

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## TAXATION COMMITTEE

Wednesday, August 1, 2012  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator David Hogue, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators David Hogue, Randy Burckhard, Dwight Cook, Jim Dotzenrod, Dave Oehlke, Ronald Sorvaag; Representatives Larry Bellew, David Drovdal, Glen Froseth, Lyle Hanson, Patrick Hatlestad, Craig Headland, Richard Holman, Jim Kasper, Shirley Meyer, Mike Nathe, Marvin E. Nelson, Mark S. Owens, Roscoe Streytle

**Members absent:** Senator Lonnie J. Laffen; Representative Wesley R. Belter

**Others present:** Representative Jerry Kelsh and Senator Ray Holmberg, members of the Legislative Management, were also in attendance.

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

**It was moved by Representative Drovdal, seconded by Senator Burckhard, and carried on a voice vote that the minutes of the May 29, 2012, meeting be approved as distributed.**

### PROPERTY TAX STUDY

#### Property Tax Relief Bill Drafts

Chairman Hogue called on Committee Counsel for presentation of a property tax relief bill draft [\[13.0018.02000\]](#). Committee Counsel said the committee has reviewed this bill draft, which provides mill levy reduction grants to school districts to reduce property taxes for all taxable property, following the approach used to provide property tax relief for the years 2009 to 2013. He said after the previous committee meeting, some changes were made in Section 4 of the bill draft to recognize that under North Dakota Century Code Section 57-15-14, 55 percent voter approval is required to approve an excess levy if the school district has 4,000 or fewer population. He said the existing statutory provision refers only to approval by a majority of electors, and the language is changed to recognize that a higher vote for approval is required in some school districts.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [\[13.0017.02000\]](#) to provide property tax relief through a residential property tax credit. Committee Counsel said the bill draft has been revised since it was reviewed at the previous meeting. He said when the committee reviewed the previous version of the bill draft, it eliminated the property tax exemption for farm residences and provided a residential property tax credit for all primary residential property. He said the bill draft in its current form limits

the property tax exemption to \$75,000 of true and full valuation on a farm residence. He said the bill draft has been revised to provide a residential property tax credit for a primary residence in the amount of \$80,000 of true and full value or 80 percent of true and full value, whichever is less. He said the appropriation for the bill draft has been adjusted to reflect a Tax Department estimated cost of \$370.6 million for the 2013-15 biennium.

Representative Meyer asked if the cost of assessment of farm homes is included in the cost estimate for the bill draft. Committee Counsel said the appropriation estimate probably does not account for any costs to counties of assessing farm homes. He said he believes the estimated amount is for the appropriation necessary to distribute residential property tax credit funds.

In response to a question from Senator Oehlke, Committee Counsel said the estimated amount for the appropriation was made with the assumption that the mill levy reduction grant program would continue.

Representative Meyer asked if farm homes exceeding the \$75,000 value would be entitled to a residential property tax credit against the taxable portion of the value. Committee Counsel said he would review the language of the bill draft and statutory provisions to determine if that would be possible.

Senator Cook said the reason he requested a change in the amount of valuation exempt under the residential property tax credit is to require that taxpayers have some "skin in the game." He said if the entire value of property in smaller communities is less than \$75,000, the taxpayer would have no reason to care if the property valuation is increased to \$75,000 because the state would be responsible for the entire tax bill. He said if some portion of the value remains taxable, the taxpayer will have a reason to monitor assessment increases.

Representative Nathe questioned the need for the provision of the bill draft requiring homeowners to make an annual claim to receive the credit. Committee Counsel said Ms. Marcy Dickerson, State Supervisor of Assessments and Property Tax Division Director, Tax Department, would be providing comments on the annual claim issue later in the meeting.

Representative Headland said the bill draft provides a more substantial credit for residential property than the farm residence exemption is

allowing under the bill draft. He questioned why a farmer would claim the farm home exemption when it appears the farmer would be better off under the bill draft to obtain the residential credit for \$80,000. Committee Counsel said the \$80,000 credit is limited to 80 percent of the value of the property, and the farm residence exemption is not. He said he will provide some examples at the next meeting.

Representative Nelson asked if there is any state oversight that would limit the incentive to inflate values of residential property with less than \$80,000 valuation. Committee Counsel said the State Board of Equalization reviews assessments and compares information from the sales ratio study, so there is a degree of oversight, but there is room within the range of tolerance allowed by the State Board of Equalization for approximately a 10 percent variation in property assessments.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [\[13.0088.01000\]](#) to provide a residential property tax credit for an individual's primary residence of up to \$75,000 of taxable valuation. Committee Counsel said the bill draft provides an increased reduction of valuation of \$125,000 for an individual 65 years of age or older. He said the estimated cost and the appropriation provided in the bill draft is \$384 million for the 2013-15 biennium.

Senator Hogue said the enhanced valuation reduction for residences for older individuals was prompted by repeated discussion during the debate of initiated measure No. 2 about seniors losing their homes or being forced to consider selling their homes because of high property taxes. He said the reduction under the bill draft would be in addition to any homestead credit to which lower-income seniors would be entitled. In response to a question from Senator Hogue, Ms. Dickerson said for this biennium approximately \$8.9 million was appropriated for the homestead credit program.

