

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

POLITICAL SUBDIVISION TAXATION COMMITTEE

Thursday, October 13, 2016
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Jason Dockter, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Jason Dockter, Kathy Hogan, Lawrence R. Klemin, Ben Koppelman, William E. Kretschmar, Alisa Mitskog, Naomi Muscha, Mike Nathe, Nathan Toman, Robin Weisz; Senators Brad Bekkedahl, Randall A. Burckhard, Tim Mathern, Jessica Unruh

Members absent: Representatives Larry Bellew, Mark A. Dosch, Craig Headland, Mike Lefor, Gail Mooney; Senators Dwight Cook and Jim Dotzenrod

Others present: See [Appendix A](#)

It was moved by Senator Burckhard, seconded by Senator Unruh, and carried on a voice vote that the minutes of the September 13, 2016, meeting be approved as distributed.

REQUIRED REPORTS

Chairman Dockter called on Ms. Rikki Roehrich, Program Administrator, Community Services, Department of Commerce, for presentation of a report ([Appendix B](#)) pertaining to renaissance zone progress and a summary of reports ([Appendix C](#)) provided by cities that have a renaissance zone included in a tax increment financing district. Ms. Roehrich said 1,533 projects have been approved and 1,175 projects have been completed since the inception of the renaissance zone program. She said in 2015 there were 58 renaissance zones in the state. She said a survey of renaissance zone communities conducted in 2015 indicated renaissance zones created 11 new businesses, 15 business expansions, and 122 new jobs. She said the total benefits realized by the 59 projects that reached completion in 2015 amounted to over \$2.8 million in property tax exemptions, \$250,000 in historic property preservation or renovation income tax credits, and over \$1.1 million in single-family, business, and investor income tax credits and exemptions. She said the cities of Bismarck, Hazen, and Mandan have properties located in both a renaissance zone and a tax increment financing district. She said Mandan is the only city with properties receiving benefits from both the renaissance zone program and tax increment financing program. She said renaissance zones are a vital economic tool for smaller communities.

Chairman Dockter called on Ms. Carla Hahn, Accountability Manager, Department of Commerce, for presentation of an annual grantor report ([Appendix D](#)) relating to the business incentive accountability law. Chairman Dockter said this information was required to be reported to the interim Taxation Committee and a request was made for Ms. Hahn to represent this information to this committee as the information is relevant to the committee's study of economic development tax incentives.

Ms. Hahn said a business must enter a business incentive agreement with a grantor before the business can receive an incentive. She said business incentive agreements must contain a description of the incentive to be granted as well as the job goals the business seeks to achieve within the first 2 years. She said recipient businesses must report on progress toward achieving stated goals. She said for the period of 2011 through 2015, 748 business incentive accountability agreements were entered totaling an incentive value of \$107,229,806. She said the report details the distribution of business incentives by type, public purpose, and type of business. She said the report also provides the number of agreements entered in the database by year and identifies whether the goal of the agreement was to create jobs, retain jobs, or neither.

In response to a question from Senator Burckhard, Ms. Hahn said 73 percent of the agreements entered over the last 5 years met the stated goals within 2 years.

In response to a question from Senator Mathern, Ms. Hahn said the granting agency is the agency that determines if and when the grantee has met the goals stated in the business incentive agreement.

In response to a question from Chairman Dockter, Ms. Hahn said the primary incentives relating to real estate would be the flex partnership in assisting community expansion family of programs offered through the Bank of North Dakota. She said these programs do not contain job creation goals but focus more on community development.

Representative Hogan said it might be beneficial to add some of the considerations addressed in this report to the items to be considered by the interim committee assigned the study of incentives during the 2017-18 interim.

ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY

Chairman Dockter called on the Legislative Council staff for presentation of an updated copy of the [Economic Development Tax Incentive Study - Evaluation Chart](#). Updated background memorandums pertaining to the [Economic Development Tax Incentive Study - Automation Tax Credit](#), the [Economic Development Tax Incentive Study - Telecommunications Infrastructure Sales Tax Exemption](#), the [Economic Development Tax Incentive Study - Angel Fund Investment Tax Credit](#), and the [Economic Development Tax Incentive Study - Soybean or Canola Crushing Facility Construction or Retrofit Credit](#) were provided following the meeting to include a full accounting of the data and testimony submitted over the course of the interim. The Legislative Council staff said the evaluation chart and updated background memorandums serve to assist the committee in tracking its progress in evaluating the economic development tax incentives selected for review this interim.

Chairman Dockter reminded the committee the study of incentives spans over 3 interims so any portions of the evaluation chart the committee did not have adequate time to complete may be revisited and further addressed during the 2017-18 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a bill draft [[17.0292.01000](#)] to eliminate the sunset date on the income tax credit for purchases of manufacturing machinery and equipment for automating manufacturing processes. The Legislative Council staff said the credit is equal to 20 percent of the cost of manufacturing machinery and equipment purchased in the taxable year to automate a manufacturing process, and is set to expire at the end of 2017.

Senator Bekkedahl said it is likely this program does as much good in expanding business opportunity as the angel fund program and he did not agree with the change made during the 2015 legislative session to reduce the maximum annual amount of the credit from \$2 million to \$500,000.

Representative Klemin said it is important to move this bill draft forward for recommendation to the Legislative Management, and if legislators would like any additional changes made to the amount of the credit, those changes could be brought forward during the 2017 legislative session.

Representative Mitskog said she agreed it is important to move this bill draft forward as a number of companies are struggling to find workers and the automation credit has helped to fill that void.

Representative Nathe said sometimes, with bills recommended by an interim committee, there is not an adequate presence by legislators to carry the bill through the process. He said sometimes there is greater value in having an individual legislator sponsor a bill so there is someone available to champion the bill from start to finish.

Senator Mathern said interim committee bills do have the added weight of indicating the bill topic has been well studied prior to introduction.

It was moved by Representative Klemin, seconded by Senator Unruh, and carried on a roll call vote that the bill draft [[17.0292.01000](#)] to eliminate the sunset date on the income tax credit for purchases of manufacturing machinery and equipment for automating manufacturing processes be approved and recommended to the Legislative Management. Representatives Dockter, Hogan, Klemin, Koppelman, Kretschmar, Mitskog, Muscha, Toman, and Weisz and Senators Bekkedahl, Burckhard, Mathern, and Unruh voted "aye." Representative Nathe voted "nay."

Chairman Dockter called on the Legislative Council staff for presentation of a bill draft [[17.0293.01000](#)] to eliminate the sunset date on the sales and use tax exemption for equipment used in telecommunications infrastructure development. The Legislative Council staff said the sales and use tax exemption is set to expire on July 1, 2017.

It was moved by Representative Klemin, seconded by Senator Burckhard, and carried on a roll call vote that the bill draft [17.0293.01000] to eliminate the sunset date on the sales and use tax exemption for equipment used in telecommunications infrastructure development be approved and recommended to the Legislative Management. Representatives Dockter, Hogan, Klemin, Koppelman, Kretschmar, Mitskog, Muscha, Nathe, Toman, and Weisz and Senators Bekkedahl, Burckhard, Mathern, and Unruh voted "aye." No negative votes were cast.

Chairman Dockter called on the Legislative Council staff for presentation of a bill draft [17.0299.01000] relating to dynamic fiscal impact analysis of economic development tax incentives reviewed by a Legislative Management interim committee. The Legislative Council staff said the bill draft was requested at the previous meeting to provide for a pilot project using Regional Economic Models, Inc., (REMI) software, or some other dynamic fiscal impact analysis software, during the 2017-18 interim by the committee tasked with studying economic development tax incentives. She said language has been placed in the bill draft to specify that the pilot project must be undertaken at the directive of the Legislative Management and the dynamic revenue analysis may be performed only to evaluate those incentives selected for review during the 2017-18 interim. She said appropriation language has been placed in Section 2 of the bill draft to provide for up to \$165,000 for the purchase of dynamic fiscal impact analysis software for the 2017-19 biennium. She said this figure was based on quotes the committee received from REMI representatives, which indicated a purchase price of \$136,000 for the first year the software is acquired and a yearly maintenance cost of \$28,500 for each additional year the software is retained.

