

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TAXATION COMMITTEE

Thursday, June 24, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Dwight Cook, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Dwight Cook, John M. Andrist, Jim Dotzenrod, Joe Miller, George Nodland, Tracy Potter, Bob Stenehjem, Constance Triplett; Representatives Larry Bellew, Wesley R. Belter, David Drovdal, Robert Frantsvog, Glen Froseth, Craig Headland, Louis Pinkerton, Arlo Schmidt, Gary R. Sukut, Dave Weiler, Lonny Winrich, Dwight Wrangham

Members absent: Representatives Jim Kasper, Scot Kelsh

Others present: Allen H. Knudson, Brady A. Larson; Legislative Council, Bismarck

See [Appendix A](#) for additional persons present.

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

PROPERTY TAX RELIEF AND INCOME TAX CREDIT BILL DRAFTS

At the request of Chairman Cook, committee counsel reviewed the revisions to a bill draft [\[10028.0300\]](#) to extend property tax relief for the 2011-13 biennium. Committee counsel said the bill draft includes a provision to allow school districts that do not obtain extended levy extension authority from the voters to retain a levy of the same amount as in the highest of the most recent three years. In addition, he said, the bill draft appropriates \$341,790,000 for the 2011-13 biennium for the state general fund; transfers \$295 million from the property tax relief sustainability fund to the general fund on July 1, 2011; transfers \$46,790,000 from the permanent oil tax trust fund to the general fund on July 1, 2011; and transfers the total of \$341,790,000 from the permanent oil tax trust fund to the property tax relief sustainability fund on July 1, 2012, for revenue needed to fund 2013-15 property tax relief at the base level of the appropriation for the upcoming biennium.

In response to a question from Representative Froseth, Senator Cook said the transfer of the \$46,790,000 is to provide additional funding for the next biennium.

Senator Miller said the total transfer of \$341,790,000 will not be enough, and that figure should be closer to \$370 million.

In response to a question from Representative Drovdal, Senator Cook said the additional transfer of funds is needed to meet the state payments for 75 mills of property tax due to increases in property valuations. As property values increase, he said, the amount of state funding needed to cover the 75 mills increases.

Senator Potter said a basic flaw of the bill draft is the tying of the valuations to the relief provided. He said if property valuations go down, schools will receive less from the state and from local property taxes.

Senator Cook said the one constant is that the state will always pay the 75 mills under the proposal.

At the request of Chairman Cook, committee counsel reviewed a bill draft [\[10110.0100\]](#) relating to a homestead income tax credit and a commercial property income tax credit. Committee counsel said the bill draft provides for a homestead income tax credit and commercial property income tax credit in the amount of 20 percent of property taxes or mobile home taxes for taxable years 2011 and 2012. He said the homestead income tax credit is limited to \$5,000 for married persons filing a joint return or \$2,500 for a single individual or a married individual filing separate returns, and the commercial property income tax credit is limited to \$5,000 for any taxpayer or married person filing a joint return and \$2,500 for a single individual or married individual filing separate returns. He said the bill draft contains some blanks with respect to the dollar amount of limitations and the amount needed to be transferred from the permanent oil tax trust fund to the general fund. He said the fiscal impact of the bill draft has not yet been determined.

In response to a question from Representative Froseth, Senator Cook said the bill draft does not address the applicability of the credits to farm limited liability companies.

Senator Potter said that issue should be addressed, and he is disappointed in the fact that no fiscal note has been prepared for the bill draft. He said the 10 percent credit that was proposed in the last legislative session was estimated to have a fiscal impact of approximately \$95 million. Therefore, he said, the 20 percent credit should still remain under \$200 million. He said the 20 percent tax credit would amount to only 60 percent of the total cost of the property tax relief in the bill draft. In addition, he said, the income tax relief would go directly to the

residential property owner, and the maximum credit amounts limit the amount of money that would go to out-of-state corporations that own commercial property in the state.

Representative Bellew said the income tax credit proposal should address situations that would occur if a property owner sells a home in July and paid taxes on the property for the first six months of the year but would not be able to claim the credit.

In response to a question from Senator Andrist, Senator Potter said the income tax credit proposal would provide that if a property owner did not owe income tax, the credit would be paid directly to the county auditor for the payment of the property taxes.

