

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### TAXATION COMMITTEE

Thursday, September 14, 2000  
Peace Garden Room, State Capitol  
Bismarck, North Dakota

Senator Randel Christmann, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Randel Christmann, Meyer Kinnoin, Randy A. Schobinger, Bob Stenehjem, Vern Thompson, Steve Tomac, Herb Urlacher; Representatives Wesley R. Belter, Mick Grosz, Pam Gulleston, C. B. Haas, Earl Rennerfeldt, Ben Tollefson, John M. Warner, Ray H. Wikenheiser

**Members absent:** Senator Kenneth Kroepelin; Representatives Gil Herbel, Stacey L. Mickelson, Ronald Nichols, Dennis J. Renner, Arlo E. Schmidt

**Others present:** See Appendix A

**It was moved by Representative Grosz, seconded by Representative Rennerfeldt, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

#### LIGNITE INDUSTRY STUDY

Chairman Christmann called on Mr. John Dwyer, President, North Dakota Lignite Energy Council, for comments on the Lignite Vision 21 Project. Mr. Dwyer said the Lignite Vision 21 Project is a partnership of the lignite industry and state government.

Mr. Dwyer said the objective of the Lignite Vision 21 Project is the establishment of a baseload electric power generation plant that utilizes state-of-the-art mining and generation technologies and the most recent environmental technologies to improve the efficiency and reduce the emissions of the generation plant. He said it is estimated that emissions from the proposed facility would be about 10 percent of the emissions of existing facilities in the state.

Mr. Dwyer said the Lignite Vision 21 Project focuses on the strengths of the lignite industry. He said lignite is an abundant resource, the generation plant would be one of the lowest-cost facilities in the United States, and the facility would be closer to electrical demand markets than competition from generating units in Montana and Wyoming. He said it is also significant that North Dakota has a healthy lignite business climate and enjoys the support of state government. He said the demand for electricity in the market from St. Cloud to St. Paul, Minnesota, is one of the fastest-growing electric demand areas in the country.

Mr. Dwyer said the Lignite Vision 21 Project has received unqualified support from the Industrial Commission. He said the Industrial Commission has approved \$10 million in matching funds for the development phase of the generation plant. He said the amount approved is from the lignite research fund.

Mr. Dwyer said Phase I of the Lignite Vision 21 Project involved environmental, generation technology, and transmission issues that required thorough analysis before the project could proceed. He said the environmental study has been completed and included review of all current and pending industry regulations and identification of environmental issues and recommended solutions. He said the conclusion of the study is that all environmental concerns can be managed with cooperation. He said the advanced generation technology study has been conducted and determined that construction and operation of the generation plant are feasible. He said the study explored establishing a generating plant in the 500 megawatt class with emissions of 10 percent or less of some existing generation plants.

Mr. Dwyer said a transmission study has been completed to analyze existing network constraints, review lines for potential upgrades, and recommend a route for transmission with consideration of necessary upgrades and the relative excess export capability. He said the study identified a transmission route with an export capability of an additional 800 megawatts.

Representative Belter asked whether Mr. Dwyer has seen changes in federal policy which encourage him about this project. Mr. Dwyer said federal policy changes have not been significant, but power shortages that have been experienced in parts of the country indicate there is a growing demand for a reliable supply of electric power.

In response to a question from Representative Gulleston, Mr. Dwyer reviewed the tentative timeframe for construction of the proposed generation plant. He said the generation plant could go on-line in 2007 or 2008.

Senator Thompson asked what the lignite industry would expect from the state to support the Lignite Vision 21 Project. Mr. Dwyer said the lignite industry always has concerns about legislative and regulatory policies and has appreciated the support of the Legislative Assembly for the industry. He said one area of

current concern is with a bill draft being considered by the Electric Industry Competition Committee which would increase taxes on electric transmission lines. Mr. Dwyer said generation and transmission companies in the state do not believe increasing taxes on transmission lines is the appropriate direction for state tax policy. Mr. Dwyer said the lignite industry has not developed proposals for state lignite industry tax policy. He said litigation is pending with regard to imposition of severance or sales taxes on imported coal and, until the litigation is resolved, it would be premature to make a recommendation. He said he believes the lignite industry will develop a comprehensive tax package when the timing is appropriate and that may be proposed for consideration in the 2001 legislative session.