In response to a question from Representative Klemin, the Legislative Council staff said, pursuant to statute, the interim committee assigned the study of incentives would have until October 1, 2017, to select the incentives to be reviewed during the 2017-18 interim. She said a dynamic revenue analysis would apply only to those incentives selected by the committee for review.

In response to a question from Senator Unruh, the Legislative Council staff said the bill draft directs the software be housed in the Legislative Council office per the committee's request at the previous meeting.

Senator Mathern said over the course of the interim the committee has learned the amount of the incentives awarded range in the millions and it seems clear the committee needs better tools to fully evaluate and assess the effectiveness of incentives. He said he would be in support of the bill draft.

In response to a question from Senator Burckhard, the Legislative Council staff said the stated appropriation amount does not take into account the hiring of any additional staff or the hiring of an economist. She said the impact on existing Legislative Council staff would primarily depend on the number of incentives selected for review during the 2017-18 interim. She said if REMI software is selected, there will be some upfront time required of Legislative Council staff to learn how to effectively use the software and to customize the software to North Dakota's specifications.

Representative Klemin said he would be more comfortable using the word "utilizing" or "acquiring" rather than "purchasing" in the appropriation section of the bill draft as the REMI representatives noted software could be rented rather than purchased.

Representative Toman said he did not see the necessity for changing the word "purchasing" in the appropriation language because with a software rental you are essentially signing a letter of intent to purchase a software lease.

Senator Unruh and Representative Nathe said they were also comfortable with the word "purchasing" remaining unchanged in the appropriation language.

The Legislative Council staff said REMI representatives provided a price quote of \$54,700 to rent the software for a 6-month period. She said if a rental option were ultimately selected, the committee would need to be mindful of the number of incentives selected for review as the window for gathering data, receiving testimony, and running a revenue analysis on various competing scenarios would be condensed into that 6-month timeframe.

It was moved by Representative Klemin, seconded by Senator Bekkedahl, and carried on a roll call vote that the bill draft [17.0299.01000] be amended on page 4, line 20, to change "purchasing" to "acquiring." Representatives Hogan, Klemin, Koppelman, Kretschmar, Mitskog, Muscha, Toman, and Weisz and Senators Bekkedahl and Mathern voted "aye." Representatives Dockter and Nathe and Senators Burckhard and Unruh voted "nay."

It was moved by Senator Mathern, seconded by Representative Toman, and carried on a roll call vote that the bill draft [17.0299.01000], as amended, relating to dynamic fiscal impact analysis of economic development tax incentives reviewed by a Legislative Management interim committee, be approved and recommended to the Legislative Management. Representatives Dockter, Hogan, Klemin, Koppelman, Kretschmar, Mitskog, Muscha, Nathe, and Toman and Senators Bekkedahl, Burckhard, Mathern, and Unruh voted "aye." Representative Weisz voted "nay."

Chairman Dockter called on the Legislative Council staff for presentation of a bill draft [\[17.0110.03000\]](#) relating to investments in qualified businesses for purposes of the angel fund investment tax credit. The Legislative Council staff said the bill draft is a revised version of the draft the committee reviewed at the prior meeting. She said changes to the bill draft include the addition of language recommend by the Securities Commissioner regarding compliance requirements and enforcement provisions relating to the provision of false or misleading information. She said the bill draft provides the Department of Commerce authority to revoke an angel fund's certification and the Tax Commissioner the authority to revoke previously awarded credits.