Senator Cook said he is sensitive to concerns about the property tax burden for citizens 65 years of age and older. He said it is important to remember that in most cases property tax burden for younger families is probably higher as a share of income. He said allocation of property tax relief for working families is an issue the committee must also consider.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [\[13.0098.01000\]](#) providing a residential property tax credit for individuals 65 years of age or older. Committee Counsel said the draft was requested after the previous committee meeting by Representative Nelson to provide property tax relief for individuals 65 years of age or older in the same manner as in the 13.0088.01000 bill draft but to provide no property tax relief for individuals under 65 years of age. Committee Counsel said the bill draft has an appropriated amount, which was estimated by the Tax Department at \$123 million for the 2013-15 biennium.

Representative Nelson said his motivation for requesting the bill draft is to have an option available for relief for seniors if other residential property tax relief approaches do not get approval.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [\[13.0059.01000\]](#) to provide property tax relief through allocations to counties for distribution among taxing districts. Committee Counsel said the bill draft was reviewed at the March committee meeting. He said, in addition to reducing property taxes, the bill draft provides for replacement of payments in lieu of taxes and other tax types as part of property tax relief. He said the bill draft provides for coverage of mobile home taxes payable in the year after the property tax year, and the committee will later consider a bill draft that would change the mobile home tax year. He said an administrative difficulty with the bill draft is that the statistical information necessary to determine the property tax reduction percentage for each taxpayer's tax statement is not available until after the tax statements have been distributed. He said this would require some form of estimation of tax reductions.

Senator Sorvaag said he is concerned that the county distributing revenue for property tax replacement under the bill draft should have no discretion in how the distribution occurs. Committee Counsel said the bill draft was prepared with the intention of providing no discretion on how distributions will occur, but he will review the draft to make sure that is the case.

Chairman Hogue called on Committee Counsel for presentation of a memorandum entitled [Statutory Usage of the Words "Primary Residence"](#). Committee Counsel said the bill drafts under committee consideration relating to residential property tax relief use the words "primary residence" to identify property eligible for the credit. He said the question was raised at the previous committee meeting about other statutory uses of the words "primary residence." He said there are five references in the North Dakota Century Code to "primary residence," each of which is identified in the memorandum. He said none of these statutory references should cause any conflict or interpretation issues.

Chairman Hogue called on Mr. Kevin Ternes, City Assessor, Minot, for comments on the property tax relief approaches under consideration. Mr. Ternes said the objective of providing residential property tax relief would be a benefit to taxpayers, but requiring annual claim forms to be filed for property tax credits will result in problems and complaints from taxpayers and an unmanageable workload for assessment officials. He said in Minot he would anticipate close to 10,000 annual applications would have to be filed for eligible properties. He said even the first year of required claim filing would be extremely difficult to manage. He said requiring claim filing every year would result in confusion, taxpayer dissatisfaction, and unmanageable workloads for assessment officials.

Senator Hogue said Mr. Ternes raises valid concerns. He asked if committee members have comments or questions.

Senator Cook said the requirement of annual filing was included to prevent fraud in claims for multiple properties by a single owner. He asked if Mr. Ternes perceives an easier way to prevent fraudulent claims of credits. Mr. Ternes said if a statewide comparison system is used, taxpayer identification numbers would identify multiple claims by the same taxpayer. He said this possibility should be explored.

Representative Froseth said if an individual lives in North Dakota for six months and lives in Arizona for six months during the year, there would be no way for an assessor to know if the individual claims both residences as a homestead for tax purposes.

Representative Meyer said a related question is if the Tax Department ever kept track of the income tax credit certificates from the property tax relief in 2007-08 that were never used by taxpayers. Ms. Dickerson said the Tax Department compiled data on that question and can provide information to the committee.

Mr. Don Flaherty, Director of Tax Equalization, Dickey County, said it may be possible to simply add a box to the property tax payment form that the taxpayer could check to indicate this is the person's primary residence. Representative Kasper said he foresees potential problems with that approach when an escrow company is the source of payment of the property taxes for a home. He asked how the escrow company would mark these boxes on behalf of the taxpayer without running a risk of providing incorrect information.

Representative Owens said several states provide homestead credit relief to homeowners. He said he believes in some states once the claim is made by a homeowner, the claim does not have to be resubmitted until ownership changes. He said he believes certification is done at the time a home is purchased.

### **Property Tax Reform Bill Drafts**

Chairman Hogue called on Committee Counsel for presentation of a bill draft to synchronize taxable years for mobile homes and real property. Committee Counsel reviewed a bill draft [[13.0107.01000](#)]. He said the first two sections of the bill draft bring mobile home taxes into calculation of the property tax levy limitation in dollars for political subdivisions and determination of property tax rates. He said the objective of the bill draft is to treat mobile home taxes essentially in the same manner and subject to the same schedule as real property taxes. He said the bill draft does not transition mobile homes to a real property status but would treat mobile homes in the same manner as real property for tax purposes. He said the bill draft would provide that a mobile home tax permit is valid in the entire state, and if a mobile home is moved within the state from one county to another county, the mobile home tax permit must be

presented and endorsed by the Director of Tax Equalization of the county where the mobile home is relocated. He said Section 7 of the bill draft provides a statutory provision effective only during 2014 to require state payments in lieu of 2013 mobile home taxes. He said mobile home taxes for 2013 would be paid in January 2013, and the bill draft would take effect and require mobile home tax payments for 2013 to be made in 2014 in the same manner as property taxes. He said this could be perceived as imposing tax for mobile homes twice for 2013. He said the bill draft provides an appropriation of \$4 million to provide for taxes due in 2014.