Representative Belter said the Electric Industry Competition Committee is considering legislation to restructure the tax environment for the electric utilities of the state and any recommendation would necessarily involve some shifting of taxes within the industry. He asked what the industry opinion is about those tax shifts. Mr. Dwyer said opinions differ within the industry, but approximately 80 percent of the industry in the state is engaged in generation and transmission and companies engaged in generation and transmission oppose increasing transmission line taxes because increases will affect their ability to compete in out-of-state markets.

Senator Christmann said timing is everything and, with litigation pending involving lignite industry taxes, it appears this is not the time for recommendations on lignite industry tax policy.

### **MOTOR FUELS TAX STUDY**

Chairman Christmann called on Ms. Myra Kosse, Director, Chemistry Division, State Department of Health, for discussion of the role of the Chemistry Division in testing for the presence of dye in diesel fuel. Ms. Kosse said the Chemistry Division will receive all diesel fuel samples collected by the Highway Patrol when violations are suspected. She said the Chemistry Division will do testing on those samples the Tax Department requests testing on.

Ms. Kosse displayed samples of diesel fuel containing concentrations of red dye from one part per million to 20 parts per million.

Representative Warner said different refiners include differing levels of dye in diesel fuel that does not contain red dye. He asked which fuel is used as a baseline in testing for the presence of red dye. Ms. Kosse said clear diesel fuel is used as a baseline in testing.

Senator Christmann inquired about the cost of sample testing by the Chemistry Division. Ms. Kosse said the cost has not been determined and samples have not been tested, but she expects that cost will not be great. She said quality control measures are

required in testing and a test may take approximately an hour.

Representative Warner said red dye is added to diesel fuel by refiners, and he asked whether they are consistent in the concentration of red dye. Ms. Kosse said the Chemistry Division obtained some dyed fuel from a retail outlet and analyzed it. She said the fuel contained approximately 20 parts per million of red dye, which is what it should be.

Committee counsel said committee members raised numerous questions at the previous committee meeting regarding how long it takes to remove red dye presence in a fuel tank after it has been introduced. Ms. Kosse said dilution of dyed fuel to a point of compliance with the law will vary based on many factors. She said if one gallon out of 20 is dyed, that would be a concentration of approximately one part per million, which is a violation.

Senator Christmann called on Captain Neil Johnson, Highway Patrol, for comments on dyed fuel enforcement. Captain Johnson said the Highway Patrol entered an agreement with the Tax Department in March 2000 for enforcement of the dyed fuels provisions of the special fuels tax law. He said training for Highway Patrol troopers was conducted in August. He said thus far there has been only one instance in which a fuel sample was drawn from the tank of a vehicle because of a suspected violation from use of dyed fuel on the highway.

Captain Johnson said the circumstances in which a Highway Patrol officer will sample for the presence of red dye in the fuel tank of a vehicle are when the officer has a reasonable suspicion that a violation is occurring and the reasonable suspicion must derive from the officer's observations or reliable information furnished to the officer. He said in the one instance in which a sample has been drawn, the vehicle was stopped for another violation and the officer observed red fuel leaking from auxiliary tanks of the vehicle.

Senator Christmann asked whether the Highway Patrol, as part of a traffic stop of a vehicle, will test for dyed fuel on a random sample basis. Captain Johnson said the Highway Patrol will not do random sample testing and will draw samples only when reasonable suspicion of a violation exists. He said if an officer has reasonable suspicion that a violation is occurring, the officer will request authorization to check the fuel for the presence of dye. Captain Johnson said search and seizure concerns with testing for dyed fuel are the same constitutional issues that apply in other vehicle search situations. He said fuel is in a sealed container and legal considerations are similar to those for searching the trunk of a vehicle.

Senator Kinnoin asked whether South Dakota follows the same procedures. Tax Commissioner Rick Clayburgh said he believes South Dakota has a statutory provision allowing random checks for the

presence of dyed fuel in tanks of vehicles on the highways.

Senator Urlacher asked whether North Dakota law could be changed to allow random checks for dyed fuels. Ms. Joan Galster, Tax Department, said a statutory change could be enacted, but even a statutory provision is subordinate to rights guaranteed by the United States Constitution. She said if random sampling is found to be a violation of the freedom from unreasonable search and seizure under the United States Constitution, the fact that random samples are taken under a statutory provision would not make the search valid.