In response to a question from Representative Nathe, the Legislative Council staff said this bill draft differs from the bill draft the committee previously recommended in that this bill draft modifies the workings of the current angel fund tax credit while the other previously recommended bill draft sunsets the angel fund tax credit provisions and provides increased credit thresholds for the seed capital investment tax credit. She said if both bills were to pass, the previously recommended bill draft would nullify the impact of any changes made by this bill draft as the angel fund tax credit would no longer be in effect for purposes of earning additional tax credits. She said the committee received quite a bit of positive testimony on the bill draft the committee previously recommended. She said both the Tax Commissioner and representatives from the Department of Commerce indicated the previously recommended bill draft that redirected investments through the seed capital credit was preferable to a bill draft that sought to rework the existing angel fund provisions.

In response to a question from Representative Klemin, the Legislative Council staff said the bill draft serves as an alternative to the bill draft the committee recommended at a prior meeting.

Chairman Dockter said this bill draft was provided for committee members who expressed interest in an alternative version of a bill draft.

In response to a question from Representative Weisz, the Legislative Council staff said the bill draft would not restrict angel fund investments to only in-state businesses as the definition of a qualified business is not restricted to only in-state businesses.

Senator Mathern said he wondered if it would be important for the committee to recommend both angel fund bill drafts to the Legislative Management to address compliance concerns.

Representative Nathe said if any additional changes need to be made for compliance purposes, those changes could be added as an amendment during the legislative session to the previously recommended bill draft. He said the fact that the Tax Department and the Department of Commerce are supportive of the previous bill draft makes him very comfortable moving forward with that bill draft. He said providing investment tax credits through the seed capital program, rather than the angel fund program, does not prevent anyone from investing in businesses, but provides for the transparency and accountability the committee is looking for when tax credits are awarded.

Chairman Dockter said prior to the existence of the angel fund program, the seed capital program was the primary program for investing and that program contains more safeguards than the angel fund program.

In response to a question from Representative Weisz, Chairman Dockter said any investments that qualified for a tax credit under the angel fund program prior to the passage of the provisions in either bill draft would not be impacted. He said both bill drafts would only impact new money invested in an angel fund after the effective date of either bill draft.

Chairman Dockter called on Mr. Ryan Rauschenberger, Tax Commissioner, for comments relating to the bill draft and recent angel fund developments.

In response to a question from Representative Weisz, Mr. Rauschenberger said looking at the provisions of the bill draft without consideration of the previously recommended bill draft, the reporting requirements in this bill draft would only apply to investments made after this bill draft's effective date. He said only investments made after the effective date would be subject to the new reporting requirements.

In response to questions from Senator Mathern, Mr. Rauschenberger said if this bill draft is the only bill draft to pass, the additional reporting requirement language would be necessary. He said the reporting requirement language would not be necessary if the previously recommended bill draft is the only bill draft to pass. He said this bill draft involves a three-layer transaction; between the investor, the angel fund, and the business; whereas the previously recommended bill draft involves a two-layer transaction, between the investor and the business, so the additional reporting requirement language would not be necessary. He said most angel funds are already well capitalized. He said angel funds still would be able to invest, but only would be able to earn tax credits through the seed capital program.

Chairman Dockter called for comments from interested persons in attendance in regard to the bill draft. No comments were received.

Chairman Dockter said the angel fund bill draft the committee previously recommended addresses concerns raised by the committee in regard to the need for transparency and additional restrictions as to where investment dollars qualifying for the credit may be invested. He said any additional concerns raised by committee members can be addressed as amendments to the recommended bill draft during the upcoming legislative session.

