

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

LEGISLATIVE MANAGEMENT

Tuesday, May 1, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Al Carlson, Chuck Damschen, David Drovdal, Jerry Kelsh, Shirley Meyer, Kenton Onstad, Dan Ruby, Don Vigesaa; Senators Robert Erbele, Joan Heckaman, David Hogue, Gary A. Lee, Larry Robinson, Ryan M. Taylor, Rich Wardner

Members absent: Representative Robin Weisz; Senator Ray Holmberg

Others present: Cory Fong, Tax Commissioner Allen H. Knudson, John Walstad; Legislative Council, Bismarck

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

It was moved by Senator Robinson, seconded by Representative Vigesaa, and carried on a voice vote that the minutes of the February 24, 2012, meeting be approved as distributed.

OPENING REMARKS

Chairman Carlson said the purpose of the meeting is to fulfill the Legislative Council's statutory responsibility to coordinate the determination of the estimated fiscal impact of initiated measures. He said North Dakota Century Code Section 16.1-01-17 requires the Legislative Management to hold hearings, receive public testimony, and gather information on the estimated fiscal impact of initiated measures. He said this law resulted from the passage of an amendment to the state constitution in 2004 which permits the Legislative Assembly to provide by law a procedure through which the Legislative Council may establish an appropriate method for determining the fiscal impact of an initiated measure and for making the information regarding the fiscal impact of a measure available to the public.

Chairman Carlson said the Secretary of State has notified the Legislative Council office that two initiated measures qualify for the primary election ballot--an initiated constitutional measure relating to property taxes and an initiated constitutional measure relating to religious liberty.

Chairman Carlson said the procedure for obtaining fiscal information basically tracks that followed during legislative sessions--the Legislative Council staff requested the state agencies that appear to have either the best information on the impact of a measure or the primary responsibility for compiling and maintaining relevant information to present their

determinations at this meeting. He emphasized the only purpose of holding this meeting is to meet the Council's statutory responsibility to obtain fiscal information on each measure, and the Legislative Management is not holding this meeting to hear testimony on the merits of any measure.

Chairman Carlson said the Legislative Management's interim Property Tax Measure Review Committee was established to study ramifications of the initiated measure to prohibit local imposition of property taxes. He said the Legislative Management will hear the report of the interim committee.

INITIATED MEASURE PROHIBITING IMPOSITION OF PROPERTY TAXES

This initiated measure ([Appendix B](#)) prohibits the Legislative Assembly and political subdivisions from raising revenue to defray the expenses of the state or political subdivisions through the levying of a tax on the assessed value of real or personal property.

Representative Drovdal, Chairman, Property Tax Measure Review Committee, presented the report ([Appendix C](#)) of the committee.

In response to a question from Representative Carlson, Representative Drovdal said if measure No. 2 passes, local school building projects would require funding from the Legislative Assembly without further statutory changes.

In response to a question from Representative Damschen, Representative Drovdal said approximately \$126.3 million in property tax is paid by out-of-state entities.

In response to a question from Senator Wardner, Representative Drovdal said the committee determined that property tax revenues estimated for 2012--\$812,225,000--should be the fiscal effect number rather than revenues for 2011. He said the cost for the 2013-15 biennium is estimated to be \$1.8 billion. Representative Carlson noted that according to the initiated measure, the Legislative Assembly is obligated to provide funding only at 2011 levels.

Representative Carlson noted that the \$812,225,000 amount is net of the current property tax relief of \$342,000,000 per biennium.

In response to a question from Senator Hogue, Representative Drovdal said he assumes any special legislative session would be a stopgap session to

appropriate enough funds so political subdivisions could operate as of January 2013.

Chairman Carlson recognized Ms. Kathryn Strombeck, Research Analyst, Tax Department. Ms. Strombeck described the assumptions for the fiscal note provided to the Legislative Council by the Tax Department. (The fiscal note [appendix](#) is attached to the *Report of the Property Tax Measure Review Committee*.)

Ms. Strombeck said 62 political subdivisions levy taxes for bond repayments, and those levies would continue until the bonds are paid.

In response to a question from Senator Wardner, Ms. Strombeck said there is no requirement that the Legislative Assembly provide funding above the 2011 property tax amounts. She said the 2012 estimate is based on 2011 with a 7.7 percent growth factor.

