2015 HOUSE FINANCE AND TAXATION

HB 1054

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1054
1/12/2015
#21830

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to establishment and use of modifiers for assessment of agricultural property.

Minutes: Attachment #1, 2

Chairman Headland: Opened the hearing on HB 1054.

John Walstad, Legal Director of Legislative Council: Introduced bill. Distributed amendments to this bill. See attachment #1 and 2. The bill addresses the use of modifiers and Ag assessments. The effective date on the draft is the 2016 assessment year because the evaluations being established this year will largely be taken care of before this legislation can take effect. Since the conclusion of the interim committee activity there has been continued work on this involving assessors from different parts of the state. Some changes to the formula were suggested after the study and that's what this copy is (#2). If the committee chooses to incorporate these changes I could turn that draft into an amendment to this bill.

Chairman Headland: Could you go through the changes in the amendment?

John Walstad: One is the elimination of the inundated lands category. That has been in place for quite some time. It has been a useful tool. The suggestion was that it could be replaced, not eliminated, and basically incorporated into a broader category called nonproductive Ag land. In the second page there is overstruck language relating to cap rates. That language is now obsolete. On page 3 there is the description of nonproductive agriculture land and that it has to be a minimum of 10 acres to get that kind of treatment. There is some language being overstruck about inundated lands but inundated would still be eligible for that kind of treatment under the nonproductive category. There is a requirement that nonproductive land cannot have produced more than 50% of the county average revenue per acre for non-crop land. To be nonproductive it truly has to be nonproductive. Then there is a sentence added that land cannot be classified as nonproductive solely because it is wooded. We have a forest stewardship tax treatment available for wooded lands. In a number of counties the wooded lands that exist has been treated as some sort of modifier. The committee's feeling is the existence of wooded land is a management decision and should not be included in valuing the property for Ag use.

An application for treatment as nonproductive has to be made by the owner and it is provided that you don't have to do that every year. You make the application once and it is presumed that if that application proves that status will continue but the Director of Tax Equalization can request information in later years to establish a debt treatment is still appropriate. On page 4 there is a second Wednesday in February. That is the actual date that is the deadline to provide assessors the assessment books. There is some language struck out of subsection a. The conclusion was that language is not being used and is not really useful. Then on the part about modifiers or the factors to be applied in valuing Ag land, the first is soil type and classification data. There is a presumption included that if the productivity index determined by soil survey is more than 40 is cropland and if it's less than 40 it's noncropland. It is not determinative if the owner has cropland or noncropland; it is productivity of soil that makes the dividing line. The modifiers can be applied after the soil is looked at. Current law has a third category which is how the property is used by the owner and that is eliminated. The modifiers that are allowable are listed. In the soil survey if salinity is a characteristic of a soil type that is already a factor in that soil survey. Applying salinity as a modifier essentially doubles the reduction attributable to this level of salinity. However, there are areas where the greater degree of salinity exists then the soil type would indicate because of seepage, discharge from a higher area or something, or collection of standing water that sits for a period of time that leaves a high level of salinity as it soaks in or evaporates. That kind of salinity is a potential modifier. The valuation modifiers in here state that at least 5 contiguous acres has to exist to apply a modifier. Subsection 11 was added. See attachment. I'm not for or against anything. If the committee wants this second draft prepared as an amendment I can do that.

Chairman Headland: For classifying Ag land as nonproductive, five acres is used as a modifier. What was the rational for having two different acreages?

John Walstad: That was the conclusion after discussions. The local assessors suggested that the 10 acre limit be retained because that was the inundated limit. The five acres was recommended instead of ten.

Chairman Headland: Is it going to be the property owners' responsibility to make sure that the modifiers are used properly or are the assessors going to go out and assess all these properties?

John Walstad: We have some very good assessors and they may be able to stay on top of those situations but my guess is that it would generally be a landowner on those where there has been some seepage that wasn't there the last time the assessor came by.

Chairman Headland: Any questions for Mr. Walstad? I think you should probably go ahead and put it in the amendment form.

John Walstad: Should I just put it as recommended by the house finance and tax committee?

Chairman Headland: I think that would be fine.

Representative Schneider: Page 4 line 28 has a little error. It doesn't affect the bill though.

John Walstad: Thank you.

Chairman Headland: We are having this drafted as an amendment but this is a substantial change from what the interim committee drafted. I just want everybody to keep in mind that we are having them drafted for purposes of discussion. That doesn't mean we are going to automatically accept everything without proper discussion.

Sara Meier, Tax Department: I will offer myself for assistance in writing the amendment.

Chairman Headland: Thank you Sara. Any further questions?

Representative Trottier: Do you not think that actual production numbers would be the most affective for assessments?

Sara Meier, Tax Department: Trying to use actual production numbers would be very difficult and time consuming.

Representative Strinden: Do you have any idea of how this will impact the counties financially?

Sara Meier, Tax Department: There are 49 counties that are currently using... (Inaudible)

Chairman Headland: Anything else? Is there any further testimony on 1054? If not, we will close the hearing on 1054.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1054
1/12/2015
#21854

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to establishment and use of modifiers for assessment of agricultural property.

Minutes:

Chairman Headland: Has everyone had a chance to review the amendment? I don't think this is the version the Representative Schmidt had talked to me about earlier because I'm missing some of the things that he had talked about or I can't find them in the bill draft. I intend to talk to Representative Schmidt before we take any action. Does the committee have any comments?

Vice Chairman Owens: This is a major change compared to what went on in the interim committee. I haven't had time to digest all of it and understand where it all came from.

Chairman Headland: I agree with you wholeheartedly. We're going to need a little more time to digest what the proposed amendment is for. The first thing we have to do is make sure it's right and I don't believe it is.

Representative Dockter: Should we have John Walstad come down again and make sure we have everything?

Chairman Headland: We'll have Representative Schmidt explain.

Representative Dockter: He had John draft it for him so he'll have the history.

Chairman Headland: We'll find out from Representative Schmidt and take direction from there. It's a pretty dramatic change from the bill draft.

Representative Klein: On the backside where it talks about modifiers that are applied to at least five continuous acres, is that something new?

Chairman Headland: That language was put together by the interim committee. Maybe someone that sat on that committee could enlighten me. I believe the five acres was

thrown out by the chairman and the committee members agreed with it. I don't think there was anything magical about the number; I think it was just a starting place.

Representative Hatlestad: John mentioned that they needed a base and so they threw in five acres. I thought they threw in ten acres too.

Chairman Headland: Ten acres is referenced in this possible amendment. I'm not sure why we would reference five acres in one area and 10 acres in another.

Representative Klein: Are we referring to the marsh piece of land that is not usable?

Chairman Headland: That is correct. We are going to be replacing what used to be called inundated property. There was an attempt over the interim to try to broaden it. There was a group that came to the interim committee and referred to areas that were wooded and wanted us to change the policy to include woodlands along with marshes. The committee decided there was probably a reason to change the language and broaden it a bit because of some circumstances that are occurring with wetlands. However, the interim committee chose not to allow for woodlands to be part of that because woodlands are a management type decision by the property owner.

Representative Trottier: However, if you have 40 acres of land that is wooded will that change under this?

Chairman Headland: Under this draft I don't think it would change. It would remain taxable based on the different modifiers that were used in the soil quality. The fact that it was trees the interim committee deemed that a decision by the property owner. It would remain taxable as it was currently being taxed and would not qualify for nonproductive.

Representative Trottier: I realize that is a decision of the Ag producer but the cost to remove those trees would be so great that it would take away from the meaning of the cost of that land wouldn't it?

Chairman Headland: I'm quite certain it adds a substantial cost to get rid of trees. That is being deemed a management decision by the property owner. If a property owner buys a property there's a value of the property with the trees on it. Last session we couldn't come up with an equitable decision and that's why we put it into a study resolution where we looked at it over the interim. This is the end result of what the interim committee decided.

Representative Trottier: It was pointed out that some of the productivity indexes on some of those wooded areas are as high as it is any place in the state. It would be very expensive to remove those trees to make it tillable. I would be totally against them buying it for hunting or conservation.

Chairman Headland: It's a management decision. If the property owner doesn't like the taxes and doesn't want to remove the trees and doesn't do what he can do to maximize the productivity of his land then he would probably have to sell it or do something else with it or pay the tax.

Representative Froseth: The state forester said this morning that some of that land near Bottineau could be productive if the timber was removed. The location of those woodlands in the state are natural and are tourist attractions so you probably wouldn't want to have that altered just to have a few acres of productive land. Also, flooded land could become dry to where it's farmable again but most of the time it's full of saline by that time so it's not productive anyway.

Chairman Headland: In one of these drafts I believe there was an attempt to state that if there are circumstances that even with the soil productivity being fairly high and being deemed productive land a determination could still be made.

Representative Hatlestad: If woodland is conservation do we pay them for that?

Chairman Headland: I'm not aware of any payment that would qualify as conservation project in a wooded area today.

Vice Chairman Owens: Prior to last session a constituent said he owned some land that had trees on it. The law at that time stated that if it was wooded land the county may recognize it as wooded land and charge them $.50 on the acre. This county wasn't doing it for him so he was upset. It was presented as a bill then brought to a study because we couldn't find a nice clean answer. It's not part of the modifiers so now this bill says we are changing inundated to nonproductive. In order to be declared nonproductive land it has to be a minimum of 10 acres. Then it says if it's just woods then it's not considered nonproductive. I think you could still charge them as productive land as it reads now. The five year it talks about was to the reference of modifiers and soil types but trees are not considered a modifier.

Representative Hatlestad: Couldn't you use woods as a modifier?

Vice Chairman Owens: They weren't paying $.50 that all that they would charge.

Representative Hatlestad: But wouldn't that be classified as a modifier?

Vice Chairman Owens: It wasn't part of the listed modifiers used to assess agricultural land. It was a separate part of the law. You could but you'd have to create a new modifier that included wooded areas.

Representative Hatlestad: But if a county (inaudible)

Chairman Headland: I believe currently that is the practice that's occurring in at least one county. I think everybody should take some time and read it then we'll discuss at greater length.

Representative Trottier: I believe the maximum modifiers are 30% of the total of all the modifiers.

Representative Hatlestad: If they reduce your taxes because you have trees then they have modified.

Chairman Headland: I think we'll wait on this now.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1054
1/21/2015
22321

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to establishment and use of modifiers for assessment of agricultural property.

Minutes:

Attachment #1

Chairman Headland: Sara Meier from the Tax Commissioners Office brought down some amendments. See attached amendment #1. These amendments would replace some language on page 4 that had to do with productivity levels. It would use soil type and soil classification data as a replacement. This is her asking us for some possibilities and to see if this is what we want to do with the bill. We'll have to get it officially drafted as an amendment. I'm thinking we need to go to legislative council to get something prepared and easier to work off. A couple of us will go to legislative council and get this going.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1054
1/26/2015
22548

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to establishment and use of modifiers for assessment of agricultural property.

Minutes: Attached amendments #1.

Chairman Headland: Opened discussion.

Representative Dockter: Distributed amendments 15.0199.02002. See attachment #1. This is the bill we've been working on a while on the value assessment of agriculture lands. Sara Meier can maybe walk us through the amendments.

Sara Meier, Property Tax Specialist with the Office of State Tax Commissioner: Explained amendments. The amendments are to try and make the valuation process for agricultural property more consistent from county to county. I'll go through the underlined areas on the amendments. In the first subsection we have inundated crossed out and nonproductive added. This is a category that we're seeing a lot of counties use but there really isn't any statutory reference to it. It's for land that is not really good land and not highly productive. It has limiting factors that if you try to account for them with modifiers you'd just be modifying over and over and over again. So instead of using a modifier for it producing its own category may be a better approach to take. In subsection four on page two there is old language crossed out starting after North Dakota. That was a floor that was placed into law that actually started in 2005 when interest rates started to decrease. A lower interest rate means a higher value so to try to slow down the value increase in agricultural property those floors were placed into law. In 2011 was the last year we had a statutory floor on the capitalization rate. In 2012 it completed removed that floor so we are just actually getting rid of the language that isn't useful in the statute anymore. In subsection six is clean up on inundated land classification and producing the nonproductive agricultural land category. In the previous version of this bill ten acres was the minimum which has now been changed to five acres to make it more consistent with the modifier minimum acreage. Five acres is the minimum acreage that would be included in a larger map unit or soil. You're not going to draw out that little area of five acres or less for a specific limiting factor like salinity or rocks or something like that. The inundated land category was just reference to the average revenue per acre and it's now been changed to 50% of that average revenue. The average revenue as calculated by NDSU for different

counties is probably $8-12 an acre so 50% of that would be $4-6 per acre so it's not very much revenue that's being produced by that specific acreage and hence would be nonproductive. I think there should probably be an adjustment for woodlands but that's something you probably want to discuss with the sponsors of the bill. Most of the large adjustments are made at the county level so the tax director would really be the first person to talk to you with this nonproductive category. When you get into the modifiers the township assessor would be the first person to speak to. Subsection seven was at the request of one of our tax directors. Tax directors present their assessment books, give instruction to township assessors and hold their meeting the first few weeks in February to prepare for the township meeting. This was just a request so that it's not so crunched in the first part of February where they have to give that information out. They wanted to do it all at one time. Subsection eight has some clean up in the modifier language. Subsection a of eight talks about the division between cropland and noncropland. The soil capability classes are developed by a natural resource conservation service and those don't change. Production indexes as noted in the previous version of this bill can change from year to year. NRCS is constantly developing new soils and testing their production so we wanted something that wasn't going to change every year or every two years; we wanted something that would stay nice and level. Rather than having the classes of two, three and four being called cropland and classes five, six, seven and eight as noncropland was the good split between those two categories. On page four it talks about the supervisor of assessments providing information to the county directors. The guidelines have not been written but I think we have a year to do that before we have to provide them to the township assessors and county directors. We have a guide to evaluation of agricultural property and we'll probably pull from that but the guidelines are written from statute from case law and attorney generals opinions so we will be limited to those specific documents when preparing that guideline. The modifiers are the most commonly used and were also noted by natural resource conservation service as being the ones that are not inherent in the soil already or not to the extremes. Inaccessibility is an area that is not accessible by farm machinery. Nonconformity is an area that is not typical and may be really highly productive soil but is surrounded by soils that have steeper slopes or they aren't going to be used as cropland because of some other limiting factor. Salinity is included in most of the soil types but this would be an extreme case of salinity. Those five acres of minimum condition would apply. Subsection 10 lists the guidelines and what we are to provide to county directors, how they would provide it to local assessors and how to apply modifiers. Subsection 11 is similar to the assessment equalization appeal process or the abatement process. A property owner would have to provide proof that the valuation of their property is too high compared to what it should be based on the soils.

Representative Trottier: In section two page one it talks about the purpose of this section annual gross return. If something is capable of or has been growing sugar beets or potatoes is that land valued higher?

Sara Meier: This first part of the statute deals specifically with North Dakota State University's calculation for the average value of the county. Looking at a specific parcel does not apply. Those percentages were set up in the 80s and we're really trying to get at the net revenue after all the costs to produce. It was designed to zone in to just that revenue that's produced after all the expenses are met. The lower percentage for sugar

beets and potatoes means there's a higher input cost which is why it's different. We're not going to apply this to each specific property; its county wide.

Representative Trottier: We always talk about rolling land as more a quarter of land has more acres in it. What if the land goes up tremendously, is that part of the quarter or is it considered acreage?

Sara Meier: Yes. Measurements of the acreage are not based on a flat measurement or following the topography of the land. It is square or as close to square as possible. We don't add more acreage if you have more hills in it.

Representative Froseth: After these changes and you're overall assessment, do you think this will come out with an increased affect to the assessed valuation or decreased or neutral?

Sara Meier: I would hope it would be very neutral. The biggest change we have to look at is that dividing line we're placing in here in subsection eight. I asked that we make a change and not have a production index or a specific number in there because in looking at what I'm receiving now for my agricultural land valuation review, there are many counties where that division is between 54-55. If we put it down at 40 more acres would have been thrown into the cropland and that would have increased their overall value for that county. More acres in that higher value group are higher values per acre for that county. Looking at these classes I would hope would not be that kind of a shift. I'll keep working on getting better information for that to present to your committee or to the senate so we know it will be as neutral as possible.

Representative Klein: Are you telling me that the most productive land in the valley is taxed lower than the other?

Sara Meier: It's not taxed lower. The revenue we are using in this calculation is adjusted down a little bit more than for the small grains because there's more input costs. If you start out with the revenue on sugar beets and potatoes and then take five percent more reduction on the revenue it's still going to be above where our small grains are. It's not necessarily a tax break.

Representative Dockter: Made a motion to move the amendments .02002

Representative Strinden: Seconded.

Voice vote: Motion carries.

Representative Dockter: Made a motion for a Do Pass As Amended.

Representative Klein: Seconded.

Roll call vote: 12 yes 1 no 1 absent
Motion carries for Do Pass As Amended.

Representative Dockter will carry this bill.

15.0199.02002
Title.03000

Prepared by the Legislative Council staff for
Representative Headland
January 26, 2015

#1-2015
1/1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1054

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to assessment of agricultural property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for ~~inundated~~nonproductive agricultural land. The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.

2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the department of agribusiness and applied economics of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.

3. The "average annual gross return" for each county must be determined as follows:

   a. Total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.

   b. The department of agribusiness and applied economics of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. The department of agribusiness and applied economics shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average

the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.

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c. Divide the figure arrived at in subdivision b by eight.

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota~~, but the rate used for capitalization under this section may not be less than eight percent for taxable year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011~~. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years~~, and the~~. The gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).

5. The department of agribusiness and applied economics of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis; shall compute the average agricultural value per acre [.40 hectare] for cropland~~,~~ and noncropland~~, and inundated agricultural land~~ for each county~~; and shall~~, and provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the department of agribusiness and applied economics. Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

6. ~~For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing~~The county director of tax equalization may classify agricultural land as nonproductive agricultural land if it consists of a minimum of ~~ten~~five contiguous acres ~~if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it~~and is unsuitable for growing crops or grazing farm animals for two consecutive growing seasons or more~~,~~ and ~~which produced~~did not produce revenue from any source in the most recent prior year which is ~~less~~more than fifty percent of the county average revenue per acre for noncropland calculated by the department of agribusiness and applied economics of North Dakota state university. Land may not be classified as nonproductive agricultural land solely because it is wooded.

Application for classification as ~~inundated~~nonproductive agricultural land for property that was not so classified in the prior year must be made by the owner in writing to the ~~township assessor or~~ county director of tax equalization by March thirty-first of ~~each~~the taxable year. The owner shall

thereafter furnish to the county director of tax equalization, when requested to do so, any information that is believed will support the claim to retain nonproductive agricultural land classification for any subsequent year. Before all or part of a parcel of property may be classified as ~~inundated~~nonproductive agricultural land, the board of county commissioners must approve that classification for that property for the taxable year.

The agricultural value of ~~inundated~~nonproductive agricultural lands for purposes of this section must be determined ~~by the department of agribusiness and applied economics of North Dakota state university~~ to be ten percent of the average agricultural value of noncropland for the county as determined under this section. ~~Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.~~

Determinations made under this subsection may be appealed through the ~~informal~~ equalization process and ~~formal~~ abatement process provided for in this title.

7. Before the second Wednesday in February ~~first~~ of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall use soil type and soil classification data from detailed and general soil surveys.

8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. ~~Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.~~ In determining the relative value of each assessment parcel, the local assessor shall apply the following considerations~~, which are listed in descending order of significance to the assessment determination~~:

   a. Soil type and soil classification data from detailed or general soil surveys. It is presumed that if the soil capability class is 2, 3, or 4, that soil must be valued as cropland and if the soil capability class is 5, 6, 7, or 8, that soil must be valued as noncropland. How the property is used by the owner, by itself, does not overcome this presumption.

   b. The schedule of modifiers that ~~must~~may be used to adjust agricultural property assessments within the county ~~as approved by the state~~

~~supervisor of assessments under subsection 9~~and the guidelines established by the state supervisor of assessments for application of those modifiers.

~~c. Actual use of the property for cropland or noncropland purposes by the owner of the parcel.~~

9. Modifiers that may be applied to an agricultural property assessment parcel are:

   a. Inaccessibility, consisting of topographic conditions making farm machinery access impracticable.

   b. Nonconformity, consisting of an area of relatively higher productivity soil type surrounded by nonproductive or lower productivity soil type land, making it impracticable to utilize the area to its highest productive capacity.

   c. Uncharacteristic salinity, consisting of a greater degree of salinity than is characteristic of the soil type where it exists, by reason of water seepage, discharge, or collection.

10. Before the second Wednesday in February ~~first~~ of each year, the county director of tax equalization in each county shall provide to all assessors of agricultural property within the county instruction on how to use and apply available soil survey resources, a schedule of modifiers that must be used to adjust agricultural property assessments within the county and ~~directions~~a copy of the current guidelines established by the state supervisor of assessments regarding how those modifiers must be applied by assessors. ~~Before the schedule of modifiers is provided to assessors within the county, the county director of tax equalization shall obtain the approval of the state supervisor of assessments for use of the schedule within the county~~Modifiers may be applied to reduce the soil type valuation of an area consisting of at least five contiguous acres of a soil type affected by conditions described for one or more of the allowable modifiers, if the assessor confirms the existence of those conditions.

11. An agricultural property owner may challenge any aspect of the agricultural property assessment determined for a parcel of that person's property, including the soil survey determinations, the application or nonapplication of modifiers, and the application or nonapplication of nonproductive status. The owner must present the evidence and argument supporting the challenge to the assessor or through the equalization or abatement process provided for in this title.

~~10.~~12. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys by February first of any taxable year after 2011, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each quarter from the state aid distribution fund under section 57-39.2-26.1 beginning with the first quarter of 2013, and continuing until the tax commissioner certifies to the state treasurer that that county has fully implemented use of soil type or soil classification data. The amount withheld from the allocation must be deposited into the agricultural land valuation fund. The amount withheld from the allocation must be withheld entirely from the portion of

the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

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SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2015."

Renumber accordingly

Date: 1-26-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1054

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0199.02002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Dockter Seconded By Rep. Strinden

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Aye
~~Nay~~
Voice Vote

Motion Carries.

Date: 1-26-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1054

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0199.02002

Recommendation:
☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Dockter Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	AB				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER		✓			

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Dockter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1054: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1054 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to assessment of agricultural property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for ~~inundated~~nonproductive agricultural land. The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.

2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the department of agribusiness and applied economics of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.

3. The "average annual gross return" for each county must be determined as follows:

   a. Total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.

   b. The department of agribusiness and applied economics of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. The department of agribusiness and applied economics shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.

   c. Divide the figure arrived at in subdivision b by eight.

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota~~, but the rate used for capitalization under this section may not be less than eight percent for taxable year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011~~. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years~~, and the~~. The gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).

5. The department of agribusiness and applied economics of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis; shall compute the average agricultural value per acre [.40 hectare] for cropland~~,~~ and noncropland~~, and inundated agricultural land~~ for each county~~; and shall~~, and provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the department of agribusiness and applied economics. Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

6. ~~For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing~~The county director of tax equalization may classify agricultural land as nonproductive agricultural land if it consists of a minimum of ~~ten~~five contiguous acres ~~if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it~~and is unsuitable for growing crops or grazing farm animals for two consecutive growing seasons or more~~,~~ and ~~which produced~~did not produce revenue from any source in the most recent prior year which is ~~less~~more than fifty percent of the county average revenue per acre for noncropland calculated by the department of agribusiness and applied economics of North Dakota state university. Land may not be classified as nonproductive agricultural land solely because it is wooded.