Representative Pinkerton said property taxes in this state were high because the state had failed to properly fund schools. Therefore, he said, he does not like the idea of refunding state money based on property tax valuations rather than on a per student basis.

Senator Cook said the best result of the concept of buying down the 75 mills is the compression that has been brought to school mill levies. He said the concept brings the desired effect of lowering levies under 110 mills.

Senator Andrist said he believes state property tax relief can become a disincentive for local governments to be more efficient and thrifty.

Senator Triplett said one of the benefits of the property tax relief proposal is the reception of the general public for the concept. She said the legislation from the last session had a direct impact on taxpayers and was noticed and acknowledged more than the credit against income taxes. She said the property tax relief has been a good effort at fixing the equity between the state and local support of education.

Senator Potter said income tax credits were adopted in 2007 because the state collects income tax and does not meddle with local control of schools. He said income tax credits are a method to restrain the authority that the Legislative Assembly does not have with respect to local property taxes. He said the perception of the property tax relief legislation is illusory in that the relief amounted to approximately 12 percent while the income tax relief amounted to 10 percent for a significantly lower cost. He said there is a need to provide better information to the public so that voters can understand the value of the income tax credits.

Representative Bellew said if the funds were put directly into education, it is not likely that the local school boards will lower taxes.

Representative Schmidt said he thought there was much less confusion regarding the tax relief in 2009 than in 2007.

Representative Headland said if the state is going to buy down mills, taxpayers should be given some ability to control local levies. He said the levies should be reduced to previous levels at the beginning of a tax

year and allow the local government to make a decision whether to raise a levy.

Senator Cook said property tax caps are not necessary in the bill draft. He said the Legislative Assembly is likely to see proposals for property tax caps in other bills.

It was moved by Senator Stenehjem, seconded by Senator Nodland, and carried on a roll call vote that the committee give initial approval to the property tax relief bill draft. Senators Cook, Andrist, Dotzenrod, Miller, Nodland, Potter, Stenehjem, and Triplett and Representatives Bellew, Belter, Drovdal, Frantsvog, Froseth, Headland, Pinkerton, Schmidt, Sukut, Weiler, Winrich, and Wrangham voted "aye." No negative votes were cast.

It was moved by Senator Potter and seconded by Senator Triplett that the committee give initial approval to the bill draft relating to a homestead income tax credit and a commercial property income tax credit and that a fiscal note be requested for the bill draft.

Senator Triplett said she agrees that public education is important so that citizens can share and evaluate different property tax proposals. Although further discussion of the income tax credit bill draft may provide additional information, she said, in the end she will support only one proposal.

The motion failed on a roll call vote. Senators Dotzenrod, Potter, and Triplett and Representatives Bellew, Pinkerton, Schmidt, Weiler, Winrich, and Wrangham voted "aye." Senators Cook, Andrist, Miller, Nodland, and Stenehjem and Representatives Belter, Drovdal, Frantsvog, Froseth, Headland, and Sukut voted "nay."

IMPUTATION OF SCHOOL DISTRICT FUNDS

Chairman Cook called on Mr. Jerry Coleman, Director, School Finance, Department of Public Instruction, for comments relating to imputing funds received by school districts for purposes of state aid allocations. Mr. Coleman distributed a spreadsheet ([Appendix B](#)) that outlines imputed funds and equity payments for school districts in the state. He said imputation of funds is provided for within the state's school aid funding formula under which the ability of a school district to raise local funds is examined on a per student basis. He said the imputed additional valuation for a district is calculated by determining additional local sources of revenue for the school district. He said the calculation includes 70 percent of the amount a school receives of the funds included in the first four columns of the spreadsheet and 100 percent of the mobile home and telecommunications taxes reflected in the fifth and sixth columns of the spreadsheet. He said the state average is calculated and any district below 90 percent of the state average is given additional funds, while any district over 150 percent of the state average will see a reduction in state aid. He said a transition minimum, which is reflected in the last

column of the spreadsheet, guarantees that a school district will not receive less than a set amount from the distribution formula.

In response to a question from Senator Cook, Mr. Coleman said revenue distributed to a school district from an oil-producing county is imputed as provided for under North Dakota Century Code Section 15.1-27-11.