Representative Meyer said there are many mobile homes located in western North Dakota. She said the bill draft provides for tax transition if a mobile home is moved from one county to another. She asked what happens if a mobile home is moved from North Dakota to another state during the tax year and if the owner is responsible for a partial year of tax payment. Ms. Dickerson said the bill draft does not address that situation. She said to relocate a mobile home to another state, it would be necessary for the owner to obtain a moving permit. She said a provision could be added that at the time of obtaining a moving permit, the tax would be prorated to the time of moving. Chairman Hogue directed that a provision be added to the bill draft to provide for payment of a partial year tax obligation for a mobile home being moved outside the state.

Senator Cook said he has heard complaints from the sheriff's department that being required to enforce tax obligations for mobile homes is difficult and time-consuming for the sheriff's department. He asked if the bill draft would relieve that problem. Committee Counsel said he does not think the bill draft would change that situation. He said he was not aware that the sheriff's department is involved in enforcement of mobile home tax obligations. Ms. Dickerson said she does not believe the bill draft would change the existing situation. Committee Counsel said an option to consider may be to provide for foreclosure of tax deeds for mobile homes in the same manner as for real property, which he said may not require enforcement by the sheriff's department. Senator Cook suggested that option be explored and added to the bill draft if feasible.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [[13.0016.01000](#)] relating to agricultural property valuation for property tax purposes. Committee Counsel said the bill draft was reviewed at previous meetings by the committee and makes an addition to the agricultural property valuation formula of a factor based on a percentage of market value. He said the bill draft would provide that true and full and average agricultural value per acre for cropland and noncropland for each county could not be less than an unspecified percentage of market value.

In response to a question from Senator Hogue, Ms. Dickerson said available agricultural property

market value statistics are not very reliable. She said sales of agricultural property are required to be reported if the transfer is over 90 acres of agricultural land. She said in most cases, the seller retains the purchase price as confidential information and files a statement of consideration with the State Board of Equalization. She said agricultural property has never been assessed on market value, and even if the purchase price is known, it may not reflect actual market value that would be determined by a proper assessment. She said she believes the information available to the Tax Department on market value of agricultural land is not sufficient for purposes of this bill draft.

Representative Headland said using market value in the agricultural property valuation formula defeats the purpose of using a productivity formula. Ms. Dickerson said that is correct, and mixing the methods of productivity valuation and market value would produce an unknown result.

Senator Cook said he believes use of a market value floor for agricultural property should be explored. He said the formula yields a valuation that is about 30 to 40 percent of market value, which is not convincing that the formula is working correctly. He said farmland being bought for recreational purposes is a common complaint of taxpayers and is the basis for exploring this solution. He said if sales prices are far out of line with the formula valuation, the property should be taxed at a higher rate.

Representative Nelson asked Ms. Dickerson if properties get revalued when sales of farmland are made with the expectation the land is to be used as an industrial or commercial property site. Ms. Dickerson said those properties would be revalued at the time there would be a change of use of the property. She said the difficulty of problems and concerns about purchases of farmland for recreational purposes is that the property is still used to graze animals or raise crops, which means under statutory provisions it would retain an agricultural status and still be assessed under the productivity formula.

Senator Hogue asked if the status as agricultural land could be tied to the owner's income source like the factors under the farm home exemption. Ms. Dickerson said it could be possible, but it would be difficult to identify the sources of income. She said perhaps rather than using grazing animals or raising crops as the determining factor, the "primary use" of land could determine its status as agricultural or commercial property. She said if land is primarily used for hunting, the valuation would be as other than agricultural property.

Representative Kelsh said one of the strong points of the valuation formula is that it does not change quickly but cushions rapid increases or decreases in agricultural valuations. He said these fluctuations were a problem before the implementation of the productivity formula. He said the productivity formula has served well for 30 years or more.

Representative Holman said when an estate including farm property is transferred, it is required that a licensed appraisal of the property be obtained based on market value so there would be reliable market value information for some land but that information is probably not complete enough to be the basis for market value assessment determinations.

Representative Drovdal said use of market value would require the assessor to determine a formula and market value amount for each agricultural parcel. He said it would also raise a question of what effect the sale of the neighbor's agricultural land would have on the value of surrounding farms. Ms. Dickerson said she is not certain how the sale of neighboring property would affect agricultural land market values.

