

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

PROPERTY TAX MEASURE REVIEW COMMITTEE

Wednesday, November 2, 2011
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative David Drovdal, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives David Drovdal, Glen Froseth, Joyce Kingsbury, Kim Koppelman, Ralph Metcalf, Dan Ruby, Clark Williams, Lonny B. Winrich; Senators Dwight Cook, Joe Miller, Ronald Sorvaag, Dave Oehlke

Members absent: Representatives Larry Bellew, Wesley R. Belter, Tracy Boe, Chuck Damschen, Steven L. Zaiser; Senator Carolyn C. Nelson

Others present: RaeAnn G. Kelsch, State Representative, Mandan

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

It was moved by Senator Oehlke, seconded by Representative Metcalf, and carried on a voice vote that the minutes of the August 15, 2011, meeting be approved as distributed.

PROPERTY TAX MEASURE REVIEW

At the request of Chairman Drovdal, Mr. John Walstad, Code Revisor, Legislative Council, presented a memorandum entitled [Property Tax Elimination Initiated Measure - Analysis of Issues Raised by the Property Tax Measure Review Committee](#) relating to an analysis of the provisions of the initiated measure prohibiting property taxes.

Mr. Walstad said the effective date of the initiated measure, or the date when the measure should be applied, is January 1, 2012. He said the measure would be effective for the entire 2012 tax year. He said the measure does not affect taxes levied but not paid by December 31, 2011, because the Supreme Court has ruled that repeal of law does not extinguish the liability of taxes imposed before the law is repealed.

Mr. Walstad said if the initiated measure is approved by North Dakota voters in June 2012, property taxes would be eliminated because all property taxes are levied on the assessed value of property. He said the language in Section 1 of the measure appears to eliminate levying property taxes dedicated to retirement of political subdivision general obligation bond issues because the taxes levied for those purposes are a tax on assessed value of real property. However, he said, bonded indebtedness is issued under a contractual agreement between the political subdivision and the bondholders. Under these contracts, he said, the political subdivision pledges to levy dedicated property taxes until the

bonded indebtedness is retired. He said this contractual agreement would be "substantially impaired" if the measure is interpreted to remove the authority to levy the property taxes required to make payments to bondholders which may be a violation of the contract clause of Article 1, Section 10, of the United States Constitution. He said, therefore, he believes property tax levies relating to general obligation bonds will need to continue until all outstanding bonds issued prior to the initiated measure election are retired.

Mr. Walstad said he believes the following taxes imposed as in lieu of property taxes would not be affected by the initiated measure because they are not based on the assessed valuation of property:

- Oil and gas gross production tax.
- Oil extraction tax.
- Coal severance tax.
- Coal conversion tax.
- Electric generation, distribution, and transmission taxes.
- Telecommunications tax.
- Financial institutions tax.

Mr. Walstad said he believes taxes on the following types of property would be eliminated because the payments in lieu of property tax are based on the assessed value of the property:

- Farmland and ranchland owned by nonprofit organizations for conservation purposes.
- Game and Fish Department lands.
- National Guard land.
- Land owned by the Board of University and School Lands or the State Treasurer.
- Carbon dioxide pipelines.
- Devils Lake project land.
- Workforce Safety and Insurance building.

Mr. Walstad said because the word "used" is included in subsection 1 of Section 2 of the measure rather than the word "levied," it appears the intention of the drafters of the measure is to require the state to replace revenue from property taxes used rather than levied and collected. He said subsection 1 of Section 2 appears to establish a baseline funding level of 2011 calendar year expenditures from real property tax revenues of the political subdivision and certain in lieu of tax revenues. He said this is the amount of funding the state is to replace for the political subdivisions.

Mr. Walstad said subsection 3 of Section 2 of the measure requires the Legislative Assembly to allocate a share of state taxes to "fully and properly fund the legally imposed obligations" of political subdivisions. However, he said, because the measure does not define "fully and properly fund," the measure provides the Legislative Assembly discretion in determining the level of funding that is considered proper.

In response to a question from Representative Drovdal, Mr. Walstad said identifying bonded indebtedness of political subdivisions as a legal obligation of the state is a possible interpretation of the measure. However, he said, the state has a debt limit of \$2 million for general obligation bonds, which could be interpreted by courts to mean the state may not constitutionally assume additional political subdivision debt in excess of \$2 million.

