North Dakota/South Dakota Commission focused on these areas:

1. Higher education.
2. Elementary and secondary education.
3. Highway maintenance.
4. Insurance pools for workers' compensation and high-risk health insurance.
5. Health laboratory services.

In addition, the commission received a request from the North Dakota National Guard to consider an interstate mutual aid compact. The commission also discussed the feasibility of continuing to study methods of cooperation between the two states.

HIGHER EDUCATION

The commission received testimony from representatives of the North Dakota State Board of Higher Education and the South Dakota Board of Regents regarding the higher education systems in the two states. The testimony revealed that representatives of the two higher education systems communicate on an informal basis and through participation in the Western Interstate Commission on Higher Education. In addition, there are ongoing individual and institutional relationships.

Representatives of the higher education systems suggested the best potential areas for cooperation between the two systems include cooperative purchasing arrangements, sharing of information systems, collaborative distance education programs, development and improvement of research infrastructure and research capabilities, and implementation of joint student followup processes. A representative of the State Board of Higher Education assured the commission that cooperative ventures can be undertaken without legislative action by the North Dakota Legislative Assembly. A representative of the Board

of Regents indicated that South Dakota law may need revision to allow the Board of Regents to cooperate with North Dakota in the area of cooperative purchasing.

Higher Education Recommendations

The South Dakota Commission members introduced a bill to authorize the Board of Regents to enter cooperative purchasing agreements with the North Dakota State Board of Higher Education, which was not approved by the South Dakota Legislative Assembly. The North Dakota Commission members recommended 1997 Senate Concurrent Resolution No. 4003, which was approved by the 1997 Legislative Assembly, to encourage the North Dakota State Board of Higher Education to continue to pursue collaborative efforts with the South Dakota Board of Regents.

ELEMENTARY AND SECONDARY EDUCATION

The commission reviewed information and received testimony regarding establishing uniform teacher certification standards between North Dakota and South Dakota and difficulties in establishing standard tuition reciprocity agreements for the education of students in border school districts who are enrolled in a school district outside their state of residence.

The commission received testimony from a representative of the North Dakota Education Standards and Practices Board in opposition to any proposal that would lower teacher certification standards in North Dakota. Differences between the two states include the requirement in North Dakota that an applicant must have taken student teaching before receiving a certificate. Also, North Dakota requires special teaching endorsements for each subject area while South Dakota issues a single basic teaching certificate. Commission members generally agreed that the possibility of establishing uniform teacher certification standards between the two states was unlikely.

Representatives of the North Dakota Department of Public Instruction provided testimony to the commission regarding tuition reciprocity. The commission learned that although there is a tuition agreement between the two states, South Dakota has transferred the authority of making tuition agreements for the education of nonresident students to the local school districts, which are not bound by the agreement. As a result, North Dakota school districts have experienced some difficulty in planning for and establishing appropriated tuition payments for North Dakota students attending schools in South Dakota.

Elementary and Secondary Education Recommendations

The commission encouraged the Superintendent of Public Instruction to continue to search for solutions to the problem.

HIGHWAY MAINTENANCE

The commission learned that the North Dakota Department of Transportation communicated with representatives of the South Dakota Department of Transportation regarding a proposal to share sand and salt stockpiles near the border and the reassignment of winter road maintenance responsibilities on sections of highways near the border. The South Dakota Department of Transportation, however, later informed the North Dakota Department of Transportation that any proposed agreements between the departments were "on hold."

North Dakota Century Code (NDCC) Section 24-02-02.2 allows the director of the Department of Transportation to contract with adjoining states and provinces to provide for the construction, repair, or maintenance of highways located on or near the border.

Highway Maintenance Recommendations

The South Dakota Commission members agreed to recommend a bill to allow the South Dakota Department of Transportation to undertake joint highway maintenance activities with adjacent states. The South Dakota Legislative Assembly, however, did not approve the bill.

INSURANCE POOLS

The commission received testimony from a representative of the North Dakota Workers Compensation Bureau relating to the feasibility of administration of a joint workers' compensation system. The North Dakota workers' compensation system differs from South Dakota in that South Dakota uses private insurers to provide coverage while the North Dakota state-run system is monopolistic. Commission members generally agreed that opportunities exist for cooperation between the two states in the area of sharing information relating to ratings systems. In addition, the commission members agreed the experience of the North Dakota Workers Compensation Bureau could be beneficial to South Dakota legislators in determining the feasibility of establishing a state-run workers' compensation system in South Dakota.

Insurance Pools Recommendations

The commission did not make any specific recommendations regarding insurance pools.

HEALTH LABORATORY SERVICES

The commission learned the North Dakota State Department of Health cooperates with South Dakota in several areas, including providing antibody testing for vaccine preventable diseases, providing sexually transmitted disease testing for persons getting married in states with premarital testing laws, and providing assistance to the South Dakota forensics laboratory with criminal cases. Several areas in which the two states may provide further assistance were identified--testing at the North Dakota laboratory for chlamydia and gonorrhea, tuberculosis DNA probes, influenza typing, and hantavirus testing. Areas in which South Dakota could provide testing at the South Dakota laboratory include testing for endo-thall and cyanide in drinking water and viral and tissue culture testing.

Health Laboratory Services Recommendations

The commission did not make any specific recommendations regarding health laboratory services.

Agency Bistate Authority Recommendations

The commission recommended 1997 Senate Bill No. 2048, amending NDCC Section 54-40-01, to allow an agency, department, or institution of the state to enter an agreement with South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized to perform. The bill provided that any agreement entered must be submitted to the Legislative Assembly for approval or rejection at the next regular or special session after the agreement is entered. Senate Bill No. 2048 was vetoed by Governor Schafer, who said that he supported the concept of cooperative agreements between North Dakota and South Dakota; however, requiring ratification of such agreements by the full Legislative Assembly could significantly delay implementation of time-sensitive agreements.

The language of Senate Bill No. 2048 was added during a conference committee to 1997 House Bill No. 1015, the appropriations bill for the Office of Management and Budget and is contained in NDCC Section 54-40-01. The amendment, which was approved by the Legislative Assembly, added that any agreement with South Dakota to form a bistate authority may be submitted to the Legislative Council or by a committee designated by the Legislative Council for approval or rejection if the Legislative Assembly is not in session.

The South Dakota Commission members agreed to recommend a bill to the South Dakota Legislative Assembly allowing the establishment of an entity for the administration or provision of services with an agency of another state. This bill, however, was not approved by the South Dakota Legislative Assembly.

Interstate Mutual Aid Compact

The North Dakota National Guard asked the commission to consider a bill draft to adopt an interstate mutual aid compact. Representatives of the National Guard testified that several states, including South Dakota, have enacted laws adopting an interstate mutual aid compact. The compact would allow the National Guard to enter an agreement to provide emergency or disaster assistance to another state party to the agreement in the event of a natural disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack. The compact would also provide for mutual cooperation in emergency-related exercises, testing, or other training activities.

Interstate Mutual Aid Compact Recommendations

The North Dakota Commission members recommended Senate Bill No. 2049, amending NDCC Section 37-17.1-14.2, which was approved by the 1997 North Dakota Legislative Assembly, to adopt an interstate mutual aid compact.

CONTINUATION OF STUDY

Numerous opportunities for cooperation were identified in addition to the subjects on which the commission focused. Commission members discussed various methods through which legislators may continue to study cooperative efforts, including meeting in conjunction with the Five-State Legislative Conference and establishment of a statutory commission.

Commission members generally agreed that continued study by an interim legislative commission would be the best approach to examine cooperative ventures in the future. South Dakota Commission members expressed concern, however, regarding the extent of cooperation by executive agencies in South Dakota with future studies.

The North Dakota Commission members recommended 1997 Senate Concurrent Resolution No. 4004, which was approved by the 1997 Legislative Assembly, to direct the Legislative Council to establish a commission to study methods through which North Dakota and South Dakota can collaborate to deliver government services more efficiently. Senate Concurrent Resolution No. 4004 was not prioritized by the Legislative Council for study during the 1997-98 interim. Although the agreements between the states to form bistate authorities must be approved before becoming effective, agencies of North Dakota and South Dakota may cooperate and share information, services, and activities without forming a bistate authority. No proposed agreements have been submitted for approval to the Legislative Assembly or the Legislative Council to form a bistate authority with the state of South Dakota.

The Budget Committee on Government Services has been assigned the authority by the Legislative Council to approve any agreement for a bistate authority with South Dakota for the 1997-98 through the 2005-06 interims.

ATTACH:1