   Application for classification as ~~inundated~~nonproductive agricultural land for property that was not so classified in the prior year must be made by the owner in writing to the ~~township assessor or~~ county director of tax equalization by March thirty-first of ~~each~~the taxable year. The owner shall thereafter furnish to the county director of tax equalization, when requested to do so, any information that is believed will support the claim to retain nonproductive agricultural land classification for any subsequent year. Before all or part of a parcel of property may be classified as ~~inundated~~nonproductive agricultural land, the board of county commissioners must approve that classification for that property for the taxable year.

   The agricultural value of ~~inundated~~nonproductive agricultural lands for purposes of this section must be determined ~~by the department of agribusiness and applied economics of North Dakota state university~~ to be ten percent of the average agricultural value of noncropland for the

county as determined under this section. ~~Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.~~

Determinations made under this subsection may be appealed through the ~~informal~~ equalization process and ~~formal~~ abatement process provided for in this title.

7. Before the second Wednesday in February ~~first~~ of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall use soil type and soil classification data from detailed and general soil surveys.

8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. ~~Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.~~ In determining the relative value of each assessment parcel, the local assessor shall apply the following considerations~~, which are listed in descending order of significance to the assessment determination~~:

   a. Soil type and soil classification data from detailed or general soil surveys. It is presumed that if the soil capability class is 2, 3, or 4, that soil must be valued as cropland and if the soil capability class is 5, 6, 7, or 8, that soil must be valued as noncropland. How the property is used by the owner, by itself, does not overcome this presumption.

   b. The schedule of modifiers that ~~must~~may be used to adjust agricultural property assessments within the county ~~as approved by the state supervisor of assessments under subsection 9~~and the guidelines established by the state supervisor of assessments for application of those modifiers.

   ~~c. Actual use of the property for cropland or noncropland purposes by the owner of the parcel.~~

9. Modifiers that may be applied to an agricultural property assessment parcel are:

   a. Inaccessibility, consisting of topographic conditions making farm machinery access impracticable.

   b. Nonconformity, consisting of an area of relatively higher productivity soil type surrounded by nonproductive or lower productivity soil type land, making it impracticable to utilize the area to its highest productive capacity.

c. Uncharacteristic salinity, consisting of a greater degree of salinity than is characteristic of the soil type where it exists, by reason of water seepage, discharge, or collection.

10. Before the second Wednesday in February ~~first~~ of each year, the county director of tax equalization in each county shall provide to all assessors of agricultural property within the county instruction on how to use and apply available soil survey resources, a schedule of modifiers that must be used to adjust agricultural property assessments within the county and ~~directions~~a copy of the current guidelines established by the state supervisor of assessments regarding how those modifiers must be applied by assessors. ~~Before the schedule of modifiers is provided to assessors within the county, the county director of tax equalization shall obtain the approval of the state supervisor of assessments for use of the schedule within the county~~Modifiers may be applied to reduce the soil type valuation of an area consisting of at least five contiguous acres of a soil type affected by conditions described for one or more of the allowable modifiers, if the assessor confirms the existence of those conditions.

11. An agricultural property owner may challenge any aspect of the agricultural property assessment determined for a parcel of that person's property, including the soil survey determinations, the application or nonapplication of modifiers, and the application or nonapplication of nonproductive status. The owner must present the evidence and argument supporting the challenge to the assessor or through the equalization or abatement process provided for in this title.

~~10.~~12. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys by February first of any taxable year after 2011, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each quarter from the state aid distribution fund under section 57-39.2-26.1 beginning with the first quarter of 2013, and continuing until the tax commissioner certifies to the state treasurer that that county has fully implemented use of soil type or soil classification data. The amount withheld from the allocation must be deposited into the agricultural land valuation fund. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2015."

Renumber accordingly

2015 SENATE FINANCE AND TAXATION

HB 1054

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1054
3/11/2015
Job #24653

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Relating to assessment of agricultural property; and to provide an effective date.

Minutes: Attachments, #1, #2, #3, #4

Chairman Cook opened the hearing on HB1054.

Emily Thompson, Legislative Council staff attorney --I'm here to testify in a neutral capacity to explain the provisions of HB1054. This is one of the bills brought forward by the interim tax committee. **(Attachment #4)**

Sen. Cook -- On page 4, line 27, the word: presumed. It is presumed that if... That's not a word that we are going to find in century code very often, is it? Presumed? What does it mean? It is or it isn't?

Emily Thompson -- Typically a presumption means that's what must be assumed unless other factor are put forward to overcome that, in general.

Sen. Oehlke -- That part about wooded land, so a shelter belt would have to be included as productive land? The shelter belt is designed to create a protection from wind erosion, makes the general land around it more productive but then there's a penalty if you have a shelter belt? Is that what I'm reading here?

Emily Thompson -- The wooded land provision was put in place to address concerns about land that someone is choosing to leave the trees on and the soil below the wooded land might be a very high quality soil on which they could grow crops. Based on the fact that they chose not to clear those trees and farm the land, doesn't mean that the value should be decreased because we are looking at the inherent ability of that soil type to produce, rather than the management decisions made by the property owner.

Sen.Oehlke -- It was just an accident that shelter belts are penalized.

Emily Thompson -- I couldn't speak to how much negative affect that small shelter belt would have.

Sen.Triplett -- How does it relate to the forest stewardship law?

Emily Thompson -- This is separate.

Sen. Triplett -- Can you put your testimony in form to the clerk?

Emily Thompson -- I can do that. (see attachment #4)

Sen. Dotzenrod -- On page 3, line 18 & 19, we talked about land that may not be classified as non-productive solely because it is wooded. That makes sense to me because the discount that we are providing here for non-productive is very large, but you would expect some discount for shelter belts, is that available to the land owner in this bill?

Emily Thompson -- In this section for the non-productive land, it does specify that 5 contiguous acres. As far as addressing shelter belts and the size, it couldn't speak to the affect that may have.

Sen. Dotzenrod -- It does sound like those shelter belts, even though they are not being used to produce any crops, would be valued as if they were the same as the rest.

Sen. Cook -- I believe that is the way it is today.

Sen. Dotzenrod -- I might be wrong about that. We can find out later. On page 5, starting at line 7, they have the modifiers and there's nothing in there about rocks or piles or rocks, or places in the field where rocks become problematic, these have to do with other things other than rocks because that can really be a problem, in terms of making the field farmable.

Sen. Cook -- If I remember from the interim, the argument that was made is that when you get your soil PI, it already takes into consideration rocks. And that having a modifier then for rocks, also, is allowing a double modifier.

Sen. Dotzenrod -- I'll discuss it with Linda Leadbetter. (meter 15:40-16:24)

Don Flaherty, Dickey County Tax Director -- I'm speaking in hesitant support of this bill. **(Attachment # 1**(written testimony is statistical not narrative) (meter 17:23-28:12)

Sen. Cook -- What did you say the third classification of property was?

Don Flaherty -- In our county we have 3 classifications: cropland, non-cropland, and what we call old water.

Sen. Cook -- And where did you get the authority to create a classification of old water?

Don Flaherty -- We are allowed to, by the state, to set up our valuation schedule for the determination of agricultural land. This was submitted to the state and is reviewed every year. I have never been questioned on it by the state as to it being improper or out-of-use. It does not supplant the inundated land status because any farmer can apply for that status,

if they so desire. Why should I make a farmer submit an application, year after year after year, for water that has been there for over 10 years?

Sen. Cook -- I thought we had a process of uniformity. That was the goal: that every county is the same. The problem we had with the creation of this bill was the fact that we are not uniform and you made some comments about the use, whether it's used as cropland or not cropland. It's different as you go from county to county. That's our problem. We are trying to get to uniformity. The state, apparently, has some ownership in your being not uniform.

Don Flaherty -- I will agree that we do need uniformity. We need strong direction. We also need to have common sense in how we are approaching this process. And an understanding that just because I don't do it exactly the same as the county next to me, that doesn't mean that my system is horribly flawed.

Sen. Cook -- Well, the farmer that sat me down that had land in 3 counties and starting talking about the differences in how it's done in every county was a tough man for me to explain why it is the way it is.

Sen.Triplett -- Your larger sheet, where you talked about the differences to the north and east of you -vs- south and west of you, can you explain further how that doesn't work? (meter 30:30-31:13)

Don Flaherty -- If you look at the smaller sheet, it will help to explain that better. (meter 31:19-32:35)

Sen. Cook -- The capability class, 2,3,4,5,6,7,8, how does that compare to production index?

Don Flaherty -- From what I was able to find in most cases the lower capability class, 5,6,7,8, fits into lower production soils. But, again, I have lower production soil in the eastern side of my county that are being cropped and being cropped extremely efficiently because of the topography and other factors.

Sen. Cook -- Where do these numbers come from? The numbers that are in code on this form.

Don Flaherty -- In the soil classification book, each soil is given a class rating, that capability class rating for each soil type. That's where that comes from. That's done by NRCS in their soil survey.

Sen. Cook -- NRCS put a production index on that number?

Don Flaherty -- They put a production index on that number and they put a classification. For the record, there are soil types that have multiple classifications. They may have one productivity index but they may have 2, 3, or even 4 classifications. And in doing my study, I used the very first classification because that is supposed to be the most of that soil. So you could have one that has the capability class of 5, because that's the primary one; but

then has capability class of 2 & 3 or even 4 for the rest of the soils that make up that particular soil type.

Sen. Cook -- When we had the bill in the interim, we talked PI number. Now I see this other number in the book.

Sen. Dotzenrod -- If you have a parcel of land and in that parcel of land there is different soils that have different classes, you essentially end up on that parcel with what we would consider a weighted average. Can you have some that has non cropland and cropland on the same parcel?

Don Flaherty-- Yes, I can.

Sen.Dotzenrod -- And then you have to call that parcel one or the other?

Don Flaherty-- No, the way our classification works, when we set up our classifications, we initially said if 65% of that quarter was being used for that purpose and the surrounding area helped to confirm that purpose, it was given that rating. If the rating was less than 65% and the surrounding area would also help to explain that, we would then give that a mixed classification. I then I go and break out, in that quarter, exactly how it is being used in the purpose of what schedule it is going fall in for evaluation. We felt that was fair and equitable to all of the landowners within our county.

Sen. Dotzenrod -- Is that the system that we are using in all the 53 counties?

Don Flaherty -- No, I think that my system is unique to my county. I think there are other areas surrounding me that my system would be helpful and useful but I do believe that my system is very unique.

Sen. Cook -- Let's see how many other assessors we have here that think their system is unique.

Larry Kotchman State Forester (Attachment #2)
I speak in support of this bill.

Opposed to 1054.
Allan Vietmeier, Burleigh County Tax Director
(Attachment #3) Recommend a do not pass

Scott Reisenauer, Soybean Growers
We are as confused as you are: there are some things in this bill that we'd just as soon not see and some things that might not be quite so bad. I'm a bit surprised to find myself on the same side as the Burleigh Co. tax assessor, for a lot of the same reasons. We tinker with this every session and maybe we should let it go and see how it works. I wish I understood the process better. The bottom line is the idea that we have to have 5 acres of contiguous acres as that might apply to shelter belts, etc., I'm very concerned about that. My initial reaction, when I read this bill, was that this was to encourage the removal of

shelter belts but that is not the case. As it is incorporated, many people will make that kind of assessment. We are not in favor of this bill. (meter46:49-48:05)

Sen. Cook -- There was a reason why this was in the interim committee.

No further testimony.

Chairman Cook closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1054
3/25/2015
Job #25392

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1054.

Sen. Cook -- Very briefly on this bill, find out what we need. Modifiers? A class of non-productive farmland? I think, number 1, I would like to have Linda Leadbetter down here to answer some of them. Not now. I'm thinking Monday morning. Is that alright with everybody? Take a look at this bill. Right now counties can create, should I say, their modifiers. They have to be approved by the state and then they impose their modifiers. This bill greatly changes that. It identifies the only 3 modifiers that can be used, which is wise. The argument was made, during the interim, very effectively, that the production index for all ag land takes into consideration a lot of things that were being further adjusted by modifiers. That is why it's been taken out. We can kick this bill out next week. It's an important bill that we need to work on regarding ag tax.

Sen. Dotzenrod -- On this bill, we had the testimony here from the Burleigh County Tax Director and quite often I do not agree with him. He has a very large urban community as part of his responsibility and my districts are all pretty rural and I find myself at odds with him a lot. His testimony is that, if you read it, currently the use of modifiers, PI's and actual use is at the discretion of local officials, the tax directors, county commissioners. If these local officials feel the need to use these adjustment tools, they are applied. Local officials know the sentiment of their constituents. (meter 2:24-4:30)

Sen. Cook -- Have you looked at the constitution lately to see what that says about property taxes being equalized and uniform in the same classes of property?

Sen. Dotzenrod -- I know there are some references to that, but I don't know the exact verbiage.

Sen. Cook -- I think we are going to have to start Monday with a review of what the constitution says and then a review of century code makes it very clear that taxes are to be

uniform. That's the first job of the state tax equalization officer, Linda Leadbetter, to make sure that all assessors are trained so that taxes are uniform in the state. I would argue that this is the problem in that Mr. Vietmeier from Burleigh County says this is the way that we've been doing it for 30 years. You get a gentleman from Stutsman County and he is going to make the same argument that that's the way he's been doing it but it's different than what they are doing it. Especially when we look at how they determine whether something is productive or non productive. Cropland: whether it tillable or pasture. Some use the PI number and so use use. You can take some very productive ag land and plant it to grass for pasture, do you tax it as pasture because that's what he decided to use it as? That's all part of the bait. Flexibility is always nice but the farmer I talked to who had land in 3 counties and every one of them did it differently was not happy.

Sen. Dotzenrod -- I understand it. There are variations, county to county, and I'm not too sure if we pass this that's we are going to solve that. There's still going to be variations, county to county.

Sen. Cook -- It's going to take a while to get it uniform.

Sen. Laffen -- I think there will still be some variations. I'm not an expert in this area at all but I did talk to a couple farmers I know and they see the issue, in their area, their assessors used modifiers too much as a sort of favoritism. It just allows too much personal opinion in the process. That was their issue. I think there will still be differences across county lines but hopefully it takes the personal preference out of the issue.

Sen. Unruh -- I just wanted to say that I agree with you and Sen. Laffen. I think during the interim we saw that there are a lot of problems with counties doing things a different way with additional subjectivity by the assessor. Maybe this isn't perfect but I do think it gets us one step closer to more uniformity with how we are assessing and taxing our agricultural lands. I think it is a good thing.

Sen. Cook -- We are going to get our questions answered Monday morning. We will start out here.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1054
3/30/2015
Job #25577

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1054. All committee members present.

Linda Leadbetter, State Supervisor of Assessments, Office of State Tax Commissioner --

Sen. Cook -- Talk to the committee about the requirement for property taxes to be uniform and equalized within their own classifications. It's been a while since I pulled out the constitution. Do you have any idea of what the constitution says off the top of your head?

Linda Leadbetter -- I do have the constitution with me as well. Basically, yes, what the constitution does say is that all taxable property must be assessed in the same manner. It is supposed to be assessed equally in each jurisdiction and then, again, reviewed at the county level, and again considered at the state to be equalized so the assessment methods and values are considered equitable across the state of North Dakota.

Sen. Cook -- If we were to pass legislation that enabled counties to have the discretion to separate cropland from non-cropland, some could use use if they wanted to, others could use a PI number, do you think we would be falling in line with the constitution or would we be outside of its boundaries? Your opinion.

Linda Leadbetter -- My opinion is, yes, we would not be following the guidelines of the constitution and also statute where we are supposed to be having things equally valued. We are supposed to be using the same set of tools in order to value property. We are supposed to be having the same vision when we look at them. We know that values are still based on opinion but they still have to have the same tools in place and they should be using the same basis for their valuation process.

Sen. Cook -- This seems to be one of the first areas with property tax and we all know how contentious property taxes have been over the last few years. To me it seems that most of

our problems start with this question: why do their values have to keep going up? And then we get into the ag land and we have counties that use different ways to draw the line between cropland and noncropland and they don't understand why the state should tell them how they have to do it. How do we inform the taxpayers that some of these questions you raise, we don't have any choice. We've got a constitution to follow and we've got to follow it. And that isn't necessarily for you, Linda, I'd be happy to have any committee input on this too, because that is our challenge.

Linda Leadbetter -- I was wondering if it was a question or just a very well stated comment. We do find those concerns that you are addressing when we review values at the state board of equalization level because we have the concerns when something comes in and their commercial property within a jurisdiction is 30% below the tolerance level and we have to do a lot of looking and trying to review what's happened in the process. Oftentimes we find it's not just one thing that's happened, there are many things that happened along the way.

Sen. Cook -- Is North Dakota unique in the fact that we require uniformity with taxes?

Linda Leadbetter -- No, it isn't unique. It should be an equalized process. The goal of all governing bodies is to try to equalize.

Sen. Triplett -- Mr. Chairman, your comments are making me think about the forest stewardship law which is sort of separate from this whole process. And, as I understand, was left out of the discussion at the interim level and is left to county discretion. Maybe one of the attorneys could step up and address if we are stretching the limits of the constitution to leave that to county discretion.

Sen. Cook -- We will cross that bridge. We didn't leave it out of the discussion during the interim. We discussed it to great detail. What we were left with was we weren't able to come up with consensus on a bill draft to bring forward.

Sen. Dotzenrod -- Linda, the way that the property values have to match up around the 53 counties is with the number that NDSU provides to each county once a year for a cropland and noncropland number and then the counties have to figure out how to spread those across their county to get a number that will be what the state tells them. That's my understanding of how we do it right now. How do you tell the counties how they should make the distinction between land in their county that's cropland and noncropland?

Linda Leadbetter -- I will agree with your statement from the beginning but would ask to be able to clarify it just a bit. The process for commercial and residential is market-based. The information is done by jurisdiction. At the local level, they value it, based on their best information. At the county level, they would make adjustments if necessary; and then it comes to the state and we look at the county overall and make those determinations based on that market and whether they fall within that tolerance level. For ag land, it is at the production formula that is from NDSU. Each county provides to NDSU a number that they call their productive acres and the noncrop acres. NDSU, from the surveys, has the acres that they say are in production. Based on the production, the other information included in that, NDSU will tell them cropland in your county should be based on this much, so much

for cropland, so much for noncrop. The tax director then is going to review that with all the acres that they have in their county and say, to achieve this dollar value, we need to make sure there are these adjustments made to this type. (meter 10:07-11:07)

Sen. Dotzenrod -- What this bill does, it makes it very specific on classes. I wonder how that contrasts to what we do today. That distinction, when the county has to decide what's cropland and what's not cropland, they are using the information that you just described: the productivity index, modifiers, and use. It is a bit more subjective. With this bill, there is no subjectivity. You have to take those numbers. (12:20-13:28) How do you fix that?

Linda Leadbetter -- We are here trying to help you interpret that. I am not saying that we chose those numbers. I would like to ask that Dustin Bakken be allowed to answer some of these questions to get into a bit more detail. We have looked at your concerns. (meter 13:50-15:16)

Sen. Cook -- Just to go back to the one thing you said, Sen. Dotzenrod mentioned tiling and irrigation and, I agree, those are management decisions. We don't have any counties in North Dakota, today, that would change the value of the property based on a management decision, do we? We are uniform across the state in that area, are we?

Linda Leadbetter -- Not that I am aware of.

Sen. Cook -- Do we make that clear anywhere in law, that management decisions such as tiling and irrigation do not change property valuations for tax purposes?

Linda Leadbetter -- I do not believe that it is law. I will ask Dustin Bakken, our property tax specialist, is that in our ag land education as far as management decisions not being applied to value?

Sen. Cook -- We don't need it in law than either?

Linda Leadbetter -- I would agree that we probably don't need it in law.

Sen. Cook -- Again, I've got to go back to cropland and noncropland, we put that in place back in '81 when we passed the production formula, I assume. I always question why do we have cropland and noncropland? Why can't we just have a value for ag property in a county and you take that value times the PI and you come up with the taxable value for that particular parcel of land? Why do we have to worry about whether its pasture or non-pasture?

Linda Leadbetter -- I would imagine that was a legislative decision. At that time, because they did not have the details of the soils, that was the way to identify the splits and the variations in use and how they had a different productive value.

Sen. Cook -- We have a PI for every acre in the state?

Linda Leadbetter -- Yes, now.

Sen. Triplett -- My question relates to a comment made by Mr. Glatt who testified during our hearing and he was referring to the language on page 4, lines 26-30, where we say it is presumed that if the soil capability class is 2,3,or 4, that soil must be valued as cropland and if the soil capability class is 5,6, 7, or 8, that soil must be valued as noncropland. He described to us that that is entirely too black and white because his analysis was that the way it is currently being interpreted is, whichever class has the highest number that's how the whole parcel analyzed. (meter 18:46-19:11). Was he just wrong about that?

Linda Leadbetter -- That is not how anyone is instructed to value their ag land.

Sen. Triplett -- It would be a weighted average then?

Linda Leadbetter -- Correct. Each number of acres would have a certain value applied to it, based on where it falls in the classification.

Sen. Triplett -- So if he were correct that 2,3,& 4 totalled was more than 5,6,7,&8, it would have a class that would come out as sort of a 3.5?

Linda Leadbetter -- No, that would not be correct. Each parcel, with the detail soil every parcel that you look at you can see how many acres are identified as each type and each of those types of soil will have a PI of it's own.

Sen. Cook -- Before we end I want to go to Sen. Unruh. Before we end I want to know the relationship between these numbers and the bill and the production index.

Sen. Unruh -- Two points. One, to respond to Sen. Triplett, I think what Mr. Glatt was referring to are individual soil pedons within, say, a quarter section. Those individuals soils can be 20% Bowbells and the rest of it Williams. He is referring, I think, to that much of the soil type is the dominant type, is what class gets assigned to it. For that individual pedons, there are multiple pedons within an entire tract.

Sen. Cook -- Senator Laffen, do you want to explain a pedon?

Sen. Laffen -- You aren't going to believe this but I actually had a nightmare last night that this was going to conference committee and you assigned me to chair this.

Sen. Oehlke -- Sen. Dotzenrod, you farm, so if you've got 12 acres of this soil classification and 40 of this classification and another 15 of this in a quarter section, what do you seed?

Sen. Dotzenrod -- One of the great things that has changed in agriculture is the variable rate technology. You get a field map in a digital format and then you variably apply the inputs across so that you know that you are going to lose production in some parts, relative to other parts. And then there are dual rate seed meters and in use with the mapping and the digital gps systems it will allow you to shift seeding amounts in different areas. Technology, today, because of mapping and precision planting, we are managing by the square yard rather than by the acre. The answer to what you plant will depend on where you are in the field and the information about the soils.

Sen. Unruh -- My comments feed right off of Sen. Dotzenrod's last comment. The soil, in and of itself, is only capable of producing a certain amount and any additional output you get from your soil is based on the input that the farmer puts in. I have a really hard time making the argument that modifiers should be subjective because they are already built into the inherent capability of the soil to produce. Any increase production would be a result of a management decision by the farmer.

Sen. Triplett -- If we are getting deep into this, I will just throw out the idea that I've been concerned about: the benefit that our irrigators are getting from the state, basically as a gift just because they happen to live near a canal built by Garrison Diversion, for example. They are getting really significant grants from the state of North Dakota and then we are saying that we will make no adjustments. Management decisions that farmers pay for themselves, like tiling, for example, I don't have a problem if they get additional productivity and we don't increase their taxes, but if the management decision comes with a gift from the state, I'm not sure why we wouldn't expect at least an increased tax level from that.

