

# Advisory Commission on Intergovernmental Relations

Legislative Office Building, Hartford, Connecticut

Friday, March 6, 2020

**Members present:** James Albis, John Filchak, Betsy Gara (alt.), Sam Gold, Mary Glassman (alt.), Leah Grenier (alt.), Martin Heft, Marcia Leclerc, James O'Leary, Neil O'Leary (Chair), Francis Pickering, Scott Shanley, Ron Thomas, Bob Valentine, Lyle Wray (Vice Chair)

**Others participating:** Brian O'Connor

**Members absent:** Carl Amento, Maureen Brummett, Sen. Stephen Cassano, John Elsesser, Brian Greenleaf, Rick Hart, Tommy Hyde, Lon Seidman, Brendan Sharkey

**ACIR staff:** Bruce Wittchen

## 1. Call to Order

Commission chair Neil O'Leary called the meeting to order at 10:37.

## 2. ACIR Membership Updates

Commission member Thomas explained that the CT Council of Municipalities has nominated Hartford Mayor Luke Bronin to fill the remaining vacancy for an official of a vacancy of population 60,000 or more.

## 3. Consideration of the draft minutes of the February 7, 2020 meeting

A motion was made and seconded to approve the [minutes of the 2/7/2020 meeting](#) and the motion was approved unanimously.

## 4. Old business

### a. Updates on ACIR reporting

- Bruce Wittchen said the [final report](#) of the [Task Force to Promote Municipal Shared Services](#) has been submitted.

Commission member Heft pointed out that OPM must establish requirements and procedures for implementation by July 1<sup>st</sup>, as described in Subsections (e) and (f) of Sec. 366 of [PA 19-177](#), the section that had created the Task Force. He recommended that the ACIR establish a work group to assist in accomplishing this. He noted that funding probably will not be immediately available for the functions as described.

- Bruce Wittchen said the [2020 Compendium](#) was completed and submitted.
- Bruce Wittchen said a draft of an ACIR annual report is complete and explained that it will cover more than previous reports, which largely summarized other ACIR reports. This edition will also discuss the task force and other ongoing efforts of the group. He noted that he has also included a work plan for the coming year, which would have been a requirement of the original bill that led to PA 19-117. It seems like a good idea to do that now that the ACIR is doing more.

### b. Proposed work group on state-to-local and local-to-state reporting

Commission vice-chair Wray said he, Commission chair Neil O’Leary and Commission member Heft had met with [Dept. of Administrative Services](#) (DAS) Commissioner Geballe and Chief Information Officer (CIO) Mark Raymond. He provided an overview of the meeting, mentioning the interest in developing a single state portal, as well as the desire to simplify the shared delivery of local services. The goal is two-way communications, from local to state and from state to local, for activities such as permitting. This is one of the priorities identified in the Task Force report.

Commission vice-chair Wray said the group should identify a few areas to begin with and he suggested transportation be one of those. He said forms can be online and state agencies can also use SharePoint to provide information. He noted that this would be an effective way for the Dept of Public Health to share information regarding Corona virus.

There was a discussion of inviting Commissioner Geballe and CIO Mark Raymond to attend an ACIR meeting and Commission member Heft said he had asked them to hold the date of the ACIR’s April meeting. Commission vice-chair Wray said a lot of time is spent pushing paper and the associated cost is hidden. Commission chair Neil O’Leary said that, given the Commissioner’s recently added responsibilities might prevent him from attending the ACIR’s next meeting, but he hopes Mark Raymond can. Commission member Heft said he will follow up with them.

Commission chair Neil O’Leary asked for additional comments or suggestions. Commission member Leclerc mentioned the over-abundance of emails that municipalities receive and said a state portal could enable municipal officials to log in and see any messages from the state. It would be a central location for communications and help avoid messages being lost.

Commission vice-chair Wray said that is a great idea and noted that messages specific to a particular town would be made available to that town, while broader messages could be made available through SharePoint. Commission member Leclerc said such a system should enable towns to sign contracts online and Commission member Valentine said many towns on the Nutmeg Network had expected to be able to do these things.

