

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TAXATION COMMITTEE

Wednesday, July 30, 2014
Harvest 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, Ronald Sorvaag, Jessica K. Unruh; Representatives Jason Dockter, David Drovdal, Glen Froseth, Patrick Hatlestad, Craig Headland, Jim Kasper, Jerry Kelsh, Mike Nathe, Mark S. Owens, Dan Ruby, Jim Schmidt, Robin Weisz

Members absent: Senator Lonnie J. Laffen; Representatives Wesley R. Belter, Scot Kelsh, Steven L. Zaiser

Others present: Senators Ray Holmberg and Rich Wardner, members of the Legislative Management, were 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 May 27, 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 the use of detailed soil survey data in agricultural property assessments. Ms. Meier explained how the Department of Agribusiness and Applied Economics at North Dakota State University (NDSU) computes estimates of average value per acre of agricultural land. She said the average value per acre for each county is used by the State Board of Equalization to maintain equality of assessment among counties. She described how a valuation schedule is used for map units obtained from the Natural Resources Conservation Service (NRCS) soil surveys. She said a parcel datasheet is used by assessment officials for assessment information about an agricultural parcel. She said the parcel datasheet lists the legal description of the parcel, taxable acres for each of the soil type map units, the associated value for each map unit, and other considerations in valuing the parcel. She said many parcel datasheets also show map units, topography, or use of the parcel.

Chairman Cook asked for an explanation of the difference between the cropland and noncropland classifications. Ms. Meier said noncropland is the land used for pasture with native grasses and seeded grass for raising livestock. She said the noncropland acres never change for purposes of the NDSU formula; those acres were distinguished when the original formula was created and have not been changed.

In response to a question from Chairman Cook, Ms. Meier said if noncropland is cultivated, it is subject to assessment as cropland at the county level.

Representative Headland asked who determines what qualifies for treatment as inundated acres. Ms. Meier said the classification is specifically set out in statute and a property owner must apply to the township assessor or county director of tax equalization. She reviewed the statutory requirements for treatment as inundated land ([Appendix C](#)).

Representative Schmidt expressed concern that wetlands shown on the soil survey should not be double-counted with inundated land status. Ms. Meier said that should not occur.

Representative Froseth asked how conservation reserve program (CRP) land is classified. Ms. Meier said CRP land is considered cropland, which is then further valued depending on the types of soil in the parcel.

Mr. Walstad asked for clarification of the issue some counties were having this year with equalization. Ms. Meier said some of the county assessors were not taking into consideration the limitations to the soils such as restricted accessibility because of landscape. She said those factors must be considered by local assessors.

Chairman Cook called on Mr. Mike Ulmer, retired former employee of the National Resources Conservation Service, for presentation ([Appendix C](#)) of information on the use of detailed soil survey data. Mr. Ulmer said the soil survey is an inventory of the soil resources in each county. He said the soil survey can be used in many economic applications, including appraisals, realtor comparison of different pieces of land, land assessment, bank loans, and other applications. He said use of soil surveys to equalize taxes is a long-standing practice. He said in China, soil surveys have been used for more than 2,000 years to equalize taxes. He said in North Dakota, soil surveys have been used since the 1930s for tax equalization.

Mr. Ulmer said the soil survey is conducted by soil scientists going out to examine the land. He said soil scientists map landscape units and displayed a picture of a swale which he said the soil scientist would map and map the surrounding terrain and then correlate soils to different landscape units. He displayed photos of eroded soil with high lime content. He said the underlying soil type in this example is Barnes and the unit would be mapped to reflect these soil types. He said every map unit has inclusions, which are areas that contain different soil from the predominate soil in the unit. He said these inclusions create problems in mapping and in using the survey for valuation interpretation.

Mr. Ulmer said a productivity index is assigned to soil types. He said the intention is to eliminate management decisions in comparing soils. He said the limitations of terrain are generally handled with modifiers; however, difficulties may arise with lack of education about the land on the part of the assessor.