In response to a question from Representative Carlson, Mr. John Walstad, Code Revisor, Legislative Council, said current law restricts the authority to use special assessments, but the Legislative Assembly could authorize use of special assessments for budget supplementation purposes.

In response to a question from Senator Wardner, Mr. Walstad said in lieu taxes that are based on property value assessments would be prohibited by measure No. 2, but not all in lieu taxes are based on property value assessments.

It was moved by Senator Wardner, seconded by Senator Heckaman, and carried on a roll call vote to accept the report of the Property Tax Measure Review Committee. Representatives Carlson, Damschen, Drovdal, Kelsh, Meyer, Onstad, Ruby, and Vigesaa and Senators Erbele, Heckaman, Hogue, Lee, Robinson, Taylor, and Wardner voted "aye." No negative votes were cast.

INITIATED MEASURE RELATING TO RELIGIOUS LIBERTY

This initiated measure ([Appendix D](#)) prohibits the government from burdening a person's or religious organization's religious liberty.

Chairman Carlson recognized Ms. Pam Sharp, Director, Office of Management and Budget. Ms. Sharp reviewed the fiscal impact statement ([Appendix E](#)) the Office of Management and Budget (OMB) provided to the Legislative Council. She said OMB is unable to determine the fiscal impact of measure No. 3.

Chairman Carlson recognized Mr. Tom Freier, Chairman, Measure No. 3 Sponsoring Committee. Mr. Freier said measure No. 3 was drafted in response to a 1990 United States Supreme Court decision that removed the "compelling interest" test in determining whether a governmental entity has infringed upon a religious belief. He said the measure would restore that requirement. He said the drafters of measure No. 3 did not believe measure No. 3 would have any fiscal impact.

It was moved by Representative Drovdal, seconded by Representative Damschen, and carried on a roll call vote to accept the statement of OMB which concluded OMB is unable to determine the fiscal impact of measure No. 3, if any; and to forward the fiscal impact statements of the Property Tax Measure Review Committee and OMB to the Secretary of State as provided by Section 16.1-01-17. Representatives Carlson, Damschen, Drovdal, Kelsh, Meyer, Onstad, Ruby, and Vigesaa and Senators Erbele, Heckaman, Hogue, Lee, Robinson, Taylor, and Wardner voted "aye." No negative votes were cast.

SASKATCHEWAN DISCUSSION

Representative Drovdal said he had met with some members of the Legislative Assembly of Saskatchewan and discussed issues common to Saskatchewan and North Dakota. He said Saskatchewan is an associate member of the Midwestern Conference of the Council of State Governments. He said Saskatchewan would like to pursue full membership. He said Saskatchewan would pay its membership dues. He said full membership would give Saskatchewan voting privileges. He inquired whether North Dakota could sponsor Saskatchewan. He said another request is to form an association between North Dakota and Saskatchewan, whereby visitations during legislative sessions could be conducted. He said Saskatchewan and Montana have formed such an association. Chairman Carlson said the request to form an association with Saskatchewan would require the Legislative Assembly's approval.

It was moved by Senator Robinson, seconded by Senator Wardner, and carried on a voice vote to support sponsorship of Saskatchewan as a member of the Midwestern Conference of the Council of State Governments.

LEGISLATIVE COUNSEL EMPLOYMENT

Representative Kelsh said the Legislative Management had authorized counsel to be retained to represent the legislative branch in the lawsuit initiated by the State Board of Higher Education. He inquired about the cost of retention of the counsel. He said he was not impressed with the brief the counsel filed with the Supreme Court, especially because the court did not address the issue of the role of the Legislative Assembly in dealing with the State Board of Higher Education.

Representative Carlson said he was impressed with the brief and how it presented the constitutional issues. He said the Supreme Court made the decision not to address the constitutional issue of the role of the Legislative Assembly. He said the cost of the counsel was about \$32,000.

Representative Ruby inquired as to the status of the Property Tax Measure Review Committee. He said he thought the committee should proceed to

address issues brought before the committee with respect to questions about measure No. 2.

Chairman Carlson said the original intent in establishing the committee was for the committee to determine the fiscal impact of measure No. 2, and that task has been completed.

No further business appearing, Chairman Carlson adjourned the meeting at 11:35 a.m.

Jay E. Buringrud
Director, Legal Services Division

Jim W. Smith
Director

ATTACH:5