

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TAXATION COMMITTEE

Tuesday, May 27, 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, Lonnie J. Laffen, Ronald Sorvaag, Jessica K. Unruh; Representatives Wesley R. Belter, Jason Dockter, David Drovdal, Glen Froseth, Patrick Hatlestad, Craig Headland, Jim Kasper, Jerry Kelsh, Mike Nathe, Dan Ruby, Jim Schmidt

Members absent: Senator Jim Dotzenrod; Representatives Scot Kelsh, Mark S. Owens, Robin Weisz, Steven L. Zaiser

Others present: Senator Joan Heckaman, member of the Legislative Management, was also in attendance. See [Appendix A](#) for additional persons present.

It was moved by Representative Headland, seconded by Senator Burckhard, and carried on a voice vote that the minutes of the March 25, 2014, meeting be approved as distributed.

TAX DEPARTMENT

Chairman Cook called on Ms. Sara Meier, Property Tax Specialist, Tax Department, for presentation ([Appendix B](#)) of information on nonproductive agricultural property assessment. Ms. Meier said the handout provided is a guide to assessing agricultural land in North Dakota. She said the handout provides examples of what the values of specific kinds of lands are per acre. Chairman Cook asked whether the county has the authority to assign the value. Ms. Meier said a county works through the soil committee to develop the values by looking at the actual production of the land. She said this is the method of adjusting the productive value that is set out by the soil type to better represent the value. Chairman Cook asked if there are any guidelines in law as to what the value should be and whether there is a list of what the counties use as values. Ms. Meier said there is not a list nor do all the counties have the same values or use identical modifiers.

Representative Nathe asked how the counties determine a dollar figure for an acre of a certain soil type. Ms. Meier said the Tax Director in Richland County created the bar for most counties because he has a very good soil committee and worked with that group to develop the values. She said many areas in the Red River Valley followed that model beginning in the early 1980s.

Chairman Cook asked if every county has a soil committee. Ms. Meier said that many that have made the transition to using soil values have a committee. She said a soil committee is very useful in spreading values for the county. She said the soil committees only act in an advisory role to the tax director and county commissioners.

Ms. Meier said an image of a quarter section from Cavalier County is included in the handout as an example of soils that are being treated as marshland, and this property has been valued at \$30 per acre. Representative Headland asked how county officials deal with relative values among soil types. Ms. Meier said most counties accept what the Natural Resources Conservation Service (NRCS) provides as a basis for production indexes. Chairman Cook said every value should be relative to one of the three numbers provided by the North Dakota State University value calculations. Ms. Meier said that is true except for the nonproductive category, which is randomly chosen. She suggested creating a specific category for nonproductive agricultural land at a value of 30 percent of the noncropland value. She said the 30 percent is a suggestion that would be consistent with where the counties are currently valuing these properties.

Mr. Walstad asked if the inundated valuation change is still functional or if it should be combined with a nonproductive category. Ms. Meier said for the most part, counties view inundated lands as coming back into production at some point. She said a few counties use the inundated category as a catchall for other issues like wetlands so the average for the county can be lowered. She said she would like to see use of the inundated category continue, but for the counties that use it to lower average values, it would be a better approach to have both categories available.

Chairman Cook said currently there are issues relating to whether landowners are having their taxes equalized. Representative Belter said there are always problems with taxation and inequity, but in the past year, some counties have experienced severe differences in valuations. Ms. Meier said the transition from the older system of valuation to the new soil survey method has triggered some of the problems. She said part of a county may be in one predominate soils area and another part may be in a different area. She said making that transition can be a problem because there are so many more soils to analyze and make sure the land is valued properly. Representative Kelsh asked how Ms. Meier's proposal would work being that counties are required by law to use soil types and cannot change the total valuation of the county. Ms. Meier said every year's assessment stands on its own. She said inequity is caused when there is an increase in the values on productive soils when trying to correct the values from the unproductive soils.