Representative Meyer said it is commonly complained to legislators that sales of agricultural land for hunting purposes create market value and tax issues. She asked if there is any evidence that these kinds of sales are occurring. Ms. Dickerson said those properties would still be on the tax rolls as agricultural land so the Tax Department would not have any statistics on the existence or the extent of this problem.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [[13.0015.02000](#)] relating to informational reporting on indebtedness of a political subdivision or building authority. Committee Counsel said the committee has reviewed the bill draft in two versions. He said the first version related only to indebtedness incurred through a building authority, and the second version was expanded to include any indebtedness of political subdivisions. He said the bill draft requires reporting to an unidentified state agency with the objective of providing a central source of information on political subdivision indebtedness.

Committee Counsel said at the previous committee meeting it was suggested by Mr. Scott Wegner, Arntson Stewart Wegner PC, that information on bonded indebtedness of political subdivisions is readily available through Internet sources. Mr. Wegner said imposing a reporting requirement would duplicate existing sources, and it would be preferable to have a state agency prepare a listing of indebtedness information from existing sources.

Chairman Hogue called on Committee Counsel for presentation of a memorandum entitled [Debt of Political Subdivisions - Approval Requirements](#). Committee Counsel said the memorandum was requested to identify the level of approval required for various statutory authorizations for political subdivision indebtedness. He said there are several levels of stringency required for approval of specific kinds of indebtedness. He said the memorandum attempts to list types of debt by type of political subdivision and group indebtedness by the level of approval required by voters or the governing body of the political subdivision.

Senator Cook asked which of the listed kinds of indebtedness constitute debt for constitutional limit purposes. Committee Counsel said the memorandum

was requested to identify levels of approval required for indebtedness and is not organized to identify constitutional indebtedness. Senator Cook requested preparation of a memorandum for the next committee meeting to identify the kinds of indebtedness that would constitute debt for purposes of the constitutional debt limit for political subdivisions.

Committee Counsel said at the previous committee meeting it was requested that examination be made of Internet sources of information on indebtedness for political subdivisions, including examination of information available for a sample North Dakota county. He said copies ([Appendix B](#)) of information obtained from the Electronic Municipal Market Access website were distributed to committee members. He reviewed the website information.

Committee Counsel said a search for information for Burleigh County provides a listing of political subdivisions and types of indebtedness. He said examination of information for the Bismarck Public School District No. 1 provides information on current and retired indebtedness. He said examination of detailed information for Bismarck School District debt leads to access to an audited financial statement for the year ended June 30, 2011. He said reviewing the audited financial statement provides detailed information on current general obligation bonds and other debt as well as the other assets and liabilities of the school district. He said examination of information for Cass County provides similar kinds of information. He said for the Fargo city and school district, building authority lease revenue debt is listed as well as the other types of building authority debt incurred for political subdivisions in Cass County. He said the annual financial report for the Fargo Public School District No. 1 is accessible and contains a financial summary examining current indebtedness of the school district. He said the financial summary shows general obligation debt, limited tax debt, lease obligations, and overlapping general obligation debt. He said all of these kinds of debt are compared to market value of property by the financial summary and are approximately 5.98 percent of market value of property. He said this would exceed the constitutional debt limitation, but the kinds of indebtedness listed are uncertain in status as debt for constitutional purposes.

Senator Sorvaag requested information to be provided at the next meeting on what constitutes limited tax debt and overlapping general obligation debt.

Committee Counsel said it was also requested at the previous meeting to obtain information on whether the audits of the State Auditor make a comparison of political subdivision debt to the constitutional debt limit of the political subdivision. He said information was provided by the State Auditor that the audits of political subdivisions are done in two-year cycles. He said the staff of the State Auditor performs about 85 political subdivision audits in each cycle, and political subdivisions are free to contract with private auditing companies, which perform about 600 political

subdivision audits in each cycle. He said the State Auditor said that one of the steps in an audit by the staff of the State Auditor is debt limit testing, under which the assessed valuation of the political subdivision is determined and multiplied by 5 percent to determine the approximate maximum debt limit. He said the indebtedness currently outstanding for the political subdivision is compared to the maximum debt limit determination, and a conclusion of whether the political subdivision is below the legal debt limit is stated in the audit. He said the State Auditor said private audits of political subdivisions should be conducting the legal debt limit analysis, but the State Auditor cannot vouch for whether this step is done on all private audits.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [[13.0052.01000](#)] to allow a city or county to reduce or revoke a previously granted property tax exemption or option to make payments in lieu of taxes. Committee Counsel said the committee previously has reviewed this bill draft. He said the bill draft has not been revised. He said the bill draft developed from information on a situation in Jamestown in which Ms. Clarice Leichy has urged the city to withdraw a property tax exemption. He said the committee has taken no position on the issue, but it was discovered that the Attorney General has advised that a political subdivision does not have statutory authority to withdraw a property tax exemption granted for a new or expanding business. He said political subdivisions have only the authority provided by statute, and the bill draft would supply authority for withdrawal of an exemption upon specified grounds. In response to a committee question, Ms. Dickerson said it appears that under existing law, a political subdivision may withdraw an exemption only if it were improperly granted.

Chairman Hogue called on Ms. Katie Andersen, Mayor, Jamestown, who reviewed the background of the issue regarding the exemption granted in Jamestown for a facility partially intended for use as an assisted living facility.

Representative Headland requested preparation of a bill draft to create a right to appeal to the State Board of Equalization for aggrieved property owners objecting to a property tax exemption that was granted for another person's property.