Representative Belter asked whether federal officials do random sampling for dyed fuels. Captain Johnson said federal officers cannot stop vehicles just to test for dyed fuels, and he is not certain whether they check the tank of every vehicle stopped for another reason.

Senator Urlacher asked whether a search warrant is required to sample fuel in tanks of vehicles. Captain Johnson said if reasonable suspicion of a violation exists, Highway Patrol officers will ask for approval from the vehicle operator to sample the fuel and if approval is not given, a warrant will be sought.

Senator Stenehjem asked how random samples for dyed fuel would differ from sobriety checkpoints for driving under the influence violations. Captain Johnson said sobriety checkpoints involve procedures to randomly check vehicles. He said at sobriety checkpoints a reasonable suspicion is still required for citations to be issued.

Colonel James M. Hughes, Superintendent, Highway Patrol, said the bottom line is that the Highway Patrol does not want to be in a position in which the driver of a vehicle can refuse to submit to a search. He said blood samples for the presence of alcohol cannot be taken from a driver unless that individual is placed under arrest. He said if the Highway Patrol stopped a vehicle and began searching the vehicle without a reasonable suspicion to believe a law has been violated and without authorization from the driver, this would be an illegal search. He said the same legal concerns apply to opening a vehicle fuel tank and sampling for the presence of dyed fuel.

Commissioner Clayburgh said there are three agencies involved in enforcement under the dyed fuels provisions of the fuel tax laws. He said he believes the next step is to make sure the public knows that use of dyed fuel on the highways is a violation. He said he hopes to launch a public awareness campaign for that purpose.

Senator Stenehjem said he would not want the Highway Patrol to be in the position of violating constitutional rights of drivers. He said he believes the Legislative Assembly wants a reasonable enforcement effort and at this point he thinks that is occurring. He said time will tell whether changes in the law are necessary.

Senator Tomac said perhaps the dyed fuel law is not very effective if officers cannot check for violations unless fuel is dripping from the tank. He said maybe we are on the wrong track to have the Highway Patrol to try to enforce a tax law.

Representative Grosz said he commends the Highway Patrol for its attitude about observing rights of drivers.

Senator Stenehjem asked whether there are other reasons besides a leaking fuel tank to check for the presence of dyed fuel. Colonel Hughes said the other situation besides observations of the officer would involve information provided by someone lodging a complaint.

## **FARM AND RANCH RETIREMENT AND AGRICULTURE BUSINESS INVESTMENT STUDIES**

Chairman Christmann called on committee counsel to review resolutions on issues related to the agricultural studies.

Committee counsel reviewed a resolution draft urging Congress to reduce or eliminate the impediment of capital gains and estate taxes on passage of stewardship of family farms to succeeding generations. He said the resolution draft states that capital gains and estate taxes often require liquidation of family farm property and put families out of the farming business.

Senator Stenehjem said he opposes imposition of capital gains and estate taxes on any property. He said he thinks it is wrong to limit the coverage of the resolution draft to only family farms.

Senator Christmann said he believes the committee's study resolution draft limits the committee to the topic of farming.

**It was moved by Senator Stenehjem, seconded by Senator Schobinger, and carried on a voice vote that the resolution draft be amended by substituting the word "property" for the phrase "stewardship of family farms" on line 2 and lines 19 and 20 and eliminating the words "family farm" on line 3 and "to their family farm operations" on line 4.**

**It was moved by Senator Stenehjem, seconded by Representative Belter, and carried on a roll call vote that the resolution draft, as amended, relating to elimination of capital gains and estate taxes, be approved and recommended to the Legislative Council.** Senators Christmann, Kinnoin, Schobinger, Stenehjem, Tomac, and Urlacher and Representatives Belter, Grosz, Gulleon, Haas, Rennerfeldt, Tollefson, Warner, and Wikenheiser voted "aye." No negative votes were cast.

Committee counsel reviewed a resolution draft urging Congress to provide a greater opportunity for farmers to participate in retirement investments by allowing withdrawals from individual retirement

accounts and similar investments without penalty when necessary to support family farming operations.