SOCIAL SERVICES FINANCING STUDY

Chairman Dockter called on the Legislative Council staff for presentation of a bill draft [[17.0287.02000](#)] relating to the transition of funding responsibility for county social services. The Legislative Council staff said various adjustments have been made to the prior version of the bill draft to incorporate changes recommended by the working group. She said the quarterly disbursement schedule for formula payments was reduced to two semiannual disbursements occurring on or before January 10 and on or before June 15 of each year. She said the disbursement date for hold harmless payments related to the 12 percent state-paid property tax credit also was changed to on or before January 31 of each year. She said language relating to the timing for determining fund carryforward limits also was modified as a result of the changes to the formula payment disbursement dates. She said an additional change was made to the hold harmless provisions relating to the maximum and minimum payments a service area can receive. She said the previous version of the bill draft allowed a service area to exceed the maximum payment thresholds if the service area's most recent year caseloads exceed the service area's base year caseloads by more than 5 percent. She said upon further evaluation, it was determined the language was ambiguous as to whether the 5 percent increase applied to economic assistance cases, social service cases, or both. She said the language was clarified to note the determination of a more than 5 percent increase in caseloads is determined separately for each case type and is measured as a comparison to prior year caseloads, rather than base year caseloads. She said an additional limiter was applied to the amount by which a service area could exceed the maximum funding threshold if the service area's caseloads exceeded the defined limits. She said the final change to the bill draft involves an adjustment to the language referencing federal payments to align with the language recommended by the Department of Human Services.

Chairman Dockter called for comments from interested persons in attendance in regard to the bill draft.

Mr. Zachary Smith, Director, Communications and Government Relations, North Dakota Association of Rural Electric Cooperatives, said rural electric cooperatives recently were included in the 12 percent state-paid property tax credit provisions. He said as this bill draft serves to repeal the 12 percent state-paid property tax, rural electric cooperatives would request language be added to the bill draft to hold rural electric cooperatives harmless in the same manner as counties are being held harmless in the bill draft. He requested further action on the bill draft be delayed to provide rural electric cooperatives the opportunity to meet with working group members and craft additional language to hold rural electric cooperatives harmless.

In response to a question from Chairman Dockter, Mr. Smith said the hold harmless payment in the bill draft would not apply to rural electric cooperatives in the same manner it applies to counties because rural electric cooperatives are not subject to property tax. He said rural electric cooperatives make payments in lieu of property tax and for that reason, mill levy reductions at the county level would not succeed in holding rural electric cooperatives harmless in relation to the 12 percent state-paid property tax credit.

Mr. Joe Morrissette, Deputy Tax Commissioner, and Member, County Social Services Finance Working Group, said the disconnect between the application of the hold harmless payment as it relates to rural electric cooperatives was recognized as an issue, but was not addressed by the working group. He said the working group was tasked with developing a funding formula and the hold harmless provisions were not introduced into the bill draft until the end of the working group's discussions. He said Mr. Smith makes a valid point regarding the hold harmless provision.

In response to a question from Chairman Dockter, Mr. Morrisette said depending on how the rural electric cooperatives might be addressed in the bill draft, there could be an increase in the overall fiscal impact of the formula. He said when rural electric cooperatives were added as beneficiaries of the 12 percent state-paid property tax credit, the fiscal impact was a little over \$2 million so there is the potential for a similar fiscal impact if rural electric cooperatives are held harmless under this bill draft.

Mr. Morrisette said he has a question regarding the language on lines 5 and 6 and line 17 of page 10 of the bill draft pertaining to the wording related to federal administrative costs reimbursements to counties. He said the Department of Human Services may want to make an additional adjustment to this language.

In response to a question from Representative Koppelman, Chairman Dockter said the manner in which additional funds remaining in the allotted \$300 million for property tax relief could be further allocated is an issue that could be raised during the legislative session.

Representative Weisz said the Legislative Assembly may allocate any additional funding it sees fit, but that issue is not pertinent to the operation of the funding formula.

Chairman Dockter said the manner in which savings realized by a taxpayer as a result of the state-paid property tax relief credit hold harmless provisions and the elimination of county social service mills might appear on a taxpayer's property tax statement is an issue that might need to be addressed during the upcoming legislative session.