Representative Nathe asked if Ms. Andersen sees the four points in the bill draft for withdrawing an exemption as useful for city governing bodies. Ms. Andersen said having those options could be useful but also could create confusion for local governing bodies.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [[13.0081.01000](#)] to eliminate property tax exemptions that may be granted by a city or county for new and expanding businesses, tax increment financing, renaissance zones, new residential and townhouse and condominium property, early childhood services property, pollution abatement improvements,

residential property owned by the builder, and property improvements. Committee Counsel described the exemptions related to the chapter and subsection and section numbers in the repeal section of the bill draft.

Representative Nathe said he is concerned about the effects of eliminating the exemption for early childhood services property because western North Dakota is in need of more early childhood services facilities.

Representative Kelsh said these exemptions that would be eliminated by the bill draft provide incentives for development of communities. He asked why these exemptions should be taken away if local government wants to provide the exemptions.

Representative Headland said the objective of the bill draft is to identify discretionary exemptions and encourage testimony to find out the extent the exemptions are being used, whether they result in unfair application, and what the cost is for other taxpayers. He said the committee needs to find out how effective these exemptions are in economic development efforts relative to the cost to other taxpayers.

## DEPARTMENT OF COMMERCE INCENTIVE REPORTS

Chairman Hogue called on Mr. Gordon La France, Compliance Manager, Department of Commerce, for presentation of the annual report for business incentive accountability. A copy of the testimony provided by Mr. La France is attached as [Appendix C](#).

Mr. La France said the business incentive accountability statutory provisions require business incentives grantors and recipients to enter agreements before the incentive is provided. He said an agreement must contain a description of the incentive as well as job goals for the recipient business to achieve within two years. He said recipients must report on progress until they meet their goals. He reviewed the report and the statistical information provided in the tables attached to his testimony.

Chairman Hogue said in situations in which local government grants tax benefits as incentives for local business growth, such as the situation described under the exemption granted by the city of Jamestown, it may be useful to require written agreements, such as those required for the incentives provided by the state. He asked if the Department of Commerce has a position on use of written agreements by local governments. Mr. La France said the Department of Commerce provides assistance as requested to local governments on economic development issues but does not advise or dictate on how local government administers locally granted exemptions.

Representative Owens inquired about the meaning of "bonus jobs" as listed in Table 5 of the statistical information provided. Mr. La France said bonus jobs

are jobs that were not specifically required under the business incentive agreement but which are identifiable as jobs created as a result of the business incentive provided.

Additional statistical and detailed information ([Appendix D](#)) on business incentive agreements by project was provided by Mr. La France as a supplement to his testimony.

Committee Counsel distributed copies ([Appendix E](#)) of written information provided as a report on renaissance zone activity, which was prepared by the Division of Community Services of the Department of Commerce. He said the report was provided by Ms. Andrea Holl Pfennig, who is out of state at the time of this meeting. The chairman requested that Ms. Pfennig be invited to attend the next committee meeting to review the information provided and answer questions the committee members might have.

Chairman Hogue called on Ms. Andersen who presented written testimony ([Appendix F](#)) relating to city and county use of economic development tools, such as tax increment financing, renaissance zone, and new and expanding business exemptions. Ms. Andersen said the only ways to truly reduce property taxes are to either reduce services or grow the total pool of property value. She said growth of the pool of property value is what economic development tools are intended to accomplish. She said the city of Jamestown has successfully grown its property tax base, and much of the growth is attributable to economic development incentives. She provided statistical information on the results of economic development incentives in the city of Jamestown.

Representative Kasper asked if the city of Jamestown has used the growth of property value to reduce the mill rate for property in the city. Ms. Andersen said the city has recently been able to reduce the mill rate for city taxes but before that reduction had maintained essentially a level mill rate for previous years.

Chairman Hogue called on Mr. Donald Frye, Mayor, Carrington, for testimony ([Appendix G](#)) relating to discretionary property tax exemptions granted by cities or counties. Mr. Frye described economic development efforts through property tax exemptions that have addressed problems of growing local businesses. He said the city and county have worked to apply the property tax exemptions to benefit the community and to ensure proper use of these enhancements.

Chairman Hogue called on Mr. John Phillips, State Chairman, Economic Development Association of North Dakota, for comments on economic development incentives used by cities and counties. Mr. Phillips said his organization is concerned about the bill drafts to eliminate the use of economic development tools by local governments. He said severe impacts would result from the loss of these programs. He said the impacts would fall hard on

smaller communities that require use of these tools to develop the property tax base. He said there may be issues to address to improve how incentives are applied and administered, but blanket elimination would be harmful to North Dakota communities trying to grow.

Chairman Hogue called on Mr. Flaherty for comments on the property tax studies. Mr. Flaherty said with regard to the homestead credit for individuals 65 years of age or older or disabled, the asset level restriction is the single most common factor in loss of the homestead credit in Dickey County. He said the income limits and other restrictions may cause loss of the homestead credit, but the asset restriction should be examined because it is causing individuals to lose the homestead credit.