Chairman Cook asked if there is a weighted production index number for every acre of land in North Dakota. Mr. Ulmer said not for every acre, but for every map unit in the state. Chairman Cook asked how that production index number works in the productivity formula. Mr. Ulmer said every tract of land can have a production index which can be ranked from highest to lowest for the county. He said then the corresponding tax rate is assigned from high to low.

BILL DRAFT ON USE OF MODIFIERS IN AGRICULTURAL PROPERTY ASSESSMENTS

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0199.01000](#)] on the use of modifiers in agricultural property assessments. He said the bill draft was prepared based on a suggestion by Ms. Meier, who suggested that many of the modifiers allowed under existing law for use by counties are already accounted for as factors in the soil survey determination for certain soil types. He said the bill draft provides that modifiers may be used to make a 30 percent reduction to the soil type valuation of an area. He said the bill draft provides that the two allowable modifiers would be inaccessibility, meaning restricted access by farm implements, or nonconformity, meaning relatively small areas of good soil which is uneconomical to cultivate because of surrounding poor-quality soil.

In response to a question from Representative Weisz, Ms. Meier said currently modifiers are to be applied only for cropland, and modifiers should not be applied to noncropland valuation. She said the reduction by applying modifiers is intended to bring the cropland value closer to noncropland value. She said the 30 percent reduction under the bill draft may not be enough in some circumstances. She said counties currently apply modifiers to reduce cropland values by 10 to 40 percent. She said counties do not apply modifiers to reduce noncropland values.

Representative Schmidt said he is concerned with allowing modifiers to be used for existence of trees. He said planted or retained trees are a management decision. He said the purpose of using soil survey data is to eliminate management decisions from valuation considerations.

Representative Hatlestad said as he understands the explanations, soil types include factors that may also be used as modifiers. He asked if the Tax Department has a list of modifiers that are included in soil types that are not to be used as modifiers. Ms. Meier said the Tax Department does not maintain such a list. She said the authority of the Tax Department is to approve or disapprove a list of modifiers submitted by each county. Representative Hatlestad asked how a county would find out what modifier factors have been included in the soil types determined within the county. Ms. Meier said the soil survey book is available to every county. Chairman Cook said this is a significant issue for proper application. He said it would be useful if the Tax Department, perhaps with assistance from Mr. Ulmer, assembled a list of modifying factors that are incorporated in the soil survey according to soil types.

Representative J. Kelsh said he could not support this bill draft in the present form. He suggested it should be given more consideration.

TAX DEPARTMENT

Chairman Cook called on Mr. Joe Morrisette, Deputy Tax Commissioner, Tax Department, for presentation ([Appendix D](#)) of information on the potential impact on North Dakota of pending federal legislation. Chairman Cook said the committee should be aware of the possible changes in federal law as described by Mr. Morrisette because they could have a significant fiscal impact on the taxpayers of North Dakota.

Chairman Cook called on Ms. Linda Leadbetter, State Supervisor of Assessments, Tax Department, for presentation ([Appendix E](#)) of information on efforts to establish uniform formatting for property tax statements among counties. Ms. Leadbetter distributed copies of two sample real estate tax statement formats. She said the first copy provides information based on the current method of imposing property taxes in mills. She said the information was rearranged slightly to show legislative tax relief total at the top of the form, and that information is followed by property valuation information, the consolidated mill levy, and a breakdown of taxes in dollars by taxing district. She said the effective tax rate for each tax year is shown at the bottom of the columns. She said the second sample real estate tax statement was requested by the committee at the previous meeting to show a change from application of taxes in mills to application of taxes in dollars as provided in a bill draft approved by the committee. She said the difference can be seen in the column for tax year 2014 in which the tax rate is \$18.385 for each \$1,000 of taxable valuation of the property. She said the taxable valuation is also increased because the bill draft increases taxable valuation used as a basis for determining taxes. She said the second sample sheet shows that the consolidated tax and effective tax rate are the same under the imposition of the tax rate in dollars rather than mills.