In response to a question from Representative Headland, Ms. Meier said all counties use NRCS for soil value determinations. Chairman Cook asked how much discretion the local assessor has in determining the valuation. Ms. Meier said the statute sets out the process. She said first the assessor sets the value, then the township adds modifiers, which are approved or denied, and then the final step is to make an adjustment for the actual use of the land.

Representative Schmidt requested that NRCS be requested to provide testimony at the next meeting relating to how soil values are determined.

Chairman Cook called on Ms. Linda Leadbetter, State Supervisor of Assessments, Tax Department, for presentation ([Appendix C](#)) of information on efforts to establish uniform formatting for property tax statements among counties. Ms. Leadbetter said the working group has had discussions with software vendors to try to meet the goal of a uniform statement and found some limitations. She said the standards in the handout are not uniform because the group is focused on creating something that has all the necessary information in the same location even if the appearance in font may look different.

Chairman Cook asked if legislation was needed to ensure the desired level of uniformity. Ms. Leadbetter said legislation is not necessary because the group is working under the statutory provision to act as provided or prescribed by the Tax Commissioner.

Ms. Leadbetter said the two options include the voucher at either the top or the bottom of the statement. She said the options also vary depending on type and size of font as well as use of boldfaced font in some cases.

Chairman Cook asked for an example for the next committee meeting of what a statement would look like if the use of mills is eliminated.

Representative Kasper said the only thing missing on the examples is a line that states the state mill levy reduction in dollars. He said the taxpayer is not getting the true picture of how much a school district is levying in dollars because the statement does not show the full amount of school tax.

Representative Kasper and Representative Nathe asked that the language be adjusted to include the school district reduction. Representative Nathe asked that the statement show what the tax would be without the 12 percent in addition to the reduction in dollars and then the actual taxes for the year.

Senator Heckaman asked if there is an option for counties to update the software or whether it would be an additional purchase. Ms. Leadbetter said all counties have a taxation program, and some have data available to generate statements. She said counties are at different cost levels to change to a standard report because different software and capabilities exist among counties. She said it does not appear feasible to require identical statements for every county. She said as a result, when the group is finished, there will be a "standard" statement rather than a "uniform" statement.

Chairman Cook called on Ms. Leadbetter for presentation ([Appendix D](#)) of information on assessor training requirements in surrounding states. Ms. Leadbetter said the handout includes standards for South Dakota, Minnesota, and North Dakota. She said the first goal of assessor training is ensuring the best education resources are available. She said the North Dakota-specific courses will be provided on a yearly basis so everyone can have the administrative courses completed within 12 months to 18 months of appointment.

BILL DRAFT ON PROPERTY ASSESSOR CERTIFICATION

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0039.02000](#)] to provide for certification of assessors. Mr. Walstad said the committee has previously reviewed the bill draft. He said it may be advisable to change dates to 2017 for the deadline for licensing under increased training requirements.

Chairman Cook called on Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, for the association's comments on the bill draft. Mr. Traynor said the Association of Counties is in favor of the bill draft although it will increase the costs for county government. Representative Froseth asked if the association had estimated any costs. Mr. Traynor said there have not been any estimates yet as he understood the bill draft places the primary responsibility on the local taxing authority.

It was moved by Representative Kasper, seconded by Representative Nathe, and carried on a roll call vote that the bill draft [15.0039.02000] be amended by adding "or July 31, 2017" to the last line on page 6 and the top of page 7, and change "2015" to "2017" on page 8, line 13, and that the bill draft as amended be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Laffen, Sorvaag, and Unruh and Representatives Dockter, Drovdal, Hatlestad, Kasper, Nathe, and Schmidt voted "aye." Representatives Belter, Froseth, Headland, Kelsh, and Ruby voted "nay."

In discussion of the motion, Chairman Cook said a lot of people in North Dakota think property tax is not fair and fair taxes start with an accurate assessment. He said this bill draft is a place to start in improving the fairness of the property tax system. Representative Belter said he will not support the bill draft because he is not convinced that by passing the bill draft the inequalities or perceived inequalities will be remedied. Representative Nathe said the bill draft needs more work but is an adequate starting point for legislative consideration. Representative Kasper said additional information will be needed.