In response to a question from Senator Nodland, Mr. Coleman said the funds on the spreadsheet designated as "US Flood" are funds received from oil revenues for property under Lake Sakakawea. He said those funds are imputed as federal revenues as provided in Section 15.1-27-11.

Senator Cook said although the law provided those funds are imputed, it was his recollection that prior discussions regarding the distribution of oil revenues suggested that those funds would not be imputed.

In response to a question from Senator Andrist, Mr. Coleman said the only federal funds imputed are the funds designated as US Flood funds. He said other federal revenue sources are not imputed, often because those funds are directed to certain programs and the uses are restricted and because of specific federal prohibitions.

In response to a question from Senator Triplett, Senator Cook said the removal of the reference to taxable year 2008 in the school district levy compliance section of the property tax relief bill draft is not connected to the use of the 2008 general fund levy in the imputation provisions. However, he said, more clarification may be needed with respect to the removal of the 2008 reference in the property tax relief bill draft.

In response to a question from Senator Miller, Mr. Coleman said the Department of Public Instruction collects annual comprehensive financial statements from school districts which report revenues and expenditures. He said the data collected is very detailed, and the department publishes a summary of the data on its website which shows the major sources of revenue for school districts.

In response to a question from Senator Potter, Mr. Coleman said the federal aid provided to school districts related to the Air Force bases is generally in a larger amount than that which would have been generated locally.

In response to a question from Representative Froseth, Mr. Coleman said the percentage of the amount of oil revenue that was imputed began at 60 percent in the first year after the law was adopted and increased to 70 percent and has remained at 70 percent for the current biennium.

In response to a question from Representative Pinkerton, Mr. Coleman said the Department of Public Instruction receives the property valuation information from county auditors. He said that information includes residential, agricultural, and commercial property and provides only a total valuation for a county.

Senator Andrist requested Mr. Coleman to provide more detailed descriptions of what each column on the spreadsheet represents.

TAX INCREMENT FINANCING DISTRICTS

Chairman Cook called on Mr. Jerry Hjelmstad, Assistant Director, North Dakota League of Cities, for information ([Appendix C](#)) regarding tax increment financing districts. Mr. Hjelmstad said the North Dakota League of Cities surveyed all 27 cities that have established tax increment financing districts, and all 27 cities responded to the survey. He said the tax increment financing districts vary in length of existence from five years to indefinite. He said the first district was created in 1979. Of the 89 districts that have been established, he said, 30 districts have been completed, and any remaining funds held by a district have been distributed back to the various taxing entities.

In response to a question from Senator Cook, Mr. Hjelmstad said the typical length that a district is in place is 15 years. However, he said, the renewal plans of a district may be amended, and the district may be extended.

In response to a question from Representative Drovdal, Mr. Hjelmstad said the amending of a renewal plan to extend the term of a district does not go to a public vote. However, he said, the altering of the renewal plan goes through a hearing process.

In response to a question from Representative Belter, Mr. Hjelmstad said Section 40-58-20, which provides for the creation of tax increment financing districts, allows for the establishment of a district for the development or renewal of commercial or industrial property or to address blighted areas. For residential areas to be included within a district, he said, the residential areas must fall under the definition of a blighted area. He said that definition is quite broad.

In response to a question from Representative Weiler, Mr. Hjelmstad said he is not sure if the Radisson Hotel in Bismarck is part of a tax increment financing district or if the property owner of the hotel pays school taxes. He said he will attempt to provide the committee with additional information regarding the Bismarck districts.

In response to a question from Representative Wrangham, Mr. Hjelmstad said tax increment financing funds must be used to address development or renewal within the district. He said the funds may be used for privately owned buildings if the buildings are part of the renewal plan.

In response to a question from Representative Headland, Mr. Hjelmstad said he is not aware of cities using both special assessment districts and tax increment financing districts together. He said the North Dakota League of Cities has not addressed that issue because it would be an issue of local control. He said he believes the cities establishing districts intend to follow the statutory guidelines and not abuse the program. He said if there are cities abusing the

program, revision of the statutory provisions relating to tax increment financing should not be necessary because those cities would be acting outside the scope of the law.