**It was moved by Representative Grosz, seconded by Senator Urlacher, and carried on a roll call vote that the resolution draft relating to withdrawal of retirement investments without penalty when necessary to support family farming operations be approved and recommended to the Legislative Council.** Senators Christmann, Kinnoin, Schobinger, Stenehjem, Tomac, and Urlacher and Representatives Belter, Grosz, Gulleson, Haas, Rennerfeldt, Tollefson, Warner, and Wikenheiser voted "aye." No negative votes were cast.

Committee counsel reviewed a resolution draft urging Congress to reduce or eliminate capital gains on inflationary valuation increases of farm and ranch property. He said the resolution draft states that imposition of capital gains taxes on inflation valuation increases for farm and ranch property serves as an impediment to retirement for farmers and ranchers, further inflates the value of farm and ranch property, and makes acquisition of property much more difficult for the next generation of farmers and ranchers.

**It was moved by Representative Belter, seconded by Representative Warner, and carried on a roll call vote that the resolution draft relating to elimination of capital gains taxes on inflationary valuation increases of farm and ranch property be approved and recommended to the Legislative Council.** Senators Christmann, Kinnoin, Schobinger, Stenehjem, Tomac, and Urlacher and Representatives Belter, Grosz, Gulleson, Haas, Rennerfeldt, Tollefson, Warner, and Wikenheiser voted "aye." No negative votes were cast.

Committee counsel reviewed a resolution draft urging Congress not to implement or allow implementation of the Kyoto Protocol because of the potentially disastrous impact on American agriculture. He said the 1997 Kyoto Protocol treaty on global warming called for reductions of emissions of carbon dioxide and for application of carbon permit fees for fuel users in industrial countries. He said farmers are forced to use fuels in farming operations and the resolution draft states the fuel cost increases would aggravate the existing farm crisis.

**It was moved by Senator Schobinger, seconded by Representative Belter, and carried on a roll call vote that the resolution draft relating to not implementing the Kyoto Protocol be approved and recommended to the Legislative Council.** Senators Christmann, Kinnoin, Schobinger, Stenehjem, and Urlacher and Representatives Belter, Grosz, Gulleson, Haas, Rennerfeldt, Tollefson, Warner, and Wikenheiser voted "aye." No negative votes were cast.

Committee counsel reviewed a resolution draft urging Congress to enact legislation to allow farm and ranch risk management accounts and to consider limiting the size of the accounts rather than the time

funds may be held in the accounts. He said Congress is considering legislation to allow farm and ranch risk management accounts as a management tool for farmers and ranchers to defer income by setting it aside in tax-deferred accounts to be drawn upon as taxable income when needed in years of lower income.

**It was moved by Senator Kinnoin, seconded by Representative Rennerfeldt, and carried on a roll call vote that the resolution draft urging Congress to allow farm and ranch risk management accounts be approved and recommended to the Legislative Council.** Senators Christmann, Kinnoin, Schobinger, Stenehjem, Thompson, and Urlacher and Representatives Belter, Grosz, Gulleson, Haas, Rennerfeldt, Tollefson, Warner, and Wikenheiser voted "aye." No negative votes were cast.

Chairman Christmann called on committee counsel to review a bill draft to provide a sales and use tax exemption for sales and use of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes. Committee counsel said the bill draft was prepared at the request of the chairman and is intended to continue and expand on the sales and use tax rate reduction contained in 1999 Senate Bill No. 2217. He said the 1999 legislation reduced the sales and use tax rate from 3 percent to 1.5 percent for used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes. He said the 1999 legislation was effective through June 30, 2001. He said the bill draft would provide a complete sales and use tax exemption for these items effective July 1, 2001.

Committee counsel said the fiscal effect of this bill draft was discussed with Tax Department staff, who said fiscal estimates on the 1999 legislation have proven to be quite accurate and could be used as a basis for estimating the fiscal effect of this bill draft. He said the fiscal impact of the 1999 legislation was estimated at a loss of \$4.47 million for the state general fund and \$389,000 for the state aid distribution fund. He said if these amounts are doubled, it should approximate the fiscal effect of a complete sales and use tax exemption for the items in question. He said this would indicate a potential fiscal effect of a loss of \$8.94 million to the state general fund and \$788,000 to the state aid distribution fund from a complete sales and use tax exemption for used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes. He said one additional consideration regarding the fiscal effect is that under North Dakota Century Code (NDCC) Section 57-39.2-01(3), a trade-in allowance is given for sales tax calculation purposes if the item being traded in will later be subject to sales tax when it is sold. He said this allowance was available when the sales tax rate was reduced to 1.5 percent, but this allowance would not

be available when a complete exemption is provided for used farm machinery or irrigation equipment. He said because the trade-in allowance would not apply, some of the revenue loss would be offset by a gain in revenue from the denial of trade-in allowances. He said the fiscal note for 1999 Senate Bill No. 2217 as introduced showed a gain of approximately \$926,000 because of the trade-in allowance factor. He said adding this revenue gain to the overall revenue loss would show a net fiscal effect of a loss of approximately \$8.8 million.

