

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TAXATION COMMITTEE

Thursday, January 30, 2014
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, Randall A. Burckhard, Jim Dotzenrod, Lonnie J. Laffen, Ronald Sorvaag, Jessica K. Unruh; Representatives Jason Dockter, Glen Froseth, Patrick Hatlestad, Craig Headland, Jim Kasper, Jerry Kelsh, Mike Nathe, Mark S. Owens, Dan Ruby, Jim Schmidt

Members absent: Representatives Wesley R. Belter, David Drovdal, Scot Kelsh, Robin Weisz, Steven L. Zaiser

Others present: Representative Brenda Heller and Senator Rich Wardner, members of the Legislative Management, were also in attendance.

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

It was moved by Senator Burckhard, seconded by Representative Hatlestad, and carried on a voice vote that the minutes of the November 5-6, 2013, meeting be approved as distributed.

DEPARTMENT OF PUBLIC INSTRUCTION

Chairman Cook called on Mr. Jerry Coleman, Director of School Finance, Department of Public Instruction, for presentation of information ([Appendix B](#)) on 2013 school district property tax levies. Mr. Coleman reviewed the 2013 changes in the school funding formula. He said now funding is focused on the adequacy rate of funding through state and local sources with the addition of property tax relief being considered in the equation. He said the school districts are currently in a transition year, allowing for an increase in property tax levy authority limited to 12 percent.

Representative Headland asked what districts can do if they were capped below 110 mills and believed they were not treated equitably in the old formula. Mr. Coleman said because of the fundamental change in the way school districts are funded, a baseline was set to ensure each school will get enough funding for each student. He said this should alleviate some of those concerns. He said the per student rate to educate a student for the two years of this biennium is \$8,810 and \$9,092 per student.

Representative Nathe asked if there is a hard number on the share of education cost the state is paying. Mr. Coleman said it changes slightly between districts depending on tax base, but 80 percent was the figure used during the 2013 legislative session. He said until some funding cycles are completed, the Department of Public Instruction will not have an exact figure. He said another factor that may affect calculation is that there was a 16 percent increase in taxable value this year.

Chairman Cook asked how many school districts had to send a notice of property tax increase to taxpayers. Mr. Coleman said he does not have that information.

Representative Headland said there was a 16 percent increase in taxable valuations, but some school districts took the maximum available in property tax dollars. He asked if there is a way to determine if school districts are using this method to build reserve funds. Mr. Coleman said the School Finance Facts publication of the Department of Public Instruction would provide that information. He said school districts are allowed 45 percent of their budget in reserve, but any amount over that reduces state aid. Representative Nathe pointed out that the reserve amount has been decreased to 35 percent, and right now, the average balance among school districts is 25 percent. He also said the interim Education Funding Committee is looking at what the reserve level should be because many districts have a substantial reserve fund.

NORTH DAKOTA ASSOCIATION OF COUNTIES

Chairman Cook called on Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, for presentation ([Appendix C](#)) of 2013 tax year notices of assessment increases and notices of proposed levy of more than a zero increase number of mills by counties. Representative Nathe asked if sending email notices had been considered. Mr. Traynor said the current software used by most of the counties does not have the capabilities of sending notices via email. He said two counties have newer software that would allow it, but for the other counties, sending email would take even more time.

Representative Kasper asked what triggers require a political subdivision to send notice of levying more than a zero increase number of mills. Mr. Traynor said counties set their budgets in relation to the current funds available and then look to see what is left to collect from property taxes. He said if the amount left would result in an increase in taxes collected from existing properties, the county must send a notice. Representative Nathe asked if the mailed notices contributed to increased turnout at budget meetings in comparison with notices in the newspaper. Mr. Traynor said that appears to be the case.

NORTH DAKOTA LEAGUE OF CITIES

Chairman Cook called on Mr. Jerry Hjelmstad, North Dakota League of Cities, for presentations ([Appendix D](#)) of information regarding 2008 through 2013 taxable valuation, state and county mill rates, school district mill rates, city mill rates, park district mill rates, and mill rates of other taxing entities and information regarding 2013 tax year notices of assessment increases and notices of proposed levy of more than a zero increase number of mills by cities. Mr. Hjelmstad said the information in [Appendix E](#) was provided by city assessors.

Mr. Hjelmstad said one of the problems reported in a survey ([Appendix F](#)) with developing and mailing the budget hearing notice was that developers received numerous letters rather than one letter for all of their properties. Representative Kasper suggested the law be changed to update any change of ownership to avoid future notices coming back as being undeliverable.