Senator Andrist said he has heard reports of abuses of the tax increment financing program in some cities in which the tax levels of the properties within a district are frozen long after the city has recovered its money. Therefore, he said, the city receives its money, but schools and counties do not get their fair share. He said that type of activity is an abuse of a good program.

In response to a question from Senator Cook, Mr. Hjelmstad said money remaining after the termination of a district goes back to the taxing entities. He said he would survey cities to gather information about fund balances.

In response to a question from Senator Potter, Mr. Hjelmstad said a district with an indefinite length remains active until the renewal plan is completed.

In response to a question from Representative Weiler, Mr. Hjelmstad said a property does not come out of a district when the renewal or development of the property is done but remains within the district until the renewal plan is complete. He said Bismarck has established two districts--one in 1979 and one in 1988. He said one of the districts has had no activity. Although he is not familiar with the specifics of the Bismarck plans, he said, he believes the one district has had no activity due to no developers choosing to use the financing.

In response to a question from Representative Winrich, Mr. Hjelmstad said development and renewal plans vary by city. For example, he said, some plans have targeted specific properties for improvement under a plan.

In response to a question from Senator Cook, Mr. Hjelmstad said the properties within a district continue to be appraised, and the additional funds from increased valuations go to the district.

Senator Stenehjem said the ability to adjust the plan allows for the continuation of a plan for an indefinite time period. He said the freezing of the property values is a big drain on tax revenues for the other taxing districts that are affected. He questioned whether there are other areas in which funds are diverted from school districts.

Representative Frantsvog said the committee should seek additional information regarding the content of renewal plans.

Representative Belter said discussion relating to property tax relief during the last legislative session raised the issue of tax increment financing districts. He said he recalls receiving information indicating that Bismarck has \$10 million to \$15 million in its tax increment financing fund. He said the purpose of the program is to improve blighted areas and use the revenue to pay the bonds used to improve blighted areas. After the improvement of the blighted areas, he said, the revenues should go back to the other taxing districts. He said it appears that at least one

city may be holding a large amount of money that should belong to the school district and the county. Although the program is a good program, he said, it is important to see that the program is being used as intended and not depriving schools and counties of tax revenues.

Representative Drovdal questioned to what degree the increase in valuation of property within a tax increment financing district is reflected in the school district's wealth.

Representative Belter said all the taxpayers not in a tax increment financing district assume the cost of properties within that district.

Mr. Hjelmstad said a significant amount of good things have happened under the program, and increased valuations in properties likely would not have taken place if not for the tax increment financing.

In response to a question from Senator Cook, Mr. Hjelmstad said most districts have little to no funds remaining at the termination of the district.

Senator Cook requested the Legislative Council staff to provide the committee with additional information regarding legislation considered in 2003 that would have amended the tax increment financing law.

Representative Winrich said tax increment financing has worked well in Grand Forks to assist in the recovery after the 1997 flood. He said the districts in Grand Forks had a fixed term, and 14 districts were completed. The fact that no funds are left at the termination of the districts, he said, indicated good planning. He said the increased revenues generated from the districts are now going to the schools and other taxing entities. Because districts have worked well in many places, he said, it is important to focus on addressing any problems and not slaughter the entire program.

Senator Miller said the development in Grand Forks may have happened without tax increment financing. He said the program targets development and may have affected development in other areas of the city.

OIL AND GAS LEASE REVENUE

At the request of Chairman Cook, Mr. Allen H. Knudson, Legislative Budget Analyst and Auditor, Legislative Council, presented a memorandum entitled [*Income From Oil Leases and Royalties*](#).

In response to a question from Senator Cook, Mr. Knudson said most of the \$342 million in revenue for fiscal year 2010 will be deposited in trust funds from which only the interest income may be used. He said the funds deposited in the lands and minerals trust fund and the capital building fund may be appropriated by the Legislative Assembly. He said the royalty revenue from federal lands relating to flood control leases is distributed by the State Treasurer to counties and allocated 50 percent to school districts, 25 percent to townships, and 25 percent for county road purposes.

Senator Stenehjem requested the Legislative Council staff to provide additional information regarding the amounts of royalty, bonus, and rent revenues from leasing mineral rights on federal lands in the state for the last three years or four years.