In response to a question from Senator Cook, Mr. Walstad said the North Dakota Supreme Court would probably not consider ruling on the constitutionality of a measure until it has been approved by North Dakota voters. He said any North Dakota citizen would have standing to challenge the constitutionality of a measure eliminating property taxes.

Ms. Charlene Nelson, chairman, sponsoring committee for initiated measure No. 2, presented testimony ([Appendix B](#)) regarding the initiated measure. She requested the Property Tax Measure Review Committee to either contract for the completion of a fiscal impact study of the initiated measure or adopt the study that has been completed by Beacon Hill Institute ([Appendix C](#)) at the request of the sponsoring committee. She requested the Property Tax Measure Review Committee to develop recommendations and bill drafts relating to how the constitutional language of the initiated measure will be implemented. She presented draft language that could be used to establish an escrow account for property tax money paid until the initiated measure has been voted upon ([Appendix D](#)).

In response to a question from Senator Cook, Ms. Nelson said the sponsoring committee for initiated measure No. 2 would provide a written response regarding any concerns with Mr. Walstad's analysis of the measure for the next committee meeting.

Ms. Kathryn Strombeck, Research Analyst, Tax Department, said the department is unable to determine the effect on the North Dakota economy resulting from reducing or eliminating property taxes. She said the department uses static models based on historical information from tax returns and does not use econometric models which are needed for this type of forecasting. She said Moody's Analytics, North Dakota State University, or the University of North Dakota may be able to provide information relating to the effect on North Dakota's economy from reducing or eliminating property taxes.

Ms. Marcy Dickerson, State Supervisor of Assessments, and Director, Property Tax Division, Tax Department, presented testimony ([Appendix E](#))

regarding estimated property taxes and in lieu of taxes that will be levied for tax years 2011 and 2012. She said property taxes and valuation-based in lieu of taxes levied for 2010 totaled \$720 million. She estimates statewide collections of property taxes and valuation-based in lieu of taxes for 2011 and 2012 may total \$773 million and \$857 million, respectively. She said the estimates for the future property tax levies are based on the assumption that growth in property valuations from 2011 to 2012 will be similar to the growth experienced from 2010 to 2011, except for agricultural land which is expected to grow 20 percent from 2011 to 2012. She said mill rates for 2011 and 2012 are assumed to be similar to mill rates for 2010.

Mr. Doug Johnson, Executive Director, North Dakota Council of Educational Leaders, presented testimony ([Appendix F](#)) regarding the estimated impact of initiated measure No. 2 on North Dakota's public schools. He said the initiated measure provides that school districts' funding levels will be based on taxes levied prior to 2012 resulting in future funding being based on 2010 tax levies and property valuations which will create budget shortfalls for most school districts. He expressed concern that passage of the measure would result in inequitable funding distributions to schools.

Mr. Scott Rising, citizen, Bismarck, presented testimony ([Appendix G](#)) regarding initiated measure No. 2. He said he believes the initiated measure does not reduce the aggregate tax liability. He said the measure only changes how the taxes are paid and who pays them.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Senator Cook suggested the Property Tax Measure Review Committee develop a bill draft to address how the Legislative Assembly will replace funding from property taxes and use the bill draft as a basis to determine the fiscal effect of the elimination of property taxes.

Senator Miller suggested the Beacon Hill Institute study could be analyzed to determine the appropriateness of its outcomes.

Representative Drovdal said the analysis of the initiated measure presented by Mr. Walstad should be the basis for determining the fiscal effect of the initiated measure.

In response to a question from Representative Koppelman, the legislative budget analyst and auditor said the committee's assigned responsibility is to coordinate the determination of the fiscal impact of the initiated measure. He suggested the Legislative Council staff could provide the Legislative Council memorandum presented by Mr. Walstad to the Tax Department and ask the department and any other affected agencies to estimate the fiscal impact for presentation at the next committee meeting.

Chairman Drovdal said he will work with the staff and the Legislative Management chairman to request the estimated fiscal impact information, and the committee will be notified of the next meeting date.

No further business appearing, Chairman Drovdal adjourned the meeting at 4:50 p.m.

Becky Keller
Senior Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:7