Commission member Albis said the Dept. of Energy & Environmental Protection is working on doing something like this with its permitting and mentioned that there is a large number of documents. Commission vice-chair Wray said DOT has a project management system for such documents, but that system is not public facing. He mentioned Washington State DOT’s [Gray Notebook](#) as a good approach for making information available.

Commission member Filchak asked if agencies developing management systems are doing it in a coordinated fashion. Commission vice-chair Wray said that is a question for CIO Mark Raymond. He added that there are advantages and disadvantages to centralizing or to decentralizing, but said that there is much inconsistency between and within agencies.

## **5. Other Old Business**

### **a. Sampling mandates for more rigorous review and reporting of impacts**

Commission member Thomas provided an overview of recent discussions of having the ACIR doing more rigorous analyses of 3-5 mandates. The goal is to compare how the impacts experienced by municipalities compared with those predicted at the time of passage. He said CCM tried to examine a broad range of mandates and circulated a document, prepared by Brian O’Connor of CCM, outlining five mandates (see [Attachment A](#)).

Brian O'Connor and Commission member Thomas provided an overview of CCM's document. They first highlighted that state payments in lieu of taxes (PILOT) for state, hospital, and college property exempt from property taxes fall short of the amounts specified in statute. The state also does not provide the expected reimbursement for state's exemption of manufacturing machinery and equipment (MME).

They noted that special education costs are skyrocketing beyond predictions and the state is only reimbursing a percentage of the cost for a student beyond 4.5x the district's average cost per student. The third mandate described in the document is the unexpectedly high cost of municipal recycling and solid waste disposal and Commission member Thomas said this is not solely due to China restricting what can be sent there.

The 4<sup>th</sup> mandate is statutory pesticide bans and CCM's document provides examples from three municipalities. Commission member Thomas pointed out that mandates are not necessarily bad, but these have greater impact than originally said. The 5<sup>th</sup> mandate identified by CCM is the state's municipal separate storm sewer system (MS4) requirements and he said the state's interpretation of the federal requirement makes it more costly. Commission member Thomas noted that there has been some success in reducing mandates, including minimum budgeting requirements for education (MBR), prevailing wages, and the obligation to transport tenant possessions following an eviction.

Commission member Gold said prices individual municipalities pay for waste management vary greatly and it should be possible to do better by coordinating among municipalities. Commission member Shanley said the [CT Resource Recovery Authority](#) (CRRRA) was able to do that; the [Materials Innovation and Recycling Authority](#) (MIRA) is limited to recyclables. He added that the cost for recyclables is still lower than the cost for other solid waste.

Commission member Shanley noted that the state's [bottle bill](#) dates back to 1983 and he believes there needs to be broader response to the increased amount of packaging in the waste stream. He highlighted that bottled water is much more common now. Brian O'Connor mentioned [product stewardship](#) efforts that shift the cost of managing waste from municipalities to the manufacturer, such as the mattress stewardship program enacted in [CGS 22a-905 – 22a-905g](#).

Commission member Albis said that CT has a relatively low redemption rate under its bottle bill. CT provides a low handling fee, so there are fewer redemption centers than in some other states. He said a 10¢ deposit also improves the redemption rate. He mentioned [SB 11](#), *An Act Concerning The Reliability, Sustainability And Economic Vitality Of The State's Waste Management System*, and said the public hearing is underway now. Among other things, it directs DEEP to seek additional facilities for handling waste.

Commission member Valentine said the unit costs of municipal solid waste are higher than they would otherwise be because recycled material is not included. Commission chair Neil O'Leary said Waterbury is experiencing the impacts of these solid waste issues and he hears it will get worse before it gets better.

Commission member Shanley said MIRA is operating under a favorable contract that keeps costs below what they would otherwise be. Costs will rise in the next contract. He mentioned state restrictions on what can be burned and said the world of solid waste in 2020 is very different from what it had been in 1983. We have to rethink everything. He said that it's a public cost, but it's our garbage. He added that he hopes DEEP, not MIRA, pays for any needed studies and mentioned the age of MIRA's equipment. MIRA is unable to bond and private financing has not been available.