BILL DRAFT ON UNELECTED BOARD TAX LEVIES

Chairman Cook called on Mr. Walstad for review of a bill draft [15.0067.01000].

Mr. Traynor recommended three changes to be made to the bill draft to remove the ambulance, fire, and hospital districts. He said that would mean removing Sections 10, 22, 23, and 24. He said these districts are created through a vote, and electors vote to elect members of a governing board at the annual meeting of each district. Representative Schmidt asked how an area for a hospital district is determined. Mr. Traynor said the area is determined by a petition to place the issue on the ballot.

Representative Froseth asked if a county can levy the extra mills if an airport authority only levies two of the allowed four mills. Mr. Traynor said that is not a possibility.

Senator Sorvaag asked how nonelected boards are created. Mr. Traynor said in many cases, the appointed boards come by direction or requirement of state law so the county appoints them.

COMMENTS BY INTERESTED PERSONS

Chairman Cook invited comments by interested persons in attendance regarding the bill draft on unelected boards.

Mr. Patrick Dame, Executive Director, Grand Forks Regional Airport Authority, said he is concerned with the bond authority of the airport authority if there is any reduction in mill levy or control. He said any reduction in mill levy or control can impact the airport authority's ability to bond for projects. He said if the city or county had authority to reduce the levy backing the bond authority, it would no longer be considered a secure bond.

Senator Laffen asked how the authority currently gets approval on bonds. Mr. Dame said right now the authority does not need city or county approval although that does not mean the authority does not seek it.

Representative Hatlestad asked who is responsible for the bond payments if the airport authority defaults. Mr. Dame said the bonds would ultimately be the responsibility of the city or county.

Mr. Shawn Dobberstein, Executive Director, Fargo Municipal Airport Authority, said he agrees with the concerns Mr. Dame mentioned. He said if the county or city has the ability to control the airport authority's budget, the airport authority would be in violation of federal grant assurances under North Dakota Century Code Title 49.

Representative Kasper asked how the airport authority receives grants. Mr. Dobberstein said the grants are from the Federal Aviation Administration through the Department of Transportation trust. He said every time an airline ticket is purchased, a fee comes back to the airport as an entitlement. He said the amount an airport receives depends on the number of passengers boarded at a particular airport in a year.

Mr. Don Frye, Mayor, Carrington, said his first concern is on the first page of the bill draft where the auditor's report is due by February 1. He said he is not aware of any board that could have an audit completed by then as audits are usually completed by the end of March. He said smaller airport funding is different as the airport

authority has to provide 5 percent of project costs, then looks to bonds to match those funds. He said the state then provides 10 percent and the remaining funding comes from the federal government. He said the bond counsel's concern is that the airport authority is appointed by the Mayor of Carrington, and when significant changes in counsel and commission are made, there may not be the same level of understanding of the day-to-day operations of an airport.

Chairman Cook asked Mr. Frye's opinion on whether the final decision on funding should be made by the people who pay the bill draft or the people that know airport projects best. Mr. Frye said the local authorities have already spoken and appointed the board to make the decisions.

COMMITTEE DISCUSSION

Chairman Cook asked for an updated bill draft on levies of unelected boards reflecting the concerns expressed. Senator Sorvaag requested bond counsel be asked to testify at the next meeting to help the committee better understand any potential impact the bill draft would have on bonding.

NORTH DAKOTA ASSOCIATION OF COUNTIES

Chairman Cook called on Mr. Traynor for presentation ([Appendix E](#)) of information on county expenditures for social services programs that are not state or federal programs. Mr. Traynor said the handout was prepared by the Department of Human Services. He said all county expenditures are reported monthly to county social services on a standard form. He said in-home care is a significant cost that is not covered by state-funded programs. He said in all counties except those in yellow, the county commission and social services board have decided there are people in the county that need the services but do not qualify for state services. He said counties are required to devise a plan to create a fund to handle emergency situations that do not fit other established categories, such as indigent burials. He said counties spend about \$4.32 million for social services that are not attached to any state or federal programs.