Senator Cook said the bill draft under committee consideration would eliminate all discretionary property tax exemptions that may be granted by cities or counties. He said the individual property tax exemptions contained in the bill draft could be debated and addressed separately. He said committee members should consider each component of the bill draft and whether they believe changes should be made.

Chairman Hogue said any committee members who believe additional bill drafts should be prepared or changes should be made to pending bill drafts should contact Committee Counsel before the next committee meeting.

Chairman Hogue called on Committee Counsel for presentation of a bill draft [[13.0113.02000](#)] to eliminate job development authorities. Committee Counsel said the bill draft was requested to eliminate job development authorities, and the draft also eliminates industrial development organizations and economic growth districts, which can only exist in a district with a job development authority. He said the bill draft is prepared to become effective at the end of calendar year 2013, and at that time, Section 6 of the bill draft would provide that any funds held by a job development authority, industrial development organization, and economic growth district would be transferred to the county or city general fund.

Testimony ([Appendix H](#)) was distributed to committee members provided by Ms. Debra Walworth, Executive Director, Prairie West Development Foundation, Beach. Ms. Walworth said it is small rural communities that rely on job development authorities and economic developers to diversify the local economy and provide economic growth for those communities.

Chairman Hogue called on Mr. Mark Resner, Director, Hettinger County Job Development Authority, for comments on the bill draft to eliminate job development authorities. Mr. Resner said the authority has provided significant benefits. He said the authority has used tools provided by state law to expand and retain businesses, which is very important in a small population county. He described some of the projects that have retained or expanded local

businesses. He said for a smaller county, eliminating the use of job development authorities would be very harmful.

Representative Meyer said she believes most of the projects described by Mr. Resner would not have happened without the job development authority. Mr. Resner said he would agree that some of the projects would not have happened but said he could not take credit for the success of all of the projects.

Representative Headland said one measure for comparison is the cost per job created for economic development efforts. He asked if there is any such data available for job development authority efforts.

Chairman Hogue called on Mr. Phillips who said repeal of the tools for job development authorities and other local economic development efforts basically would eliminate economic development except in the very largest population centers in the state. He said small-size and mid-size population areas need these tools to retain and develop jobs to sustain local economies.

Chairman Hogue called on Committee Counsel to present a resolution draft [[13.3008.01000](#)] for a constitutional measure to allow limited property tax imposition for school, religious, cemetery, charitable, or property used for other public purposes. Committee Counsel said the resolution draft was requested to allow imposition of certain property tax costs against some exempt properties for the share of the cost of certain services provided. He said the resolution draft would not impose any tax on any property but would allow the Legislative Assembly to provide by law for city or county levy against property for the relative share of the cost of law enforcement, fire protection, ambulance, and other services that provide a direct benefit to the property. He said the committee should consider the phrase "other services that provide a direct benefit to the property" because the language was inserted for the purpose of prompting discussion of what services should be included in addition to the specifically listed law enforcement, fire protection, and ambulance services. He said the resolution draft provides an effective date of January 1, 2014. He said if the constitutional change is not implemented through legislation, no tax imposition would result.

Senator Cook asked if a bill draft could be prepared that would become contingent on voter approval of this constitutional measure. Committee Counsel said a bill draft could be prepared that would be contingently effective for tax year 2014.

Chairman Hogue called on Ms. Dickerson for testimony ([Appendix I](#)) on three issues requested by the committee.

Ms. Dickerson said she was requested to provide information on taxable values of property in the 10 largest counties for exemptions granted under the new and expanding business property tax exemption. She said the chart attached to her testimony provides the information requested and shows a grand total of \$11,984,099 taxable value exemption.

Ms. Dickerson said she was requested to identify pros and cons of requiring annual application for a residential property tax exemption. She said she recently became aware of a homestead exemption fraud detection solution offered by LexisNexis. She said this system could help assessors identify improper claims for exemptions, including claims in more than one state.

Ms. Dickerson reviewed the provisions of the bill draft presented for committee consideration to synchronize mobile home taxes and property taxes. She said the bill draft appropriates \$4 million for state payment of mobile home taxes in 2014. She said this may be viewed as a free tax year for mobile home owners. She said it also could be viewed as a payment for 2013 property taxes, which were already paid by mobile home owners in 2013.

In response to a question, Ms. Dickerson said a mobile home tax payment could be required before issuance of a moving permit to take a mobile home outside North Dakota. She said the tax payment could be prorated for the part of the year the mobile home is located in North Dakota.

Mr. Flaherty said consideration should be given to the status of mobile homes as real property or personal property. He said there could be difficulties in a sale of a mobile home among private parties who are not aware of the potential tax liability that might exist for part of the tax year at the time the sale is made.

## OIL AND GAS IMPACT FUNDING

Chairman Hogue called on Mr. Lance Gaebe, Director, Department of Trust Lands, relating to the energy infrastructure and impact grants program administered by the department. A copy of PowerPoint slides provided by Mr. Gaebe is attached as [Appendix J](#).

Mr. Gaebe said \$100 million was made available for impact grants by the 2011 regular legislative session. He said \$35 million additional impact grant funding was appropriated by the November 2011 special legislative session.

Mr. Gaebe said the impact program was confronted with a range of impact issues to alleviate, including housing shortages, housing cost increases, infrastructure problems in virtually every aspect of infrastructure, overburdened fire and ambulance services, public safety, law enforcement, and rapidly increasing school populations. He said the energy infrastructure and impact grants program was set for four scheduled grant rounds each fiscal year covering city infrastructure, township roads and transportation, emergency services and response, and all other political subdivision infrastructure, including schools, parks, counties, and airports.

Mr. Gaebe reviewed the application criteria for evaluating grant applications. He reviewed the legislative intent and guidelines on impact grants. He said the grants program receives the input of an advisory committee consisting of officials from oil

counties, including two county commissioners, two mayors, one sheriff or emergency manager, and one township officer. He said the advisory committee also includes one oil industry representative, the Director of the Department of Transportation, and the Land Commissioner.

Mr. Gaebe said in July 2011 city infrastructure grants totaling \$53.5 million were awarded. He said in August and December 2011 additional grant awards were made for firefighter training, township transportation, and housing and urban development communities planning grant cost-sharing. He said in 2012 awards were made in March for emergency services and response totaling \$11.99 million. He said in March and April 2012 grant awards were made for temporary portable classrooms totaling \$4,999,244. He said awards were made in June 2012 for other political subdivisions totaling \$3,994,309. He said in July 2012 city infrastructure grants totaling \$37,605,691 were made, and a child care pilot program grant totaling \$625,000 was made. He said the total grants awarded to date for the 2011-13 biennium is \$115,035,343.

Mr. Gaebe provided detail information on grants awarded during the biennium.

Representative Meyer said over recent years, there have been discussions and disappointment that only basic governmental services were eligible for impact funding and secondary impacts ineligible. She said it appears that the grant program has taken a different approach on secondary impact issues funding. She asked if the Energy Infrastructure and Impact Office is considering legislation to rewrite the law on services eligible for impact funding. Mr. Gaebe said the office is considering legislation to separate the governing authority for oil impact from its current location under the coal tax laws. He said the impact program originated at a time of rapid development of the coal industry, and this may be the appropriate time to create separate statutory provisions for oil impact, which is significantly different from the coal impact experience. He said current funding is stretched to the limit dealing with basic governmental services, and he does not anticipate substantial impact funding for secondary impact.

Representative Drovdal said people in western North Dakota have expressed appreciation for the impact program funding provided by the state and the way the program has been administered.

In response to a question from Representative Drovdal, Committee Counsel said information could be provided to show in chart form the allocation of the 11.5 percent tax for oil, including breakdowns showing deposits in each fund and allocations to each political subdivision.

Representative Nathe asked if the impact office receives progress reports on projects that are funded. Mr. Gaebe said approved grants do not receive the funds until the project is complete. He said percentages of grants may be paid out in phases for larger projects. He said requiring completion of



projects before delivery of funds avoids need of progress reports and provides better administration.

Representative Nelson asked if Mr. Gaebe foresees requests for emergency impact funding to be available in the spring of 2013. Mr. Gaebe said requests for emergency funding could be possible, but the request for emergency funding would not originate from the impact office.

### **TAX IMPACT OF FEDERAL HEALTH CARE REFORM**

Chairman Hogue called on Mr. Joseph Becker, Tax Department, for testimony ([Appendix K](#)) to address two questions that were raised by the committee. Mr. Becker said the first question is the 3.8 percent Medicare contribution tax on unearned income and its application to sale of a home. He said misinformation circulating about the new tax indicates that it is essentially a "sales tax" on sale of a home. He said the new tax may be triggered by the sale of a home, but the information in circulation is wrong on tax calculations. He said in the case of individuals the tax is 3.8 percent of the lesser of net investment income or the excess of adjusted gross income over a threshold amount, which is \$200,000 for a single filer or \$250,000 for married individuals filing jointly. He provided some examples of how the tax is determined in different fact situations.

Mr. Becker said the other question he was asked to address is other tax implications of the 2010 federal Health Care Reform Act. He said these implications are examined in a document attached to his testimony providing a summary and timeline of tax changes.

### **OIL TAX STUDY**

Chairman Hogue called on Committee Counsel for presentation of a bill draft [[13.0021.01000](#)] to eliminate the stripper well property exemption from the oil extraction tax for certain new wells completed in the Bakken or Three Forks Formations. Committee Counsel said the bill draft would eliminate the stripper well property exemption for Bakken or Three Forks Formations wells completed after an unspecified date until the production from the well individually meets the requirements of the definition of stripper well status. He said under the definition of stripper well property, once the production from a well has declined below the definition for a stripper well status any new well drilled on that property is a stripper well and exempt from the oil extraction tax. He said this will become a very significant concern as the Bakken Formation wells age. He said when production declines to stripper well status and oil companies begin infill drilling on properties that currently have operating stripper wells, it is very likely that many of those infill wells will be very productive wells and exempt from oil extraction taxes. He said technology and improved understanding of the oil formations gained through drilling and operating experience in North Dakota will serve oil companies well in

conducting additional drilling operations in existing fields. He said the drilling risks that made the stripper well exemption appropriate will not exist to the same degree in Bakken and Three Forks Formations infill drilling.

Committee Counsel said he received concerns expressed by Mr. Ken Herman, Oil and Gas Tax Auditor, Tax Department, regarding the bill draft to limit stripper well property exemptions in the Bakken and Three Forks Formations. Committee Counsel said Mr. Herman expressed the following concerns:

- That various conventions have been used to identify producing pools for over 60 years in North Dakota.
- In some field areas, the original production is identified by the stratigraphic "period" (i.e., Devonian, Silurian, and Ordovician), which is a broad definition with subcategories for "sequence," "group," "formation," and "intervals."
- Based on North Dakota Geological Survey's *North Dakota Stratigraphic Column*, the Bakken and Three Forks "Formations" are along a line that puts them in the Devonian or the Mississippian "period," and they appear to be part of an unnamed "group."
- History has shown that a stripper property qualified at the "period" or "group" level is granted stripper status for wells that target any formation within the "period" or "group."
- The Bowman County wells originally were defined as Ordovician "period" with horizontal targets to the "Red River Formation" and more specifically the Red River A, B, C, and D "intervals," and the Burke County wells originally were defined as Madison "group" with later targets to the Rival and Midale "intervals."
- The Bakken and Three Forks "Formations" are loosely defined by the Industrial Commission and the oil and gas industry.

Committee Counsel said Mr. Herman suggested that to prevent misinterpretation or manipulation of legislative intent, the stripper well property change should remove the phrase "in the Bakken or Three Forks Formations" so that any new well spud after the effective date of the change would have to qualify based on the 12-month production limits contained in the current definition of stripper well.

Chairman Hogue said the committee will require more discussion of the issue of limiting stripper well property exemptions based on the producing formation. He said testimony should be obtained for the next meeting from representatives of the Tax Department, Industrial Commission, oil industry, and perhaps the State Geologist.

Representative Streyle said he would prefer a simpler, flatter, oil extraction tax with lower rates and elimination of exemptions.

Chairman Hogue called on Committee Counsel for a presentation of a bill draft [[13.0054.01000](#)] that would reduce oil extraction tax rates and eliminate oil

extraction tax exemptions based on certain levels of statewide oil production. Committee Counsel said the bill draft is identical to an amendment offered in March 2011 for consideration by the Senate Finance and Taxation Committee. He said the amendment was offered by Representative Al Carlson. He said Representative Carlson assigned the study of this approach to the interim Taxation Committee in his capacity as Chairman of the Legislative Management. Committee Counsel said the bill draft would eliminate a wide range of exemptions and price triggers from the oil extraction tax that have been created over the course of 30 years. He said the bill draft would provide that when average statewide daily production of oil reaches specified benchmarks, the oil extraction tax would be reduced by one-half of one percentage point at each of five benchmarks and could be reduced to as low as a 4 percent tax rate. He said the benchmarks in the bill draft are the same as those in the 2011 amendment, and current production is very close to reaching the fourth benchmark of 650,000 barrels per day, which would have triggered a total reduction of two percentage points, to 9.5 percent combined production and extraction tax for oil in North Dakota.

In response to a question from Senator Cook, Committee Counsel said he discussed this bill draft with Representative Carlson to see if Representative Carlson has suggested changes to the draft. He said Representative Carlson said he now believes that oil extraction tax rate reduction and exemption elimination, by itself, is not the appropriate approach. He said Representative Carlson believes consideration of oil extraction tax rate reductions and exemption elimination would have to be part of a broader approach that would include consideration of oil and gas gross production tax allocations and perhaps other considerations in addition to oil tax policies.

Representative Hatlestad said he would suggest removing references to the Bakken and Three Forks Formations from the bill draft relating to elimination of the stripper well property exemption for new wells.

### **SALES TAX EXEMPTION STUDY**

Chairman Hogue called on Committee Counsel to review bill drafts to eliminate the sales tax exemption

for purchases by Montana residents [[13.0048.01000](#)] and eliminate sales tax refunds for Canadian residents [[13.0049.01000](#)].

Representative Hatlestad said merchants in western North Dakota would be up in arms if the exemption for purchases by Montana residents is eliminated. He said purchases by Montana residents are a substantial segment of sales for western North Dakota, and retailers in the west believe the exemption for Montana residents is very important to retain that customer base.

### **COMMITTEE DISCUSSION**

Chairman Hogue said he foresees that the committee will meet again shortly after Labor Day and again in early October to conclude its study activities. He suggested that any committee members wishing to have legislation considered by the committee work with Committee Counsel to get any proposed legislative drafts prepared.

Representative Holman said he has requested a draft of a property tax relief measure based on state payment of a portion of the taxable valuation of property.

Senator Cook said this has been an active interim for property tax issues, and many constituent communications have been received by legislators on suggested changes. He said there are many options for committee consideration. He suggested study by committee members and deliberation of which approaches should be pursued and refined. He said the time has come for committee recommendations that will set the stage for 2013 legislative discussions.

Chairman Hogue suggested that committee members work with Committee Counsel to develop appropriate bill draft language for any legislative changes committee members would like to have considered by the committee.

No further business appearing, Chairman Hogue adjourned the meeting at 4:00 p.m.

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John Walstad  
Code Revisor

ATTACH:11