Commission chair Neil O’Leary said Waterbury was able to double recycling by providing bins and education, but costs began rising. Commission member Leclerc said there needs to be a broader approach. As an example, she mentioned that state support of farming and other local production could reduce the amount of packaging being discarded.

Commission member Thomas said CCM is planning a press conference to highlight the ACIR’s [2020 compendium](#) and some potentially costly proposals of the current session. He mentioned the post-traumatic stress injury benefits of [SB 231](#) as being an example of such a proposal. He added that the ACIR’s document is well worth reading.

b. Review of DAS technology/automation meeting

Commission vice-chair Wray noted that this was discussed earlier and invited any suggestions that can help guide the effort.

c. Future meeting topics and/or invitations

There was a discussion of the consequences of [CGS 7-339a](#) limiting the applicability of interlocal agreement statutes to municipalities. Commission member Filchak explained that the CT Dept. of Agriculture (DoAg) has said it will not recognize his COG’s regional animal control service, which serves 22 municipalities. He noted that similar interpretations could jeopardize ambulance, assessment, or other regional services and asked how many other regional services might face similar statutory restrictions. A council of governments cannot sign agreements as a municipality.

Commission vice-chair Wray said his COG has dodged this problem because agreements are structured so that each regional facility is owned by a municipality. Commission member Filchak said approval by COG or regional education services center (RESC) would qualify without need of town-by-town ratification. Commission vice-chair Wray recommended that the ACIR compile a list of regional services that might be similarly affected.

Commission member Filchak said another issue that has arisen regarding the regional animal control is that DoAg says his COG’s operation would lose its grandfathering if it is changed to interlocal. He believes these problems can be resolved, but the process should not work this way. Commission member Valentine said the [Northwest Hills COG](#) (NHCOG) is also thinking of such issues and said the problem is sometimes administrative, not legislative. He explained that small towns are authorized by statute to share resident state troopers, but the Division of State Police has been reticent.

Commission member Gold suggested reviewing Title 7 of the statutes to identify statutory conflicts. Commission member Shanley said the problem might be addressed by modifying the “two or more municipalities may jointly...” language of [CGS 7-148cc](#) to also include COGs and RESCs. There was a discussion of the desire for a simple fix.

Commission member Pickering said agencies read statutes too narrowly and changes in statutory wording could help limit that. Commission member Filchak said many agencies that used to rely on the Attorney General’s office now have in-house attorneys now, resulting in more inconsistency. Commission member Gold said a lot of work will be necessary and the ACIR should take a position on solving such problems in Title 7 of the statutes. Commission member Pickering said the focus of those statutes should be that the specified services are provided.

Commission vice-chair Wray referred to recent 5G discussions and said the state should take action to avoid a situation in which service providers must negotiate separate agreements with each each

municipality. Boilerplate municipal agreements can streamline the process. The state should also ensure the consideration of additional factors, such as equity of access.

Commission member Shanley said the choice of where to live has upsides and downsides. The initial roll-out of 5G will be in urbanized areas; rural areas have other advantages. He noted that any health impacts associated with the 5G units would likely be greater in areas of denser service. He recommended that an expert be brought in for a presentation on health impacts.

There was a discussion about the need for reliable information and Commission vice-chair Wray pointed out that there are three kinds of 5G. There was further discussion of the information needed regarding differences between the 5G alternatives and their potential impacts. Commission member Pickering said it would be beneficial if CTN can cover that meetings and he noted that there should be a broader look at impacts of all radio-frequency energy. He agreed that uncertainty leads to fear.

Commission member Gold noted that previously used frequencies are being re-allocated for 5G service. Commission member Shanley said people are skeptical of government edicts about product safety after official assurances that some opioids are non-addictive. Commission vice-chair Wray mentioned the [Governor's 5G Council](#) and said the ACIR's look into this can piggyback on what that group has done.

Commission vice-chair Wray mentioned Nick Simmons, member of the 5G Council and Manager of Strategic Initiatives in the Governor's Office, and there was further discussion of concerns that have been raised and how the state might address them. Commission member Valentine said small towns recognize that they will not get 5G immediately, but the state should not lose track of their needs. The state should ensure the rollout of trunk lines that would serve them and noted the need to maintain property values. He added that their needs might be met instead by a more robust 4G service or broadband.