BILL DRAFT ON NOTICE OF ASSESSMENT INCREASES

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0020.04000](#)] on notice of assessment increases. Mr. Walstad said the bill draft was revised from the previous version to make uniform provisions for city, township, and county boards of equalization and make clear that at any point when a property's assessment is increased 10 percent and \$3,000 from the prior year, the entity that made the increase must notify the owner. He said if the local board of equalization is considering an increase that would make the assessment 15 percent or more above the previous year's assessment, the board must provide reasonable advance notice and opportunity to appear for the owner. He said Mr. Donald W. Flaherty, Director of Tax Equalization, Dickey County, suggested these changes to make the equalization process uniform, which is not the case under current law.

COMMENTS FROM INTERESTED PERSONS

Chairman Cook invited comments from interested persons in attendance regarding the bill draft relating to notice to taxpayers of assessment increases.

Mr. Traynor said he has not seen the changes from the previous bill draft but understands the bill draft is more consistent and more uniform. He said it will cost more, but if it provides better information, it may be worthwhile.

It was moved by Representative Dockter, seconded by Senator Unruh, and carried on a roll call vote that the bill draft [[15.0020.04000](#)] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Laffen, Sorvaag, and Unruh and Representatives Belter, Dockter, Drovdal, Froseth, Hatlestad, Headland, Kasper, Kelsh, Nathe, Ruby, and Schmidt voted "aye." No negative votes were cast.

A letter from Mr. Flaherty was received by email during the committee meeting and is attached as [Appendix F](#).

BILL DRAFT ON NOTICE OF PROPERTY TAX LEVY INCREASE HEARING

Chairman Cook called on Mr. Walstad to review a bill draft [[15.0095.02000](#)]. Mr. Walstad said the bill draft has been reviewed by the committee and relates to notice to taxpayers of a budget hearing for a greater than zero increase in tax rate. He said existing law requires notice by the governing body in the newspaper and to taxpayers by mail if the taxpayer received a notice of an assessment increase, if the governing body is considering more than a zero increase in the number of mills to be imposed for the upcoming tax year. He said the bill draft amends that section to provide for elimination of newspaper publication of notice and that written notice of greater than a zero increase tax rate must be provided to every taxpayer by personal delivery, mail, or electronic mail if the owner consents to receive electronic mail. He said the bill draft provides that a consolidated notice be allowed for an individual or entity owning more than one parcel of taxable property.

Mr. Traynor said this bill draft would impose substantial costs for political subdivisions. He said the bill draft essentially creates a cost equivalent to another property tax billing cycle and the estimated cost would be close to half a million dollars.

It was moved by Representative Nathe, seconded by Representative Dockter, and carried on a roll call vote that the bill draft [15.0095.02000] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Laffen, Sorvaag, and Unruh and Representatives Belter, Dockter, Froseth, Hatlestad, Headland, Kasper, Nathe, Ruby, and Schmidt voted "aye." Representatives Drovda and Kelsh voted "nay."

BILL DRAFT ON RURAL FIRE DEPARTMENT LEVY INCREASE APPROVAL

Chairman Cook called on Mr. Walstad to review a bill draft [15.0147.01000] relating to approval of increased levy authority for a rural fire protection district. He said current law requires a petition signed by 20 percent of electors of a district to approve increasing the levy limit from 5 mills to 13 mills. He said the bill draft allows the same increase but would require a majority vote through a mail ballot election. He said the mail ballot provisions were modeled after the provisions for mail ballot elections for water districts.

BILL DRAFT ON ELECTRIC INDUSTRY PROPERTY REPORTING

Chairman Cook called on Mr. Walstad for presentation of a bill draft [15.0094.02000] relating to reports of electric transmission, distribution, and generation companies. Mr. Walstad said the committee reviewed this bill draft at the previous meeting. He said the bill draft was suggested by Tax Department staff when it was discovered there is no statutory reporting requirement for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. He said the bill draft adds statutory language to require these reports at the time transmission and distribution company reports are required to be filed. He said the bill draft also corrects a reference to the June reporting date of the information. He said the bill draft is effective beginning in 2016 because 2015 legislation would not take effect early enough to require the reports in 2015.