Sen. Cook -- That's an issue for another day and another bill, I would think. You can start with repealing the sales tax exemption on irrigation equipment.

Sen. Cook -- On page 3, we eliminated inundated agricultural land and we are creating a class of nonproductive agricultural land and the requirement is that it does not produce revenue in the most recent prior year which is more than 50% of the county average. To me, that is productive land. Where did we come up with the 50%? Was that done in the interim or did it get done over in the House? Do you know?

Linda Leadbetter -- I don't recall when that actually happened.

Sen. Cook -- For noncropland. So it's the revenue that you get off of an acre of noncropland, the average revenue off of an acre? You've got to be below 50% of that value to be nonproductive?

Linda Leadbetter -- Right. You would be looking at that as a very low amount. On noncropland, you are looking at that value based on animals and how many animals per acre. Each acre isn't producing the number of dollars that it would be on the cropland so less than 50% of what you would have gotten from noncropland means that you have had a very low production on what you had assumed had been cropland prior.

Sen. Cook -- Well, when I think of nonproductive land, or inundated agricultural land, I see zero value.

Linda Leadbetter -- I believe the idea is that they expect it to return to value so it does not have a zero value because it would still hold value in itself.

Sen. Cook -- Okay, so 10% of noncropland. I'm just trying to think of the logic of 50%.

Linda Leadbetter -- I believe that it was 10% of cropland production was inundated.

Sen. Unruh -- It looks like that was added on in the House.

Sen. Cook -- Okay. Well, we might just change it to 10 and then we will have a conference committee and we will have that discussion.

Sen. Triplett -- Can you tell me why we are moving away from the inundated lands which seemed to be a pretty clear line that people understood and this seems fuzzier.

Sen. Cook -- I had so many discussions and sat in on so many meetings over this, during the interim, I can't recall the real answer to that. It kept coming up every time we met.

Linda Leadetter -- My recollection is that inundated was very specific to water and they are saying that the water does not always stand there in order to be nonproductive so they were saying that it's maybe not completely under water right now but the effects of that were part of the discussion.

Sen. Triplett -- So we are still talking about lands that are nonproductive because of inundation.

Sen. Cook -- Not necessarily.

Sen. Unruh -- Part of that was inaccessibility, as well. Small portions of land that were inaccessible, and inundated. This gave us one kind of classification of land that could not be used.

Sen. Cook -- We had a conversation about woods. Was it nonproductive?

Linda Leadbetter -- Yes, they did discuss that as well and we are trying to determine the number of acres that would actually become wooded and otherwise would just be considered shelterbelts and add value to the land.

Sen. Cook -- So we are going to have to have a discussion on that before we are done.

Now let's go to the bottom of page 4, tell me where these soil class numbers 2,3,4,& 5,6,7 & 8 came from and what's the relationship of those numbers to the PI which I've become familiar with.

Linda Leadbetter -- May I call Dustin Bakken to the podium to assist with clarification on those so I do not misstate some of those numbers?

Sen. Cook -- Dustin Bakken, would you come to the podium, please?

Dustin Bakken, Property Tax Specialist, Property Tax Division -- To address your question on where these capability ratings come from, those are published by the NRCS through their soils survey, much the same as the productivity index rating for a certain soil. They also group them into their capability, so to speak. Just reading off the list here, for example, class 2 would have moderate limitations that reduce choice of plants or would require moderate conservation practices. Pretty good cropland. Whereas 5 would be subject to little or no erosion having other limitations impractical to remove that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat. The NRCS has basically

gone through all the motions to group these different soil types, regardless of their PI's into a capability rating.

Sen. Cook -- There's only 7 of them?

Dustin Bakken -- There are 8. 1 through 8. But in the bill, as it exists right now, there's only 7.

Sen. Cook -- What's 1?

Dustin Bakken -- One would have few limitations that restrict their use.

Sen. Cook -- Shouldn't 1 be in here then?

Dustin Bakken -- I would agree. I am not aware that we would have any class 1 soils in the state.

Sen. Cook -- So a 1 is 100% PI? And a 5 is at 40 or below?

Dustin Bakken -- It could vary. I've seen, in a few counties, where the PI of a class 5 soils is actually up in the 60's and lower 70's. There is other information that they would use to classify that soil and that capability class.

Sen. Cook -- Now let's go to the modifiers. Uncharacteristic salinity? Where did that come from? That didn't come out of the interim?

Dustin Bakken -- As far as where this language came from, I am not aware.

Sen. Cook -- It came from the House, didn't it? From Schmidt?

And, why isn't salinity in the production index?

Dustin Bakken -- I do believe, in discussions earlier, that Sen. Unruh brought this up. A portion of salinity is included in the PI rating of a particular soil type. I think what this language is intended to do is address areas that, over the last 2 years, have really had high water levels where the water has risen so fast that the salts came up and then they went down just as fast as they came up leaving those salts at the top of the surface.

Sen. Cook -- Will that high salinity eventually disappear?

Dustin Bakken -- Common sense would tell you, yes, if the moisture levels came up to the point where it would absorb that salinity back into the moisture of the soil and lessen, to an extent, where it would draw the soils back down into the soil.

Sen. Unruh -- It probably will and we hope that it will. We've seen a lot of areas with increased salinity in the western part of the state, in particular because we are just not used to all the rain that we've gotten. We've had record rainfall over the last 5 years. If it does get reduced over time, it will be a very long time, probably decades.

Sen. Dotzenrod -- The salt really is one of the more serious things. (meter 38:38-40:14)

Sen. Unruh -- To follow up, tiling in western North Dakota is definitely a good concept for us and is something that people are talking about. We've been talking about it on the soil conservation district level but given our history of reduced rainfall amounts, it's a very, very difficult investment for producers to make.

Sen. Triplett -- I was going to add to that, too, the reason that it works in the Red River Valley is because of the very high quality soils and the relative flatness of the land. It will be a pretty rare event in the western 1/3 of the state, especially.

Sen. Cook -- You are not going to see a whole quarter section tiled like you do in the valley. You might see a couple spots of it.

Counties actually determine what modifiers they want and then the state approves the modifiers that they want to use, correct?

Dustin Bakken -- That is correct. The counties have the authority.

Sen. Cook -- And we are eliminating that completely. The state is determining only 3 modifiers and the assessor has to go and visually inspect the farm before he can apply a modifier, correct?

Dustin Bakken -- That is exactly how I would interpret that section as well. The state would be the ones responsible for drawing up the guidelines as how those modifiers are to be applied.

Sen. Dotzenrod -- I'm looking at the 3 modifiers on page 5, inaccessibility, nonconformity, and salinity. I imagine all that information is attainable without going out to look. It's probably a good idea to have verification. Are we putting it into the century code that this verifiability on the ground is a requirement?

Sen. Cook -- That's what I see.

Sen. Dotzenrod -- What page and line is that on?

Sen. Bekkedahl -- Line 27, page 5.

Sen. Cook -- There it is. I think at one time it said more than that. I'm done with my questions. Anybody else have any questions they need to ask on this?

Sen. Dotzenrod -- Does this bill clear up the question of how trees are taxed? If you have a 3 acre shelterbelt on the south side of an otherwise perfectly good square quarter section, those 3 acres will be treated in what manner with this bill?

Sen. Cook -- This bill isn't going to change it, I don't think.

Dustin Bakken -- I don't believe that it is clarifying that issue very well. It's just that land may not be classified as nonproductive solely because it is wooded. I think the intent with that was to take into consideration the forest stewardship tax. But that may be a county decision on whether or not that is taxed.

Sen. Dotzenrod -- From this point on, it is really not a question for me but just to raise the point, one of the counties I visited with over the last few days on this, they have a flat $50/acre valuation they put on any field shelterbelts. They ignore soil type.

Sen. Cook -- Did you ask the where they got the authority to do that?

Sen. Dotzenrod -- I didn't ask them where they got the authority, but I don't know if there is a statewide policy. I think that idea is a pretty good idea. I like that they don't put a high cultivated land productive index on land that nobody is going to get to farm. It makes sense to me.

Sen. Triplett -- I would agree with Sen. Dotzenrod but I also agree with you, Sen. Cook. that there probably is not currently authority in the statute to do that. I think we, in North Dakota, have been a little slow at least at the taxation level of valuing trees. (meter 45:48-47:55)

Sen. Unruh -- Just got a response from NRCS and they verified that they don't think there are any class 1 soils in North Dakota but I don't think it would hurt to stick them in the bill, just in case.

Sen. Cook -- Sen. Dotzenrod, regarding the trees, I can look at my mother-in-law's farm, 50 years ago, her husband planted trees all over their place. Today they are not needed because of no-till. They are virtually all dead. They've got to come out and I don't see them getting replanted.

Sen. Triplett -- I understand that with the large equipment today, farmers consider them to be a nuisance. My larger concern is for the native woodlands that are remaining along our rivers. I think that if we are going to be concerned about not giving counties discretion that we better put that into the bill and leave it to the state forester to decide what is good quality woodlands that should be protected.

Sen. Cook -- I'm not opposed, myself, to having something amended onto this bill to address that.

Sen. Triplett -- I'll volunteer to do that.

Sen. Unruh -- I agree with Sen. Triplett 100%. There is an important distinction between shelterbelts and native woodlands and preserving the native woodlands is a very, very important thing.

Sen. Cook -- Sen. Unruh, how does a PI change? Does it change easy? Can a landowner request that NRCS comes out to their place with a soil classifier for the sole purpose of reevaluating the production index? Is it something that NRCS does on a regular basis?

Sen. Unruh -- The best I can do is make a conjecture, I know the soils books that I use were done back in the 1960's. Whether or not those are updated, the website, with changes in soil classifications, I don't know. Soils are mapped based on the type of soil that is there and if the producer wanted a different productive level on their soil they would have to get it classified as a different soil type, make that argument rather than changing the productivity index level. It is not something that I have ever seen happen in our area.

Sen. Cook -- Nobody is shaking their head like they know a better answer. Let's see if we can find that out. Propose the question to NRCS. I assume NRCS is the only organization that assigns production index numbers in North Dakota. Is that true?

Sen. Unruh -- Yes.

Sen. Dotzenrod -- Where I live and farm, the soils books that were done in the '60's are surprisingly good. It makes me wonder, how did they get information that accurate and that good. When you farm a piece of ground for many years and then you look at the soils map and you see how accurate it is. It is fairly refined. They are very good.

Sen. Cook -- Have you ever gone out with your laptop and pulled up your farm to see what your PI is?

Sen. Dotzenrod -- No, I don't think I ever have. Can you get PI information?

Sen. Cook -- Any acre in the state you want. Right off the computer.

Sen. Unruh -- We are geeking out here, Mr. Chairman, and I am just loving this conversation. The FSA office has all that information on the maps when you do your yearly check-in with them.

Sen. Cook -- You can go out to NRCS also, right?

Sen. Unruh -- Yes, it is also on their website. Their programs are more optional, whereas FSA programs are not quite as optional.

Sen. Dotzenrod -- If you talk to people who are in the tiling business, one of the things that they all seem to agree is, you can take a fairly flat piece of farmland on the eastern part of the state and those parts of the field that were limited and had all kinds of problems and maybe are identified in the soils book, if you tile that field those generally become the highest producing parts of the field after you get the tile in.

Sen. Unruh --- There is an appeals process, if you are not happy with the classification of your soil. We've never done it in Mercer County.

Sen. Cook -- Do you want to go up to the podium and talk about the constitutionality of having a woodland tax treatment that's not mandatory in all the counties? Perfectly normal, isn't it?

Dan Rouse, Legal Counsel, Tax Commissioner's Office and Legal Counsel to the State Board of Equalization -- If I could step back for a moment, what I think I understood you talking about at the beginning of this conversation was the concept that's in the state constitution that all taxes shall be uniform on the same class of property. With that having been said and the constitution, as you all very well know, it says further that the legislature shall determine what the parameters are and, as Ms. Leadbetter pointed out, there is a fair number of hands that are involved in the assessment process by the time it gets down to the individual parcel of land. There is that opportunity for some variation in how property is assessed from one parcel to the next, given the human nature involved, given the fact that the people that are making those assessments are understanding and interpreting the statutes and the instructions that are given to them by the tax department, by the legislative assembly and by the broad parameters of the constitution, but again, within those broad parameters there is going to be some limited recognition of the variances from one parcel of property to the next, whether that be wooded, whether it be productive index, whether it be soil classification modifiers

Sen. Triplett -- That wasn't my question though. My question was whether the forest stewardship law found in 57-57 which authorizes individuals to apply to their counties for a tax break on forested lands fits within the parameters of the constitution, given that county commissions can choose not to even participate in it; so you get uneven treatment county by county, depending on whether an elected body chooses to participate in that particular thing.

Dan Rouse -- Thank you for throwing me the lifeline there of not issuing an AG's opinion because I'm not authorized to do that, I struggle with the answer to that question because I think it is capable of a couple of interpretations.

Sen. Cook -- We should get an AG's opinion.

Dan Rouse -- Perhaps that is the best direction.

Sen. Triplett -- There certainly wouldn't be any problem with us making it a statewide rule and taking it out of the hands of the county commissioners.

Dan Rouse -- I would agree with that.

Sen. Dotzenrod -- The impression I have is that the current system that we have in North Dakota is constitutional as far as measuring property values on ag land. What's offered in this bill would be constitutional. (meter 59:45-1:00:48). Do you see anything about our current system of valuing ag land that is not constitutional?

Dan Rouse -- That's really not my opinion to render. The state board of equalization is the body that is responsible for making a lot of these determinations, short of any sort of a court order. As you know, the actions of this assembly are assumed constitutional. (meter 1:01:13-1:01:47)

Sen. Cook -- This was a good discussion. I wanted to have it. Sen. Laffen is really glad because he may chair the conference committee.

Sen.Laffen -- I actually have learned a lot and reading at the end of the bill here, I wanted to clarify one thing that you asked earlier. You asked if the PI could be changed, how hard it was. Were you wondering if there was a process to do that or is it just hard to do that? At the end of the bill, it does add that you can challenge that classification and that was added into this statute. It doesn't say how you get it done so I didn't know if your question was is that difficult or if it is allowed?

Sen. Cook -- I was just curious if it could be done and, if so, how and I think we know it can be. I would hope that it is not real easy.

We are probably going to do some amendments on this. I think we need to. I think it would be nice to put the class 1 soils in there. I have some questions over the 50% number. I'd like to lower that number. You are talking about an amendment for shelterbelts.

Sen. Triplett -- I think I would limit it to more areas that qualify under the forest stewardship as determined by the state forester.

Sen. Dotzenrod -- I may want to spend some time seeing if I could get an amendment that would recognize shelterbelts to separated out on a tax statement or valued at a lower value than the cultivated land. I want to work on that a little bit.

Sen. Cook -- That's fine.

Committee work on HB1054 closed.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1054
3/31/2015
Job #25646

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes: Attachment #1

Chairman Cook opened the committee work on HB1054.

Sen. Cook -- There are 2 sets of amendments. How are we going to work through this? Sen. Unruh, do you want to start with some changes? We've got 2 sets. We want to get them synchronized. We've got John here to take notes so if you can give an explanation of what it is you want to do.

Sen. Unruh -- (Attachment #1) They do a couple of different things. If you take a look at page 3, subsection 6 of section 1: it talks about the qualifiers for land to be classified as nonproductive and on line 16 part of that description is that the revenue from any source which is more than 50% of the county average revenue would qualify land to be nonproductive. I am proposing to move that 50 down to 10% so basically it really has to be land that is not producing hardly anything and the producer is not making money on it, as a percentage of the county average. Page 4, there's a listing of soil capability classes and class 1 was not included. It is in there now. Page 5, line 27, talks about challenging any of the parts of the ag property assessment and included in language now, it says that may include the soil survey determination and that challenge would be going through the board of equalization and I don't think that is appropriate. If a producer has an issue with his soil survey determination, he needs to talk to the NRCS. Simply put, the board of equalization is not going to have any say in what the soil is classified as. It needs to go through the NRCS. I am proposing to strike that language. I think we will have Walstad draft up a different version. Page 5, line 27, there's some language there that says if the assessor confirms the existence of those conditions; I was thinking that I wanted the assessor to actually do a site inspection to confirm conditions in the field but not for the modifiers for the classification of nonproductive land. When Mr. Walstad drafts our next version of the amendments we will be sliding that language back into the definition of nonproductive land. requiring the assessor to make a field visit; an actual site inspection of the classification of nonproductive land. Not for the modifiers, though. That language would stay the same.

Sen. Cook -- Just for nonproductive?

Sen. Unruh -- Just for nonproductive. Not for the modifiers. They do not need to make a site inspection for the modifiers.

Sen. Cook -- Is that it?

Sen. Unruh -- That is it.

Sen. Oehlke -- My question is on line 16, page 5, where it mentions before the second Wednesday in February of each year, the county, and then it talks about a site inspection and that type of thing, is there a time limitation on when that site inspection has to be done? If they get the instructions in February, are they supposed to have it done in March? Or do they get until the following year so they have the better part of the year to actually go out and do a site inspection? What is the critical timing issue? I don't want them trying to do a site inspection if the ground is frozen and there is snow all over.

Sen. Cook -- Sen. Oehlke I see that to have a nonproductive classifications of agricultural land, it's got to be made by a request of the owner in writing by March 1 of the taxable year. I'm on page 3, line 22.

Sen. Unruh -- That is part of the confusion because my amendments addressed subsection 10 but I didn't intend for them to address that section. I want them to address the language in subsection 6, which is on page 3 where Sen. Cook is referring to. And if the producer has to make that request by March of that current taxable year, then there would be time for them to inspect the property.

Sen. Oehlke -- So they have to have it inspected by when? Because they have to have all this information in to the county for them to build their budget by June?

Sen. Bekkedahl -- I think the critical aspect of this, doesn't it deal with when the township board meets as equalization and then the county meets. In the cities we are required to do that in April. I don't know when the townships do it.

Linda Leadbetter, State Supervisor of Assessments -- The township board of equalization are in April, as well, so they would have to have the modifiers reviewed or their nonproductive land reviewed prior to those meetings. It could be addressed at the county level, as well. Those opportunities would still exist.

Sen. Oehlke -- Is it reasonable for us to expect that? The landowner comes in March 1 and says I think I've got some nonproductive land; it's 4 feet of frost, 2 feet of snow, please go out and check it because we got to have this to our township by a couple weeks from now.

Linda Leadbetter -- I will address that with an understanding that this is going to be based on information from a previous year, as well. You are talking about the inundated impact that are now in the nonproductive. They are going to be based on characteristics that existed the previous year that you are able to prove rolled forward into this assessment.

Sen. Oehlke -- We are requesting here, possibly, a site inspection, too, which wasn't in the original wording but that's what we are looking at now. I don't know what a site inspection accomplishes other than what the pictures verifying that's there snow on it.

Sen. Unruh -- While not included in the version we received from the House, it was language that was included in the original bill that was presented to the House from the interim committee.

Sen. Oehlke -- I wonder if that is why it was struck because that information is available other places without someone having to have boots on the ground to know. NRCS has maps. There's all kinds of information out there.

Sen. Bekkedahl -- If it was an issue at the timing for the township meeting, the assessor could say I was not able to get to the site and it could be brought before the county board of equalization which is a later date, isn't that correct, Ms. Leadbetter?

Linda Leadbetter -- Yes, that is correct.

Sen. Unruh -- I don't mind providing a little extra leeway in there and giving them a little extra time, but as a person who takes all of the information available: looking at maps, sitting behind my computer in my office trying to figure out what's going on out in the field, there is nothing better than an actual field visit out to the site to know what's going on, especially for those new applications.

Sen. Cook -- Linda, I'm reading this thing and I need to ask a question, as I read the whole paragraph, application for classification as nonproductive agricultural land for property that was not so classified in the prior year, must be made by the owner. So we have land that was not nonproductive the prior year by March to have to request that it be deemed nonproductive; and then you've got to have here, will support the claim to retain nonproductive land classification for any subsequent year. What's the relationship between prior year and subsequent year, neither one of them are talking about the current year.

Linda Leadbetter -- What I believe that is addressing is the idea that it was not qualified as that last year during that taxable year but, based on the conditions that existed during that last year, you are able to make your application for this year; and then it would be something again because it's eligible now in 2015 that would be eligible again a subsequent year because we have now proven that it's met those requirements and is probably not productive again now in 15 so you would have that to move forward.

Sen. Unruh -- I think maybe we could just include some language that new applications for classification of nonproductive land have to be inspected but they don't need to be inspected on a yearly basis if they previously qualified.

Sen. Cook -- Sen. Triplett, can you shed some light on what you were thinking?

Sen. Triplett -- Yes, and I will say that none of my proposed amendments will impact or negate any of the ones that Sen. Unruh is describing. I mentioned yesterday the idea of

incorporating the forestry stewardship tax into this bill so that it would be uniform across the state; we would just append a rewrite of 57-57 which is the forestry stewardship bill and I have discussed it with Mr. Walstad and he is working on it but it is not finished yet. Basically, it would just pull the decision making away from the county commission. 57-57-02 has this sentence in it, this chapter applies in any county in which the county commission has approved, by resolution, the application of this chapter to all qualifying property within the county. What we've learned from the state forester is that only 8 counties in the state have adopted the resolution and have used the forestry stewardship law. In our never-ending quest for uniformity in taxation across the state, the decision making power would have to be removed from the county commission. (meter 14:00-15:24)

Sen. Cook -- So your amendments then would take the decision out of the hands of the county commission as to whether or not they were going to have the forest program. What would it do to the rate of tax?

Sen. Triplett -- My proposal would do nothing to the rate of tax. Right now in the forestry stewardship, the tax is a flat rate of 50cents per acre and to get that the landowner has to apply and has to agree to maintain it and accept recommendations for quality forestry stewardship for a period of 5 years and then they have to reapply each 5 years so that the forester can determine at some point if a shelterbelt has died or it's been bulldozed. If it's maintained then they can just reapply in 5 year increments. I'm not proposing to change any of the substantive aspects that have been in law for a long time. (meter 16:24-16:34)

Sen. Cook -- I have one immediate concern and it has nothing to do with the language that you just proposed. We had a bill last session dealing with the forestry stewardship program. I believe it ultimately got turned into a study and we had an indepth study during the interim. We studied it greatly. We looked at various options from doing what you are doing here to changing the tax policy, to appropriating state money to the counties for support of this program and the interim committee was unable to move and recommend a bill forward. The interim committee wasn't able to come to agreement on this issue. I am reluctant to look at that policy shift in the form of an amendment after crossover with there being no hearing. It's an issue that probably needs to have some attention but we couldn't get anybody to bring up a bill that we could find agreement so we could have this discussion in a public hearing.

Sen. Triplett -- We did have a public hearing on it, in a sense. I agree with you, ordinarily that if there's been no discussion of a topic, it's inappropriate to try to fix it at the 11th hour but the state forester was part of the testimony here and the fact that the bill that we are looking at expands the definition of nonproductive and starts developing tax policy for it and then also puts in new legislation that say, very specifically, land may not be classified as nonproductive agricultural land solely because it is wooded, which is apparently trying to correct a perceived a problem that some counties have been just kind of casually treating forested land as though it were nonproductive land in the past. I think it is germaine. I think it is relative and I think it did have a hearing.

Sen. Cook -- I will agree with you, it's germaine. I'm questioning the level of a hearing that it really had to be vetted.