In response to a question from Senator Miller, Mr. Knudson said a county would retain township revenues for unorganized township areas.

In response to a question from Representative Sukut, Mr. Knudson said distributions are made by the State Treasurer on a quarterly basis.

In response to a question from Senator Cook, Mr. Knudson said he does not have a breakdown of revenues between leases and royalties.

PROPERTY TAXES LEVIED FOR COUNTY ROADS

At the request of Chairman Cook, Mr. Brady A. Larson, fiscal analyst, Legislative Council, presented a memorandum entitled [Property Taxes Levied for County Roads](#).

In response to a question from Senator Cook, Mr. Larson said the data does not take into account other sources of road funding and does not include levies for roads in unorganized townships.

In response to a question from Representative Bellew, Mr. Larson said although there are limits to most road levies, the farm-to-market levy may be increased to any number of mills that are approved by the electors of the county.

Senator Triplett said counties may use portions of the general fund levy for roads, and some counties may not use a special road levy.

In response to a question from Representative Drovdal, Mr. Larson said the Bowman County levy should be at five mills, and he will check further on the reported amount. He said 2009 Senate Bill No. 2012 required a report to be filed with the Tax Commissioner regarding expenditures for roads.

In response to a question from Representative Froseth, Mr. Larson said he can provide the committee with additional information regarding provisions relating to including county road and bridge funds with the general fund consolidated levy.

SUBSIDIZED HOUSING PROPERTY TAX EXEMPTION BILL DRAFT

At the request of Chairman Cook, committee counsel reviewed a bill draft [10047.0100] relating to the exclusion of subsidized rental property from the property tax exemption for property used for charitable or other public purposes.

Chairman Cook said the bill draft was requested to remove inconsistencies in application of the exemption and to reduce the likelihood of litigation with respect to actions by cities with respect to the exclusion.

Ms. Clarice Liechty, Jamestown, said the bill draft does not resolve issues relating to the definition of provision of health care to tenants who have a

demonstrated need for it. She said the definition of care for an assisted living facility is very limited, and the Tax Commissioner should provide specific instructions for assessors to use in determining market value where tax credits are given. She said organizations that receive credits and exemptions cause other property owners to have to pay more. She said she has never seen anyone from the Jamestown School District protest the granting of a tax exemption.

Chairman Cook said additional consideration may be needed to define the line between nursing homes and assisted living facilities.

Representative Winrich said governing bodies are often in a position where property owners go before the governing body and state that the law requires the governing body to grant an exemption, and the governing body grants the exemption to avoid appeals or litigation.

It was moved by Senator Stenehjem, seconded by Representative Drovdal, and carried on a voice vote that the committee give initial approval to the bill draft relating to the exclusion of subsidized rental property from the property tax exemption for property used for charitable or other public purposes. Senators Cook, Andrist, Dotzenrod, Miller, Nodland, Potter, Stenehjem, and Triplett and Representatives Bellew, Belter, Drovdal, Frantsvog, Froseth, Headland, Pinkerton, Schmidt, Sukut, Winrich, and Wrangham voted "aye." No negative votes were cast.

EMERGENCY SERVICES COMMUNICATIONS COORDINATING COMMITTEE REPORT

Mr. Jerry Bergquist, President, Emergency Services Communications Coordinating Committee, and Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, presented *Emergency Services Communication in North Dakota: A Status Report 2010* ([Appendix D](#)) as required by Section 57-40.6-12.

In response to a question from Senator Cook, Mr. Traynor said two home rule cities levy a fee per telephone access line and per wireless access line pursuant to a home rule charter. He said those cities have kept the fee consistent with other jurisdictions. He said TracFone is the prepaid wireless company that refuses to pay the access fee. He said five other prepaid providers remit fees to the local jurisdiction based upon the primary point of use of the device which is determined upon activation of the wireless telephone.

Senator Cook called on Mr. Greg Wilz, Director, Division of Homeland Security, Department of Emergency Services. Mr. Wilz said the digital photography used for mapping is accurate to a nine-inch standard. He said \$2.1 million was allocated during the last legislative session to conduct the digital photography mapping, and the department will likely request a carryover for some of the funds because the

project will continue beyond the end of this biennium. However, he said, the mapping should be completed within the \$2.1 million appropriation.