CONSIDERATION OF LEGISLATIVE COUNCIL BILL DRAFT

Chairman Cook called on Mr. John Walstad for presentation of a bill draft [[15.0020.01000](#)] relating to notice of assessment increases ordered by a local or state board of equalization. Mr. Walstad said the bill draft is intended to require notice to taxpayers when a board of equalization orders assessment increases large enough to trigger notice when the assessor makes an increase.

COMMENTS BY INTERESTED PERSONS

Chairman Cook invited comments by interested persons in attendance.

Mr. Leon Mallberg, Dickinson, said he owns property in several areas in North Dakota, one of them being Forman. He said he received notice that the county was asking for a 9.83 percent increase. He also said he was concerned because the notice was dated September 25, 2013, postmarked October 3, 2013, delivered October 5, 2013, with the meeting scheduled for October 7, 2013. He said prior to that notice, he had received notice from the county commission looking for a 6 percent increase. He said this was after a prior quarterly increase. He said he did attend the October 7, 2013, meeting along with about 30 other interested people. He said there was a miscellaneous line on the budget asking for an increase from \$5,000 to \$15,000 dollars--a 200 percent jump without any explanation. He said he later learned the county wanted to purchase court reporting devices.

Mr. Mallberg said there was a similar issue with receiving notice of the local school district's budget meeting. He said the meeting was scheduled to begin at 6:00 p.m., but the farmers were still working and very few citizens attended the meeting.

TAX DEPARTMENT

Chairman Cook called on Ms. Sara Meier, Property Tax Specialist, Tax Department, for presentation ([Appendix G](#)) of information on agricultural property valuations and property taxes paid from 1982 through 2013. He asked if the chart shows the formula valuation of agricultural property resulted in a reduced share of property taxes for agricultural property. Ms. Meier said formula valuation is generally well below market rates. She said the interest rates in the formula as well as production increases have contributed to periods of relative decline or increase in the agricultural property share of property taxes. She said the big jump in agricultural values between 2011 and 2012 was a result of the removal of the floor on capitalization rates. She said after that occurred, years of good production and higher agricultural production prices being added into the formula are driving increased values. Chairman Cook said most people do not know that agricultural land valuation for property tax purposes has nothing to do with the actual land market value.

Representative Schmidt asked whether there is a penalty in place for the counties that have yet to have their soil studies in place for agricultural assessments. Ms. Meier said those counties forfeit a portion of state aid distribution fund allocations. She said the statutory penalty is 5 percent of state aid distribution fund allocations, which may total about \$20,000 to \$30,000.

Ms. Meier presented information ([Appendix H](#)) on the assessed property valuations by property classes for 2012 and 2013.

Chairman Cook called on Ms. Linda Leadbetter, State Supervisor of Assessments, Tax Department, for presentation of information on unelected boards or commissions with levy authority and the extent of county commission review authority. Ms. Leadbetter said a survey was sent to existing boards, but it appears the boards found the language in the statutes confusing. She said the statutes could be clearer as many of the laws were written some time ago and do not necessarily mesh with newer laws.

Ms. Leadbetter also provided information to the committee on plans for uniformity and improved information for taxpayers on tax statements and the feasibility for uniform formatting and software. She said information was presented accurately on 2013 tax statements. She said the Tax Department was not looking at the formatting of the statement, only the information provided. She said the department saw varied programs and different statements, but the information is uniform and meets requirements set by law. She said some counties add extra information making it more difficult to find the required information. She said it could be very expensive for some counties if each county were required to send the same statement and implement the same software. Chairman Cook said the committee wants to move toward a standard statement and asked Ms. Leadbetter to proceed with evaluating how to create a standard statement.

Chairman Cook called on Ms. Leadbetter to present information on plans for the development of rules for supervision of assessment officials. Ms. Leadbetter said there is a working group within the Tax Department that is reviewing North Dakota Century Code, rules, and duties and considering potential penalties. She said drafts of documents and investigations are being undertaken to give the group a working list to identify deficiencies in duties. Chairman Cook asked if the department has the adequate authority from 2013 Senate Bill No. 2094 to audit assessments and use it as a tool to promote uniformity. Ms. Leadbetter said it does have the authority but is focusing initial efforts on education of assessment officials. She said the assessment specialists are reviewing assessing practices and training tax directors in processes.

Chairman Cook called on Ms. Kathy Strombeck, Research Analyst, Tax Department, for presentation of information ([Appendix I](#)) on oil and gas tax allocations to political subdivisions under 2013 House Bill No. 1358. Ms. Strombeck said the last update to the committee was tied to the forecast, whereas this update is more in line with current production and price levels. Chairman Cook said oil and gas tax allocations are significantly more than estimated at the end of the 2013 legislative session.