Representative Nathe asked whether it is possible to show the levy that came from the school before the state reduction. Ms. Leadbetter said the working group tried to incorporate that information but the statements became much more complicated to read.

Chairman Cook called on Ms. Meier for presentation ([Appendix F](#)) of information comparing the state share of the 2013 homestead and veterans' credits to the 2012 costs. She said the homestead tax credit was substantially expanded by 2013 legislation. She said the number of qualifying applicants for the homestead tax credit increased from 4,265 in 2012 to 6,740 in 2013--an increase of 58 percent of persons qualifying for the credit. She said the appropriation for the homestead tax credit was increased to \$20 million--an increase of more than \$11 million compared to the 2011-13 biennium. She said after payments for the 2013 homestead tax credit, more than \$14 million remains available under that appropriation. She said renter refund credits were also increased for payments made in 2014, with 2,683 qualifying applicants and an average payment of \$270.12.

Chairman Cook called on Mr. Joseph Becker, Auditor III, Tax Department, for presentation ([Appendix G](#)) of information on the angel fund investment tax credit. Representative Nathe asked whether there was an increase in angel fund investors prior to 2011. Mr. Becker said from 2007-10, angel fund investments were just shy of \$4 million, after 2010, investments have risen to \$27 million, and tax credits earned have exceeded \$10 million. Representative Froseth asked whether the type of enterprises receiving the funds is tracked. Mr. Becker said the law only requires the name and principal place of business to be disclosed. He said the law does not mandate that angel funds invest in North Dakota businesses.

Chairman Cook called on Ms. Leadbetter for presentation ([Appendix H](#)) of information on the coal tax exemption for coal used in certain plants. Ms. Leadbetter said the law requires legislators to review the report containing the number of tons exempted. She said only about one-half of 1 percent of coal mined in the state qualified for the benefited coal exemption.

BILL DRAFT ON STATE ECONOMIC DEVELOPMENT TAX INCENTIVES

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0064.01000](#)] on the evaluation of state economic development tax incentives. He said this bill draft was reviewed by the committee at the previous meeting and has not been modified. He said the bill draft would establish a regular review and evaluation of state economic tax incentives. He said in every six-year cycle, an interim legislative committee would have to review every state economic development incentive on the list, and each interim the committee would determine which of the incentives would be reviewed during that interim. He said other states have established economic development tax incentive review processes involving other branches of government, but this bill draft places the responsibility for review within the legislative branch to monitor the progress of programs it establishes.

Chairman Cook called on Mr. Keith Lund, Vice President, Economic Development Association of North Dakota, for presentation ([Appendix I](#)) of information relating to the evaluation of economic development tax incentives. Mr. Lund recommended an amendment to page 3, line 18, after the word "shall" to insert "work with the department of commerce, tax commissioner, economic development foundation, and any other state agency or instrumentality" to include the stakeholders in the process.

COMMITTEE DISCUSSION

Representative Kasper asked whether Mr. Lund's suggested change was already included in the bill. Chairman Cook said the suggested language is very close to the language on page 3, line 28, and is probably not needed.

It was moved by Representative Nathe, seconded by Senator Unruh, and carried on a roll call vote that bill draft [15.0064.01000] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Dotzenrod, Sorvaag, and Unruh and Representatives Dockter, Drovdal, Froseth, Hatlestad, Headland, Kasper, J. Kelsh, Nathe, Owens, Ruby, Schmidt, and Weisz voted "aye." No negative votes were cast.

PROPERTY TAX TASK FORCE

Chairman Cook called on Governor Jack Dalrymple for a presentation of information relating to the Property Tax Task Force appointed by the Governor. Governor Dalrymple said the task force continues to work on a bill draft that translates some of the task force's ideas to legislation. He said the changes will allow for political subdivision peers to compare among themselves on levies for various purposes. He said many county levies will not be revised in any way, such as the Historical Society and Extension Service levies. He said numerous levies would be consolidated into general fund levy authority. He said in exchange, there will be an overall mill levy limit for the county commission in both the general fund category and the roads category. He said there will be very specific amounts of levies allowed for voter approval. He said all previous voter-enacted mill levies will be able to remain in place for 10 years or the voter-approved period of time, whichever is less; however, future voter-approved levies will be limited to a maximum duration of 10 years.