Chairman Christmann called on Ms. Patti Lewis, Deputy Director, Government Relations, North Dakota Farm Bureau, for comments on the bill draft to provide a sales and use tax exemption for used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes. Ms. Lewis said the Farm Bureau supported a complete exemption from sales and use taxes on these items in the 1999 legislative session and would strongly support this exemption in the upcoming legislative session.

In response to a question from Senator Christmann, Ms. Lewis said she has heard many positive comments on the reduced sales tax rate for these items. She said the reduction does not result in huge savings for individual farmers, but the reductions are greatly appreciated.

Senator Thompson asked Ms. Lewis whether the sales tax reduction for used farm machinery has also helped retailers. Ms. Lewis said she has not inquired on the opinion of the Implement Dealers Association, but she believes that organization would support this exemption in the 2001 legislative session.

In response to a question from Representative Gulleason, Ms. Lewis said she knows implement dealers near borders of other states would like equalization of sales tax rates with neighboring states, especially Minnesota and Montana. She said she believes this bill draft would be supported by those dealers.

Representative Grosz said he would support the sales tax exemption in the bill draft, but he has concerns with the fiscal effect and the competing demands for state funds in the legislative session.

**It was moved by Representative Grosz, seconded by Representative Rennerfeldt, and carried on a roll call vote that the bill draft providing a sales and use tax exemption for used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes be approved and recommended to the Legislative Council.** Senators Christmann, Kinnoin, Schobinger, Stenehjem, Thompson, and Urlacher and Representatives Belter, Grosz, Gulleason, Haas, Rennerfeldt, Tollefson, Warner, and Wikenheiser voted "aye." No negative votes were cast.

Chairman Christmann called on committee counsel to review a bill draft to establish a farmers equity trust fund. Committee counsel said the bill draft was reviewed at the previous committee meeting and comments have been sought from institutions and groups. He said minor changes have been made in the bill draft since the previous meeting to incorporate some technical suggestions made by the Tax Department. He said the bill draft requires the Industrial Commission to establish the farmers equity trust fund at the Bank of North Dakota. He said moneys in the fund may be used by the Agricultural Products Utilization Commission on behalf of the fund to acquire ownership interests in value-added agricultural projects or for loans to value-added agricultural projects. He said loans must be secured by ownership interests in the projects. He said the bill draft requires the Agricultural Products Utilization Commission to establish procedures to evaluate a value-added agriculture project's relative merit, likelihood of success, and need for an investment or loan. Evaluation of relative merit must include considering the number of citizens of the state who would benefit from the project and the amount of benefit. He said the bill draft allows the Industrial Commission and Agricultural Products Utilization Commission to delegate to the Bank of North Dakota administrative powers including issuing and selling bonds and processing and reviewing applications for investments and loans. He said bonds issued under this law would not be payable from any funds other than revenue pledged to payment of the bonds. He said bonds issued would not constitute an obligation of the state, the Industrial Commission, or the Bank of North Dakota. He said the bill draft requires that each bond issued must contain a statement that neither the faith and credit nor the taxing power of the state is pledged to payment of the principal or interest on the bond.

Committee counsel said the bill draft provides income tax credits for investments in bonds issued for the farmers equity trust fund. He said the bill draft would allow a credit of 20 percent of the investment in bonds, but no more than 50 percent of the credit could be claimed in one taxable year. He said the bill draft also provides that credits for investments in these bonds may not exceed 50 percent of the taxpayer's income tax liability. He said the income tax credit would be available for the individual long-form income tax return, the individual short-form income tax return, and the corporate income tax return. He said that in addition to the credit for investments, the interest income from the bonds would be excluded from taxable income.