## **6. Other municipal, regional, or state matters, if any**

There were no additional municipal, regional, or state matters.

## **7. Adjournment**

A motion was made and seconded to adjourn the meeting and it was approved unanimously. The meeting was adjourned at 11:46.

*Minutes prepared by Bruce Wittchen, OPM*



## **Five Mandates Presented As Minimal, But Are More Costly Than Thought**

### **Payment in Lieu of Taxes (PILOT)**

The state provides payments in lieu of taxes (PILOT) to municipalities in order to reimburse towns and cities for the revenue they lose for hosting private nonprofit college and hospital property and state-owned property. The purpose of PILOT payments are to help offset the amount of revenue a municipality would have collected in property taxes from a private nonprofit college or hospital property or state owned property if they were not tax exempt.

The rate of reimbursements for the PILOT programs are set in state statute. For private nonprofit college and hospital property it is 77% and for state-owned property the reimbursement rate is 45%. Unfortunately, the state has not reimbursed at these levels in years, but has instead insufficiently funded the grant and reduced the percentage reimbursements to municipalities for the tax losses they incur for hosting these tax exempt properties. In essence, the state has effectively cut the reimbursement rates for the PILOT programs. *Currently, PILOT for state property is reimbursed at 15%, underfunded by about \$115 million; PILOT for private colleges and hospitals is reimbursed at 23%, underfunded by \$240 million.*

Reviewing the town runs produced by the Office of Fiscal Analysis (see attached), the College and Hospital PILOT has been reduced from \$125.4 million in FY 15 to an estimated \$109.9 million in FY 21 and State PILOT has been reduced from \$83.6 million in FY 15 to an estimated \$54.9 million in FY 21.

This loss of revenue, combined with the increase in other unfunded mandates, has placed an extraordinary amount of pressure on the property tax to fund municipal operations due to Connecticut's overreliance on the property tax as a municipality's primary source of revenue.

### **Special Education Excess Cost Grant**

The special education excess cost grant reimburses school districts for (1) the reasonable costs of special education for a student who lives in the district that exceed 4.5 times the district's average per pupil expenditures for the preceding year and (2) 100% of the cost of special education for any student placed in the district by a state agency and who has no identifiable home district in the state. (Source, Office of Legislative Research, 2007-R-0043)



The excess cost grant is calculated by adding up all the reasonable costs of special education services a district provides to a particular student and subtracting the district's "basic contribution." The basic contribution is 4.5 times a district's average per pupil expenditure for the preceding year, in the case of a resident student, and 100% of that expenditure in the case of a state-agency-placed child with no identifiable home school district. Any expenditure exceeding the basic contribution is reimbursable by the state. (Source, Office of Legislative Research, 2007-R-0043)

The grant does not reimburse districts for regular education costs attributable to a special education student. (Source, Office of Legislative Research, 2007-R-0043)

In FY 03, the Excess Cost Grant for Special Education was capped by the State Department of Education (SDE) and this status has been maintained through FY 20 with the exception of FY 09 (Source, Office of Fiscal Analysis, 2020 Budget Book). These prorated allocations have not kept up with the significant rise in special education costs and have necessitated municipalities to raise property taxes to address the shortfall.

The Excess Cost Grant is proposed to be flat funded at FY 19 levels at \$140.6 million. Due to the cap, municipalities are losing approximately \$62.2 million in FY 20 and \$68.5 million in FY 21. If the cap were removed and municipalities and school districts were to receive their full statutory Excess Cost Grant, then the allocation would be approximately \$202.8 in FY 20 and \$209.1 in FY 21.

These funds are badly needed because of the substantial increase in special education costs at the local level. Not fully funding the Excess Cost Grant only exacerbates the property tax burden placed on taxpayers and the fact that there has been a cap on the excess cost grant for almost two decades puts further pressure on municipal budgets because of the lost revenue.