Governor Dalrymple said the task force approach would allow the current spending level to be maintained, and any required reduction in mill levies will be phased in to allow enough time to adapt. He said cities will be handled in a similar way to counties, with a combination of a mill levy limit on the city governing body and additional mills that may be enacted with voter approval. He said the task force has had some discussion about elections for voter approval of increased levies, and members appear to believe those elections should be held at general or primary elections rather than holding special elections unless the additional levy is truly an emergency. He said in the end the bill will look like a reform bill as the task force is considering all aspects of property tax levies.

Governor Dalrymple said the 20-mill levy for human services is still under analysis by the Department of Human Services. He said the task force is not studying that particular levy; therefore, any ideas would have to be brought forward by legislators.

Representative Kasper asked if the bill draft allows any home rule charters to override the levy limits. Governor Dalrymple said the home rule charter privilege will remain as it is. Representative Kasper asked if the task force has spent any time reviewing building authorities. Governor Dalrymple said the task force has not spent time on building authorities specifically, but now would be the time to look at building authorities along with capital improvement levies.

Representative Nathe asked if the bill will define the parameters for a special election to be held. Governor Dalrymple said the task force will consider in what cases voter-approved levy increases are considered urgent. He said as an example, sudden needs from damage to roads and bridges is an area where nothing should stand in the way of repairs.

NEW COMMITTEE ASSIGNMENT

Chairman Cook said the committee has received an additional interim directive ([Appendix J](#)) from the Chairman of the Legislative Management. He said under this directive, Mr. Michael Ziesch, Bureau of Labor Statistics Manager, Job Service North Dakota, was requested to provide the committee a briefing on a report as described in the Chairman's directive.

JOB SERVICE REPORT

Chairman Cook called on Mr. Ziesch for presentation ([Appendix K](#)) of a report prepared by Job Service North Dakota under a directive in 2013 House Bill No. 1358 relating to oil industry employment statistics.

Senator Burckhard asked where the 2013 population estimates were obtained. Mr. Ziesch said the population estimates are United States Census Bureau products.

Senator Dotzenrod asked if the employment data contained in the study relates to employment in the eastern portion of the state when a private company has to hire extra people to do something as a result of the added demand for oil industry activity. Mr. Ziesch said that is exactly how the system works.

Representative Ruby asked if there are any jobs reflected in the data that are not oil related. Mr. Ziesch said jobs such as lodging and restaurants are not included in the data because those activities were not critical for production of the well.

Representative Schmidt asked whether the contractors used to build the man camps were included in the data. Mr. Ziesch said the contractors would be included if the contractor was dedicated to work in the oil patch.

BILL DRAFT ON TAX LEVIES BY UNELECTED BOARDS

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0067.01000](#)] providing that property tax levies requested by unelected boards are subject to adjustment by the board of county commissioners or city governing body. Mr. Walstad said this bill draft has been reviewed by the committee at previous meetings. He reviewed the bill draft. He said another draft of the bill was prepared for the Advisory Commission on Intergovernmental Relations based on suggestions made by the North Dakota Association of Counties and the North Dakota League of Cities. He said the revised draft eliminates application to some levying entities that have elected boards and would limit the application to boards appointed by a county or city.

It was moved by Representative Kasper, seconded by Representative Dockter, and failed on a roll call vote that bill draft [15.0067.01000] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Dotzenrod, Sorvaag, and Unruh and Representatives Dockter, Drovdal, Froseth, Hatlestad, Headland, J. Kelsh, Nathe, Owens, Schmidt, and Weisz voted "nay." Representatives Kasper and Ruby voted "aye." **The motion failed.**

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0067.02000](#)] providing that property tax levies requested by unelected boards are subject to adjustment by the board of county commissioners or city governing body. Mr. Walstad said this revision of the bill draft contains changes recommended by political subdivision representatives to remove some of the levying entities from the first version of the bill draft. He said this version also removes the language inserted in numerous sections of the first version of the bill draft regarding the information that must be submitted by the entities requesting a levy from the county or city. He said in the revised bill draft, authority is added in the code sections governing general powers of counties and cities to allow the county or city auditor to request submission of financial information from any entity submitting a levy request to the county or city.