Sen. Triplett -- Obviously we will have a larger discussion when the amendments are drafted but because I am making no substantive change it would be a pretty minimal change for anyone over the next 2 years in the sense for the forester to get information out to relative people and for people to put in their applications. (meter 19:29-20:28)

Sen. Cook -- You should have been on that interim committee, you could have made a motion there and we would at least have a bill to vote on, but we didn't even get a motion for somebody to move something through.

Sen. Dotzenrod -- It sounds like the provision she is talking about there it would be a 50cents per acre tax that would be due on those tracts and that would go to the county?

Sen. Triplett -- Yes.

Sen. Dotzenrod -- And then the county would be reimbursed? They would get the 50cents. There is no real loss to the county?

Sen. Triplett -- It's the same thing that we've talked about. It would be a slight redistribution in the sense that if someone is not paying taxes or being taxed at a reduced rate then everyone else is a miniscule increase. The fact is that we don't have very much forested lands in this state. (meter 21:31-22:03)

Sen. Dotzenrod -- In my county, what I was told, is that they value all trees, shelterbelts or wooded areas, at $50/acre. The taxes on land, valued at $50, would probably be less than 50cents. In my county, whether they are in the stewardship program or not, they have essentially accomplished all of the tax policy objectives that you have verified and in line with what you are talking about.

Sen. Triplett -- Exactly but they won't be able to do that now because we've put this one line in our bill that says that land may not be classified as nonproductive solely because it is wooded. They are going to be required by this to base it on the soil surveys and the soil under a natural forest is usually pretty fine because it is so high in organics. The function of this line in this bill is going to prevent your county from doing that in the future. (meter 23:10-23:24)

Sen. Dotzenrod -- I do think that counties that look at treed lands and give a considerable discount over the cultivated areas are on to something that is pretty important. I think it is a good policy. (meter 23:35-24:01)

Sen. Triplett -- That's what I'm saying, either adopt my amendments or kill this bill but we can't let this bill go out with these precision soil classifications and not do something to say that we value the trees. We will see the destruction of a lot more native woodlands, if we do that.

Sen. Cook -- Do you see a difference between native trees and windbreaks or tree claims?

Sen. Dotzenrod -- Offhand, I don't think so. The shelterbelts were planted, probably, in strategic locations, as far as the landowner was concerned to provide some protection on that land; where the native trees are just sort of growing in areas that were not very suitable to break up and farm. As far as providing a discount that is pretty substantial for land that is planted to trees, it would still be hard to imagine anyone going out to say I'm going to plant 50 acres of trees because I can get this big tax break. That's not going to work that way. (meter 25:06-25:38)

Sen. Unruh -- We could certainly get into a conversation about the importance of shelterbelts and how they are used now and how they were used in the past, but I will move past that. Whether or not we adopt Sen. Triplett's amendments, the forestry stewardship tax, at a rate of 50cents per acre will still be available to all counties, they would just have to enroll, if we did not adopt the amendments but I think we could still pass the bill. I'm not saying that I won't support Sen. Triplett's amendments. They would still be able to utilize the forestry stewardship tax at the county level. They would just have to go through a different process than we would if we adopted Sen. Triplett's amendments. The tax reduction would still be available for those folks.

Sen. Cook -- And I would say that what we have learned out of the counties that have not adapted the programs, they don't because of the loss in tax revenue that is shifted to other taxpayers. They are all willing to do it if there is some sort of mechanism like there is for the homestead tax credit for reimbursement of lost revenue.

Sen. Bekkedahl -- A follow-up to what Sen. Unruh was discussing in her amendments, she discussed considering the site visits required only for new applications or change requests to nonproductive agricultural land. I thought you said you might be amenable to that language so that they don't do the site visits every year.

Sen. Unruh -- Correct. I would be amenable to that. I'd like to hear the committee's thoughts on it.

Sen. Bekkedahl -- What happens to land that is requested to be nonproductive but at some point becomes productive again, where is that monitored in the system? I'm not sure that the person that requested it to go to nonproductive is going to come in and say, oh by the way, now it is productive. How is that taken care of?

Sen. Cook -- A good assessor is going to know what the property looks like in the area that he is assessing. I've always been a proponent that it should be mandated in law that the assessor visits your property every 7 years. Good assessment policy does that. Minot does that. Property goes down. It isn't always going up.

John, do you know what you have to draft for the amendments?

John Walstad speaks offside and can't be picked up on the microphone.

Sen.Unruh -- I would think so, yes, and in response to Sen. Bekkedahl's concern, I share that same concern. Every 7 years would be wonderful but the law as proposed would require the landowner to give information to support that claim for subsequent years. So

any time that assessor had any concerns or issues he could request information or do a site inspection. I don't think that needs to be addressed necessarily.

Sen. Cook -- Do you know what your pen is going to write, John? Put it all in the one amendment and we will deal with it. Will that be done this afternoon? There are other amendments that should be done this afternoon, I'm hoping. This is all we have now.

Sen. Dotzenrod -- In reading this bill, it looks like they use the term contiguous acres. It has to be 5 contiguous acres. I was talking to my tax director in Sargent County and they have a lot of quarters where there's 18 acres of potholes but they are not contiguous so they have been discounting that and giving a modifier of some kind on that 18 acres. If it's got to be 5 contiguous acres, it looks like they would not be able to do that, am I wrong?

Sen. Cook -- It's got to be 5 contiguous acres.

Sen. Dotzenrod -- So that quarter would be taxed the same as if those potholes were not there.

Sen. Cook -- They are all smaller than 5 acres?

Sen. Dotzenrod -- Yeah, 2 acres, ½ acre. Some of these quarters look like a shotgun pellet pattern. They would probably be able to go nonconformity modifier. We can't assess that piece the same as a nice square quarter that you can drive from one end to another without having to turn around. It's going to cost that operator more to farm that quarter with all those potholes all over. (meter 31:45-31:59)

Sen. Cook -- Any other questions? Okay. We are going to adjourn.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1054
4/1/2015
Job #25692

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alexi Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1054.

Sen. Triplett -- I have amendments on my desk but they are not quite right. Could this one wait until Monday?

Sen. Cook -- It can wait until Monday.

Sen. Triplett -- It just needs a little clean-up in the removing of the county piece.

Sen. Cook -- Okay, we will wait until Monday.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1054
4/6/2015
Job #25821

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1054.

Sen. Cook -- Please come to the podium, Linda.

Linda Leadbetter, State Supervisor of Assessments, Office of State Tax Commissioner --

Sen. Cook -- Bottom of page 4, the thing that keeps coming up is soil capability class, 2,3,4 & 5,6,7,8. I need to know more about them and also we had questions, during the interim, I thought there was a couple of counties that did some research as to moving away from use and going to production index, and what that might do to the county ag tax base. Did you get any of that information? Or you mentioned that your office had done some research, also. Can you shed us any light on that question?

Linda Leadbetter -- Yes, we did have some information from the interim committee and also, just now, by using the information from the soil maps and using the capability ratings, looking at information for 1 county going through the capability ratings for cropland being 2,3 & 4, presuming then, with those acres listed on the website, that 808,000 acres would be considered cropland. In 2014 at that same county, there were approximately 453,000 acres that were reported as cropland. There is going to be quite a change in what is considered cropland based on using those capability ratings, solely as the first defining point for crop and noncropland.

Sen. Cook -- So this is a county that, right now, uses use?

Linda Leadbetter -- Yes, I believe for the most part, they use use in their valuation process with the soils.

Sen. Cook -- We also had a county that, I believe, uses soil PI's right now. Was that Stutsman County? What county was this?

Linda Leadbetter - This is Burleigh County.

Sen. Cook -- Stutsman County, they don't look at use right now, do they?

Linda Leadbetter -- Stutsman County does focus on use for their cropland and noncropland determination.

Sen. Cook -- Are you sure?

Linda Leadbetter -- Dustin Bakken, the property tax specialist in the Office State Tax Commissioner was the former Stutsman County Tax Director and, yes, he would have been involved in use being one of the categories reviewed for determining value of ag land.

Sen. Cook -- I thought when he testified last interim you said it was based on soil types. What county was standing in front of us?

Sen. Dotzenrod -- I was going to recall the interim. I remember when Mr. Bakken talked to us representing Stutsman County that when he told us that there were a lot of their policies and the way they valued things based on use that that really got a lot of reaction from the committee. They wanted to know why, where he got the permission to do that. I don't remember the other county that was all productivity and ignored use.

Linda Leadbetter -- I do know that Logan County I believe uses the productivity of the soils and also probably Dickey County.

Sen. Cook -- Do you know how many counties do PI's and how many counties look at use?

Linda Leadbetter -- All 53 counties are provided the same statutes and given the same guidelines and that is the problem.

Sen. Cook -- I want to know the consequences. How quick can we find out?

Linda Leadbetter -- As quickly as I can provide an email and do a question from them.

Sen. Cook -- I think we need to know that information if we could get it as quick as possible.

Sen. Dotzenrod -- As long as we are talking about use, I wanted to ask Linda, the way our system works right now, it seems to me that the numbers that NDSU provides each county, once a year, are really based on use. That is, they are taking FSA data, they are taking the crops that are under cultivation, yields information, price information. They put all this through their formula and have data from revenue up in the numerator, interest rate as the denominator, so when they are done with their process, they give each county 2 numbers, or a blended number. It is my impression that what the counties are provided, as a target that they must hit, is data that is based on use. Is that correct?

Linda Leadbetter -- I would agree with that when you read the reports from NDSU, the reports that are actual acreage reportage. We do know how many acres were involved in producing the crop and determining that value per acre. At the county level, they have somehow distinguished cropland and noncropland in their acreage and then they have to apply that dollar amount to those acres that they have assigned as cropland and the ones that are noncropland. (meter 6:00-6:20)

Sen. Dotzenrod -- Some of the examples we saw in the interim, you could have a feeding operation or a livestock operation or someone that has livestock near their place and they keep a tract for calving, forage, etc. It's not under cultivation. They may have a high enough productivity index to justify breaking that up and cultivating it but they are choosing to use it in a noncultivated use. (meter 6:48-7:21)

Sen. Cook -- Are you saying that hayland is noncropland? Linda, what is it then?

Linda Leadbetter -- It is not reported to NDSU as being a production crop. Hay is not under the production side of it when they are determining the value of it. Hayland is, of course, producing, but it is not producing what we are looking at those grains that they use to determine the value of cropland on that formula.

Sen. Triplett -- And then there is the issue that the information that NDSU gets is aggregated and it doesn't necessarily come back to the county, parcel by parcel. Just because the use is incorporated into the aggregate numbers that they get, doesn't, in any way, impact how the county director of tax equalization applies it to any individual parcel. Am I correct about that?

Linda Leadbetter -- Yes, again, it would be dependent on how they are reporting those acres. If they are reporting them based on the soil type and the PI, they are calling them cropland, even though the individual is using it differently. If they are just seeing what it is and saying that acreage by a farmstead where they have for the cattle to be in the Spring where its dry, if they are reporting that as noncropland then they are going to use a different valuation on that.

Sen. Dotzenrod -- When the director of tax equalization in any one county is looking at trying to put together a system that the taxpayers will support and make it credible to taxpayers, I do think that use should be one of the things that they can modify for or can recognize. (meter 9:33-10:15)

Linda Leadbetter -- I do agree that that would be a method that would work. (meter 10:22-10:57)

Sen. Cook -- So what should the bill say? If we want to get to uniformity, what do we need the bill to say?

Linda Leadbetter -- We have looked at it several different ways and I think it is nice for us to believe that those numbers would really be a standard but we know that even when we dealt with the issues in Walsh County, how it varied from this side of the county to the other

with those very same soil types, making sure that they worked, knowing that these capability ratings are in there, it's probably too defined. I don't know that we can make it work. (meter 11:25-12:09)

Sen. Cook -- So you are saying that we should take this part on the bottom of page 4 out of the bill? And leave it as status quo. Go just with modifiers. Is that what I am hearing you say?

Linda Leadbetter -- That is what I like.

Sen. Cook -- To what degree is that going to solve the problems we have in Walsh County?

Linda Leadbetter -- I think what we did with the information with Walsh County is still knowing that those soils exist out there. The production ratings exist out there but they had to look at them and know that, just because this is a soil type, or has a capability rating of 4, they had to really look at what was happening on that side of the county and then use those modifiers to make adjustments to the values. (meter 12:48-13:12)

Sen. Cook -- What year did we go to soils? '81? Did I hear you say that we are still in the early stages?

Linda Leadbetter -- I said some of the counties are. They are some that have not been able to achieve it to the detailed level, just because of the costs. (meter13:30-13:42)

Sen. Cook -- My favorite saying is, the road to perfection is always under construction. We have been spinning our wheels for many years out here.

Sen. Triplett -- I think this would be the appropriate time for the Sen. Laffen amendment to consolidate our counties to 8 counties, statewide. So that every county has a centralized assessment process and it would be so much easier for our state folks. Kidding aside, my question is, would it be a correct statement to say that the ability for the tax equalization directors to use use of land, kind of helps to incorporate some of the notions that we aren't considering with productivity, such as average annual rainfall, for example. (meter 14:36-15:13)

Linda Leadbetter -- Yes, I believe that is true and I believe it is what we encountered in Walsh County and it is not necessarily about the rainfall, it was just about the topography of that land and those capability ratings were able to be accessible and were able to raise crops. (meter 15:29-15:47)

Sen. Cook -- Doesn't the production numbers that NDSU comes out certainly takes into consideration rain? You've got a production index of 80% on land out west that gets less rain than 80% of the land in the east.

Sen. Dotzenrod -- I don't know if this would bear but when I went home I got a letter from the tax director and it said the value of this particular parcel is going up 10% and they were lifting a modifier. They said we are raising the value of your property 10%. We are taking

one of the modifiers that we had off because you tiled it. I have no argument with that. I think the tax director is using good judgment. (meter 16:40-17:52) One of the thoughts that I had was maybe what we should be doing is picking out, 4, 5, or 6 counties and having a 2 year study to look at, if we implemented a complete productivity index system in those counties, would that give us enough time and information to know how a change like that is going to affect everything. How do we get from where we are now and get to a standard that can be applied to all 53 counties?

Sen. Cook -- Thirty-four years we've been spinning our wheels, we can spin it for some more. When is uniformity going to mean uniformity? And to what degree do we need it? (meter 19:17-19:33)

Sen. Dotzenrod -- It should be a local issue. When the state provides a number to the county, it's the county's job to figure out how to spread the taxes within their subdivisions of the county and they need to make sure that they the support of the patrons in their county. (meter 19:50-20:25)

Sen. Cook -- Is it your suggestion that we take that part out? Can you quickly try to send an email out to the 53 counties? We are going to meet on this tomorrow. We are going to have to make some changes to this bill. (meter 20:57-21:50)

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1054
4/7/2015
Job #25875

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes: Attachment #1, #2

Chairman Cook opened the committee work on HB1054. All committee members present.

Sen. Unruh -- I have amendments for HB1054 **(Attachment #1)** The amendments are a combination of the amendments that we spoke about previously and some of that language is duplicative. We did not pass those amendments but we did discuss them. The rest of the amendments address some of the concerns that we heard about yesterday.

Sen. Bekkedahl -- As of our read on this right now, there are no guidelines established by the state supervisor of assessments. You are saying in the bill that they will develop those guidelines but we don't know what they are at this point. I'm assuming that they will involve the soil survey data as you say in here.

Sen. Unruh -- That's correct. There aren't actual guidelines set out there. They have been working with counties to make sure that they are doing it the right way, the way that is outlined in code. This doesn't actually change the way that anything is being done with the proposed amendments because counties are already supposed to be looking at these items in this order. We wanted to provide a more emphasis on using the soil type rather than jumping to a different way of assessing, such as starting off with use, as we've been hearing. This just puts more emphasis on utilizing the soil type and classification first and then the next step would be to use the modifiers. There are guidelines for modifiers set up by the state supervisor of assessments but we are changing those modifiers with this bill and limiting the modifiers that can be utilized.

Sen. Oehlke -- On line 7, the must was replaced by may. Who gets to make that decision that they may or must use it?

Sen. Unruh -- It is my understanding that each county utilizes a set of modifiers, as a county as a whole.

Sen. Oehlke -- From my perspective, if you give them the option, which we are trying not to do, then you are not doing it all the same. How do we want it to be?

Sen. Cook -- Where we want it all the same is the 3 modifiers that are being used.

Sen. Oehlke -- Each local assessor shall determine; so they get to do it from person to person. I don't know if I like that, if my neighbor gets a modifier and I don't. Are we creating more of a problem here or not?

Sen. Unruh -- No, I don't think that we are creating a problem here. What we are doing is narrowing the scope of the modifiers that can be used. Right now, there are multiple modifiers being used in multiple counties. They are not all the same. (meter7:35-7:50)

(Senator Unruh continues going through the provisions of the amendment)

Sen. Cook -- We saw a report yesterday from Burleigh County that showed that there would be considerable change the way this bill was in the amount of land that would move from nonproductive to productive. This will eliminate that change.

Sen. Unruh -- Yes, that will fix that issue.

(Senator Unruh continues through the amendment)

Sen. Triplett -- I would say that I think these amendments are a significant improvement on the bill as it is, given the concerns that we heard. I would respectfully request that we could wait until 8a.m. tomorrow morning to act on this bill so that I could run it past my tax equalization director in my county.

Sen. Cook -- No problem.

Sen. Oehlke -- One thing, on line 16 on page 3, I notice the 50 has been changed to 10%, I don't think you mentioned that as you walked through it.

Sen. Unruh -- That was part of the amendment from yesterday.

Sen. Dotzenrod -- I don't know if any of the rest of us got these sheets. **(Attachment #2)** (meter 11:00-12:05)

Sen. Cook -- The class of nonproductive. Before it was inundated. I'd say that when it was inundated it was zero.

Sen. Dotzenrod -- I think one of the reasons we are using this nonproductive; there may be times when land is virtually lost, it may not be submerged all year long but it has been damaged so much by water that stood there for so long. Maybe this 10% should be 20%, it seems like if you going to have it at 10%, you are basically saying it's like the parking lot at the Capitol. There is nothing there.

Sen. Cook -- On my mother-in-laws farm, it's cattails six feet tall.

Sen. Dotzenrod -- Yes, and there is some of that out there, especially with the years we have had up until now that were really, really wet.

Sen. Cook -- I would like to get this bill out of here. Get it passed on the floor. Get it into a conference committee. I would hope that we have NRCS down there to show us how every acre of land in North Dakota supposedly has a PI. I'd like to see the relationship with the PI to the soil classifiers that we saw in the bill that caused all the contentions. (meter 13:50-14:22)

Sen. Dotzenrod -- The situation in Richland County is, for the folks that have some knowledge of the history of Larry Osborn. (meter 14:37-15:42)

Sen. Cook -- Quotes from statement from Andrew, "I was so looking forward to when the new NRCS map was coming out and coupling that with the NRCS's PI's and hopefully this will eliminate all bias and a large majority of the modifiers creating equality across the state and within the county." As we have this discussion, Sen. Dotzenrod, how do we fix this problem?

Sen. Dotzenrod -- It is a good goal to try to get it fixed and I wonder too, how do we move from what is there, which we have no scientific substantiation to know how he derived at these figures (meter 16:30-17:07)

Sen. Cook -- Do we have to mandate it from the state?

Sen. Dotzenrod -- I don't know enough about the difference between the system they have now and the system that went wrong. (meter 17:20-18:28)

Sen. Cook -- Modifier A, would that not solve the problem? Is that why we don't have the modifiers?

Sen. Dotzenrod -- Modifier A, inaccessibility?

Sen. Cook -- Inaccessibility, consisting of topographic...

Sen. Dotzenrod -- The nonconformity, you couldn't get from one end of the field to the other without having issues.

Sen. Cook -- Right there, with that modifier, is what a local assessor should be able to use to make the NRCS PI's modify to reflect the difference in the value.

Sen. Dotzenrod -- I think that would go a long way to getting it, as long as there isn't some cap on what any one of these by itself can do. That is, if you said no modifier can exceed a change of 10%.

Sen. Cook -- That cap is not in here.

Sen. Dotzenrod -- That cap is not in here but I think the county there has a rule that no total of whatever modifiers you use, the total cannot exceed a certain percent.

Sen. Cook -- I keep hearing where counties have rules. There, again, we are not uniform. So where do we draw the line? That's where we've got to come to some sort of consensus.

Sen. Dotzenrod -- I agree with you. We need to be working toward uniformity. The problem that I saw with the bill as it came over from the House is, we could adopt that but we wouldn't really know what its effects would be. We would only be able to pass it, send it out to the field, have people use it and then find out after the fact that were some things going on out there that we just would not be able to justify.

Sen. Cook -- I think we have watered the bill down now where it is not going to have the types of consequences that got people awfully nervous. I think the study is probably the most important thing and the most important thing of the study is that we need to know what all 53 counties are doing.

Sen. Dotzenrod -- From my point of view is to understand the NRCS system. Was it really developed with agricultural productivity as its objective and its primary way of measuring one soil against another; or was it an index that was developed primarily with conservation objectives in mind. I'm not sure of how they got to where they got. Another question on the bill and that is trees. Since we took out the use requirement on page 5, does that mean that counties can look at trees and select a standard for trees that they want in their county? That they feel is appropriate?

Sen. Cook -- I think it is just the opposite.

Sen. Unruh -- Land may not be classified as nonproductive land solely because it is wooded. I think there is still some wiggle room in there as we put back in subsection c for actual use of the property. It couldn't be classified as nonproductive necessarily.

Sen. Dotzenrod -- It looks to me like c on page 5, line 11, would allow the county to look at the way that is being used and decide that they want to have a modifier. Are the modifiers that they can use going to be strictly limited to these 3?

Sen. Cook -- Yes, those 3 modifiers.

Sen. Dotzenrod -- The question is, the way we had it in the original version, if land on a quarter was valued at $900/acre, if there was 5 acres of shelterbelts, you would have to call that $900/acre. Like in Richland County, they are using $50. Quite a few counties are using the noncropland number for that county. We know that because we asked Linda Leadbetter to find out and she came back and had that information.

Sen. Cook -- How many counties were there? Let the record show that 12 of the 30 that responded are doing it that way.

We will bring this up at 8a.m. tomorrow morning. Adjourn until 8a.m.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1054
4/8/2015
Job #25906

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes: Attachment #1

Chairman Cook opened the committee work on HB1054. All committee members present.

Sen. Cook -- 1054, Sen. Unruh gave us amendments yesterday. Any more questions on the amendments?

Sen. Dotzenrod -- On page 4, lines 10 & 11, that overstrike there, did we ever figure out what that does to the bill?

Sen. Unruh -- I am thinking it is providing clarification that the county board of equalization is the board that you would appeal to and it would be more of a formal process.

Sen. Cook -- Linda, can you answer the question and I'm also wondering, I think there is a word missing up above, agricultural land for purposes of this section must be determined to be 10% of the value, shouldn't it be less than 10%?

Linda Leadbetter, Office of State Tax Commissioner -- I believe the question on page 4, lines 10 & 11, has actually been presented in subsection 11 on page 6, where it provides for the opportunity for them to challenge it and the last sentence the owner must present evidence and can go through equalization or abatement process. The equalization process is the informal appeal and the abatement is the formal appeal.

Chairman Cook, which line were you considering?

Sen. Cook -- I was looking on page 4, the sentence starting on line 3. Just read that sentence through.

Linda Leadbetter -- I believe that is correct.