### **Recycling/Solid Waste**

Towns and cities of all sizes in every region of the state have seen municipal recycling move from a revenue generator for their town government to a growing expense item, as the sales market price for recycles has collapsed, primarily because of the cutoff of sales to China of recycled materials.

Municipal officials believe that this recycling crisis will not be resolved quickly. The decision of China to not accept materials with over 0.5 percent contamination will not go away. Moreover, China has initiated a massive recycling effort of its own that will use the freed up capacity of its recycling facilities with domestic materials.

Here are some specific cost examples, from that release, of the communities where their recycling operation has moved from a revenue generator to a growing expense – highlighted by the net change for their town moving from a revenue item to an expense item from the current fiscal year to how they are budgeting for it for the new fiscal year.

- Bridgeport – Shifting from \$129,512 in profits to projected \$394,380 in expenses.
- Stamford -- Now paying \$700,000 to a company to process its recycling materials; a significant change from last year when the city generated \$95,000 in revenues.
- Waterbury – Shifting from \$15,022 in revenues to \$330,000 in expenses.
- Fairfield – Shifting from over a \$50,000 profit center to a \$525,561 cost center.
- Milford – Shifting from \$85,000 in revenue to \$250,000 in costs.
- Stratford -- Shifting from a \$64,000 profit center to a \$240,000 cost center.
- Hamden -- Shifting from no net expense to a \$190,000 cost item.
- Seymour – Shifting from \$12,000 in revenues to \$171,316 cost item
- North Haven – Previously incurred no cost or revenue from recycling and now will have to pay \$70 per ton.
- Plymouth -- Previously received \$9.05 per ton for recycles and now will have to pay \$70 a ton – that is an \$80,000 swing from a revenue item to and expense item.
- Montville -- Previously received \$5.00 per ton for recycles and now will have to pay \$30 a ton – that is a \$35 per ton swing from a revenue item to and expense item.
- Wilton -- Previously received \$20 per ton for recycles and now will have to pay \$65 a ton – that is an \$85 per ton swing from a revenue item to and expense item.
- Naugatuck: -- Was being paid \$16 a ton for recycling, but now have to pay \$23 a ton.
- Union -- Changing from \$500 in revenue through recycling to a \$3,000 expense.
- Columbia -- Changing from \$2,027 in revenue through recycling to a \$12,166 expense.
- Manchester – They are locked in on a rebate contract until June 2022. As a result they currently receive a \$5/ton rebate for single stream and rigid plastic from the transfer station. The town's annual rebate ranges between \$20,000 and \$22,500 at the \$5/ton. Prior to 2017 they were receiving a \$22.50/ton rebate. They deliver approximately 4,000 to 4,500 tons per year which, unless there is a significant shift if markets prior to the expiration of their current contract, will result in a liability of \$250,000 to \$300,000 per year.
- Middletown -- Most of Middletown residents are serviced by private subscription however a small area is serviced by the City Sanitation District. Their budget for recycling has fluctuated over the past 25 years, but this is certainly the biggest down turn they have seen. The City's contract changed in Jan. 2018 – they went from a \$0 tip fee for single stream to paying a monthly index price ranging from \$40-55/ton. As a result they had to add \$30,000 into the budget to cover the additional costs. On the subscription side of things, they are serviced by two haulers who operate in the City. Recently one of the haulers increased their prices and as a result, the City has been receiving a lot of calls complaining about the increase and the lack of choices available.

Connecticut towns and cities cannot afford to have recyclables become a greater expense, one that matches solid landfill waste. Connecticut answers should include the



modernization of our states bottle bill program and continued efforts to develop domestic recycling facilities for all recycling needs. Over the years, Connecticut, whether intentionally or unintentionally, has created a closed market for the collection of our municipal solid waste (MSW) and recyclable materials. This closed market has consequently resulted in a lack of competitive response to municipal requests for proposals, for the management of their waste and recyclables. Connecticut needs to start to think of ways to reinvigorate the competitive marketplace around municipal solid waste and recycled content collection.