Committee counsel said the Tax Department has suggested technical changes in the bill draft to eliminate the limitation to individuals, estates, and trusts on page 6, line 29, and to eliminate the phrase "to the extent that income was included in the taxpayer's

federal adjusted gross income" in subsections 3 and 4 of NDCC Section 57-38-30.3.

Committee counsel said the response from the Tax Department on the fiscal effect of the bill draft was distributed to committee members and indicates that the fiscal effect cannot be determined because there is no information on which to base an estimate. A copy of the Tax Department correspondence is attached as Appendix B.

Committee counsel distributed copies of a letter from Mr. Lance Gaebe, Executive Director, Agricultural Products Utilization Commission, relating to the bill draft to establish a farmers equity trust fund. A copy of the correspondence is attached as Appendix C.

Chairman Christmann called on Mr. Eric Hardmeyer, Interim President, Bank of North Dakota, for comments on the bill draft to establish a farmers equity trust fund. Mr. Hardmeyer reviewed his letter prepared in response to the request of the committee for comments on the bill draft. A copy of his letter is attached as Appendix D. He said if the program is successful, it could augment agricultural loan programs available through the Bank of North Dakota. He said areas of concern are the potential to duplicate programs of the Bank of North Dakota and exclusion of the private sector from the delivery system of the bond proceeds. He said the Bank of North Dakota has made modifications to its programs to address some of the concerns in the 1999 legislation that the bill draft was modeled after. He said the Ag PACE program can be used to finance finishing facilities for livestock producers and the farm operating program allows individuals to retain livestock to finishing weight by providing a second tier of operating debt.

Chairman Christmann said the study directive to the committee was to find means to bring outside investment into value-added agricultural projects. He said most Bank of North Dakota programs deal directly with the farmer or rancher. Mr. Hardmeyer said that is correct, but the Bank does have an invest program to allow any resident to invest in value-added agricultural projects. He said the Bank is hoping the usage of this program will increase.

Representative Warner said he is concerned with equity ownership in agricultural projects by the farmers equity trust fund. He asked whether the fund would keep equity interests indefinitely or sell them at some point. Mr. Hardmeyer said it is not clear from the bill draft whether equity interest could be retained indefinitely or would have to be sold.

Chairman Christmann called on Ms. Lewis for comments on the bill draft to establish a farmers equity trust fund. A copy of her letter in response to the committee's invitation for comments is attached as Appendix E. She said the North Dakota Farm Bureau likes the concept of the bill draft but has some questions that are pointed out in the letter. She said the

primary concern is whether investors would buy the bonds.

Chairman Christmann called on Mr. Tom Tudor, Executive Director, Municipal Bond Bank, for comments on the bill draft to establish a farmers equity trust fund. Mr. Tudor reviewed his letter prepared in response to the invitation of the committee to comment on the bill draft. A copy of his letter is attached as Appendix F. Mr. Tudor said bonds issued under the bill draft would not be marketable without some form of credit enhancement, such as bond insurance or state or federal backing.

Senator Thompson asked Mr. Tudor to expand on the suggestion that credit enhancement would be necessary. Mr. Tudor said under the bill draft the money raised from the sale of bonds would go to buy equity and make loans to agricultural projects. He said the bill draft creates no certain obligation to repay bondholders. He said earnings from equity investments and interest on loans would be available to repay bondholders, but it may be many years before there is a return on the purchase of equity. He said it appears, because of the use of bond proceeds, there is not enough revenue base to support bonds without bond insurance or federal or state backing.

In response to a question from Senator Christmann, Mr. Tudor said he cannot recall seeing bonds issued without adequate backing such as those under the bill draft. He said another point for consideration is that it would probably be necessary to pay a very high rate of interest on bonds under the bill draft to attract investors.

In response to a question from Senator Christmann, Mr. Tudor said he cannot judge whether the tax credits provided by the bill draft would be enough incentive for investors to buy the bonds.

Chairman Christmann called on Mr. Bill Patrie, North Dakota Association of Rural Electric Cooperatives, for comments on the bill draft to create a farmers equity trust fund. Mr. Patrie said it is important for the state of North Dakota to try to create opportunities for growth in the agricultural sector. He said the state has suffered a substantial loss of cattle and hog production. He said Cloverdale Meats is a valuable industry to North Dakota and may not be able to continue production without an increase in pork production within the state.