Sen. Cook -- Shouldn't it be less than 10%?

Linda Leadbetter -- This is setting the value, the agricultural value of nonproductive agricultural lands for purposes of this section must be determined to be 10% of the...

Sen. Cook -- Yes, you are right.

Sen. Dotzenrod -- On page 6, line 4, there is an overstrike over the soil survey determinations, if someone thinks that the soil survey is wrong or should be refined and that there is maybe some question that, instead of 1 soil type there is maybe 2 or 3 there and they want some clarification, by overstriking that we are saying that you can't challenge that, at least as far as the assessment goes, you can't challenge it. How would you try to get that corrected if you are not allowed to protest or challenge it?

Sen. Oehlke -- On line 3, where it says owner may challenge any aspect, is that why that is crossed out because it says you can challenge any aspect of the assessment. Maybe you don't really need to get specific in there.

Sen. Cook -- Linda, please come to the podium.

Linda Leadbetter -- The way that will be addressed is that we cannot question the soil survey determinations because those are by NRCS. Those qualifications would have to be challenged to NRCS and that would then be part of our process that we would identify in the guidelines for the assessment so that owners, if they came to the county or to their local assessor to say I disagree with the soil and the soil survey then they would be able to direct them in the correct process on how they would be able to challenge those soil types through NRCS.

Sen. Dotzenrod -- To try to challenge something that is provided to us by NRCS, that might not be too simple. It is one thing to go to an assessment board and say there's some problems here, can we get it fixed; but to say I think the NRCS's got some mistakes and you just call them up and they take a look and say, I think you are right and we'll change that for you. That's not how it will work. They will say, give us 5 years and we will see what we can figure out.

Linda Leadbetter -- That may be possible. That is the process now for actually challenging the soils because they are the ones who have made that determination. I think part of the concern presented there is what we actually are dealing with now is that someone can cause pressure at a local level and make them change those values and have it done in a manner that maybe shouldn't be done. With this we have a real clear process in place that tells you how to define this and how to approach NRCS.

Sen. Triplett -- One of my concerns is the issue of the study. If we think this is as important as I think all of us in this room do, maybe we should delete the word, consider, and just say to legislative management that we want to do this.

Sen. Cook -- I had the same thought. This is a very important study. Unfortunately, the minute you do that there are certain legislators who automatically go to a no vote because you took the discretion away. If you leave it like this, there is less risk of somebody voting

against the study. But you do have the risk of the study not being selected by management.

Sen. Triplett -- Another concern is that the amendment still contains the phrase, on page 3, lines 18 & 19, land may not be classified as nonproductive agricultural land solely because it is wooded. I think the result of that would be that a lot of wooded land would likely be classified as cropland based on the quality of their soil. I have another amendment to offer when we are finished with this one, regarding the forest stewardship law and making it a little more open but that still would be a process by which people would have to apply to the state forester and agree to certain management practices, etc., so it wouldn't apply to all woodlands. At least while the study is pending, we need to have some ability for counties to continue doing what they are doing. I don't know if removing this line would take care of it. I would hate to see more trees be killed in the next 2 years just because we are increasing the taxes on them dramatically from what has been.

Sen. Unruh -- Yes, could we have Linda address if unstriking the use language would allow for some flexibility regarding trees.

Linda Leadbetter -- The way we have been reviewing this with different members in the property tax division and others in the assessing world, as long as we are leaving use in this bill, as long as we still have modifiers for inaccessibility, we believe that the guideline that we will be able to create because we consider those numbers that come from NDSU showing what acres actually produce those crops and the value of it, those acres where the trees were not part of that production, we believe that we will be able to come up with some method that will have those either be a use category, that defines them as a use as trees, so they are not part of the production; or if we had a modifier as inaccessibility because they were not actually cropped pieces of land. We believe we will be able to address that so that we make sure that we see a value in trees but we don't put a high value on the soil underneath them.

Sen. Triplett -- Assuming that that works the way you just described and the guidelines are issued and people understand what they are doing, what would you tell the counties in terms of where they sit: they are not cropland, they are not hay land, they are not completely unproductive, or would they be unproductive? Would you count them that way or allow counties to count them that way?

Linda Leadbetter -- I think nonproductive is very defined in here as to what you can call nonproductive. What I see us proposing through the guidelines is that we would still have a soil type beneath all of those tree belts, everything that is out there would still have that value to it, based on its soil and then applying those modifiers for inaccessibility or making a determination of use then. You look at the soil, consider modifiers, and determine use. If the use where those trees are is not producing a profit, then you would be able to apply those percentages to that. (meter12:39-12:56)

Sen. Triplett -- Do you think that it would roughly approximate the informal process that those 12 or more counties are using now? There wouldn't be a dramatic change in the next 2 years while we are studying this in more detail?

Linda Leadbetter -- That is what our goal would be. (meter 13:12-13:52)

Sen. Cook -- Who does determine the percentage that is used in the modifier?

Linda Leadbetter -- I believe, right now, it had just been those modifiers as approved by the state supervisor of assessments and they had guidelines that each of them had; several of them did limit modification on any one given parcel to be 40% in several areas. That will be a consideration for us to try to work on to make sure that we have a limit, if we feel that is necessary.

Sen. Dotzenrod -- I was concerned about the trees, as well, and was prepared to offer a 4th modifier category, but based on what Ms. Leadbetter has said here if she feels that we can arrive at something that is reasonable, that puts us in this range of what some of the counties are using and could be the noncropland value I think I will trust that that will happen. There is one other issue and that is on the bottom of page 5 & top of page 6 they are talking about modifiers that may be applied to reduce soil type valuation of an area consisting of at least 5 contiguous acres of a soil type. (meter 15:26-17:17) Could we say non-contiguous instead of contiguous? Or take the word contiguous out? It's not part of our amendment discussion at this point but I think that is another issue.

Sen. Triplett -- I think it is part of the amendment. As it is presented, it is underlined material. If we are going to take care of it, we should take care of it inside of this amendment.

Sen. Unruh -- I agree, Sen. Dotzenrod, those smaller wetlands would not qualify under here but just taking a look at those wetlands, most wetlands that are that small in size and in nature are temporary or ephemeral wetlands and the definition of a temporary or ephemeral wetland is that it actually can be farmed or utilized 7 out of 10 years, on average. While sometimes it may not be able to be used I would argue that most times it should be able to be utilized and be productive. I think we do need to draw the line somewhere. I think this is a good place to draw it. I wouldn't be amenable to taking the word contiguous out.

Sen. Dotzenrod -- I would like to get it out of there. It does have an impact. Could we vote on the amendments in front of us and then I could offer to further amend?

Sen. Unruh -- I would move amendment 15.0199.03006 to engrossed HB1054.

Sen. Laffen -- Seconded.

Sen. Triplett -- I agree with what Sen. Dotzenrod just said so I will be supporting his subsequent motion but in terms of what we have in front of us, I am only voting in favor of this because of the assurances that we have just received, prior to the motion being offered, from Ms. Leadbetter in terms of the guidance document that she intends to put forward. (meter 20:25-20:42)

Sen. Cook -- I would hope that our goal is to move more in the direction of uniformity. (meter 20:50-21:40)

Roll call vote on amendments 03006. 6-1-0. Carried.

Sen. Dotzenrod -- On page 6 of the Christmas tree bill, I would like to strike the word, contiguous, on line 1.

Sen. Triplett -- Seconded.

Sen. Bekkedahl -- For clarification, I do have 1 of my quarters of land in Divide County that has 16 potholes on it and they never get farmed because they have too much water to be farmed. At this point what I'm trying to figure out is what this language does in here of an area consisting of at least 5 acres. Does it deal with the valuation, solely on those contiguous acres or if there's 5 contiguous acres within the whole parcel, the whole parcel gets a valuation applied to it differently, Sen. Unruh?

Sen. Unruh -- I think it would just apply to those particular acres not the entire parcel.

Sen. Dotzenrod -- You're the only farmer at the table, you've got a quarter section of land and it's got some potholes on it, some years you can farm it, some years it's too wet, some years you cannot even plant it. With the various programs that are out there, crop insurance, to what degree do you get reimbursed or compensated through your insurance because you weren't able to plant a pothole on a given year?

Sen. Dotzenrod -- We've gotten into this concept of prevented plant and the rules require that you have to be prevented from planting at least 20 acres or 20% before you can qualify to make that claim. That's covered through insurance, federal crop insurance.

Sen. Cook -- Twenty contiguous acres?

Sen. Dotzenrod -- I don't think it has to be 20 contiguous. The problem with these low spots is that you are probably not going to be able to make a prevented plant claim, unless they have really gotten wet and expanded. Most of these potholes that are small are not going to get you a prevented plant claim. (meter 25:42-27:00)

Sen. Unruh -- Every time we get back to talking about use, we start to spin our wheels, because use is just a very, very difficult thing. To the points that Sen. Dotzenrod made, the ability of the land to produce is also tied back into the purchase price. A farmers or rancher looks at the land and what it is capable of producing before they purchase it. Some of those wetland areas might provide a lot of value for one person and not a lot for another person. It's better to take a step back at look at things as a whole.

Sen. Dotzenrod -- I don't think that you are going to find a lot of Audubon Society folks out there farming. They are out there trying to generate income. There may be some scenic beauty to some people that don't farm. This is a tax system based on the ability of the land to produce, a productivity system. (meter 28:24-29:23) It seems to me that we ought to find some way for the property tax system to recognize those limitations.

Sen. Cook -- One way is to base it on sale price.
We have a motion and a second to remove the word, contiguous.

Sen. Triplett -- Sen. Dotzenrod, maybe we need to say, 5 acres or more within some defined legal parcel or within a tract to kind of finish the thought if they are not contiguous.

Sen. Cook -- A suggestion, this bill is going to go to a conference committee, and that is a motion that could out in black and white and offered during the conference committee. One of you will be on it.

Sen. Dotzenrod -- I think if we took the word, contiguous, out right now we could work on how to make it more clear in the conference committee. I think the concept here is pretty important, if you are really serious about trying to make sure that the taxpayers within a taxing district feel they are getting a fair shake. I think this would be an affront to someone who has got those lost acres out there and they are being asked to pay taxes on the land as if it is productive when they know that it is not. (meter 31:24-31:46)

Sen. Cook -- We have a motion by Sen. Dotzenrod, seconded by Sen. Triplett that we move away from the word, contiguous acres.

Roll call vote 5-2-0. Carried

Sen. Cook -- We have before us HB1054.

Sen. Triplett -- I do have amendments which do not conflict with the amendments that Sen. Unruh has been working on because it is an add-on of the idea of eligibility for the forest stewardship. It was because of the language: land may not be classified as nonproductive agricultural land solely because it is wooded, which seemed to me to be a significant change from how at least a number of counties are treating woodlands. I think it is important to make it clear that the state values these, particularly the natural forest covers that are along our rivers and streams that do provide enormous value to the state and the people of the state. This is an amendment that modifies the forest stewardship tax law to basically remove the county commission from the act so that any owner of private property in the state, having the defined amount of forest, could make application directly to the state forester. The state forester would still use the same provisions that that office has always used in terms of qualifying the land and then if it's qualified and if the landowner signs up for it and agrees to the forest stewardship provisions then it would be taxed.

Sen. Cook -- Do you have an amendment that you would like to hand out?

Sen. Triplett -- Yes, they are at my desk. **(Attachment #1)** This is really close to what I wanted. I had asked Mr. Walstad if he could make a couple of tiny changes which have not come down yet but this is close. I can make the rest of the changes in the conference committee, if approved. The basic idea is to give over the authority directly to the state forester so that all lands across the state are treated the same so it meets your standard of uniformity. It only applies to land where people are willing to make a management contract with the state forester for qualifying property. I would move amendment 15.0199.03001.

Sen. Oehlke -- Seconded.

Sen. Cook -- I am going to say what I said before when we brought this discussion up, I think this is a major policy change and it's one that was studied extensively during the interim and, unfortunately, at the end of the study, the interim couldn't come to an agreement on a bill draft. No individual introduced this bill so it could have a hearing. I question the appropriateness of whether we should put it on to this bill at this time. I would hope we do not.

Sen. Oehlke -- Did someone not introduce it because they didn't think it was a problem to have trees only handled differently, or is it because west of Bismarck there's only 5 trees and no one cares out there?

Sen. Cook -- Sen. Oehlke, there was considerable discussion on this issue. We all understand the issue that was on the interim committee yet there didn't seem to be any desire to change what is current state policy.

Sen. Oehlke -- Was it also broached that if nothing is done, then trees are just going to be taxed like everything else?

Sen. Cook -- Well, that is not the case.

Sen. Triplett -- It may well be the case when this bill comes out of the conference committee. We don't know how our bill is going to fair in the end and this just adds a statement from this committee that we, especially in these next 2 years when we are going to study this and try to get to a place of uniformity, acknowledge and agree that there is some serious value that should be recognized by the state of North Dakota. I am thinking of the riparian natural forest. (meter 40:54-41:50) I think it is very germaine to the overall topic that we have been on here today.

Sen. Cook -- It is definitely germaine. It's a major policy change.

Sen. Dotzenrod -- I don't see anything here that essentially amounts to a mandate. We've got may in here. I don't see this as an imposition of a state policy upon a subdivision.

Sen. Triplett -- It's a private landowner decision. Any landowner in the state could make the application, if they wanted to. What I am doing is taking the intermediate bearer.

Sen. Cook -- You are removing the county commission as the decision maker.

Sen. Triplett -- If a goal of our committee, in general, is to march toward uniformity than we ought not to be having any pieces of our taxes where we say that the county gets to decide one way or the other. I have learned from Sen. Cook that counties are the administrative arm of state government and they are to execute the laws and administer them.

Sen. Cook -- You are moving a decision from county government to the state forester to the degree that property taxes apply to forestry and it will affect all taxpayers in the county.

Sen. Triplett -- In a very, very modest sense because this is such a small piece of the puzzle in any county. (meter 43:57-44:27)

Sen. Cook --Sometimes you like uniformity and sometimes you don't.

Sen. Triplett -- I am fully in agreement.

Sen. Cook -- You have been fully in agreement.

Sen. Triplett -- I just think we need to be careful about how we do it and we need to understand what we are doing and I think this one is understandable.

Sen. Unruh -- I don't know that there is anyone at this table that loves trees more than I do. When I grabbed my folder for this committee work, I grabbed the folder from the interim work entitled forestry tax, so that is how this whole discussion started. We looked at this in depth and I'm not saying that this is not the way that we need to go. We discussed this quite extensively and how it would all work. I agree with Sen. Cook, we can't make such a big policy change without even having the state forester in the room.

Sen. Triplett -- He was in the room and he testified quite passionately on this bill about the value and the need for preserving our forests.

Sen. Unruh -- Yes, I have no doubt that there is where he stands. I think this is a big policy shift. It's something that so many of us studied in such depth and none of us could come up with anything. On day 64, I don't think this is the right time to add this policy change.

Sen. Bekkedahl -- Could Ms. Leadbetter come up for a quick question?

-- Is this one of those areas that by the use of guidelines we could get further guidance on this issue or does it have to be something addressed differently that all the other guidelines that you are going to be developing?

Linda Leadbetter -- I believe the forestry, the woodland program, is very specific. Whether or not a county chooses to participate is still in their hands. We will be able to address certain values on those trees by use and those modifiers but this program where it establishes, is it 50cents an acre, that is still very specific. I think we will be able to adjust values that will make a difference for those pieces of property that have a soil value beneath but it will not be exactly the same as that 50cents an acre.

Roll call on motion to amend .03001. 2-5-0. Failed

Sen. Cook -- We have before us HB1054.

Sen. Unruh -- I would move engrossed HB1054, as amended, do pass.

Sen. Laffen -- Seconded.

Sen. Dotzenrod -- I think I am going to support this bill but I would like to reserve the right and have the chairman of the committee understand that if, as we go through this process and learn more about how this is going to affect the counties, I don't want to feel that I am committed to supporting the bill all the way through. I still have unanswered question.

Roll call vote on HB1054, as amended. 7-0-0. Carried.

Carrier: Sen. Unruh

Chairman Cook adjourned the committee.

Prepared by the Legislative Council staff for
Senator Unruh
April 7, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1054

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 3, line 16, replace "fifty" with "ten"

Page 3, line 23, after the period insert "If the property was not classified as nonproductive agricultural land in the preceding taxable year, the assessor must confirm that the property qualifies for that classification by conducting a site inspection of the property and reporting the conclusion from that inspection to the county board of equalization."

Page 3, line 23, replace "The" with "If the property was classified as nonproductive agricultural land in the preceding taxable year, the"

Page 3, line 23, remove "thereafter"

Page 3, line 27, overstrike "board of"

Page 3, line 27, overstrike "commissioners" and insert immediately thereafter "board of equalization"

Page 4, overstrike lines 5 and 6

Page 4, line 24, remove the overstrike over "~~, which are listed in~~"

Page 4, line 25, remove the overstrike over "~~descending order of significance to the assessment determination~~"

Page 4, line 26, after "surveys" insert ", using guidelines established by the state supervisor of assessments for use and application of the soil survey data"

Page 4, line 26, remove "It is"

Page 4, remove lines 27 through 30

Page 5, remove the overstrike over lines 5 and 6

Page 5, line 27, remove ", if the assessor confirms the existence of those conditions"

Page 5, line 29, remove "the soil survey"

Page 5, line 30, remove "determinations,"

Page 5, line 30, remove the second underscored comma

Page 6, after line 13, insert:

"**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL PROPERTY ASSESSMENT UNIFORMITY.** During the 2015-16 interim, the legislative management shall consider studying the most accurate and equitable means of achieving uniformity in agricultural property assessments. As a basis for this determination, the committee or task force selected to conduct the study shall gather the best information available to compare and consider each county's method of assessment of agricultural property, including detailed information for each county on application of modifiers or other methods of adjusting valuations. The legislative management shall report its findings and recommendations, together with any

legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Prepared by the Legislative Council staff for
Senator Triplett
March 31, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1054

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "57-02-27.2" insert ", 57-57-02, and 57-57-04"

Page 1, line 2, after "property" insert "and application of the forest stewardship tax"

Page 6, after line 13, insert:

"**SECTION 2. AMENDMENT.** Section 57-57-02 of the North Dakota Century Code is amended and reenacted as follows:

57-57-02. Eligibility for forest stewardship tax - Application.

This chapter applies in any county in which the ~~county commission~~state forester has approved ~~by resolution~~ the application of this chapter to all qualifying property within the county. The owner or agent of the owner, having any tract of contiguous forest which consists of:

1. Natural forest cover ten acres [4.05 hectares] or larger in size;

2. Planted forest cover five acres [2.02 hectares] or larger in size and not less than sixty feet [18.29 meters] in width; or

3. Any combination of natural and planted forest cover ten acres [4.05 hectares] or larger in size,

may file an application with the ~~county commission of the county in which the property is located~~state forester setting forth a description of property that the owner desires to place under the forest stewardship tax and on which land the owner will practice forestry. If the ~~county commission~~state forester has approved application of this chapter within the county, the ~~county commission shall forward each application received to the~~ state forester ~~for a determination of~~shall determine whether the property qualifies under this chapter. The state forester shall prescribe the form for application blanks and make them available to all interested persons.

SECTION 3. AMENDMENT. Section 57-57-04 of the North Dakota Century Code is amended and reenacted as follows:

57-57-04. Application and acceptance to constitute a contract.

The application of the owner or agent of the owner and the acceptance of the application by the ~~board of county commissioners~~state forester constitutes a contract, running with the land, for a period of five years, unless terminated as provided in this chapter. Any order issued on or before February first of any year takes effect in that year, but all orders issued after February first of any year take effect the following year. If at the end of five years the contract is not renewed by mutual consent of the owner or agent of the owner and the ~~board of county commissioners~~state forester, the land is declassified and removed from the provisions of this chapter.

Any property that was subject to the tax under this chapter on December 31, 2014, continues to be subject to any agreement under this chapter in place at that time and assessment and taxation as provided in section 57-57-06 for a period of five years from its acceptance by the board of county commissioners or until it ceases to be qualifying forested property under section 57-57-02 or as otherwise provided in this chapter. Property approved for forest stewardship tax treatment under this section is classified as agricultural property for all purposes, except as provided in section 57-57-06, but must be excluded from calculations of agricultural value for the county under section 57-02-27.2."

Renumber accordingly

15.0199.03009
Title.04000

Prepared by the Legislative Council staff for
Senate Finance and Taxation Committee
April 8, 2015

JW
4/8/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1054

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 3, line 16, replace "fifty" with "ten"

Page 3, line 23, after the period insert "If the property was not classified as nonproductive agricultural land in the preceding taxable year, the assessor must confirm that the property qualifies for that classification by conducting a site inspection of the property and reporting the conclusion from that inspection to the county board of equalization."

Page 3, line 23, replace "The" with "If the property was classified as nonproductive agricultural land in the preceding taxable year, the"

Page 3, line 23, remove "thereafter"

Page 3, line 27, overstrike "board of"

Page 3, line 27, overstrike "commissioners" and insert immediately thereafter "board of equalization"

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Page 4, line 26, after "surveys" insert ", using guidelines established by the state supervisor of assessments for use and application of the soil survey data"

Page 4, line 26, remove "It is"

Page 4, remove lines 27 through 30

Page 5, remove the overstrike over lines 5 and 6

Page 5, line 26, remove "contiguous "

Page 5, line 27, remove ", if the assessor confirms the existence of those conditions"

Page 5, line 29, remove "the soil survey"

Page 5, line 30, remove "determinations,"

Page 5, line 30, remove the second underscored comma

Page 6, after line 13, insert:

"**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL PROPERTY ASSESSMENT UNIFORMITY.** During the 2015-16 interim, the legislative management shall consider studying the most accurate and equitable means of achieving uniformity in agricultural property assessments. As a basis for this determination, the committee or task force selected to conduct the study shall gather the best information available to compare and consider each county's method of assessment of agricultural property, including detailed information for each county on

application of modifiers or other methods of adjusting valuations. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 4-8-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1054

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0199.03006

Recommendation: ☑ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Sen. Unruh Seconded By Sen. Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke		✓			
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 4-8-15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1054

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: Sen. Dotzenrod's Amendment to strike Contiguous on pg. 6, line 1

Recommendation: ☑ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Dotzenrod Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh		✓			

Total (Yes) 5 No 2

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-8-15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1054

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0199.03001

Recommendation: ☑ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Sen Triplett Seconded By Sen Oehlke

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett	✓	
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓			
Senator Jessica Unruh		✓			

Total (Yes) 2 No 5

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 4-8-15

Roll Call Vote #: 4

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1054

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15-0199.03009 Title .04000

Recommendation:
☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☑ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Sen. Unruh Seconded By Sen. Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Unruh

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1054, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1054 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 3, line 16, replace "fifty" with "ten"

Page 3, line 23, after the period insert "If the property was not classified as nonproductive agricultural land in the preceding taxable year, the assessor must confirm that the property qualifies for that classification by conducting a site inspection of the property and reporting the conclusion from that inspection to the county board of equalization."