In response to a question from Representative Kasper, Ms. Strombeck said oil and gas tax revenues are distributed monthly. Representative Kasper said he would like to see information on how the oil-producing counties are spending the tax revenues they are receiving.

DEPARTMENT OF HUMAN SERVICES

Chairman Cook called on Ms. Debra McDermott, Chief Financial Officer, Department of Human Services, for presentation of information ([Appendix J](#)) relating to 2013 House Bill No. 1233, which would have provided for transfer from counties to the state of certain social services programs and costs. Ms. McDermott said there are three categories of funding addressed by the fiscal notes. She said there are program, administrative, and one-time restructuring costs. Chairman Cook asked if the \$102 million would eliminate the cost funded by counties for all social services delivered at the county level. Ms. McDermott said that was the estimate. She said some of the aspects will have to be looked at further by a state consultant. Chairman Cook asked if the \$81 million shown as administrative costs is mostly salaries. Ms. McDermott said the \$81 million shown was for salaries and operating costs because county employees would have become state employees.

Senator Sorvaag asked if the \$102 million would be new money to the fund. Ms. McDermott said the \$102 million is what it would take to turn the county employees into state employees and pay for the administrative costs of doing so. Representative Wardner asked if changing the structure would allow the state to do a more efficient job of delivering services and eliminating duplications. Ms. Maggie D. Anderson, Executive Director, Department of Human Services, said over time there would be efficiencies. She said as the economic assistance program rolls out, the department will see how it can share workloads to provide efficiencies.

Chairman Cook asked if House Bill No. 1233 had passed, would it have been workable. Ms. Anderson said the first \$20 million would have been available on July 1, 2013, with the remaining funds being distributed the following July. She said it would have been difficult to accomplish the changes in that timeframe. She said phasing in changes with a multiyear project would be a better approach for changes of that magnitude.

Representative Wardner asked what the average mill rate for counties is for human services. Ms. McDermott said the average mill rate was 15.02 across all counties for the combined three mill levies for human services.

Representative Kasper asked if the restructuring plan contract costs in the handout would include examining how the whole system would work. Ms. Anderson said infrastructure needs, planning, changes in management, communications issues, and the change in status for 800 employees to 1,000 employees would all be considered through the contract costs listed. She said a consultant could compare the costs of a restructuring versus maintaining the current structure.

Chairman Cook asked for information for the next committee meeting on where the county derives the money to pay for social services costs. He asked if there are other revenue streams for county social services costs. Mr. Traynor said other revenue streams are minimal. He said about \$47.5 million last year came from property tax levies, and \$2.5 million came from other revenues that counties had available. He said none of these expenditures were funded by federal funds. Chairman Cook requested information for the committee on these expenditures.

CONSIDERATION OF LEGISLATIVE COUNCIL MEMORANDUMS AND BILL DRAFTS

Chairman Cook called on Mr. Walstad for presentation of a memorandum entitled [*Property Tax Exemption for Private Use of Buildings on State Land*](#).

Senator Laffen asked what is the next step regarding this issue. He said a for-profit business housed on campus should still pay taxes at some point. Chairman Cook said consideration of a bill draft would be the next appropriate step.

Chairman Cook called on Mr. Walstad for presentation of a bill draft [[15.0038.01000](#)] to provide for imposition of special assessments by cities for tax-exempt property of fee-based nonprofit organizations. Mr. Walstad said the draft was modeled after a 2013 bill. He said there are Attorney General opinions on the topic. He said Supreme Court decisions imply the property tax exemption provided by the Constitution of North Dakota prohibits imposition of some alternative form of tax or fee. He said the opinions do not say the special assessment approach would not be upheld, but the committee should be aware that there may be constitutional objections. Senator Sorvaag said it could be difficult to determine a value of the benefit based on the assessment area. Representative Kasper said there is a cost shift in property taxes by exempting nonprofit entities. He said the local taxing entities could create a formula to determine the appropriate value of benefit. Representative Hatlestad asked if taxing entities could just charge a fee. Mr. Walstad said there are court opinions providing that charging a fee is not less objectionable than imposing a tax.

Chairman Cook called on Mr. Walstad for presentation of a bill draft [[15.0039.01000](#)] relating to certification of assessors. He said the bill draft would replace the existing assessor classifications with a single status of certified assessor. He said one of the changes in training requirements is there would no longer be a 24-hour training requirement because everyone would be required to complete 180 hours of instruction. He said the bill draft allows the State Supervisor of Assessments to give credit for any topic with documented training in this state or another state. He said the provision on transition provides that any current certificate holder whose certificate expires on or after August 31, 2015, would be subject to new requirements. He said anyone currently holding a certificate would be unaffected until the current certificate expires. Chairman Cook asked that interested parties be invited to comment on the bill draft for the next committee meeting.

PROPERTY TAX TASK FORCE

Chairman Cook called on Governor Jack Dalrymple for presentation of information relating to the Property Tax Task Force appointed by the Governor. Governor Dalrymple said the purpose of the task force is to provide assistance to the legislature as it works to reform property taxation. He said so far, the task force work confirms the system is a web of one-at-a-time measures adopted over the last 60 years. He said there are 186 different levy limitations for various purposes. He said many are not used by any subdivision, and some of these levies need to be consolidated to allow for a more transparent system to help taxpayers understand how much they are being assessed for certain purposes. He said the task force as a group has a broad range of property tax experience, and the time has come to work through the maze to simplify and consolidate levy provisions in order to make the system understandable and save taxpayer money.

Governor Dalrymple said whether mill levies are consolidated or remain in separate levies, the task force would like to make levy limitation real rather than subject to discretion. He said in some cases the need for additional funds is real, but that need could be addressed through other sources, such as fees or state aid, rather than mill levy authority. He said achieving tax savings will come from working directly with tax representatives from political subdivisions and requiring public officials to set spending limits to create discipline in the budgeting and spending process while providing greater flexibility. He said providing flexibility is a strong motivator for subdivisions to support overall reform. He said there is a difference between reform and relief. He said the legislature provided relief in the form of school mill levy buydowns and a state-paid credit, but this was not reform because it was not permanent and did not encourage additional discipline in local spending.

Representative Kasper asked if the task force was considering capping local spending or other restrictions. Governor Dalrymple said the task force had not gotten to that point yet. He said the task force is trying to create a framework in which to analyze a number of options that would provide more discipline but allow flexibility. He said this will be possible if levies are combined because a political subdivision may be able to get by with the same level of authority as before while reducing the level of mills. He said during the 2013 education funding revisions, school districts felt the additional flexibility in mill levies from consolidation was more valuable than having greater taxing authority. Senator Burckhard asked if the Governor foresees fewer exemptions going forward. Governor Dalrymple said the focus is not on exemptions so much as reducing exceptions to mill levy limits. He said a levy limit has little meaning if there are three to four ways to get around it.

ECONOMIC DEVELOPMENT ASSOCIATION OF NORTH DAKOTA

Chairman Cook called on Mr. Keith Lund, Vice President, Economic Development Association of North Dakota, for presentation of information ([Appendix K](#)) relating to the evaluation of tax incentives. Representative Nathe asked for information regarding the angel fund investment tax credit. Mr. Lund said the reason for that credit was to attract investments and to encourage small business development. Representative Kasper asked if the working group would be looking at new ideas and concepts because the changing economy of North Dakota has to create career-path jobs. Mr. Lund said he hopes the efforts of the committee will shed new light on ideas that would advance that goal. Representative Kasper asked if The Pew Charitable Trusts staff would bring ideas that other states are exploring. Mr. Lund said as of now most of the conversation has been on the issue of accountability. Chairman Cook said Pew staff intends to help establish a review of incentives, which would allow regular evaluation of how incentives fit in a changing economy.

CONSIDERATION OF LEGISLATIVE COUNCIL MEMORANDUM

Chairman Cook called on Mr. Walstad for presentation of a memorandum entitled [Economic Development-Targeted State Tax Incentives](#). He said the memorandum has been updated to serve as an inventory of incentives to be considered for review.

TAX DEPARTMENT

Chairman Cook called on Mr. Ryan Rauschenberger, Tax Commissioner, for presentation of the *North Dakota Tax Incentives for Business* booklet ([Appendix L](#)) and a business incentive exemption summary ([Appendix M](#)). Mr. Rauschenberger said tax credits will be used less as income tax rates come down. He said all of the available incentives are described in the booklet. He said the sales tax exemptions are heavily utilized, possibly even more than income tax exemptions.

Chairman Cook asked how many times new businesses are lured to North Dakota after learning about the tax incentives. Mr. Rauschenberger said the Tax Department spends a lot of time trying to attract new businesses to the state and showing those businesses how the tax exemptions would apply.

Representative Headland asked if new businesses are looking for multiple tax incentives, and if so, should the committee look at not allowing multiple incentives for different projects. Mr. Rauschenberger said the income tax code has limiting parameters, but there are businesses that would like to use as many as possible. He said the code provides ways to prevent abuse.