COMMENTS BY INTERESTED PERSONS

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

Mr. Terry Traynor, Executive Director, North Dakota Association of Counties, said the association is pleased the committee is trying to unify the system but the preference is the second version of the bill.

Chairman Cook pointed out to the committee that written testimony ([Appendix L](#)) prepared by Mr. Maurice Cook, a retired bond lawyer and member of the North Dakota Aeronautics Commission, was distributed for the committee to consider. He said the memorandum points out concerns of airport authorities that their bonding authority would be adversely affected if their levy is restricted.

Mr. Blake Crosby, North Dakota League of Cities, said the League of Cities also prefers the second version of the bill draft.

Mr. Patrick Dame, Executive Director, Grand Forks Regional Airport, said the concern from airport's perspective is the ability to bond in the future.

Mr. Larry Syverson, North Dakota Township Officers Association, agreed with previous testimony that second version would be preferable.

Mr. Casey Bradley, North Dakota Auditors Association, said the association supported the bill draft in either form, but preferred the second version.

Mr. Kyle Wanner, Director, North Dakota Aeronautics Commission, said the commission shares the concerns expressed regarding the ability of airports to bond under the bill draft as it exists.

It was moved by Senator Unruh, seconded by Representative Drovdal, and carried on a roll call vote that bill draft [15.0067.02000] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Dotzenrod, Sorvaag, and Unruh and Representatives Dockter, Drovdal, Froseth, Hatlestad, Headland,

Kasper, J. Kelsh, Nathe, Owens, Ruby, Schmidt, and Weisz voted "aye." Senator Sorvaag and Representative Kasper voted "nay."

BILL DRAFT ON PROPERTY TAX STATUS OF CERTAIN LEASEHOLD INTERESTS

Chairman Cook called on Mr. Walstad for review of a bill draft [[15.0071.02000](#)] on the property tax status of leasehold interests in certain buildings at state institutions of higher education. Mr. Walstad said the bill draft has been considered at previous meetings by the committee. He said the bill draft was prepared based on a suggestion that the state property tax exemption for leasehold interests in certain buildings on university campuses should be subject to a limit in duration. He said the bill draft limits a tax exemption in these buildings to three taxable years, but the governing body of the city or county may extend the exemption for an additional three taxable years. He said under state law that applies to most governmental buildings; the property is exempt from taxation because it is governmental property but is subject to assessment and taxation for the leasehold interest owner based on the value of the leasehold interest. He said the two subsections of North Dakota Century Code Section 57-02-08 in the bill draft create an exemption for the leasehold interest in only certain property at institutions of higher education which would otherwise be taxable to a lessee.

COMMENTS BY INTERESTED PERSONS

Chairman Cook invited comments by interested persons in attendance regarding the bill draft on the property tax status of leasehold interests in certain buildings at state institutions of higher education.

Mr. John Cosgriff, Manager, North Dakota State University Research and Technology Park, said the current method is effective and encouraged the committee to leave the law as it is. Representative Kasper asked how long people stay in incubator facilities. Mr. Cosgriff said the average length is three to four years, but the NDSU park has two to three anchor tenants. He said the anchor tenants sustain the programs through lease revenue. Representative Kasper asked whether the anchor tenants pay property tax. Mr. Cosgriff said the anchor tenants do not pay property tax.

Ms. Ellen Brannon, Interim Executive Director, Business Incubator, Bismarck, said it can take a long time for some startups to move out of the incubator so leaving current law in place would be best. Representative Ruby asked whether businesses are taking advantage of all the other incentives available. Ms. Brannon said it depends whether the particular business is appropriate for incentives or whether the incentive fits the business model. Chairman Cook asked whether the business always leaves by choice. Ms. Brannon said as long as the business is coachable, the expectation is that the business has to continue to move down the path to commercialization. Representative Nathe asked how many of the successful businesses leave North Dakota. Ms. Brannon said close to 90 percent stay in the area.

Mr. Paul Dodak, Deputy Assessor, Grand Forks, said the Grand Forks legislative committee does not support the bill as written. He said Grand Forks views the incentive as an economic tool that should be further studied.

BILL DRAFT

Chairman Cook called on Representative Owens for review of a bill draft [[15.0071.05000](#)] on the property tax status of leasehold interests in certain buildings at state institutions of higher education. Representative Owens said the difference between this bill draft and the other bill draft [[15.0071.02000](#)] is that his version is based on the success of the business. He said he believes termination of an exemption should be based on revenue rather than the duration of occupancy.

COMMITTEE DISCUSSION

Representative Weisz asked whether incubators could currently be exempt from property taxes. Mr. Walstad said this bill draft only deals with state university space in certain buildings, and he believes it does not deal with the status of incubators using other buildings. Representative Owens said they can but there is not a reporting requirement. Representative Kasper asked who paid for the incubator building. Mr. Cosgriff said the building was funded by several private contributions, grants, and an economic development loan.

CONSIDERATION OF BILL DRAFTS

It was moved by Representative J. Kelsh, seconded by Representative Dockter, and carried on a roll call vote that bill draft [[15.0147.01000](#)] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Dotzenrod, Sorvaag, and Unruh and Representatives Dockter, Drovdal, Froseth, Hatlestad, Headland, Kasper, J. Kelsh, Nathe, Owens, Ruby, Schmidt, and Weisz voted "aye." No negative votes were cast.

Chairman Cook invited comments by interested persons in attendance relating to bill draft [[15.0066.02000](#)], regarding the replacement of mill rates with property tax determination based on cents per thousand dollars of

taxable valuation. He said this bill draft has been under consideration by the committee and interested parties.

Mr. Bradley said the North Dakota Auditor's Association does not support the bill because it does not see a benefit. He said the association is also very concerned about the effective date. He said the entire system would need to be changed in every county, which would take at least two to three years.

Ms. Donnell Preskey, North Dakota Association of Counties, said the effective date is the major concern. She said a 2016 effective date would be more acceptable to county officials.

It was moved by Representative Ruby, seconded by Representative Kasper, and carried on a roll call vote that bill draft [15.0066.02000] be approved and recommended to the Legislative Management with the effective date amended to December 31, 2015. Senators Cook, Burckhard, Sorvaag, and Unruh and Representatives Dockter, Drovdal, Froseth, Hatlestad, Headland, Kasper, Nathe, Owens, Ruby, Schmidt, and Weisz voted "aye." Senator Dotzenrod and Representative J. Kelsh voted "nay."

Chairman Cook asked Mr. Walstad to review the changes to the bill draft [15.0054.03000] relating to sharing of confidential information by Job Service North Dakota and the Tax Department for consideration by the Department of Commerce. Mr. Walstad said representatives of Job Service North Dakota and the Tax Department reviewed the bill draft as previously considered by the committee. He said Job Service North Dakota and the Tax Department suggested some language changes that have been incorporated in this version of the bill draft. He said it appears Job Service North Dakota and the Tax Department have a greater level of comfort with the language in this version of the bill draft.

It was moved by Representative Headland, seconded by Representative Schmidt, and carried on a roll call vote that bill draft [15.0054.03000] be approved and recommended to the Legislative Management. Senators Cook, Burckhard, Dotzenrod, Sorvaag, and Unruh and Representatives Dockter, Drovdal, Froseth, Hatlestad, Headland, Kasper, J. Kelsh, Nathe, Owens, Ruby, Schmidt, and Weisz voted "aye." No negative votes were cast.

No further business appearing, Chairman Cook adjourned the meeting at 4:10 p.m.

John Walstad
Code Revisor

Samantha E. Kramer
Counsel

ATTACH:12