Page 3, line 23, replace "The" with "If the property was classified as nonproductive agricultural land in the preceding taxable year, the"

Page 3, line 23, remove "thereafter"

Page 3, line 27, overstrike "board of"

Page 3, line 27, overstrike "commissioners" and insert immediately thereafter "board of equalization"

Page 4, overstrike lines 5 and 6

Page 4, line 24, remove the overstrike over "~~, which are listed in~~"

Page 4, line 25, remove the overstrike over "~~descending order of significance to the assessment determination~~"

Page 4, line 26, after "surveys" insert ", using guidelines established by the state supervisor of assessments for use and application of the soil survey data"

Page 4, line 26, remove "It is"

Page 4, remove lines 27 through 30

Page 5, remove the overstrike over lines 5 and 6

Page 5, line 26, remove "contiguous "

Page 5, line 27, remove ", if the assessor confirms the existence of those conditions"

Page 5, line 29, remove "the soil survey"

Page 5, line 30, remove "determinations,"

Page 5, line 30, remove the second underscored comma

Page 6, after line 13, insert:

"**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL PROPERTY ASSESSMENT UNIFORMITY.** During the 2015-16 interim, the legislative management shall consider studying the most accurate and equitable means of achieving uniformity in agricultural property assessments. As a basis for this determination, the committee or task force selected to conduct the study shall gather the best information available to compare and consider each county's method of assessment of agricultural property, including detailed information for each county

on application of modifiers or other methods of adjusting valuations. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2015 CONFERENCE COMMITTEE

HB 1054

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1054
4/13/2015
26068

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to establishment and use of modifiers for assessment of agricultural property.

Minutes: No attachments

Chairman Owens: Opened conference committee. I have a couple questions on the changes you made. On page three of the Christmas tree version line 16 where it talks about it did not produce revenue from any source in the most recent prior year we are referring to the nonproductive agricultural land of not more than 10% of the county average revenue per acre. Was there a reason going down to 10% instead of 50% as we had it?

Senator Cook: I don't know how 50% got in there but we are replacing inundated land with nonproductive land. I thought 50% seemed awful high. I think 10% is where it should be but if it's nonproductive what point does it become nonproductive?

Senator Dotzenrod: The vote was not unanimous. Current law on inundated is 50% of non-crop land. If you look at the non-crop land numbers across the state in the 53 counties there is nothing below 100 and nothing above 200 so 50% would be $75 an acre of gross revenue to qualify. Fifty percent of non-crop land to me is fine.

Chairman Owens: I just noticed it was a change. I can't answer if it was already there before or not.

Senator Unruh: We have crossed out the definition of inundated agricultural land. It looks like it had in code that if the value of inundated land exceeds 10% that makes it unsuitable so 10% is what was previously in code.

Senator Dotzenrod: I got my information from another person that works in taxes so I thought it was 50% based on that. I'll have to check on that.

Chairman Owens: We can check into that.

Representative Headland: What are we decreasing the amount of tax to? We're reducing the amount of revenue requirement to qualify down to 10% so what is the tax going down to if it's considered nonproductive?

Linda Leadbetter, Office of State Tax Commissioner: I don't believe this bill is addressing a flat rate for tax. This is just addressing reducing the value of that land to be nonproductive and they are not just leaving it at being inundated; they are saying it will be nonproductive for other reasons.

Senator Cook: What's the value?

Linda Leadbetter: Ten percent of the non-crop land. We would not have the tax dollar amount.

Chairman Owens: On page three lines 23-28 it talks about requiring an assessor to make a site visit if it's the first time the land is considered to be classified as nonproductive. I don't have a problem with that. On page four lines 10-11 we delete the right to appeal the decision through an informal equalization process and formal abatement process. Was there a reason we deleted the ability to appeal?

Senator Unruh: The ability to appeal was just moved to another part of the bill, starting at the bottom of page five and top of page six; subsection eleven.

Chairman Owens: The other thing I noticed was on page four lines 29-30 where it creates an order of consideration for an assessor in valuing property. The next lines on page five explain the determination.

Representative Headland: Could you explain the rationale behind the order of which the modifiers apply?

Senator Unruh: For the most part the order for how the land is assessed and the prioritization of each category stays the same as it did in code previously. The way the bill came to us it took out the ability to consider use when evaluating the land initially. We received a lot of concerns about taking that ability away and how it would impact native grasslands in certain counties throughout the state and the way they are currently doing it. That was also the reason we added the study on to the end of the bill. We felt that before we made that big of a change to not consider use we needed to make sure we knew what all the ramifications of that were going to be so we unstruck the prioritization of these three considerations and the ability for use to be considered. We think it's important to first take a look at the productivity of the soil then look at the modifiers that could apply to that parcel of land and after that if appropriate consider use.

Chairman Owens: Any further comments? It allows modifiers to be used based on less than five acres. We've done away with continuous five acres for modifiers to be applied.

Senator Dotzenrod: I had some conversations with some of my tax directors. There's a quarter in my district that has 18 acres of land that is like a shotgun pallet pattern on a map; they are small depressions that are a half acre to an acre and they are scattered around

the field. She's been giving a landowner 18 acres of discount or a different soil type on that and with contiguous it would have been none. There are a number of examples in the pothole country of North Dakota where you could make that same case. On a quarter section you could go over five acres fairly easily and not have five contiguous acres anywhere on the quarter. It made sense for us to take contiguous out of there.

Senator Unruh: Some of the committee agreed.

Representative Headland: I agree with that but are they going to go out and measure all these?

Senator Dotzenrod: I think a lot of them are known. It may vary from county to county. I'd have to rely on information from our property tax division. I think most of the assessors know about how many acres there are out there.

Chairman Owens: On page six line four you took out the soil survey determination. What was the reason for taking that out?

Senator Unruh: For the most part the NRCS soil surveys are the surveys being utilized to calculate the productivity. In order to change the NRCS soil survey you need to go through the NRCS and not through your local board. This isn't the right place to appeal that part of your assessment.

Chairman Owens: On page six lines 22-28 was the agriculture property assessment study. Are there any further comments?

Senator Dotzenrod: When we had this discussion on the senate side there was an open question left unanswered and that was when you're dealing with a county director of tax equalization and you have some issue with the way the lines were drawn to determine the soil type it seemed that you would have some grounds to challenge and get varying opinions and maybe get someone to go out and look at it if you were dealing with just that group. If you have to go to the NRCS you may be dealing with a period of years. We left that unanswered because we felt that there was going to be an opportunity in the conference committee to talk to the NRCS and ask if someone feels they have a soil type in a certain portion of the field that isn't right. We took it out of the bill to challenge it locally with the idea it would become a NRCS determination. I think it was left unclear as to how that would work.

Senator Cook: I had reached out through the tax department. I had NRCS scheduled to be here tomorrow morning but I have since cancelled that. It didn't seem like there was a lot of interest to get them in but I think it would be valuable to get them in. During the interim I had the privilege to sit in on a couple presentations from NRCS. The people talked about their experiences with the land surveys and yet when we had NRCS at the interim committee I thought everything was pretty well accepted that it was a good place to have the production determined. I'm uncomfortable that there is no place in the state that one could challenge the NRCS rating; you have to go to NRCS to do that. I don't know how you'd fix it. Maybe that should be part of the study. When we look at property taxes in the state there is a certain amount of subjectivity in there and there always will be. That gets to

be the whole challenge when we're trying to equalize property taxes and fair between two neighbors. If I don't think my property increase is fair I have my process of protesting that and I know what that is. We have to continue to work in making it fair. I'm not sure to what degree we need to have some means to challenge the production index that is assigned to your particular quarter of land. I think it would have to have a lot more study.

Representative Headland: When it comes to soil productivity, if we're going to have use as a modifier then I don't think we need to talk about the productivity index of the soil because your taxes should be based on the productivity formula. As long as we're putting use as a modifier back in the bill I think we don't allow for the productivity and NRCS determines the make-up of the soil because it's really based on your production and what those crops are producing from it. There is room for either use or productivity of the soil in the bill but I don't think there's a need for both.

Senator Cook: Let's not forget what brought this issue to the table in the first place in the interim. We don't have uniformity from county to county as far as to what degree there is use being used and to what degree it is not being used. Do we need uniformity in 53 counties? That's the real reason for the study to find out exactly how every one of the 53 counties is doing it.

Senator Dotzenrod: Current law in the century code provides for use. If we were to take use out and go strictly by productivity...once a year NDSU provides each of the 53 counties with a cropland number and a noncropland number. They take information from FSA and they know what they have for crop acres, what is being produced and they have yield estimates. Then they generate a number that goes to each of the 53 counties. It gives you the productivity number and that is really based on use. It seems to me that if you're going to gather the data and provide a number to the counties based on use then when the tax director goes out and tries to spread this tax burden out across the county you should be part of the way they look at it and make that determination. In Burleigh County right now they have about 450,000 acres of cropland. If they were to adopt the soil types the tax director said you would end up with over 800,000 crop acres. If we were to pass a bill that raised the cropland acres from 450,000 to over 800,000 what would that mean for the taxpayers? Under today's way of determining it would be moved up and called cropland so somebody's taxes would go up and somebody's would go down. We didn't feel we were ready at this point. We are asking for a study in this if we are making changes to this degree and how it's going to affect the taxpayers.

Representative Headland: Did he make that blanket statement without looking at the use of any modifiers?

Senator Dotzenrod: I think that's correct.

Representative Headland: He just looked at soil productivity.

Senator Dotzenrod: I think there were classes.

Representative Headland: So that statement shouldn't even apply.

Senator Cook: I agree with Representative Headland that by the changes the senate made to bring use back it diminishes the effect of the PI number. The bill as it is now addresses one of the bigger problems out there and that is the modifiers and how they were being used. I think it's a good bill.

Chairman Owens: I still have a question on the inundated versus nonproductive at 50% and 10% so I would like to verify that. I think it came from current code. We should consider adding the soil survey determination on the study. Those are the two changes we've discussed that I'm focused on.

Senator Dotzenrod: We allow three kinds of modifiers in this version of the bill; inaccessibility of the tract, nonconformity of the shape and salinity. When we had the discussion on the floor of the senate there was a question of modifying for rocks and we were told it was in the productivity index. I don't see how that can be in there. There were a number of people spoke who thought if you're going to have a modifier system that can be a production issue and can affect the productivity of a piece of farmland. I thought we could look at that in this conference committee to see if we're going to be modifying if that should be in there somewhere.

Senator Cook: We had that discussion during the interim with NRCS there and the committee was satisfied that rocks is considered in the PI index. Someone from NRCS can come here if you want them to explain.

Chairman Owens: I remember going over it again and again in the interim.

Representative Headland: I wonder if it's the overstruck language soil capability classes two, three, and four that addresses what type of soils or if it includes rocks and other things that could possibly change that number.

Senator Unruh: Based on the productivity of the soil it's placed in a class so rocks are taken into account based on the type of soil it is.

Representative Schneider: Was there discussion of how the issue of rocks was handled in other states or the best practices?

Chairman Owens: I don't recall. We were so focused on soil classification and modification in this state.

Senator Cook: I don't recall anything either. It would only be an issue in other states that have a productivity formula that determines valuation rather than market sales.

Chairman Owens: I want to go back and check the inundated versus the nonproductivity. I will adjourn the conference committee on HB 1054.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1054
4/17/2015
26228

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature	Mary Brucker

Minutes: Attachment #1

Chairman Owens: Opened conference committee.

Representative Headland: Distributed proposed amendments 15.0199.03010; see attachment #1. This amendment would simply increase the amount of revenue generated from nonproductive land from 10% to 30% which is a compromise between what the house sent over at 50 percent.

Senator Unruh: Is that the only change?

Representative Headland: That's the only change.

Senator Dotzenrod: Is current law at 50 percent?

Chairman Owens: It is at 10 percent. I personally think it's ridiculous to limit how much somebody can make off of land that they own whether we consider it nonproductive or not but we're doing it.

Senator Cook: That's not why we're doing it; we're doing it to identify at what point their property tax goes down.

Chairman Owens: I understand that.

Representative Headland: Made a motion that the senate recede from its amendments and further amend.

Senator Cook: Second.

Roll call vote: 6 yes 0 no 0 absent

Motion carried.

15.0199.03010
Title.05000

Prepared by the Legislative Council staff for
Representative Headland
April 17, 2015

4/17/15
1/6

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1054

That the Senate recede from its amendments as printed on pages 1496 and 1497 of the House Journal and pages 1239 and 1240 of the Senate Journal and that Engrossed House Bill No. 1054 be amended as follows:

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 3, line 16, replace "fifty" with "thirty"

Page 3, line 23, replace "The" with "If the property was not classified as nonproductive agricultural land in the preceding taxable year, the assessor must confirm that the property qualifies for that classification by conducting a site inspection of the property and reporting the conclusion from that inspection to the county board of equalization. If the property was classified as nonproductive agricultural land in the preceding taxable year, the"

Page 3, line 23, remove "thereafter"

Page 3, line 27, overstrike "board of"

Page 3, line 27, overstrike "commissioners" and insert immediately thereafter "board of equalization"

Page 4, overstrike lines 5 and 6

Page 4, line 24, remove the overstrike over "~~, which are listed in~~"

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Page 5, line 30, remove the second underscored comma

Page 6, after line 13, insert:

"**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL PROPERTY ASSESSMENT UNIFORMITY.** During the 2015-16 interim, the legislative management shall consider studying the most accurate and equitable means of achieving uniformity in agricultural property assessments. As a basis for this

2/2

determination, the committee or task force selected to conduct the study shall gather the best information available to compare and consider each county's method of assessment of agricultural property, including detailed information for each county on application of modifiers or other methods of adjusting valuations. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: April 13, 2015
Roll Call Vote #: 1

2015 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1054 as (re) engrossed

House Finance and Taxation Committee

Action Taken
- ☐ **HOUSE accede to Senate Amendments**
- ☐ **HOUSE accede to Senate Amendments and further amend**
- ☐ **SENATE recede from Senate amendments**
- ☒ **SENATE recede from Senate amendments and amend as follows**

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Headland Seconded by: Senator Cook

Representatives	4/13	4/17		Yes	No	Senators	4/13	4/17		Yes	No
Chairman Owens	✓	✓		✓		Senator Unruh	✓	✓		✓	
Representative Headland	✓	✓		✓		Senator Cook	✓	✓		✓	
Representative Schneider	✓	✓		✓		Senator Dotzenrod	✓	✓		✓	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier No carrier Senate Carrier —

LC Number 15.0199 . 03010 of amendment

LC Number . 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1054, as engrossed: Your conference committee (Sens. Unruh, Cook, Dotzenrod and Reps. Owens, Headland, Schneider) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1496-1497, adopt amendments as follows, and place HB 1054 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1496 and 1497 of the House Journal and pages 1239 and 1240 of the Senate Journal and that Engrossed House Bill No. 1054 be amended as follows:

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 3, line 16, replace "fifty" with "thirty"

Page 3, line 23, replace "The" with "If the property was not classified as nonproductive agricultural land in the preceding taxable year, the assessor must confirm that the property qualifies for that classification by conducting a site inspection of the property and reporting the conclusion from that inspection to the county board of equalization. If the property was classified as nonproductive agricultural land in the preceding taxable year, the"

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gather the best information available to compare and consider each county's method of assessment of agricultural property, including detailed information for each county on application of modifiers or other methods of adjusting valuations. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Engrossed HB 1054 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

HB 1054

HB 1054
1-12-15
#1 p1

Coal conversion facility taxes and oil and gas gross production taxes are paid in lieu of property taxes. Revenues from these taxes are allocated by state law to affected taxing districts. Property owned by certain state agencies, nonprofit entities, and agencies and instrumentalities of the federal government are subject to payments in lieu of property taxes as are mobile homes, certain pipelines, certain transmission lines, and certain forest lands. New and expanding business may be granted the right to make payments in lieu of property taxes under Section 40-57.1-03.

Testimony and Committee Deliberations

Assessor Rules and Certification

Following a broad review of the property tax system, the committee addressed a topic that has received considerable discussion among taxpayers--that of a perceived unfairness in property tax assessments. The committee acknowledged that one of the foundational elements needed to achieve fairness in assessments is the requirement that assessments be conducted in an accurate manner.

The committee reviewed the powers afforded to the State Supervisor of Assessments, including the power to suspend or revoke a certificate of an assessment official. The committee received a status report from a representative of the Tax Department, pursuant to Section 7 of Senate Bill No. 2036 (2013), on the development of rules for detailed and efficient administration of Section 57-01-05 regarding supervision of assessment officials. The report indicated a working group had been formed within the Tax Department to identify the core responsibilities of assessment officials and identify instances in which suspension or revocation of assessment credentials would be appropriate. The report also indicated that initial efforts were being focused on providing additional education and training for assessment officials and tax directors.

The committee reviewed information on assessor training requirements in surrounding states and considered a bill draft to replace existing assessor classifications with a single status of certified assessor. The bill draft would require assessment officials to complete 180 hours of instruction to obtain certification. This would increase the current amount of training required for township assessors and assessors of cities under a 5,000 person population who are presently required to compete only 24 hours of training. Transitional provisions in the bill draft provided that certificate holders whose certification expires on or after August 31, 2015, would be subject to the new requirements.

The committee suggested that enhanced training for assessors would result in better assessments and more fairness, but considered whether additional training requirements would cause some assessors to leave the profession and the potential costs associated with increased training. The committee received testimony from a representative of the North Dakota Association of Assessing Officers who expressed support of the association for increased training for assessors. The committee also received testimony from a representative of the North Dakota Association of Counties who summarized responses gleaned from an informal polling of county officials. The summary indicated general support for the bill draft but with some concern for the potential fiscal impact increased training requirements may create. County representatives expressed the opinion that state funding assistance for increased training would bolster county support for the bill draft. The committee received testimony in support of increased training requirements from a representative of the Tax Department.

Based on testimony from interested parties, the committee modified the date by which all assessors shall meet the requirements in the bill draft from July 31, 2015, to July 31, 2017, to allow additional time for assessors to obtain the necessary certification. The committee received testimony from a representative of the North Dakota Association of Assessing Officers indicating an additional two years to obtain the required training would be workable. The committee concluded the bill draft may require additional input and revision during the 2015 legislative session but was an adequate starting point to offering taxpayers additional assurance that their properties are being assessed in a fair and accurate manner relative to other property.

Use of Modifiers in Agricultural Property Assessments

Following the discussion on assessor training requirements, the committee received information regarding inconsistencies in how assessment officials are applying modifiers to agricultural property assessments. In reviewing the role of modifiers in agricultural property assessments, the committee received testimony from a representative of the Tax Department on the process by which assessment officials determine agricultural land values and the resources available to assessment officials in making those determinations.

The Department of Agribusiness and Applied Economics at North Dakota State University (NDSU) computes the average agricultural value per acre of cropland, noncropland, and inundated agricultural land for each county. The Tax Commissioner then provides those values to each county before January 1 of each year. The average value per acre for each township or assessment district is determined by the county director of tax equalization and provided to local assessors. In estimating the average values for each assessment district relative to the county average value, the county director uses soil type and soil classification. In determining the valuation of a parcel, the assessor first uses the soil values determined by the county director of tax equalization. Next, the assessor considers the use of modifiers

#1 p.2

to adjust for conditions not documented in the soil survey. The modifiers that may be applied are those each county submits for approval to the State Supervisor of Assessments. Lastly, the assessor considers the actual use of the land for cropland or noncropland purposes.

The committee received testimony from a former employee of the National Resources Conservation Servic regarding information on the use of detailed soil survey data. It was explained that the soil survey is an inventory the soil resources in each county. A productivity index is assigned to soil types to eliminate management decisions in comparing soils. Limitations on the land due to terrain are generally handled with modifiers. However, difficulties can arise due to lack of education about the land on the part of the assessor. Testimony indicated some counties were running into equalization issues as assessors were not taking into account limitations to the soils, such as restricted accessibility. It was pointed out that many of the modifiers being used by counties are factored into the soil classification and use of the modifier and soil classification duplicates the reduction for that soil classification.

The committee considered a bill draft to change how modifiers for agricultural property are applied. Based on information received from the Tax Department, many of the modifiers allowed under existing law for use by counties are already accounted for as factors in the soil survey determination for certain soil types. The bill draft provides for only two allowable modifiers that may be used to make a 30 percent reduction to the soil type valuation of an area. The two allowable modifiers would be for inaccessibility, meaning restricted access by farm implements, or nonconformity, meaning relatively small areas of good soil which is uneconomical to cultivate because of surrounding poor-quality soil.

The committee reviewed the differences between land classified as cropland versus noncropland. The committee learned noncropland acres never change for purposes of the NDSU formula as those acres were distinguished when the original formula was created. The committee learned that if noncropland is cultivated, it is subject to assessment as cropland at the county level. The committee also reviewed the statutory requirements for the treatment of inundated lands.

The committee received testimony from various assessment officials. It appears some counties have transitioned smoothly to use of soils survey data but some have experienced great difficulty. The committee learned that some counties differentiate between cropland and noncropland for valuation purposes and some do not. Some counties take into account the actual use of the land while others determine valuation based on what the highest and best use of the land should be, regardless of how it is actually used. Testimony from a representative in a county that determined valuation based on actual use expressed the opinion that this method of valuation was preferred as it ga landowners input in how their properties are valued. Assessment officials in this county found valuation based actual use preferable to applying modifiers to a property to reduce the valuation of land not being utilized for its highest and best use. Other county assessment officials provided testimony that modifiers had been used in the past but are no longer used as they were being improperly applied. An assessment official in a county choosing not to apply modifiers expressed the opinion that often the modification an assessor is seeking to apply has already been accounted for in the soil survey. Applying modifiers in these instances would essentially result in a double modification. Some county officials were opposed to the idea of having modifiers set out in statute. County assessment officials did acknowledged the need for property owners to be reassured that assessments were being conducted in a fair manner statewide but felt that certain systems simply worked better in some counties than in others.

The committee expressed concern that counties did not appear to be taking a uniform approach in how valuations for agricultural property are determined. Members of the committee pointed out that one of the main reasons the state shifted to a valuation system utilizing soil types was to avoid this outcome. A valuation system based on soil types was put in place to avoid the unfairness that arises when two property owners, having the same quality of soil on their properties, end up with two different valuations based on how the property owner choses to use the property. It was pointed out that the use of soil survey data was implemented so that property containing high-quality soil should receive a higher valuation, and the management decision of the owner should not affect valuation. Committee members expressed the opinion that for property taxes to be equalized and fair, a property owner's use of the land should not determine the assessment applied to the property.

The committee considered a revised version of the bill draft to allow for a single schedule of modifiers to be adopted by the State Supervisor of Assessments and used statewide. Counties would be restricted to the modifiers provided in that schedule. County directors of tax equalization would provide the schedule of modifiers to assessors within the county along with a copy of the guidelines regarding how modifiers must be applied and instruction on how to use available soil survey resources. The revised bill draft also provides that approved modifiers may be applied to reduce the soil type valuation of an area if a site inspection is conducted by the assessor to confirm the existence of conditions warranting the modification.

#1 p.3

Some committee members expressed concern regarding the provision requiring site inspections as testimony indicated that most inspections are currently done through use of aerial imagery services. Concern was expressed that physical site inspections may place an unnecessary burden on assessment officials. The committee acknowledged the difficulties in developing a bill draft that would accommodate all of the assessment practices used throughout the state or resolve every concern regarding the application of modifiers. Despite these concerns, the committee determined the revised bill draft would be worth advancing for further consideration during the 2015 legislative session to help assure taxpayers that agricultural property assessments were being arrived at in a fair manner.

Electric Transmission, Distribution, and Generation Company Reports

The committee was informed that a representative of the Tax Department had discovered a deficiency in the statutory rules regarding reporting requirements for electric transmission, distribution, and generation companies. It was discovered that no statutory reporting requirement existed for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. It was suggested the committee consider a bill draft to require these reports at the time transmission and distribution company reports are required to be filed. Upon review of the bill draft, the committee determined the effective date would need to be delayed to 2016 as the legislation would not take effect early enough to require reports in 2015.