Senator Dotzenrod asked if the dollar amount of exemptions is public information. Mr. Rauschenberger said the information is provided in the Red Book but may not be released in a form that would allow identification of individual taxpayers.

Representative Nathe asked how North Dakota's exemptions compare to other states. Mr. Rauschenberger said North Dakota is competitive. He said the manufacturing equipment, agricultural processing, and construction exemptions are very attractive. Representative Nathe asked if the incentives need to be more attractive. Mr. Rauschenberger said based on his analysis, there may be room for improvement, but on the whole, North Dakota is competitive in economic development incentives.

DEPARTMENT OF COMMERCE

Chairman Cook called on Mr. Justin Dever, Manager, Office of Innovation and Entrepreneurship, Department of Commerce, for presentation of information ([Appendix N](#)) relating to the Economic Development Foundation. Representative Ruby asked if it is necessary to have The Pew Charitable Trusts tell the committee what the Economic Development Foundation has already determined. Mr. Dever said the foundation works on a macro-level. He said the foundation considers if North Dakota's overall economic development strategy is working. He said Pew is focusing on how individual incentives can be reviewed regularly to evaluate whether individual incentives are meeting objectives. Chairman Cook asked for a review of incentives that are only available to businesses serving a public purpose for the next meeting.

CONSIDERATION OF LEGISLATIVE COUNCIL BILL DRAFT

Chairman Cook called on Mr. Walstad for presentation of a bill draft [[15.0054.01000](#)] relating to the sharing of confidential information by Job Service North Dakota and the Tax Department for purposes of evaluating tax incentives. Representative Ruby asked if there is anything allowing action by the Department of Commerce against a company that does not meet its requirements for use of a certain incentive. Mr. Walstad said he is not aware of any law allowing such an action.

COMMENTS BY INTERESTED PERSONS

Chairman Cook invited comments by interested persons in attendance.

Mr. Mallberg said he owns residential and commercial property in Dickinson. He said he always pays his taxes on time but wants to discuss commercial property in Dickinson. He said the taxpayer does not have much to say about assessed values or the setting of mills. He said the property tax on his 38-year-old building went up 220 percent in the last couple years. He said there needs to be something the property owner can do when a property assessment is too high. Representative Kasper said the legislature was presented with options in the past, but none have passed. Representative Nathe asked if other commercial owners were contacted. Mr. Mallberg said they were but are afraid of the consequences of speaking out.

CONSIDERATION OF LEGISLATIVE COUNCIL MEMORANDUMS

Chairman Cook called on Mr. Walstad for presentation of a memorandum entitled [Property Tax Year Significant Dates](#). He said there should be a deadline for centrally assessed property values to be given to counties. Ms. Meier said counties have ideas about assessed property but not concrete numbers to work with until the centrally assessed property valuations information is distributed. Chairman Cook asked for a review by the Tax Department for the next meeting on centrally assessed property valuation.

Chairman Cook called on Mr. Walstad for presentation of a memorandum entitled [Property Tax Rates Applied Against True and Full Value of Property](#). Mr. Walstad said a tax rate of one mill would be five cents per \$1,000 of value if taxable valuation is redefined. He said this option might make calculation of property taxes more understandable for taxpayers.

Chairman Cook called on Mr. Walstad for presentation of information on the committee study of the forestry stewardship tax. Mr. Walstad said the State Forester sought funding assistance for the forestry stewardship tax program through the Outdoor Heritage Fund Advisory Board, but the board did not approve the request. He said it appears the committee will have to pursue another approach to the improvement of the program. Senator Unruh said she will work with Committee Counsel on developing a potential solution in a bill draft.

COMMITTEE DISCUSSION

Chairman Cook asked committee members for suggestions of items for consideration at the next committee meeting.

Senator Burckhard suggested the next meeting could be held in Minot to allow interested persons in the area to attend.

Senator Sorvaag asked at what point should the political subdivisions be required to send notice to everyone in lieu of notice in the newspapers. He said a bill should be drafted requiring notice be sent to all taxpayers when more than a zero increase number of mills for an increase in a zero budget is proposed.

Representative Froseth said there are numerous exemptions and incentives that are no longer in use and should be considered for elimination. He said the rural development loan fund is an example. He asked if information can be obtained to identify obsolete programs.

Chairman Cook said the next meeting would probably be scheduled for later in March.

No further business appearing, Chairman Cook adjourned the meeting at 3:15 p.m.

John Walstad
Code Revisor

Samantha E. Kramer
Committee Counsel

ATTACH:14