Representative Nathe said Senator Cook is working on a bill draft relating to property tax statements which likely would incorporate any language necessary to address how this type of property tax relief could be displayed on a taxpayer's property tax statement.

Senator Mathern distributed an alternate version of a social service bill draft [\[17.0313.01000\]](#) which served to add study language to the bill draft being considered by the committee. He said the language on page 21 of the bill draft provides for three Legislative Management studies relating to the restructuring of the ownership of the Life Skills and Transition Center in Grafton, the transfer of ownership of the State Hospital to the Department of Corrections and Rehabilitation, and the restructuring of the state's eight human service centers. He said he has been involved in social services for over 45 years and although he is pleased with the progress made during the interim on developing a funding formula, he would like to see additional consideration given to modifying the manner in which social services are provided. He said some facilities may be closed if changes are made to the manner in which social services are delivered. He said the study of restructuring the state's human service centers would focus on streamlining the current organization of a state, county, and regional human service system into a two-layer system consisting of only the state and the county. He said structural changes may be warranted as a means of reducing the costs of delivering social services so individuals do not lose certain services due to budgetary restrictions. He said he does not intend to move the bill draft for consideration by the committee, but wanted to raise the issue as something legislators might want to keep in mind if a funding bill is brought forward during the legislative session.

Representative Nathe said at first blush he likes the concepts proposed in the three studies and said Senator Mathern hit the nail on the head regarding the consideration that needs to be given to how the quality of social services can be improved and how programs can run more efficiently. He said he hopes Senator Mathern will stay on top of this issue and bring amendments forward during the legislative session.

Chairman Dockter said these issues are important to address in conjunction with the funding of social services. He said he appreciated Senator Mathern thinking outside of the box in regard to how to improve services and increase efficiencies.

Representative Mitskog said she would welcome the opportunity to discuss the expansion of services to rural areas.

Senator Mathern said one of the issues that would need to be taken up is how to incentivize providers to deliver services in rural areas.

Representative Hogan said the committee developed a good product in regard to the funding formula. She said it might be more of a political discussion as to whether the bill should be recommended as an interim committee bill draft or whether it should be privately sponsored. She said she is not sure of the most effective course of action to take in delivering this product. She said she strongly supports Senator Mathern's proposed study language.

Senator Mathern said he supports the interim committee bill draft moving forward for recommendation to the Legislative Management. He said there is some weight that attaches to a bill draft recommended by an interim committee. He said an interim committee recommendation sends a message to the Legislative Assembly and the Governor that the bill draft has merit and the issues have been studied.

Representative Nathe said the bill draft may carry more weight if it is privately sponsored by individuals including the chairman of both committees studying taxation issues and the Chairman of the interim Human Services Committee. He said private sponsorship also guarantees individuals will be present to champion the bill through the process. He said the concepts raised in this bill draft likely will be among the key issues addressed by the 65th Legislative Assembly and discussions relating to the bill draft will undoubtedly run through the final days of the legislative session. He said he hopes committee members will speak in support of the bill draft as the bill draft will need support in the same manner the initial K-12 funding formula bill needed support.

Representative Weisz said he would be in favor of tabling the bill draft for introduction by individual legislators. He said the committee developed a tremendous product in relation to where the bill draft started, and there are some issues that likely will need to be addressed before the bill draft is introduced. He said he has no doubt individual sponsors will step forward to champion the bill. He said there appears to be a consensus the bill draft should go forward in some manner and hopes committee members will be supportive of the concepts in the bill draft during the legislative session.

It was moved by Representative Toman, seconded by Representative Kretschmar, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bills recommended by the committee and to present the report and recommended bills to the Legislative Management.

It was moved by Senator Unruh, seconded by Senator Mathern, and carried on a voice vote that the committee adjourn sine die.

No further business appearing, Chairman Dockter adjourned the committee sine die at 12:45 p.m.

Emily L. Thompson
Counsel

ATTACH:4