Recommendations

The committee recommends Senate Bill No. 2054 to replace existing assessor classifications with a single status of certified assessor. The bill requires all assessors to be certified and imposes the same 180 hours of training requirements for all certified assessors. The training requirements in the bill represent an increase in the amount of training required for township assessors and assessors of cities under a 5,000 person population. The deadline for assessors to receive certification under the new training requirements is 2017 to allow time for assessors to complete additional training. This bill was also reviewed and recommended by the Advisory Commission on Intergovernmental Relations.

The committee recommends House Bill No. 1054 to restrict use of modifiers in agricultural property assessments to those contained in a single schedule of modifiers adopted by the State Supervisor of Assessments. The bill provides that the single schedule of modifiers would be provided to all assessors as well as a copy of guidelines regarding how modifiers must be applied and instructions on how to use available soil survey resources. The bill requires a site inspection be conducted to confirm the existence of any conditions warranting a modification prior to an approved modifier being applied to reduce the soil type valuation of an area.

The committee recommends Senate Bill No. 2055 to provide reporting requirements for electric transmission, distribution, and generation companies. The bill includes requirements for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. The bill requires the reports be filed at the same time transmission and distribution company reports are required to be filed. The reporting requirements take effect starting in 2016. This bill was also reviewed and recommended by the Advisory Commission on Intergovernmental Relations.

TRUE AND FULL VALUE IN DETERMINING PROPERTY TAX RATES STUDY

Senate Concurrent Resolution No. 4030 (2013) directed the committee to study applying property tax rates against true and full value of property.

Background

In recent years, legislators have reported growing frustration among constituents with understanding how property tax bills and rates are determined because of the complexity of the current method of reducing true and full value to a taxable value amount and then applying local property tax mill rates. Due in large measure to these frustrations, Senate Concurrent Resolution No. 4030 (2013) was introduced as a constitutional amendment to revise relevant constitutional provisions to allow the Legislative Assembly to substitute use of the term assessed value for the current method of using the term true and full value to refer to the actual value of property. The measure as introduced would have reduced the constitutional debt limit rates by 50 percent to retain the same amount as a debt limit because the assessed value would have doubled under that change. During committee discussion of the resolution, it was suggested it may be very difficult to explain to voters why this change is needed and the necessity for a constitutional amendment could be avoided. This could be accomplished if the statutory definition of assessed value remains at 50 percent of the market or formula value of property and taxable value is redefined as 90 percent of true and full value for residential property and 100 percent of true and full value for commercial, agricultural, and centrally assessed property. It was suggested this change would allow the current mill rate method to be modified into a method of applying property taxes as a percentage of the full value for most property types. Following the discussion, the resolution was amended into a study resolution to examine the feasibility of making the proposed changes.

HB 1054
1-12-15
#2 p. 1

15.0435.02000

Sixty-fourth
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Representative Schmidt

Senator Cook

A BILL for an Act to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to assessment of agricultural property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for ~~inundated~~nonproductive agricultural land. The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.
2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the department of agribusiness and applied economics of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.
3. The "average annual gross return" for each county must be determined as follows:

a. Total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.

b. The department of agribusiness and applied economics of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. The department of agribusiness and applied economics shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.

c. Divide the figure arrived at in subdivision b by eight.

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota~~, but the rate used for capitalization under this section may not be less than eight percent for taxable year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011~~. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years~~, and the~~. The gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).

5. The department of agribusiness and applied economics of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis~~;~~ ~~shall~~, compute the average agricultural value per acre [.40 hectare] for cropland~~,~~ and

noncropland~~, and inundated agricultural land~~ for each county~~; and shall~~, and provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the department of agribusiness and applied economics. Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

6. ~~For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing~~The county director of tax equalization may classify agricultural land as nonproductive agricultural land if it consists of a minimum of ten contiguous acres ~~if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it~~and is unsuitable for growing crops or grazing farm animals for two consecutive growing seasons or more~~,~~ and ~~which produced~~did not produce revenue from any source in the most recent prior year which is ~~less~~more than fifty percent of the county average revenue per acre for noncropland calculated by the department of agribusiness and applied economics of North Dakota state university. Land may not be classified as nonproductive agricultural land solely because it is wooded.

Application for classification as ~~inundated~~nonproductive agricultural land for property that was not so classified in the prior year must be made by the owner in writing to the ~~township assessor or~~ county director of tax equalization by March thirty-first of ~~each~~the taxable year. The owner shall thereafter furnish to the county director of tax equalization, when requested to do so, any information that is believed will support the claim to retain nonproductive agricultural land classification for any subsequent year. Before all or part of a parcel of property may be classified as ~~inundated~~nonproductive agricultural land, the board of county commissioners must approve that classification for that property for the taxable year.

The agricultural value of ~~inundated~~nonproductive agricultural lands for purposes of this section must be determined ~~by the department of agribusiness and applied economics of North Dakota state university~~ to be ten percent of the average

agricultural value of noncropland for the county as determined under this section. ~~Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.~~

Determinations made under this subsection may be appealed through the ~~informal~~ equalization process and ~~formal~~ abatement process provided for in this title.

7. Before the second Wednesday in February ~~first~~ of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall use soil type and soil classification data from detailed and general soil surveys.

8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. ~~Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.~~ In determining the relative value of each assessment parcel, the local assessor shall apply the following considerations~~, which are listed in descending order of significance to the assessment determination~~:

   a. Soil type and soil classification data from detailed or general soil surveys. It is presumed that if the soil type and soil classification data shows a productivity index of more that forty, that soil must be valued as cropland, and if the soil type and soil classification data shows a productivity index of forty or less, that soil must be valued as noncropland. How the property is used by the owner, by itself, does not overcome this presumption.

b. The schedule of modifiers that ~~must~~may be used to adjust agricultural property assessments within the county ~~as approved by the state supervisor of assessments under subsection 9~~and the guidelines established by the state supervisor of assessments for application of those modifiers.

~~c. Actual use of the property for cropland or noncropland purposes by the owner of the parcel.~~

9. Modifiers that may be applied to an agricultural property assessment parcel are:

a. Inaccessibility, consisting of topographic conditions making farm machinery access impracticable.

b. Nonconformity, consisting of an area of relatively higher productivity soil type surrounded by nonproductive or lower productivity soil type land, making it impracticable to utilize the area to its highest productive capacity.

c. Uncharacteristic salinity, consisting of a greater degree of salinity than is characteristic of the soil type where it exists, by reason of water seepage, discharge, or collection.

10. Before the second Wednesday in February ~~first~~ of each year, the county director of tax equalization in each county shall provide to all assessors of agricultural property within the county instruction on how to use and apply available soil survey resources, a schedule of modifiers that must be used to adjust agricultural property assessments within the county and ~~directions~~a copy of the current guidelines established by the state supervisor of assessments regarding how those modifiers must be applied by assessors. ~~Before the schedule of modifiers is provided to assessors within the county, the county director of tax equalization shall obtain the approval of the state supervisor of assessments for use of the schedule within the county~~Modifiers may be applied to reduce the soil type valuation of an area consisting of at least five contiguous acres of a soil type affected by conditions described for one or more of the allowable modifiers, if the assessor confirms the existence of those conditions.

11. An agricultural property owner may challenge any aspect of the agricultural property assessment determined for a parcel of that person's property, including the soil survey determinations, the application or nonapplication of modifiers, and the application or nonapplication of nonproductive status. The owner must present the evidence and

argument supporting the challenge to the assessor or through the equalization or abatement process provided for in this title.

~~10.~~12. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys by February first of any taxable year after 2011, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each quarter from the state aid distribution fund under section 57-39.2-26.1 beginning with the first quarter of 2013, and continuing until the tax commissioner certifies to the state treasurer that that county has fully implemented use of soil type or soil classification data. The amount withheld from the allocation must be deposited into the agricultural land valuation fund. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2015.

HB 1054
~~HB~~ 1-21-15
1

Page 4, line 27 replace "soil type and soil classification data shows a productivity index of more that forty" with "soil capability class is 2, 3 or 4"

Page 4, line 28 replace "soil type and soil classification data shows a productivity index of forty or less" with "soil capability class is 5, 6, 7 or 8"

#1 p.2

Land Capability Classification

(refer to Table B)

Land capability classification shows, in a general way, the suitability of soils for most kinds of field crops. Crops that require special management are excluded. The soils are grouped according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to management. The criteria used in grouping the soils do not include major and generally expensive landforming that would change slope, depth, or other characteristics of the soils, nor do they include possible but unlikely major reclamation projects. Capability classification is not a substitute for interpretations designed to show suitability and limitations of groups of soils for rangeland, for forestland, or for engineering purposes.

In the capability system, soils are generally grouped at three levels—capability class, subclass, and unit.

Capability classes, the broadest groups, are designated by the numbers 1 through 8. The numbers indicate progressively greater limitations and narrower choices for practical use. The classes are defined as follows:

Class 1 soils have slight limitations that restrict their use.

Class 2 soils have moderate limitations that restrict the choice of plants or that require moderate conservation practices.

Class 3 soils have severe limitations that restrict the choice of plants or that require special conservation practices, or both.

Class 4 soils have very severe limitations that restrict the choice of plants or that require very careful management, or both.

Class 5 soils are subject to little or no erosion but have other limitations, impractical to remove, that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat.

Class 6 soils have severe limitations that make them generally unsuitable for cultivation and that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat.

Class 7 soils have very severe limitations that make them unsuitable for cultivation and that restrict their use mainly to grazing, forestland, or wildlife habitat.

Class 8 soils and miscellaneous areas have limitations that preclude commercial plant production and that restrict their use to recreational purposes, wildlife habitat, watershed, or esthetic purposes.

Capability subclasses are soil groups within one class. They are designated by adding a small letter, *e, w, s,* or *c,* to the class numeral, for example, 2e. The letter *e* shows that the main hazard is the risk of erosion unless close-growing plant cover is maintained; *w* shows that water in or on the soil interferes with plant growth or cultivation (in some soils the wetness can be partly corrected by artificial drainage); *s* shows that the soil is limited mainly because it is shallow, droughty, or stony; and *c,* used in only some parts of the United States, shows that the chief limitation is climate that is very cold or very dry.

In class 1 there are no subclasses because the soils of this class have few limitations. Class 5 contains only the subclasses indicated by *w, s,* or *c* because the soils in class 5 are subject to

#1 p.3

little or no erosion. They have other limitations that restrict their use to pasture, rangeland, forestland, wildlife habitat, or recreation.

Capability units are soil groups within a subclass. The soils in a capability unit are enough alike to be suited to the same crops and pasture plants, to require similar management, and to have similar productivity. Capability units are generally designated by adding an Arabic numeral to the subclass symbol, for example, 2e-4 and 3e-6. These units are not given in all soil surveys.

The capability classification of map units in this survey area is given in the table "Land Capability and Yields Per Acre of Crops and Pasture".

HB 1054
1-26-15
#1 p. 1

15.0199.02002
Title.

Prepared by the Legislative Council staff for
Representative Headland
January 26, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1054

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to assessment of agricultural property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for ~~inundated~~nonproductive agricultural land. The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.

2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the department of agribusiness and applied economics of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.

3. The "average annual gross return" for each county must be determined as follows:

   a. Total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.

   b. The department of agribusiness and applied economics of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. The department of agribusiness and applied economics shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average

#1 p.2

the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.

c. Divide the figure arrived at in subdivision b by eight.

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota~~, but the rate used for capitalization under this section may not be less than eight percent for taxable year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011~~. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years~~, and~~. The gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).

5. The department of agribusiness and applied economics of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis; shall compute the average agricultural value per acre [.40 hectare] for cropland~~,~~ and noncropland~~, and inundated agricultural land~~ for each county~~; and shall~~, and provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the department of agribusiness and applied economics. Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

6. ~~For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing~~The county director of tax equalization may classify agricultural land as nonproductive agricultural land if it consists of a minimum of ~~ten~~five contiguous acres ~~if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it~~and is unsuitable for growing crops or grazing farm animals for two consecutive growing seasons or more~~,~~ and ~~which produced~~did not produce revenue from any source in the most recent prior year which is ~~less~~more than fifty percent of the county average revenue per acre for noncropland calculated by the department of agribusiness and applied economics of North Dakota state university. Land may not be classified as nonproductive agricultural land solely because it is wooded.

Application for classification as ~~inundated~~nonproductive agricultural land for property that was not so classified in the prior year must be made by the owner in writing to the ~~township assessor or~~ county director of tax equalization by March thirty-first of ~~each~~the taxable year. The owner shall

#1 p.3

thereafter furnish to the county director of tax equalization, when requested to do so, any information that is believed will support the claim to retain nonproductive agricultural land classification for any subsequent year. Before all or part of a parcel of property may be classified as ~~inundated~~nonproductive agricultural land, the board of county commissioners must approve that classification for that property for the taxable year.

The agricultural value of ~~inundated~~nonproductive agricultural lands for purposes of this section must be determined ~~by the department of agribusiness and applied economics of North Dakota state university~~ to be ten percent of the average agricultural value of noncropland for the county as determined under this section. ~~Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.~~

Determinations made under this subsection may be appealed through the ~~informal~~ equalization process and ~~formal~~ abatement process provided for in this title.

7. Before the second Wednesday in February ~~first~~ of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall use soil type and soil classification data from detailed and general soil surveys.

8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. ~~Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.~~ In determining the relative value of each assessment parcel, the local assessor shall apply the following considerations~~, which are listed in descending order of significance to the assessment determination~~:

   a. Soil type and soil classification data from detailed or general soil surveys. It is presumed that if the soil capability class is 2, 3, or 4, that soil must be valued as cropland and if the soil capability class is 5, 6, 7, or 8, that soil must be valued as noncropland. How the property is used by the owner, by itself, does not overcome this presumption.

   b. The schedule of modifiers that ~~must~~may be used to adjust agricultural property assessments within the county ~~as approved by the state~~

#1 p.4

~~supervisor of assessments under subsection 9~~and the guidelines established by the state supervisor of assessments for application of those modifiers.

~~c. Actual use of the property for cropland or noncropland purposes by the owner of the parcel.~~

9. Modifiers that may be applied to an agricultural property assessment parcel are:

   a. Inaccessibility, consisting of topographic conditions making farm machinery access impracticable.

   b. Nonconformity, consisting of an area of relatively higher productivity soil type surrounded by nonproductive or lower productivity soil type land, making it impracticable to utilize the area to its highest productive capacity.

   c. Uncharacteristic salinity, consisting of a greater degree of salinity than is characteristic of the soil type where it exists, by reason of water seepage, discharge, or collection.

10. Before the second Wednesday in February ~~first~~ of each year, the county director of tax equalization in each county shall provide to all assessors of agricultural property within the county instruction on how to use and apply available soil survey resources, a schedule of modifiers that must be used to adjust agricultural property assessments within the county and ~~directions~~a copy of the current guidelines established by the state supervisor of assessments regarding how those modifiers must be applied by assessors. ~~Before the schedule of modifiers is provided to assessors within the county, the county director of tax equalization shall obtain the approval of the state supervisor of assessments for use of the schedule within the county~~Modifiers may be applied to reduce the soil type valuation of an area consisting of at least five contiguous acres of a soil type affected by conditions described for one or more of the allowable modifiers, if the assessor confirms the existence of those conditions.

11. An agricultural property owner may challenge any aspect of the agricultural property assessment determined for a parcel of that person's property, including the soil survey determinations, the application or nonapplication of modifiers, and the application or nonapplication of nonproductive status. The owner must present the evidence and argument supporting the challenge to the assessor or through the equalization or abatement process provided for in this title.

~~10.~~12. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys by February first of any taxable year after 2011, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each quarter from the state aid distribution fund under section 57-39.2-26.1 beginning with the first quarter of 2013, and continuing until the tax commissioner certifies to the state treasurer that that county has fully implemented use of soil type or soil classification data. The amount withheld from the allocation must be deposited into the agricultural land valuation fund. The amount withheld from the allocation must be withheld entirely from the portion of

the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

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SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2015."

Renumber accordingly

1.
HB 105A
3.11.1

Dickey County Ag Land Comparisons
Ave/Acre - Crop/Non-Crop

	2010	2011	2012	2013	2014	2015
ND Cropland Ave/Acre	$436.99	$463.42	$604.51	$662.65	$746.63	$804.04
% Change from Previous		6.05%	30.45%	9.62%	12.67%	7.69%
ND Non-Crop Ave/Acre	$99.54	$99.12	$121.92	$128.85	$134.49	$140.00
% Change from Previous		-0.42%	23.00%	5.68%	4.38%	4.10%
RC Cropland Ave/Acre	$569.34	$589.95	$773.95	$839.82	$932.18	$998.59
% Change from Previous		3.62%	31.19%	8.51%	11.00%	7.12%
RC Non-Crop Ave/Acre	$126.85	$126.66	$155.37	$164.19	$171.48	$178.59
% Change from Previous		-0.15%	22.67%	5.68%	4.44%	4.15%
SC Cropland Ave/Acre	$585.94	$611.56	$803.03	$873.99	$982.27	$1,064.65
% Change from Previous		4.37%	31.31%	8.84%	12.39%	8.39%
SC Non-Crop Ave/Acre	$130.08	$129.89	$159.32	$168.38	$175.72	$183.03
% Change from Previous		-0.15%	22.66%	5.69%	4.36%	4.16%
LaC Cropland Ave/Acre	$562.19	$597.30	$779.72	$893.16	$1,002.31	$1,059.80
% Change from Previous		6.25%	30.54%	14.55%	12.22%	5.74%
LaC Non-Crop Ave/Acre	$133.19	$132.99	$163.13	$172.40	$179.96	$187.47
% Change from Previous		-0.15%	22.66%	5.68%	4.39%	4.17%
DC Cropland Ave/Acre	$542.87	$570.92	$751.68	$858.30	$962.43	$1,020.40
% Change from Previous		5.17%	31.66%	14.18%	12.13%	6.02%
DC Non-Crop Ave/Acre	$128.79	$128.60	$157.74	$166.70	$173.99	$181.21
% Change from Previous		-0.15%	22.66%	5.68%	4.37%	4.15%
LC Cropland Ave/Acre	$335.61	$364.64	$474.76	$546.06	$618.11	$654.34
% Change from Previous		8.65%	30.20%	15.02%	13.19%	5.86%
LC Non-Crop Ave/Acre	$101.67	$101.52	$124.53	$131.61	$137.38	$143.03
% Change from Previous		-0.15%	22.67%	5.69%	4.38%	4.11%
McC Cropland Ave/Acre	$352.65	$389.06	$513.06	$586.95	$658.00	$692.73
% Change from Previous		10.32%	31.87%	14.40%	12.10%	5.28%
McC Non-Crop Ave/Acre	$101.10	$100.95	$123.83	$130.87	$136.61	$142.22
% Change from Previous		-0.15%	22.66%	5.69%	4.39%	4.11%

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3.16.05

North Dakota Ag Land Comparisons
NDSU Ave/Acre

	2010	2011	2012	2013	2014	2015
State Wide Ag Ave/Acre	$332.40	$350.37	$452.47	$495.26	$556.58	$596.90
% Change from Previous		5.41%	29.14%	9.46%	12.38%	7.24%
Cavalier Co Ag Ave/Acre	$472.96	$479.74	$641.46	$707.80	$785.65	$824.68
% Change from Previous		1.43%	33.71%	10.34%	11.00%	4.97%
Pembra Co Ag Ave/Acre	$699.60	$707.92	$922.33	$1,018.37	$1,183.84	$1,242.83
% Change from Previous		1.19%	30.29%	10.41%	16.25%	4.98%
Walsh Co Ag Ave/Acre	$611.43	$623.88	$745.09	$819.71	$909.62	$952.51
% Change from Previous		2.04%	19.43%	10.01%	10.97%	4.72%
Richland Co Ag Ave/Acre	$664.13	$682.22	$872.89	$959.08	$1,066.35	$1,115.98
% Change from Previous		2.72%	27.95%	9.87%	11.18%	4.65%
Ransom Co Ag Ave/Acre	$436.68	$451.10	$585.31	$637.62	$705.05	$753.81
% Change from Previous		3.30%	29.75%	8.94%	10.58%	6.92%
Sargent Co Ag Ave/Acre	$519.96	$541.84	$709.86	$768.49	$860.40	$933.55
% Change from Previous		4.21%	31.01%	8.26%	11.96%	8.50%
LaMoure Co Ag Ave/Acre	$505.73	$536.21	$698.61	$798.38	$894.19	$945.12
% Change from Previous		6.03%	30.29%	14.28%	12.00%	5.70%
Dickey Co Ag Ave/Acre	$404.95	$423.59	$553.86	$706.03	$766.25	$810.92
% Change from Previous		4.60%	30.75%	27.47%	8.53%	5.83%
Logan Co Ag Ave/Acre	$222.96	$237.61	$305.66	$345.85	$385.89	$407.50
% Change from Previous		6.57%	28.64%	13.15%	11.58%	5.60%
McIntosh Co Ag Ave/Acre	$255.12	$277.44	$329.94	$410.13	$447.21	$479.30
% Change from Previous		8.75%	18.92%	24.30%	9.04%	7.18%
Burleigh Co Ag Ave/Acre	$210.82	$225.66	$288.97	$318.95	$361.32	$401.81
% Change from Previous		7.04%	28.06%	10.37%	13.28%	11.21%
McLean Co Ag Ave/Acre	$325.07	$359.52	$468.40	$523.57	$593.71	$657.24
% Change from Previous		10.60%	30.28%	11.78%	13.40%	10.70%
Sheridan Co Ag Ave/Acre	$240.56	$256.34	$333.58	$371.60	$417.06	$446.33
% Change from Previous		6.56%	30.13%	11.40%	12.23%	7.02%
Burke Co Ag Ave/Acre	$257.32	$280.85	$378.31	$387.22	$424.81	$454.77
% Change from Previous		9.14%	34.70%	2.36%	9.71%	7.05%
Divide Co Ag Ave/Acre	$256.12	$275.98	$382.02	$388.09	$432.28	$467.18
% Change from Previous		7.75%	38.42%	1.59%	11.39%	8.07%
Williams Co Ag Ave/Acre	$217.23	$237.35	$317.31	$329.08	$378.00	$414.84
% Change from Previous		9.26%	33.69%	3.71%	14.87%	9.75%
Adams Co Ag Ave/Acre	$173.63	$187.49	$240.28	$264.71	$300.90	$346.07
% Change from Previous		7.98%	28.16%	10.17%	13.67%	15.01%
Bowman Co Ag Ave/Acre	$158.87	$169.02	$217.39	$238.29	$306.61	$337.48
% Change from Previous		6.39%	28.62%	9.61%	28.67%	10.07%
Slope Co Ag Ave/Acre	$179.61	$195.03	$250.37	$260.34	$293.42	$327.06
% Change from Previous		8.59%	28.38%	3.98%	12.71%	11.46%

64th LEGISLATIVE ASSEMBLY
Senate Finance and Taxation Committee
Senator Dwight Cook, Chair

House Bill 1054 - "Relating to the establishment and use of modifiers for assessment of agricultural property"

9:30 a.m., Wednesday, March 11, 2015

Testimony submitted by: Larry Kotchman, State Forester
North Dakota Forest Service

Purpose

The State Forester supports the application and use of modifiers to adjust agricultural property assessments. In recent years, owners of forest lands have experienced substantial increases in property taxes, primarily due to assessments based on soil classifications. Increasingly, privately owned forests are being lost through conversion to non-forest uses, as owners convert the land in an effort to generate income from the land. Considering nonproductive actual use categories and uniformly applying potential modifiers will provide mechanisms to adjust agricultural property assessments.