It was moved by Representative Dockter, seconded by Senator Burckhard, and carried on a roll call vote that the bill draft [15.0094.02000] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Laffen, Sorvaag, and Unruh and Representatives Belter, Dockter, Drovda, Froseth, Hatlestad, Headland, Kasper, Kelsh, Nathe, Ruby, and Schmidt voted "aye." No negative votes were cast.

BILL DRAFT ON TAX RELIEF CREDIT

Chairman Cook called on Mr. Walstad for review of a bill draft [15.0149.01000]. Mr. Walstad said enactment of 2013 Senate Bill No. 2036 created a new form of property tax relief through a state-paid credit of 12 percent of property taxes levied by any taxing district. He said the credit was estimated to provide \$200 million of property tax relief, and the estimate is tracking very close to actual cost for the first year of the biennium. He said the estimated cost for the 2015-17 biennium is \$230 million, and the bill draft provides an appropriation of that amount. He said the 2013 legislation had a two-year sunset, and this bill draft does not contain a sunset clause.

Chairman Cook said the credit will undoubtedly be considered in 2015, and this bill draft would initiate that legislative discussion.

It was moved by Representative Schmidt, seconded by Representative Hatlestad, and carried on a roll call vote that the bill draft [15.0149.01000] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Laffen, Sorvaag, and Unruh and Representatives Belter, Dockter, Drovda, Froseth, Hatlestad, Headland, Kasper, Kelsh, Nathe, Ruby, and Schmidt voted "aye." No negative votes were cast.

BILL DRAFT ON REPLACEMENT OF MILL RATES

Chairman Cook called on Mr. Walstad for review of a bill draft [15.0066.01000] to eliminate use of mills in calculating property taxes. Mr. Walstad said the bill draft is exceptionally long, but most of the bill draft consists of merely converting use of a number of mills for property tax determination into use of a number of cents per \$1,000 of true and full value. He said the use of mills is so prevalent that there are more than 150 sections of the North Dakota Century Code that require amendments.

Mr. Walstad said the best way to understand the changes is to consider how the conversion works. He presented a PowerPoint review ([Appendix G](#)) of how the conversions are made in the bill draft. He said for purposes of the example, \$100,000 of true and full value is used for property comparisons. He said under current law, assessed value is 50 percent of true and full value. He said it is necessary to preserve this relationship because the constitutional debt limit for political subdivisions is based on assessed value. He said assessed value is not used to determine property tax obligations, so preserving this measure would not affect other parts of the bill draft. He said under current law, taxable value of property is 9 percent of assessed value for residential property

and 10 percent of assessed value for other property classifications. He said a significant problem for citizens trying to understand tax calculations is understanding why the value is reduced in this manner before applying tax rates. He said under current law, the taxable value of a \$100,000 residential property is \$4,500 and the taxable value of \$100,000 of the other property classifications is \$5,000. He said under the bill draft, the taxable value of a \$100,000 residential property is \$90,000 and the taxable value of \$100,000 of the other property classifications is \$100,000. He said using the amounts for taxable value under the bill draft which are either the same as the true and full value or 90 percent of true and full value should help taxpayers better understand how property taxes are calculated.

Mr. Walstad said under current law, a one-mill tax on the taxable value of residential property is a tax of \$4.50 and a one-mill tax on the taxable value of other classes of property is a tax of \$5.00. He said a 300-mill tax on those properties under current law would result in a tax of \$1,350 for residential property and a tax of \$1,500 for other classes of property. He said under the bill draft, the equivalent of a one-mill tax is a tax rate of five cents per \$1,000 of taxable value and showed the resulting calculations of equivalent taxes for the classes of property. He said most of the text of the bill draft relates to converting mills to cents for tax rates at an equivalent of five cents per \$1,000 of taxable value for each one mill of taxable value under current law.