### **Impact of Pesticide Bans**

Since the passage of the ban on synthetic herbicide and pesticide use on K-8 school grounds, **towns and cities across the state have been faced with rapidly deteriorating fields and large expenses in attempts to rehabilitate them.**

- The increased presence of grubs in fields has attracted rodents, which burrow through the soil creating dangerous tunnels that cave in as players run across them increasing the risk of player injury.
- Species such as crabgrass have begun to take over the soil, causing it to harden, not respond to aeration, increasing soil density which increases the risk of concussions.

The current ban on pesticide use have increased costs in both labor and materials and these effort are often ineffective in maintaining athletic fields and parks. The negative impact has been most pronounced in distressed municipalities and cities, which have limited space to create additional fields, the resources to implement costly yet ineffective organic only maintenance programs, or install artificial turf fields which exceed \$1 million apiece.

- Hebron has calculated the current cost to maintain an elementary school field where IPM practices are prohibited in comparison to a municipal field maintained through an IPM program is almost double, \$17,310 per year vs. \$10,212 per year. Despite the investment of significant labor and resources, the quality of the field is below that of the municipal field maintained through the use of an Integrated Pest Management plan (IPM).
- Bristol has calculated that passage of these bills would increase costs of maintaining their fields from the current \$800 per acre to more than \$2500 per acre using a sustainable turf grass plan utilizing only EPA 25b minimum risk pesticides and an aggressive over seeding program.
- Madison which maintains over 20 acres of fields and grounds, has estimated that the cost of attempting to maintain theses grounds through the use of an organic only program would increase by more than \$45,000 per year, with limited expectations as to the quality of the fields and grounds.

### **MS4 Permit**

The MS4 Permit which became effective July 1, 2017, was similar in structure to the previous permit issued in 2004 but the six control measures, as referenced below, mandated by the permit contained significantly more detailed requirements which reduced municipal flexibility when implementing the permit and subsequently increased costs.

### **Public Education and Outreach**

Requirements are similar to the 2004 permit but includes more detail on the types of outreach, means of conducting the outreach, and specifies outreach that target pet waste, application of fertilizers, herbicides, and pesticides, and impacts of illicit discharges and improper disposal of waste into the MS4.

### **Public Participation**

This measure is not significantly different previous permit but requires a municipality to publish a public notice of the availability of its Stormwater Management Plan and Annual Report for public review, and requires a minimum of a 45 day comment period to solicit and receive public comment on the Annual Report.

### **Illicit Discharge Detection and Elimination (IDDE)**

The current permit contained significantly more detailed requirements regarding:

- Legal authority required to implement the IDDE program;
- Protocols for performing the field work to detect and eliminate illicit discharges;
- Mapping requirements;
- Citizen reporting provisions and;
- Timeframe for IDDE program completion.

The new general permit also contains new requirements for record keeping to document the progress of the IDDE program

### **Construction Site Stormwater Runoff Control**

While containing all of the requirements of the previous general permit, this section of the new general permit increased the specifications regarding the legal authorities the MS4 must develop to manage construction site runoff within its jurisdiction.

### **Post-construction Stormwater Management**

The permit expanded this section to require MS4s to update their land-use regulations to include among other items:

- Low Impact Development (LID) measures;
- Post-construction stormwater retention and;

Additionally the MS4 must develop a program to ensure the inspection and long-term maintenance of existing stormwater facilities under the jurisdiction of the MS4 as well as provide, through its land-use regulations, requirements for long-term maintenance of stormwater management measures in new applications for development.

### **Pollution Prevention and Good Housekeeping**

This section of the permit expanded on the requirements of the current general permit regarding the maintenance of the MS4's property and operations including but not limited to parks and open space, employee training, the management of pet waste and waterfowl, buildings and facilities, vehicles and equipment, parking lots, snow management practices, street sweeping, leaf management and catch basin cleaning.

In addition to these standard requirements, this measure includes a Retrofit Program. The Retrofit provision requires permittees develop a plan to implement retrofit projects before end of 3rd year of the effective date of the permit to disconnect existing DCIA through retrofits / redevelopment projects that utilize LID/runoff reduction measures. This is a goal to disconnect 1% in the 4th and 5th years of the permit (total of 2 percent. Permittees must track total acreage it disconnects and may include disconnections from projects 5 years *prior* to the effective date.