In response to a question from Senator Triplett, Mr. Wilz said the aerial photography for digital mapping provides great resolution but not to the point of facial recognition or violating privacy.

Senator Triplett said the media should be notified in areas before digital photography mapping is conducted to protect the privacy of residents of the area.

In response to a question from Senator Miller, Mr. Wilz said the maps likely will be updated based upon a maintenance schedule that will provide for a three-year to five-year validation. He said equipment has been purchased to allow local jurisdictions to capture mapping updates.

In response to a question from Senator Potter, Mr. Wilz said the mapping data will be available to other government agencies and likely will be placed on the state geographic information system hub for use by the public.

In response to a question from Senator Miller, Mr. Traynor said there is an option under state law to allow the prepaid wireless carriers to pay a 2 percent gross receipts tax rather than the device access fee. He said TracFone has chosen not to pay either and is not paying in any other state.

Senator Cook said the committee should further address the payment of the fees or the gross receipts tax by prepaid wireless carriers. He said the state should find a solution that can be followed by other states rather than looking to a federal solution to be handed to the states. He said if a tax cannot be administered fairly, the tax should be eliminated.

In response to a question from Senator Triplett, Mr. Traynor said the issue of collection of the tax or fees from TracFone has not been specifically presented to the Attorney General. He said state's attorneys have looked at the issue but do not have the resources to challenge TracFone. He said the owner of the company is the wealthiest individual in the world.

Mr. Bergquist said more information is needed before a recommendation can be made with respect to a solution for collection from prepaid wireless providers. He said the Emergency Services Communications Coordinating Committee will continue to examine the issue.

POTASH ROYALTY AND TAXATION

Chairman Cook called on Mr. J. T. Starzecki, Senior Director/United States Operations, Dakota Salts, LLC, for a presentation ([Appendix E](#)) regarding potash mining and taxation and royalty laws.

In response to a question from Representative Froseth, Mr. Starzecki said 1,700 state-owned acres have been identified as potential potash mining areas within the state. If a severance tax and a royalty tax were in place, he said, the state would receive both the royalty tax and the severance tax for potash mined

on state land and only the severance tax for potash mined on private land.

In response to a question from Representative Frantsvog, the tax structure does not have to be based on the purity of the potash mined.

In response to a question from Senator Potter, Mr. Starzecki said the production in North Dakota would likely be around 1.6 million tons per year. He said the current price for potash is approximately \$400 per ton. He said he would recommend a split model of taxation with a state royalty and a severance tax.

In response to a question from Representative Drovdal, Mr. Starzecki said leases on state-owned and private property would be negotiated on different terms.

In response to a question from Representative Headland, Mr. Starzecki said although the potash deposit extends into Montana, Dakota Salts is not currently in any negotiation in Montana. Although the map he provided shows major salt deposits in Montana, he said, the salt may not be minable or may not contain deposits of potash.

In response to a question from Senator Cook, Mr. Starzecki said the mined solution is piped to a plant to be turned into pure potash. From that point, he said, the potash can be shipped to where there is a customer. He said he is unaware of where the nearest fertilizer production facility is.

In response to a question from Senator Triplett, Mr. Starzecki said byproducts can be produced from much of the waste material resulting from the mining and production of the potash. He said 99.9 percent of the wastewater can be recycled, and the process has a very low impact on the environment.

In response to a question from Representative Froseth, Mr. Starzecki said it would likely take three years to five years before potash could be produced in the state. He said exploratory holes must be dug, and the cores must be analyzed. He said Dakota Salts is in the process of finalizing plans and permit applications.

In response to a question from Senator Cook, Mr. Starzecki said one facility could produce between 900,000 tons and 2.2 million tons of potash per year. He said the potash solution would be piped underground from the well to the plant.

In response to a question from Senator Miller, Mr. Starzecki said including transportation and construction, 200 to 300 full-time and part-time jobs could be created by the potash industry in the state.

Chairman Cook called on Mr. Ryan A. Rauschenberger, Deputy Tax Commissioner, Tax Department, for a presentation ([Appendix F](#)) regarding taxation of potash and related products.

In response to a question from Representative Pinkerton, Mr. Rauschenberger said a property tax could be imposed upon the processing plant and pipelines. He said he believes that underground pipelines would be assessed under current law.

Senator Cook said when oil was first produced in the state, the production was subject to a property tax.

He said the state quickly found that it was very difficult to assess the oil wells.

Mr. Lynn Helms, Director, Department of Mineral Resources, Industrial Commission, said a gross production tax was imposed on oil in 1953 in lieu of property taxes. He said the variance in assessments from county to county was very difficult for the companies to understand. He said natural gas, like potash, has no value until it is processed, and natural gas is taxed under the gross production tax model. He said the natural gas processing plants are subject to property taxes.

In response to a question from Senator Potter, Mr. Helms said the value of the proposed potash processing plant would be higher than any of the natural gas processing facilities in the state.

In response to a question from Senator Triplett, Mr. Helms said the production of potash has little environmental impact. He said the storage of the large amounts of table salt would be the biggest issue. He said the United States Geological Survey would require bonding for cleanup in the event the plant were to close.

In response to a question from Senator Dotzenrod, Mr. Helms said most of the potash and byproducts produced from the potash would be transported by rail.

In response to a question from Senator Potter, Mr. Helms said the amount of water used in potash processing would be comparable in volume to that used for oil production. However, he said, it is likely that the wastewater from oil production in the Bakken Formation could be recycled for use in the potash mining process. He said there would be a need to truck in water initially, but the water used in the processing can be recycled and reused.

Representative Froseth requested Mr. Rauschenberger to provide the committee with copies of the Utah and Michigan potash royalty tax and severance tax laws.

Chairman Cook requested the Legislative Council staff to work with the Tax Department to prepare a bill draft for consideration by the committee which would provide for a severance tax and a royalty tax. He said the bill draft should be broad enough to cover other mined resources, such as uranium.

Senator Andrist said counties should receive a portion of the taxes.

Senator Potter said to foster the growth of the industry initially, the tax production should be phased-in and raised after the industry is established in the state.

Representative Froseth said because potash is a nonrenewable resource, the state's share of tax revenue should be placed in a permanent trust fund.

Senator Potter said if the estimate of 20 billion tons of potash in the state is correct, the resource will last 2,000 years.

In response to a question from Senator Cook, Mr. Helms said he is working to bring representatives

of the uranium industry to provide information to the committee at its next meeting.

SOIL SURVEY DEADLINE BILL DRAFT

At the request of Chairman Cook, committee counsel reviewed a bill draft [\[10111.0100\]](#) relating to withholding of a county's allocation from the state aid distribution fund if the county has not fully implemented the use of soil type or soil classification data. He said the bill draft clarifies that the withholding is done on a quarterly rather than a monthly basis.

It was moved by Senator Potter, seconded by Senator Miller, and carried on a roll call vote that the committee provide initial approval of the bill draft relating to the withholding of state aid distribution funds on a quarterly basis. Senators Cook, Andrist, Dotzenrod, Miller, Nodland, Potter, Stenehjem, and Triplett and Representatives Bellew, Drovdal, Frantsvog, Froseth, Headland, Pinkerton, Schmidt, Sukut, Winrich, and Wrangham voted "aye." No negative votes were cast.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Representative Winrich requested the Tax Department provide a fiscal note for the bill draft relating to the income tax credits.

Chairman Cook requested the Legislative Council staff prepare a memorandum regarding whether renaissance zones and tax increment finance districts may overlap and, if so, attempt to determine if there are overlapping zones and districts.

Senator Nodland requested the Legislative Council staff provide a summary of the use by counties of federal oil and gas lease and royalties revenues.

Representative Winrich said because a significant portion of the problems related to the property tax are due to the increase in property values, he would like to see more data regarding the valuation of property and appeals of assessments.

Ms. Dee A. Wald, General Counsel, Tax Department, said the Tax Department has no specific data on county appeals. Although some information regarding appeals is brought to the attention of the Tax Department, she said, there has been very little litigation with respect to the State Board of Equalization.

Chairman Cook said the next meeting of the Taxation Committee will be in early August. There being no further business, the meeting was adjourned at 3:15 p.m.

John Bjornson
Committee Counsel

ATTACH:6