Mr. Walstad said the Century Code sections with amendments that make the most significant changes are Section 57-02-27, which increases the calculation of taxable value from its current rate to 90 percent for residential and 100 percent for other property classes; Section 57-06-17.2, which makes equivalent increases to taxable valuation calculation for wind turbine electric generators; Section 57-15-01.1, which includes language for conversion to a tax rate per \$1,000 to taxable valuation for base years before 2015; Sections 57-02-08.1 and 57-02-08.8, which adjust taxable valuation exemptions for the homestead credit and disabled veterans credit; and Section 156 of the bill draft, which allows the Legislative Council to reconcile statutory references to mills and taxable valuation after the 2015 legislative session if the bill is enacted.

Chairman Cook requested that interested parties and committee members take time before the next committee meeting to examine the bill draft and raise any concerns or corrections.

BILL DRAFT ON SHARING OF CONFIDENTIAL INFORMATION

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0054.02000](#)]. Mr. Walstad said the bill draft relates to the sharing of confidential information by Job Service North Dakota and the Tax Department for purposes of providing information to the Department of Commerce for evaluating tax incentives. He said the Tax Department suggested a change in the language to provide that any information disclosed by the Department of Commerce could only be disclosed in an aggregate format that does not divulge information that would identify an individual employer, and this change has been made in this version of the bill draft.

BILL DRAFT ON EVALUATION OF ECONOMIC DEVELOPMENT TAX INCENTIVES

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0064.01000](#)]. Mr. Walstad said the bill draft was developed with input and assistance from several sources. He said staff from The Pew Charitable Trusts have been very helpful in pointing out the useful features of recent legislation in other states for consideration in the process of putting this bill draft approach together. He said consideration was given to how to establish a regular review and evaluation process for state economic development tax incentives which would serve North Dakota well in monitoring success levels of incentives created by the Legislative Assembly. He said other states have established review processes involving other branches of government, but this bill draft places the responsibility for review within the legislative interim committee structure because it is the legislative branch that should monitor the progress of the programs it establishes. He said this committee has spent time this interim developing a list of economic development tax incentives for purposes of this review process, and the bill draft incorporates that list as the incentives that must be reviewed.

Mr. Walstad said the bill draft requires the Legislative Management to designate an interim committee each interim to conduct detailed reviews. He said the bill draft allows the interim committee to designate the incentives for detailed review for the current interim and requires the committee to establish a schedule for review of remaining incentives to assure that each incentive is reviewed within a six-year cycle. He said the bill draft contains a list of considerations the interim committee must apply to the detailed review of each incentive. He said the interim committee would have authority to recommend legislation regarding incentives, including adding incentives to the list to be reviewed or to allow access to better information for evaluation purposes.

PROPERTY TAX STATUS OF LEASES ON UNIVERSITY PROPERTY

Chairman Cook called on Mr. Walstad to review a bill draft [[15.0071.02000](#)] relating to the tax status of leases on university property. Mr. Walstad said a representative of the North Dakota University System was contacted to address this issue but was unable to attend and will attend the next meeting.

FOREST STEWARDSHIP TAX STUDY

Chairman Cook said the committee has done its work to gather information to understand the forest stewardship tax issue. He said it appears this issue is of greatest concern in only some counties and not a statewide concern. He said individual legislators with a particular interest in the issue are welcome to bring a bill draft to the 2015 legislative session.

COMMITTEE DISCUSSION

Representative Headland said he would like to see some progress in the analysis on locally offered tax incentives and whether there is a benefit to the community authorizing them. Representative Belter asked for estimates from the Tax Department regarding local tax incentives for the next meeting. He asked for comparison of the savings to the business from the incentive and the value of the benefit received by the community authorizing the incentive.

No further business appearing, Chairman Cook adjourned the meeting at 2:15 p.m.

John Walstad
Code Revisor

Samantha E. Kramer
Committee Counsel

ATTACH:7