

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## PROPERTY TAX MEASURE REVIEW COMMITTEE

Monday, August 15, 2011  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative David Drovdal, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives David Drovdal, Larry Bellew, Wesley R. Belter, Tracy Boe, Chuck Damschen, Glen Froseth, Joyce Kingsbury, Kim Koppelman, Ralph Metcalf, Dan Ruby, Clark Williams; Senators Dwight Cook, Carolyn C. Nelson, Dave Oehlke

**Members absent:** Representatives Lonny B. Winrich, Steven L. Zaiser; Senators Joe Miller, Ronald Sorvaag

**Others present:** Senator Joan Heckaman, member of the Legislative Management, was also in attendance.

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

**It was moved by Senator Nelson, seconded by Representative Ruby, and carried on a voice vote that the minutes of the June 22, 2011, meeting be approved as distributed.**

### PROPERTY TAX MEASURE REVIEW

At the request of Chairman Drovdal, the Legislative Council staff presented a memorandum entitled [Property Tax Measure Questions](#) relating to provisions of the initiated measure prohibiting property taxes and potential questions that may be submitted to the Attorney General's office or others for input to assist the committee in determining the estimated fiscal effect of the measure.

The Legislative Council staff presented a memorandum entitled [North Dakota Political Subdivisions Bonded Indebtedness](#) which includes information reported by political subdivisions in response to a Legislative Council survey. The Legislative Council staff said 22 cities and 31 counties responded to the survey. The most common type of indebtedness reported by cities were special assessments accounting for 33 percent and revenue bonds accounting for 28 percent. The most common type of indebtedness reported by counties were special assessments accounting for 58 percent and general obligation bonds accounting for 27 percent. The Legislative Council said 12 cities and 11 counties reported future anticipated indebtedness in the next 24 months.

The Legislative Council staff presented a memorandum entitled [Property Tax Foreclosures](#) relating to properties foreclosed on due to nonpayment of property taxes. The Legislative

Council staff said 30 counties reported a total of 265 properties foreclosed on in 2008, 195 properties foreclosed on in 2009, and 446 properties foreclosed on in 2010.

The Legislative Council staff presented a memorandum entitled [Comparison of Selected States' Tax Rates and Property Tax Relief/Incentive Programs](#) relating to a comparison of property and other taxes in North Dakota to other states. The Legislative Council staff said several states, including Alabama, Arkansas, New York, and Oregon, have lower per capita property tax rates than North Dakota. The Legislative Council staff said the memorandum includes a comparison of state and local sales tax, individual and corporate income tax, gas and diesel tax, and cigarette tax rates.

Mr. John Walstad, Code Revisor, Legislative Council, presented a memorandum entitled [Initiated Measure Construction](#) relating to court rulings or precedence in initiated measures that have discrepancies. Aside from voter approval of a correction, he said, there is only minimal opportunity to correct errors or discrepancies that may be included in an initiated constitutional amendment.

Mr. Scott Wegner, Arntson Stewart Wegner, PC, presented testimony ([Appendix B](#)) regarding the types of indebtedness that may be incurred by political subdivisions.

Mr. Wegner explained the following types of indebtedness:

- General obligation (GO) bonds - Most political subdivisions are authorized to issue GO bonds for building projects, infrastructure, and equipment. At the time GO bonds are issued, Article X, Section 16, of the Constitution of North Dakota, requires an irrevocable tax levy until the bonds are paid.
- Limited tax bonds - Limited tax bonds are payable from property tax, like GO bonds, but are limited to a certain number of mills. Limited tax bonds are considered part of the political subdivisions' constitutional debt limit.
- Certificates of indebtedness - For the financing of current budgets and cashflow needs, North Dakota law permits political subdivisions to issue certificates of indebtedness against anticipated revenues in the form of levied but uncollected taxes and distributions of state and federal money.

- Special assessment bonds - Cities, counties, and certain other political subdivisions are authorized to finance improvements through special assessments. Public school districts do not have special assessment authority. If special assessment collections are insufficient to pay the bonds, the political subdivision is required to certify an excess mill levy without limit on all taxable property to pay the bonds. Special assessment bonds are not subject to the constitutional debt limit.
- Revenue bonds - Several political subdivisions, including cities, park districts, water districts, and water resource districts are authorized to issue revenue bonds. Revenue bonds are payable solely from user revenues generated by a particular enterprise or sales tax. Revenue bonds are not subject to the constitutional debt limit.
- Tax increment bonds - Cities are authorized to finance public improvements for slum and blighted areas through the issuance of tax increment financing revenue (TIF) or GO bonds.
- Lease financing - In the context of public finance, lease financing includes various types of agreements, such as installment purchase contracts, installment sales contracts, and purchase orders, in addition to leases. Lease purchase financings result in the acquisition of the building or equipment at the end of the lease term.

In response to a question from Representative Koppelman, Mr. Wegner said it is his interpretation that property tax levies for GO bonds issued prior to the effective date of the initiated measure would continue until the bonds are repaid even if the measure is approved, because a constitutional amendment cannot negate a bond that was issued under constitutional provisions effective at the time the bonds were issued.

In response to a question from Representative Froseth, Mr. Wegner said there is no specific formula which must be used to allocate special assessments. He said valuation of property may be used but most often is not. He said water projects are usually based on the number of hookups, and street projects are usually based on the number of feet of street frontage.