Mr. Patrie said farmers and livestock producers have spent down the equity in their operations in recent years. He said several years of poor prices have forced agricultural producers to draw upon their equity. He said when an opportunity arises to invest in a value-added project or project to increase production, they have no equity to draw upon for investment so a proposed investment and production opportunity cannot go forward. Mr. Patrie said the other feature of the farmers equity trust fund that is attractive is that it would provide an opportunity for nonfarmers to invest in North Dakota agricultural projects. He said with

regard to issues about repayment of bondholders, he expects that a covenant would be entered specifying that farmers must redeem equity shares purchased by the fund in a specified period of time.

Senator Schobinger asked why investment through a bond fund is recommended rather than direct investments in projects by private investors. Mr. Patrie said there are impediments to private investment in agricultural projects under current law. He said a nonfarmer cannot own the means of production under the corporate farming laws. He said there are very restrictive limitations on ownership of cooperative ventures. He said this fund would aggregate opportunities for investment in projects across the state and would spread the risk and reward over a broader spectrum of investors.

Senator Christmann asked about purchase of equity interest or loans to agricultural projects. Mr. Patrie said he would not favor any loans under this program and would recommend that the fund only acquire ownership interests in projects.

Senator Christmann said he believes the bill draft is not quite ready to be enacted as law. He said questions exist in his mind about aspects of the program, but he believes the bill draft is a vehicle for a program with the potential to benefit the state.

In response to a question from Representative Gulleeson, Chairman Christmann said the committee will not meet again this interim.

Representative Gulleeson said she thinks the concept in the bill draft needs to move forward and involved parties can give thought between now and the legislative session to questions that have been raised and ways the bill draft can be improved.

Representative Grosz said he hesitates to support the bill draft as a committee recommendation when these questions exist about whether bonds are salable and whether investors will come forward to buy the bonds. He said there is nothing to preclude individual legislators from introducing this in the legislative session.

Senator Tomac said he takes a different approach. He said the work of interim committees is to develop concepts. He said this bill draft has merit in that regard but may have room for improvement. He said there is time before the legislative session for interested parties to consider questions that have been raised and make necessary changes.

**It was moved by Senator Tomac, seconded by Representative Belter, and carried on a roll call vote that the bill draft to establish a farmers equity trust fund be amended by removing the words "limited to individuals, estates, and trusts;" on page 6, line 29, and removing the words "to the extent that income was included in the taxpayer's federal adjusted gross income" appearing on**

**page 8, lines 6, 7, 10, and 11, and that the bill draft, as amended, be approved and recommended to the Legislative Council.** Senators Christmann, Kinnoin, Thompson, Tomac, and Urlacher and Representatives Belter, Gulleeson, Haas, and Warner voted "aye." Senators Schobinger and Stenehjem and Representatives Grosz, Rennerfeldt, Tollefson, and Wikenheiser voted "nay."

In discussion of the motion, Senator Schobinger said he agrees with the concept of the bill draft but sees too many unanswered questions about how the program comes together. He said he cannot support the bill draft as it now exists.

Senator Christmann said he believes the committee report to the Legislative Council will indicate that issues exist which must be addressed during the legislative session.

Senator Thompson said there appears to be support for investment capital and agriculture coming together and the concept in the bill draft seems to be on the right track. He said he hopes proponents will continue working on the concept to address questions that exist.

Chairman Christmann said it appears there is no further business for the committee, and he thanked committee members for their work during the interim.

**It was moved by Representative Haas, seconded by Representative Gulleeson, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill and resolution drafts recommended by the committee and to present the report and recommended bill and resolution drafts to the Legislative Council.** Senators Christmann, Kinnoin, Schobinger, Stenehjem, Thompson, Tomac, and Urlacher and Representatives Belter, Grosz, Gulleeson, Haas, Rennerfeldt, Tollefson, Warner, and Wikenheiser voted "aye." No negative votes were cast.

**It was moved by Representative Grosz, seconded by Representative Rennerfeldt, and carried on a roll call vote that the meeting be adjourned sine die.** Senators Christmann, Kinnoin, Schobinger, Stenehjem, Thompson, Tomac, and Urlacher and Representatives Belter, Grosz, Gulleeson, Haas, Rennerfeldt, Tollefson, Warner, and Wikenheiser voted "aye." No negative votes were cast.

The meeting was adjourned sine die at 2:40 p.m.

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John Walstad  
Code Revisor

ATTACH:6