Background

During the 63rd Interim Legislative Assembly, Senate Bill 2279 provided for a legislative management study of the benefits and implications on tax policy of the forestry stewardship tax. Information was presented to committee members highlighting the public benefits for conserving forest lands. The Interim Taxation Committee completed its work and concluded this issue is of greatest concern in only some counties and not a statewide concern.

North Dakota's forests encompass 772,400 acres or 1.73 percent of the total land area. The majority of forest lands, 68 percent, are privately owned. Forest resources provide important public benefits, including clean air and water, soil protection, food and cover for wildlife, and enhance outdoor recreation experiences. North Dakota's forests face tremendous threats, including flooding, drought, invasive insects and diseases such as emerald ash borer, a lack of species diversity, and deterioration associated with old age. Over maturity and limited natural regeneration, conversion to non-forest uses, wildfire, and limited wood utilization opportunities threaten forests in the Turtle Mountains, Pembina Gorge, Devils Lake hills, Killdeer Mountains and the Badlands.

Unlike agricultural croplands, forests are nonproductive lands and provide little if any annual income to their owners in North Dakota. Increasingly, privately owned forests are being lost through conversion to non-forest uses, as owners convert the land in an effort to generate income from the land. In recent years owners of forest lands have experienced substantial increases in property taxes, primarily due to assessments based on soil classifications. These rising property

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taxes on forested land are creating an additional incentive to remove privately owned native and planted forests in our state.

For example, forest lands along the Goose River in Steele County were valued at $217 per acre in 2010 and the landowner paid taxes averaging $2.92 per acre. In 2012, the value rose to $794 per acre resulting in an average tax rate of $9.41 per acre. Clearing of trees for farming, grazing or other development has occurred to generate income to pay the tax increases. The loss of such forests has negative implications for wildlife habitat, water quality, sportspersons and outdoor recreation use for future generations.

Enacted in 1991, the Forest Stewardship Tax Law (Chapter 57-57), provides a financial incentive to owners to manage and conserve this limited forest resource. The State Forester is responsible for determining whether property qualifies for taxation under this Law. By resolution, the County Commissioners in eight counties including Benson, Cavalier, Grand Forks, Nelson, Pembina, Ramsey, Walsh and Wells have approved the application of this chapter to all qualifying forestlands within these counties. There are 658 landowners and 40,979 acres enrolled in the program.

For counties not participating in the Forest Stewardship Tax Law, the establishment and use of modifiers and assigning other nonproductive land categories for assessment of agricultural property may help them conserve their forest lands. We welcome the opportunity to strengthen legislation that would provide landowner incentives to maintain forest lands. Dedicated landowners who wish to manage and conserve their forest resources to provide important public benefits, such as clean air, clean water, wildlife habitat and recreational opportunities, deserve our full support.

Chairman Cook, thank you for the opportunity to address the Senate Finance and Taxation Committee.

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TESTIMONY TO THE
SENATE FINANCE AND TAXATION
Prepared by Allan Vietmeier, Burleigh County Tax Director
03/11/2015

House Bill 1054

Mr. Chairman and members of the committee I offer the following testimony regarding changes to Agricultural land valuation process and recommend a do not pass:

- For the last thirty plus years we have worked to get this system in place. It was understood that it isn't something that can be accomplished overnight. Now because of fence line differences in taxes we want to gut all those years of work. I feel that this is a reactionary decision instead of a visionary solution. Nothing in this bill changes what is seen as the problem. TAXES!!

- As Tax Equalization Director for Burleigh County I do not believe these changes need to be codified in state law. If they were needed there would be a clamoring at the local (township), county and state board of equalization meetings – and this is not the case. I have participated in many township, county, and State Board of Equalization meetings and there does not appear to be a problem.

- Currently the use of modifiers, PI's , and actual use is at the discretion of local officials (Tax Director, County Commission, or Soils Committee). If these local officials feel the need to use these adjustment tools they are applied. Local Officials know the sentiment of their constituents; we are out valuing property and collecting the taxes. If there is a huge problem we would know.

- Burleigh County has an average True and Full value of approximately 20% of market value on agricultural land. Do we need to have ability to lower values for a class of property that is at 20% of its market?

- Is there a problem that exists? If so where? Or is this a solution searching for a problem?

Thank You,
Allan Vietmeier
Burleigh County Tax Director

4.

TESTIMONY OF EMILY THOMPSON, LEGISLATIVE COUNCIL
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE

HOUSE BILL 1054
MARCH 11, 2015

Chairman Cook, members of the Senate Finance and Taxation Committee, my name is Emily Thompson, Staff Attorney with the North Dakota Legislative Council. I am here today to testify in a neutral capacity to explain the provisions of House Bill 1054 as this was one of the bills brought forward by the Interim Taxation Committee. House Bill 1054 relates to the assessment of agricultural property. The bill arose following the Interim Taxation Committee discussion of assessor certification requirements which are currently addressed in Senate Bill 2054. During discussion of assessor practices, the committee learned assessors from county to county were not necessarily assessing agricultural land in a uniform manner. Thus, the concepts seen in House Bill 1054 were brought forth to try and address some of these concerns.

CURRENT LAW

Under current law, all property in this state is subject to taxation unless expressly exempted by law. Real property must be assessed with reference to its value on February 1 of each year. All property must be valued at the "true and full value" of the property. True and full value is defined as the value determined by considering the earning or productive capacity, if any; the market value, if any; and all other matters that affect the actual value of the property to be assessed. For purposes of agricultural property, this includes farm rentals, soil capability, soil productivity, and soils analysis. The assessed value of property is equal to 50 percent of the true and full value of the property. Taxable valuation of property is determined as a percentage of assessed valuation, which is 9 percent for residential and 10 percent for agricultural, commercial, and centrally assessed property.

The taxable valuation is the amount against which the mill rate for the taxing district is applied to determine the tax liability for individual parcels of property. True and full value of agricultural property is based on productivity as established through computations made by the North Dakota State University Department of Agricultural Economics based on the capitalized average annual gross return of the land. Annual gross return is determined from crop share rent,

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cash rent, annual gross income, or annual gross income potential. Average annual gross return for each county is determined by taking annual gross returns for the county for the most recent 10 years, discarding the highest and lowest annual gross return years, and averaging the remaining 8 years. Statistics from the most recent 10 years for prices paid by farmers are used to adjust annual gross return. Annual gross return is then capitalized using a 10-year average of the most recent 12-year period for the gross agribank mortgage rate of interest. However, the minimum capitalization rate under the formula was set at 9.5 percent for tax year 2004, 8.9 percent for tax year 2005, and 8.3 percent for tax years 2006 through 2008. Under a 2009 amendment, the minimum capitalization rate was 8 percent for 2009, 7.7 percent for 2010, and 7.4 percent for 2011. After 2011, there is no minimum capitalization rate. Replacement of the statutory capitalization rate with a market-based capitalization rate caused a greater than average increase in agricultural property values in 2012.

Personnel from North Dakota State University determine an average agricultural value per acre for cropland and noncropland on a statewide and countywide basis. This information is provided to the Tax Commissioner by December 1 of each year and then provided by the Tax Commissioner to each County Director of Tax Equalization. The County Director of Tax Equalization provides each assessor within the county an estimate of the average agricultural value of agricultural lands within the assessor's assessment district. The local assessor must determine the relative value of each assessment parcel within that assessor's jurisdiction. In determining relative values, local assessment officials are to use the following considerations, in descending order of significance -- soil type and soil classification data, a schedule of modifiers approved by the state supervisor of assessments, and actual use of the property by the owner.

PROPOSED CHANGE TO THE LAW

As originally recommended by the Interim Taxation Committee, House Bill 1054 restricted the use of modifiers in agricultural property assessments to those contained in a single schedule of modifiers adopted by the State Supervisor of Assessments. The single schedule of modifiers would be provided to all assessors as well as a copy of guidelines regarding how modifiers must be applied and instructions on how to use available soil survey resources. The modifiers could be used to reduce the soil type valuation of an area consisting of at least five contiguous acres affected by the conditions described in one or more of the allowable modifiers

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if the assessor made a site inspection to confirm the existence of the conditions warranting modification.

Upon review of House Bill 1054 by the House Finance and Taxation Committee, a hoghouse amendment was put forward to further amend North Dakota Century Code Section 57-02-27.2. In Subsection 6 of N.D.C.C Section 57-02-27.2, the provisions relating to inundated agricultural land were removed and language was added to allow the County Director of Tax Equalization to classify agricultural land as "nonproductive" agricultural land if certain conditions are met. These conditions include:

1) The land must consist of a minimum of five contiguous acres,
2) It must have been unsuitable for growing crops or grazing farm animals for at least two consecutive growing seasons, and
3) It cannot have produced revenue from any source in the most recent prior year which is more than 50 percent of the county average revenue per acre for noncropland.

It is also noted in this subsection that land may not be classified as nonproductive solely because it is wooded.

The initial application for classification as nonproductive land must be made by the owner, in writing, to the County Director of Tax Equalization by March 31 of the taxable year. Thereafter, information must only be supplied by the landowner upon request of the County Director of Tax Equalization to retain the classification of nonproductive land. Land classified as nonproductive agricultural land shall be valued at 10 percent of the average agricultural value of noncropland for the county.

Provisions were also added by the House Finance and Taxation Committee to Subsection 8 of N.D.C.C. Section 57-02-27.2. Language was added noting that an assessor shall apply certain considerations when determining the relative value of each assessment parcel. It must be presumed that soils with a certain soil capability class must be valued as cropland and soils in other designated classes must be valued as noncropland. Use of the property by the landowner, by itself, does not overcome this presumption.

Subsection 9 of N.D.C.C. Section 57-02-27.2 was amended to allow for three modifiers that may be applied to an agricultural property assessment parcel. These include modification for purposes of inaccessibility, nonconformity, and uncharacteristic salinity. The modifiers may be

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applied to reduce the soil type valuation of an area consisting of at least five contiguous acres if the assessor confirms the existence of the conditions warranting modification.

Lastly, an additional subsection has been added to N.D.C.C. Section 57-02-27.2 regarding the property owner's ability to challenge any aspect of the agricultural property assessment determined for a parcel of that person's property. The Act is effective for taxable years beginning after December 31, 2015.

CONCLUSION

I thank you for your time this morning and would be happy to respond to any questions you may have.

1.
3-31-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1054

AMENDMENT #1

Page 3, Line 16, replace "fifty" with "ten"

Page 4, Line 27, after "is" insert "1,"

Page 5, Line 27, replace "if the assessor confirms the existence of those conditions" with "if the assessor makes a site inspection to confirm the existence of those conditions"

Page 5, Line 29, remove "the soil survey"

Page 5, Line 30, remove "determinations,"

Page 5, Line 29, after "modifiers" remove the comma

15.0199.03006
Title.

Prepared by the Legislative Council staff for
Senator Unruh
April 7, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1054

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 3, line 16, replace "fifty" with "ten"

Page 3, line 23, after the period insert "If the property was not classified as nonproductive agricultural land in the preceding taxable year, the assessor must confirm that the property qualifies for that classification by conducting a site inspection of the property and reporting the conclusion from that inspection to the county board of equalization."

Page 3, line 23, replace "The" with "If the property was classified as nonproductive agricultural land in the preceding taxable year, the"

Page 3, line 23, remove "thereafter"

Page 3, line 27, overstrike "board of"

Page 3, line 27, overstrike "commissioners" and insert immediately thereafter "board of equalization"

Page 4, overstrike lines 5 and 6

Page 4, line 24, remove the overstrike over "~~, which are listed in~~"

Page 4, line 25, remove the overstrike over "~~descending order of significance to the assessment determination~~"

Page 4, line 26, after "surveys" insert ", using guidelines established by the state supervisor of assessments for use and application of the soil survey data"

Page 4, line 26, remove "It is"

Page 4, remove lines 27 through 30

Page 5, remove the overstrike over lines 5 and 6

Page 5, line 27, remove ", if the assessor confirms the existence of those conditions"

Page 5, line 29, remove "the soil survey"

Page 5, line 30, remove "determinations,"

Page 5, line 30, remove the second underscored comma

Page 6, after line 13, insert:

"**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL PROPERTY ASSESSMENT UNIFORMITY.** During the 2015-16 interim, the legislative management shall consider studying the most accurate and equitable means of achieving uniformity in agricultural property assessments. As a basis for this determination, the committee or task force selected to conduct the study shall gather the best information available to compare and consider each county's method of assessment of agricultural property, including detailed information for each county on application of modifiers or other methods of adjusting valuations. The legislative management shall report its findings and recommendations, together with any

legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2.
HB1054
4-7-15

STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Ryan Rauschenberger Commissioner

Agricultural Value per Acre for the 2015 Assessment Amended

To County Directors of Tax Equalization:

As required by North Dakota Century Code § 57-02-27.2, I, Ryan Rauschenberger, Tax Commissioner of the State of North Dakota, hereby provide to you the following estimates of agricultural value per acre of agricultural lands on a state wide and on a county wide basis as computed for the year 2015 by the Agribusiness and Applied Economics Department of the North Dakota State University.

The average estimated agricultural value per acre of agricultural lands in the state for the year 2015 is $596.90.

The estimated agricultural value per acre and the average values of cropland and noncropland per acre in each county for the year 2015 are shown in the following table:

County	All Agricultural Land	Cropland	Noncropland
Adams	346.07	477.78	130.71
Barnes	844.38	982.84	181.67
Benson	637.63	771.00	160.81
Billings	206.57	387.07	122.42
Bottineau	583.92	670.51	155.56
Bowman	337.48	471.52	108.08
Burke	454.77	591.31	143.03
Burleigh	401.81	616.57	143.64
Cass	1,165.63	1,222.83	184.65
Cavalier	824.68	932.12	157.78
Dickey	810.92	1,020.40	181.21
Divide	467.18	572.73	142.22
Dunn	262.07	482.22	130.51
Eddy	512.64	685.05	161.62
Emmons	533.87	799.80	142.22
Foster	765.00	897.58	155.56
Golden Valley	283.81	510.71	107.07
Grand Forks	967.94	1,134.95	181.21
Grant	314.29	506.06	131.11
Griggs	690.17	841.41	158.38
Hettinger	531.38	663.84	130.10
Kidder	311.52	540.00	145.05
LaMoure	945.12	1,059.80	187.47
Logan	407.50	654.34	143.03
McHenry	423.41	543.23	154.55
McIntosh	479.30	692.73	142.22
McKenzie	278.04	497.37	130.91
McLean	657.24	750.30	142.63
Mercer	380.57	571.72	130.30
Morton	318.26	575.35	130.71
Mountrail	431.31	638.59	142.02
Nelson	603.84	698.59	157.58
Oliver	353.08	663.03	131.11
Pembina	1,242.83	1,323.23	188.69
Pierce	570.05	686.06	154.75
Ramsey	623.51	767.88	162.02
Ransom	753.81	998.59	178.59
Renville	677.52	721.21	155.15
Richland	1,115.98	1,288.69	183.43
Rolette	583.99	663.23	157.37
Sargent	933.55	1,064.65	183.03
Sheridan	446.33	639.19	142.22
Sioux	208.83	489.09	130.71
Slope	327.06	559.60	119.19
Stark	403.71	565.66	131.31
Steele	1,014.32	1,150.91	161.01
Stutsman	681.23	875.96	178.99
Towner	743.99	773.13	161.62
Traill	1,280.52	1,366.06	183.03
Walsh	952.51	1,123.23	168.89
Ward	578.68	712.53	142.02
Wells	754.71	881.01	156.16
Williams	414.84	583.84	142.42
State	596.90	804.04	140.00

* THE CAPITALIZATION RATE IS 4.95%

For property tax assessment purposes, N.D.C.C. § 57-02-27.2 provides that the "true and full value" of agricultural lands shall be their "agricultural value." Agricultural lands shall be valued at ten percent of their assessed value, N.D.C.C. § 57-02-27. Assessed valuation is defined as fifty percent of "true and full value," N.D.C.C. § 57-02-01.

Dated this 19th day of December 2014.

Ryan Rauschenberger

RYAN RAUSCHENBERGER
TAX COMMISSIONER

24839

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1.

4-8-15

15.0199.03001
Title.

Prepared by the Legislative Council staff for
Senator Triplett
March 31, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1054

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "57-02-27.2" insert ", 57-57-02, and 57-57-04"

Page 1, line 2, after "property" insert "and application of the forest stewardship tax"

Page 6, after line 13, insert:

"**SECTION 2. AMENDMENT.** Section 57-57-02 of the North Dakota Century Code is amended and reenacted as follows:

57-57-02. Eligibility for forest stewardship tax - Application.

This chapter applies in any county in which the ~~county commission~~state forester has approved ~~by resolution~~ the application of this chapter to all qualifying property within the county. The owner or agent of the owner, having any tract of contiguous forest which consists of:

1. Natural forest cover ten acres [4.05 hectares] or larger in size;

2. Planted forest cover five acres [2.02 hectares] or larger in size and not less than sixty feet [18.29 meters] in width; or

3. Any combination of natural and planted forest cover ten acres [4.05 hectares] or larger in size,

may file an application with the ~~county commission of the county in which the property is located~~state forester setting forth a description of property that the owner desires to place under the forest stewardship tax and on which land the owner will practice forestry. If the ~~county commission~~state forester has approved application of this chapter within the county, the ~~county commission shall forward each application received to the~~ state forester ~~for a determination of~~shall determine whether the property qualifies under this chapter. The state forester shall prescribe the form for application blanks and make them available to all interested persons.

SECTION 3. AMENDMENT. Section 57-57-04 of the North Dakota Century Code is amended and reenacted as follows:

57-57-04. Application and acceptance to constitute a contract.

The application of the owner or agent of the owner and the acceptance of the application by the ~~board of county commissioners~~state forester constitutes a contract, running with the land, for a period of five years, unless terminated as provided in this chapter. Any order issued on or before February first of any year takes effect in that year, but all orders issued after February first of any year take effect the following year. If at the end of five years the contract is not renewed by mutual consent of the owner or agent of the owner and the ~~board of county commissioners~~state forester, the land is declassified and removed from the provisions of this chapter.

Any property that was subject to the tax under this chapter on December 31, 2014, continues to be subject to any agreement under this chapter in place at that time and assessment and taxation as provided in section 57-57-06 for a period of five years from its acceptance by the board of county commissioners or until it ceases to be qualifying forested property under section 57-57-02 or as otherwise provided in this chapter. Property approved for forest stewardship tax treatment under this section is classified as agricultural property for all purposes, except as provided in section 57-57-06, but must be excluded from calculations of agricultural value for the county under section 57-02-27.2."

Renumber accordingly

Leadbetter, Linda

From: Leadbetter, Linda
Sent: Tuesday, April 14, 2015 9:05 AM
To: Headland, Craig A.; Schneider, Mary; Unruh, Jessica K.; Cook, Dwight C.; Dotzenrod, Jim A.
Subject: FW: committee questions

Committee Members:

At Chairman Owens' request, I am providing the following responses from Wade Bott, NRCS State Soil Scientist.

From: Leadbetter, Linda
Sent: Tuesday, April 14, 2015 8:53 AM
To: Owens, Mark S.
Subject: FW: committee questions

Representative Owens:

I am providing the following responses to questions presented at yesterday's conference committee on HB 1054. Please let me know if you would like me to forward this information to the other committee members.

Linda Leadbetter
State Supervisor of Assessments
Office of North Dakota Tax Commissioner
600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599
lleadbett@nd.gov
701-328-3128

From: Bott, Wade - NRCS, Bismarck, ND [mailto:wade.bott@nd.usda.gov]
Sent: Tuesday, April 14, 2015 8:19 AM
To: Leadbetter, Linda
Subject: RE: committee questions

Hi Linda.

Are rocks a consideration in either the soil type or the production index determinations?
Yes.
Stones/rocks within a soil profile are accounted for.
Surface stones/rocks are accounted for if the word "stony" appears in the map unit name (e.g. Cabba-Amor-Savage complex, 9 to 70 percent slopes, very stony) or if a component of the map unit has a phase name that contains the word "stony" in it (e.g. Barnes, stony).
Surface stones are more difficult to account for consistently as some producers choose to physically remove the surface stones. Soil erosion and frost heave over time can expose stones from within the profile at the surface, especially in cultivated areas.

What is the process for an individual, or county, to appeal the soil survey determinations?
There is no appeal process in place for soil surveys.
If a soil survey user believes there is a technical error on a map or in the database; the process for resolution is to contact the NRCS field office either in person or by mail with specific details regarding the issue. The error must be a technical error. We are not able to challenge the soil survey for the sole purpose of equalization and/or taxation.
A resource soil scientist will investigate the issue identified and if an error is determined to exist, documentation and report of the error will be forwarded to the soil survey office responsible for the area in question. The soil survey office will create a project and add it to a list along with other pending projects. The project list is prioritized and the issue will be resolved as quickly as possible. All polygons of the map unit(s) in question will be addressed across its entire extent in a project to ensure consistency of our product. Any resulting soil survey changes/updates are delivered to the official soil survey data (Web Soil Survey) annually on or about October 1st of each year.

Please, let me know if you need further clarification.
Regards.
--
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United States Department of Agriculture
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Stay connected with USDA:

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15.0199.03010
Title.

Prepared by the Legislative Council staff for
Representative Headland
April 17, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1054

That the Senate recede from its amendments as printed on pages 1496 and 1497 of the House Journal and pages 1239 and 1240 of the Senate Journal and that Engrossed House Bill No. 1054 be amended as follows:

Page 1, line 2, after the semicolon insert "to provide for a legislative management study;"

Page 3, line 16, replace "fifty" with "thirty"

Page 3, line 23, after the period insert "If the property was not classified as nonproductive agricultural land in the preceding taxable year, the assessor must confirm that the property qualifies for that classification by conducting a site inspection of the property and reporting the conclusion from that inspection to the county board of equalization."

Page 3, line 23, replace "The" with "If the property was classified as nonproductive agricultural land in the preceding taxable year, the"

Page 3, line 23, remove "thereafter"

Page 3, line 27, overstrike "board of"

Page 3, line 27, overstrike "commissioners" and insert immediately thereafter "board of equalization"

Page 4, overstrike lines 5 and 6

Page 4, line 24, remove the overstrike over "~~, which are listed in~~"

Page 4, line 25, remove the overstrike over "~~descending order of significance to the assessment determination~~"

Page 4, line 26, after "surveys" insert ", using guidelines established by the state supervisor of assessments for use and application of the soil survey data"

Page 4, line 26, remove "It is"

Page 4, remove lines 27 through 30

Page 5, remove the overstrike over lines 5 and 6

Page 5, line 26, remove "contiguous "

Page 5, line 27, remove ", if the assessor confirms the existence of those conditions"

Page 5, line 29, remove "the soil survey"

Page 5, line 30, remove "determinations,"

Page 5, line 30, remove the second underscored comma

Page 6, after line 13, insert:

"**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL PROPERTY ASSESSMENT UNIFORMITY.** During the 2015-16 interim, the legislative management shall consider studying the most accurate and equitable means of

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achieving uniformity in agricultural property assessments. As a basis for this determination, the committee or task force selected to conduct the study shall gather the best information available to compare and consider each county's method of assessment of agricultural property, including detailed information for each county on application of modifiers or other methods of adjusting valuations. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly