NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Friday, May 7, 2004
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Scot Kelsh, Chairman, called the meeting to order at 9:05 a.m.

Members present: Representative Scot Kelsh; Senator Bill L. Bowman; Citizen Members Randy Bina, Bob Frantsvog, Mike Montplaisir, Devra Smestad

Members absent: Representative Andrew Maragos; Senator Michael Polovitz; Citizen Members Ron Anderson, Donny Malcomb, Bev Nielson; Governor John Hoeven

Others present: See Appendix A

CONSOLIDATION OF MILL LEVIES

Chairman Kelsh called on Mr. Terry Traynor, North Dakota Association of Counties, for comments regarding the status of the consolidation of county mill levies. Mr. Traynor provided written testimony, a copy of which is attached as Appendix B.

Mr. Traynor said that in response to the recommendations made by the county auditors, the North Dakota Association of Counties has prepared three bill drafts to be considered by the commission. He said each bill draft addresses the issues of removal of levies for certain boards and the removal or improvement of the growth provision.

Mr. Traynor said the three bill drafts are identical in how they address the removal from the consolidated general fund and the levies supporting the county weed board, weather modification board, county park board, and library board. He said these boards reflect the appointed boards that separately certify their levies to county commissions. Additionally, he said, the bill drafts remove from the consolidated general fund the alternate economic development levy under North Dakota Century Code (NDCC) Section 11-11.1-06. He said this economic development levy was unintentionally included in the general fund. He said there is a correction of the improper citation to Section 11-11-65, which is being corrected to Section 57-15-60, relating to the levy for the handicapped programs and activities.

Mr. Traynor said the bill drafts also deal with the issue of removing or improving the growth limitation for the county mill levy consolidation; however, each bill draft deals with this matter differently. He said Bill Draft 1 clarifies the time period for which the consumer price index is to be used, changes the increase provision from considering the number of mills to considering the total dollars levied in any year, and changes the one-year lookback to a three-year lookback. He said Bill Draft 2 changes the consolidated mill levy growth provision from addressing the total number of mills levied in any year to addressing the total dollars levied in any one year, changes from a one-year lookback to a three-year lookback, and limits growth to no more than 18 percent per year. He said Bill Draft 3 removes the consolidated mill levy general fund growth provisions.

In response to a question from Citizen Member Frantsvog, Mr. Traynor said of the three bill drafts, the North Dakota Association of Counties prefers Bill Draft 3, which removes the limitations on general fund growth. However, he said, if the commission wishes to retain the growth provisions, the North Dakota Association of Counties prefers Bill Draft 1.

In response to a question from Senator Bowman, Mr. Traynor said Table A, attached to Mr. Traynor's testimony, does not total the number of levies that are not being proposed for consideration in the consolidated general fund.

In response to a question from Representative Kelsh, Mr. Traynor said all three bill draft versions decrease the maximum county general fund mill levy from 134 mills on the dollar of taxable valuation to 118 mills on the dollar of taxable valuation. He said this decrease was meant to reflect the removal of the four appointed boards that separately certify their levies to the county commissioners. He stated the total of 134 mills used in 2003 House Bill No. 1024 was slightly lower than the total of all the consolidated mills; therefore, instead of subtracting the 21 mills designated for the boards from 134 mills, the bill totals all of the mills for the general fund, which equals 118.6 mills and rounds down to 118 mills. He said that in reviewing the mills levied by the counties in 2002, the county levying the highest number of mills for these items included in the consolidated general fund was 85.24.

Chairman Kelsh called on Ms. Marcy Dickerson, Tax Commissioner's office, for comments regarding the consolidation of county mill levies. Ms. Dickerson provided written testimony, a copy of which is attached as Appendix C. She said the Tax Department is not taking a position on the consolidation of county mill levies but is instead providing testimony at the request of the commission in order to respond to the proposed bill drafts.

Ms. Dickerson said regarding Bill Draft 1, it is advisable to clarify the time period for which the consumer price index applies, so that counties will use the annual increase provision uniformly. She said the three-year lookback provision in Bill Draft 1 appears to be based upon a similar provision in NDCC Section 57-15-01.1, which is available for use by all taxing districts, including counties that have not consolidated mills, and which provides that a taxing district may levy the same number of dollars as that county levied in the base year, calculating the base year as the highest of the most recent three years. However, she said, Section 57-15-01.1 also provides for adjustments for new property and property that was in the taxing district in the base year and is no longer in the taxing district. She said Bill Draft 1 has no similar provision; however, Bill Draft 1 does have a provision based upon the consumer price index. Additionally, she said, Bill Draft 1 does not contain language regarding including the taxable value of property exempt by local discretion or charitable status, whereas Section 57-15-01.1 does.

Ms. Dickerson said Bill Draft 2 removes reference to the consumer price index and instead provides for an increase in tax dollars of up to 18 percent over the amount levied in the highest of the most recent three years. She said only school districts are able to take advantage of a similar provision, which allows for an 18 percent increase over dollars levied for the general fund in the previous year, not in the highest of the last three years. She said school districts also have the option of using the base year calculations.

Ms. Dickerson said Bill Draft 3 removes all growth language except for the maximum levy of 118 mills. She said under Bill Draft 3, a county could conceivably go from whatever number of mills it levied in the last year to the total of 118 mills. However, she said, under the current system a county that has not consolidated its mill levy has the option of treating each fund separately and for each fund the county may levy up to the maximum number of mills, which would be 118.6 mills.

In response to a question from Representative Kelsh, Ms. Dickerson said at this point no counties have consolidated their county mill levies.

Chairman Kelsh called on Mr. Merl Paaverud, State Historical Society, for comments regarding the consolidation of county mill levies. Mr. Paaverud said he supports removal of the county historical society from the consolidated general fund. He said county historical societies take care of a variety of services that the state does not. He said the valuable services offered through the county historical societies include providing programs for schoolchildren as well as providing economic development services. He said he perceives removal of the county historical society from the consolidated general fund as a mechanism to stabilize funding for these county services.

Chairman Kelsh called on Ms. Sandy Clark, North Dakota Farm Bureau, for comments regarding the consolidation of county mill levies. Ms. Clark provided written testimony, a copy of which is attached as Appendix D.

Ms. Clark clarified that because she did not have an opportunity to review the North Dakota Association of Counties three bill drafts, her written testimony does not specifically address these bill drafts. She said she would like to have an opportunity at a future meeting to discuss in more detail the counties' proposals.

Ms. Clark said the North Dakota Farm Bureau opposition to the county consolidated mill levy is related to the implementation process. She said consolidation of county mill levies should be placed on a county ballot before implementation. However, she said, under the current law a county can implement a consolidated general fund mill levy and citizen recourse is available after the fact. She said that over time consolidation could represent a significant tax increase without ever requiring a vote of the people.

Ms. Clark said the North Dakota Farm Bureau is opposed to basing growth on the consumer price index based on dollars rather than mills. Additionally, she said, the North Dakota Farm Bureau is opposed to a three-year lookback which would allow a county to use the highest valuation of the last three years. She suggested that the counties have the option each year of either using the consumer price index increase on mills or using the three-year lookback, but not both at the same time. Additionally, she said, the North Dakota Farm Bureau is opposed to providing for an 18 percent increase per year up to the mill levy cap.

Ms. Clark said the North Dakota Farm Bureau is opposed to how House Bill No. 1024 set the mill levy cap at 134 mills. She said there are several levies that are not being used by counties or are infrequently used by counties so those mills should not be used in setting the mill levy cap. She stated the result of leaving the county mill levy law in its current form would provide for three types of tax increases:

- Increases that can result from consolidation because no county is currently using those levies;
- Increases based on the consumer price index; and
- Increases as a result of increased property valuation.

Ms. Clark said the North Dakota Farm Bureau concurs with the North Dakota Association of Counties and county auditors' recommendation to amend out the levies dealing with the weed control board, county library board, weather modification board, and park and recreation board. Additionally, she said, she would support exempting the mill levies affiliated with county historical work and county fairs.

In response to a question from Citizen Member Montplaisir, Ms. Clark said that although she is not certain how counties appoint all boards, she is familiar with how county fair boards are appointed. She said county fair boards are not elected on county ballot; however, membership is voted on by the organization at an annual meeting and there are regular reports by the board to the board of county commissioners.

In response to a question from Senator Bowman, Ms. Clark said before the 2003 legislative session, the North Dakota Farm Bureau and North Dakota Association of Counties held conversations in an attempt to come to an agreement on the bill draft relating to the consolidation of county mill levies. However, she said, the North Dakota Farm Bureau and North Dakota Association of Counties have not been discussing proposed amendments to the county consolidated mill levy law. She said she would welcome the opportunity to initiate discussions with the North Dakota Association of Counties.

Chairman Kelsh encouraged the North Dakota Association of Counties and North Dakota Farm Bureau to communicate with each other to establish a common ground and report back to the commission at its next meeting.

Chairman Kelsh called on Mr. Merlin Leithold, North Dakota Weed Control Association, for comments regarding the consolidation of county mill levies. Mr. Leithold said that in response to Citizen Member Montplaisir's earlier question, the county weed boards' members are appointed by the board of county commissioners. He said in 2003 the North Dakota Weed Control Association opposed the inclusion of the weed boards in the county mill levy consolidation bill. He said that as a result of conversations with the North Dakota Association of Counties, they have come to an agreement to support exclusion of the weed board mill levy from the consolidation. He said there are some concerns that if the weed board levy was consolidated into a county general fund, the weed board may be found ineligible for some state funds that require a three-mill levy.

In response to a question from Senator Bowman regarding whether there is a possibility that when times get tough and money gets tight there will be a series of boards requesting to be exempted from the consolidated mill levy, Mr. Leithold said he would hope that exclusions be limited to boards that govern themselves. He said within these parameters there should be a limitation on the exclusion of boards. He said he understands the concerns of funding faced by county commissioners and county interests and although he recognizes the concern that consolidation may raise taxes, he also wants the counties to have the tools to be able to make the counties function.

Chairman Kelsh called on Ms. Doris Ott, State Librarian, for comments regarding the consolidation of county mill levies. Ms. Ott distributed a copy of a letter from Mr. Mike L. Halpern, Morton County Library Board, in support of excluding library boards from the consolidated mill levy general fund. A copy of this letter is on file in the Legislative Council office. Ms. Ott testified in support of excluding library boards from the county consolidated general fund.

Chairman Kelsh called on Ms. Roberta Steckler, McLean-Mercer Regional Library, for comments regarding the consolidation of county mill levies. Ms. Steckler supported exempting county library boards from the county consolidated general fund. She said that exempting library boards from the consolidated general fund would assist libraries in budgeting.

Ms. Steckler said in response to an earlier question by Citizen Member Montplaisir, her library board members are appointed by the board of county commissioners.

Citizen Member Montplaisir stated that in his experience, as a home rule county that has a consolidated general fund mill levy, it has worked well to have exempted membership boards from the general fund. Additionally, he said, regardless of whether a county consolidates mill levies to a general fund, county commissioners are always reluctant to raise taxes. He said consolidation makes the job of the county commissioners more difficult.

MOTOR VEHICLE BRANCH OFFICE PILOT PROJECT

Chairman Kelsh called on Ms. Linda Svihovec, McKenzie County Treasurer, for comments regarding the motor vehicle branch office pilot project. Ms. Svihovec distributed a packet of letters in support of continuing the pilot project, copies of which are on file in the Legislative Council office.

Ms. Svihovec said that following the April meeting of the commission, she met with Mr. Keith Kiser, Department of Transportation, to discuss establishing criteria for additional motor vehicle branch offices. She said that at the time of the meeting, Mr. Magnusson, who had attended the previous commission meeting, was not available to attend. She said Mr. Kiser informed her that the Department of Transportation was in the process of submitting a report to the Governor regarding the department's response to the performance audit; therefore, the department is not yet in a position to establish criteria regarding additional branch offices. As a result of this conversation with the Department of Transportation, Ms. Svihovec said the department's report to the Governor will include a letter from Ms. Svihovec, a copy of which is included in the packet of letters she distributed to the commission members.

Ms. Svihovec said she recognizes that some counties are not interested in pursuing a branch office and she recognizes that existing branch offices need to continue to make a profit.

Senator Bowman said if the counties are not able to come to an agreement with the Department of Transportation regarding setting criteria for future motor vehicle branch office site locations, the counties should create criteria on their own and submit this information to the commission.

In response to a request by Representative Kelsh, Ms. Svihovec and Mr. Traynor agreed to work on creating a set of criteria.

Citizen Member Frantsvog agreed with the counties working to establish criteria and recommended they include the needs of the for-profit branches in setting this criteria in order to increase support for additional offices.

Chairman Kelsh called on Mr. Kiser for comments regarding the motor vehicle branch office pilot project. Mr. Kiser said the letter prepared by Ms. Svihovec will be included in the report being submitted to the Governor. Additionally, he said, the department is willing to work with the counties and treasurers in establishing criteria and will take into account the needs of the private branches.

In response to a question from Senator Bowman, Mr. Kiser said he is not certain whether there is an exact method for determining the service area for a for-profit branch office; however, in the past the department has tried to respect traditional trade zones of cities in which these branches are located. He said proximity is one of several factors that should be included as criteria in setting branch office site locations.

Citizen Member Frantsvog said he is interested in reviewing the auditor's report to determine whether they provide any guidance in establishing criteria in site locations.

Senator Bowman said the motor vehicle branch office pilot project began as a result of the incentive of county treasurers who recognized a service they could provide. He said prior to that time there had not been a pressing demand for this service, but once this service was provided the community recognized the positive impact it had.

DOCUMENT PRESERVATION FUND

Commission members reviewed a bill draft [50069.0100] that would remove the June 30, 2005, expiration date from NDCC Sections 11-18-05 and 11-18-22.

Chairman Kelsh called on Ms. Ann Johnsrud, North Dakota County Recorders Association, for comments regarding the document preservation fund bill draft. Ms. Johnsrud said the committee bill draft is exactly what the North Dakota County Recorders Association requested. She said that as a matter of background, the $3 fee per document being used to fund the document preservation fund would be continued under the bill draft. She stated state law requires microfilming and offsite storage of microfilm of documents.

In response to a question from Senator Bowman, Ms. Johnsrud said from the inception of the document preservation fund until August 2003, approximately $1,174,689 has been deposited in the fund. She said a portion of the money from this fund has been used to totally fund the offsite repository requirement.

In response to a question from Citizen Member Montplaisir, Ms. Johnsrud said prior to the establishment of the document preservation fund, some counties did not have the resources to comply with the state law requiring microfilming and offsite storage of documents. However, she said, when the county recorders received the grant from the Federal Emergency Management Agency, certification was required establishing the microfilming and offsite repository provisions were being met.

In response to a question from Representative Kelsh, Ms. Johnsrud said Fargo is the location of the offsite repository. She said the counties keep the original microfilm and a copy goes to Fargo.

SHERIFF SERVICE OF PROCESS

Commission counsel reported that Mr. Ted Gladden, State Court Administrator, Supreme Court, had scheduling conflicts that prevented him from attending the meeting to provide a status report regarding the payment of sheriff service of process.

SITING OF WIND TURBINES

Chairman Kelsh called on Mr. John Dunlop, American Wind Energy Association, for comments on wind turbine siting. Mr. Dunlop made a computer presentation, a printed copy of which is on file in the Legislative Council office. Additionally, Mr. Dunlop provided a document entitled *American Wind Energy Association Wind Energy Developer's Guide to Wind Project Siting - Draft*, a copy of which is attached as Appendix E.

The topics included in Mr. Dunlop's presentation included discussion of where wind resources are located in the United States, which states have renewable energy standards, how much energy each state in the country uses, turbine technology statistics, statistics regarding worldwide use of wind energy, information regarding how policy affects wind energy, issues related to turbine siting, and statistics regarding the future of wind energy.

In response to a question from Citizen Member Frantsvog, Mr. Dunlop said statistics indicate that one full-time temporary position can be expected for each megawatt of wind energy and .01 to .02 full-time permanent positions can be expected per megawatt of wind energy.

In response to a question from Representative Kelsh, Mr. Dunlop said livestock do not appear to be affected by wind energy turbines.

In response to a question from Senator Bowman regarding his experience in California where he saw abandoned wind farms, Mr. Dunlop agreed that the wind energy industry has learned a lot from California's experience. He said in the late 1970s and 1980s wind energy incentives were based upon capital expenditure; therefore, wind energy was not necessarily very efficient. However, he said, the industry has learned from this situation and incentives are now typically based on productivity. He said that it is helpful to address the issue of cleanup of decommissioned sites when the initial site is determined and contracts are entered.

In response to a question from Representative Kelsh regarding decommissioning of wind turbines and whether it would be better to address this through state law or to allow the wind industry to address this issue, Mr. Dunlop said sometimes incentives at the state level can help ensure that the wind industry takes appropriate steps in decommissioning a wind turbine site. However, he said, wind is different from coal in that a wind turbine site will not face an exhausted resource, instead a turbine can be updated and essentially last indefinitely. He said possible options to address decommissioning may include establishing an escrow account or specifically dealing with ownership issues at the initial time of siting. He said when a wind turbine is removed frequently just the top three or four feet of concrete is removed from the ground with the remaining concrete remaining underground.

In response to a question from Senator Bowman regarding a tour he took of wind energy sites in Germany, Mr. Dunlop said it is extremely important to integrate wind energy into an entire utility system. He said the cost of integration is quite low but there are costs. He said for wind energy penetrations of less than 10 to 15 percent, the cost of integration is less than one-half of a cent per kilowatt hour. He said that although the issues related to the use of transmission lines need to be dealt with federally, there are examples of wind energy transmission being successful.

In response to a question from Senator Bowman regarding the statement made by a German that living by a wind turbine is like living below a helicopter, Mr. Dunlop said although it is true that wind turbines do change air current, that is exactly why siting requirements are so important. He said the location of residential areas should be considered when turbine siting. Additionally, he discussed the technological improvements resulting in quieter turbines.

In response to a question from Senator Bowman regarding transmission problems, Mr. Dunlop said coal power plants also face transmission line issues. He said the nation's transmission lines are going through a transition regarding ownership. He said that the existing transmission lines in the United States for the most part can be transfigured to adapt to transmitting wind power. However, he said, there is a possibility that some transmission lines will need to have a slightly increased corridor size.

Representative Kelsh said the Governor has established an Upper Great Plains Transmission Council, which is a joint effort, including the coal industry and the wind industry.

Senator Bowman said the state may need an overall policy regarding wind turbine siting; however, local governments need to be actively involved in siting issues and in determining exactly what needs exist in a community.

Mr. Dunlop said Minnesota is one of two states that have addressed wind turbine siting through state law. A copy of the Minnesota Environmental Quality Board Administrative Rules, Sections 4401.0100 through 4401.0610, is on file in the Legislative Council office. He said Minnesota limits the statewide siting requirements to large wind turbine projects, intentionally excluding wind community projects so that local zoning and ordinances can address these smaller projects. He said although the Minnesota siting requirements appear to be very onerous, the industry has found that the siting requirements have been workable and there are benefits from having a uniform policy throughout the state.

POSSIBLE AREAS OF STUDY

Chairman Kelsh said possible areas of study the commission may wish to consider include public records, open meetings, and shortening from five to three years the period of tax foreclosure on real property.

Senator Bowman requested additional information regarding consolidation of county mill levies, specifically clarification whether the process of consolidation gives counties authority to increase taxes which the county previously did not have.

Chairman Kelsh suggested a tentative meeting date of Thursday, June 10, 2004.

No further business remaining, Chairman Kelsh adjourned the meeting at 12:20 p.m.

Jennifer S. N. Clark
Commission Counsel

ATTACH:5