Mr. Alvin A. Jaeger, Secretary of State, presented testimony ([Appendix C](#)) relating to the effective date of the initiated measure. He said the effective date of January 1, 2012, was included in Section 7 of the petition received from the initiated measure's sponsoring committee in March 2010. He said no changes were made by his office to the effective date when it was received. He said the role of the Secretary of State, as it relates to a petition for an initiated measure, is to review the petition to determine if the petition is in proper form and contains the names and addresses of the sponsors and the full

text of the measure. He said his role is not to review the substance or merits of the text of the measure.

Ms. Marcy Dickerson, State Supervisor of Assessments, and Director, Property Tax Division, Tax Department, presented testimony ([Appendix D](#)) regarding statutory provisions relating to nonpayment of property taxes and the homestead tax credit. She said all real and personal property taxes and yearly installments of special assessments become due on the first day of January following the year for which the taxes were levied. She said penalties are assessed at regular intervals once the taxes become delinquent. She said counties can foreclose on tax liens if not paid by October 1 of the second year following the year in which the taxes become delinquent.

Ms. Dickerson said the homestead tax credit program consists of three parts--a reduction in the taxable value of the homestead of a qualifying homeowner, a refund of a portion of rent paid by a renter that is deemed to represent property tax, and a rarely used credit against special assessments levied on the homestead of a qualifying homeowner. She said the homestead tax credit program provided a total of \$5,329,198 to 7,366 homeowners and 4,049 renters during the 2007-09 biennium and \$7,423,660 to 8,428 homeowners and 4,767 renters during the 2009-11 biennium. She said the appropriation for the homestead tax credit program for the 2011-13 biennium is \$8,792,788.

Ms. Dickerson said if property taxes are abolished in North Dakota, it is likely that individuals and businesses that are exempt from property tax will request reductions in other taxes they may be required to pay to receive benefits similar to their property tax exemptions.

In response to a question from Representative Ruby, Ms. Dickerson said she will provide information at a future meeting as requested regarding the benefits to the economy by reducing or eliminating taxes.

Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, presented testimony ([Appendix E](#)) relating to the provisions of initiated measure No. 2 and its potential effects on county revenue sources. He presented additional questions to clarify the intent of the initiated measure and to assist in the determination of the measure's fiscal impact. He said counties are concerned that if the initiated measure is approved by voters, the result could be a reduction in services in rural counties. He said counties are also concerned that over time, the revenues which are meant to replace property taxes will not be sufficient to cover increased costs in the counties. He said the elimination of property taxes may encourage county home rule.

Mr. Jerry Hjelmstad, Assistant Director, North Dakota League of Cities, presented information ([Appendix F](#)) relating to the provisions of initiated measure No. 2 and its potential effects on city

revenue sources. He questioned how a measure that is voted on in June 2012 can become effective in January 2012. He said Sections 8 and 9, Article III, of the Constitution of North Dakota, provide that an initiated measure, including a constitutional amendment, becomes effective 30 days after the election.

Dr. Jon Martinson, Executive Director, North Dakota School Boards Association, said the property tax initiative raises the following questions:

1. What is the specific mechanism that would replace local property taxes?
2. How would the measure affect local school district revenues?
3. What impact would passage of the measure have on state school aid distributions?

Mr. Robert L. Hale, committee member, sponsoring committee for initiated measure No. 2, presented written responses ([Appendix G](#)) from the sponsoring committee to potential questions that may be submitted to the Attorney General's office or others for input to assist the committee in determining the estimated fiscal effect of the measure.

In response to a question from Senator Cook, Mr. Hale said special levies and special assessments are levied for specific purposes. He said special assessments may be, but are not required to be, based on property value and therefore are not considered property taxes. He said special assessments are not prohibited by the measure.

Senator Cook expressed concern over the potential expanded use of special assessments if the initiated measure is approved.

In response to a question from Representative Koppelman, Mr. Hale said existing special assessments would continue to be billed after the measure passes. He said local jurisdictions would determine how special assessments would be billed to property owners.

In response to a question from Senator Nelson, Mr. Hale said the Legislative Assembly would determine how to replace revenue for the University of North Dakota School of Medicine and Health Sciences, which currently receives revenue from a statewide levy of one mill of property tax.

Mr. Doug Johnson, Executive Director, North Dakota Council of Educational Leaders, said the initiated measure would have a significant impact on

the funding formula currently in place for school districts.

Mr. Steve Vogelpohl, attorney, Bismarck, said under current statutory provisions, special assessments for improvements must be for a benefit for the land that is assessed. He said state statute provides that municipalities are liable for deficiencies in special improvement funds. He said under current law a municipality must levy additional property tax to generate funding for payment of any deficiency.

## COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Committee members identified the following questions to be added to the committee's list of questions:

1. Does the Legislative Assembly have the authority to require special assessments be included when determining the amount of GO bonds that may be issued by a jurisdiction?
2. Does the initiated measure prohibit the Legislative Assembly's ability to consolidate school districts or to consolidate all school districts into one school district?
3. Does the initiated measure limit the Legislative Assembly's ability to consolidate services between counties?
4. May taxes levied by a political subdivision to repay GO bonds issued prior to the effective date of the measure continue to be assessed and collected until the bonds are repaid?

Chairman Drovdal said the committee will be notified of the next meeting date.

No further business appearing, Chairman Drovdal adjourned the meeting at 12:30 p.m.

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Becky Keller  
Senior Fiscal Analyst

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:7