

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

POLITICAL SUBDIVISION TAXATION COMMITTEE

Wednesday, September 9, 2015
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Jason Dockter, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Jason Dockter, Larry Bellew, Craig Headland, Kathy Hogan, Lawrence R. Klemin, Ben Koppelman, William E. Kretschmar, Mike Lefor, Alisa Mitskog, Naomi Muscha, Mike Nathe, Nathan Toman, Robin Weisz; Senators Brad Bekkedahl, Randall A. Burckhard, Dwight Cook, Jim Dotzenrod, Tim Mathern, Jessica Unruh

Members absent: Representatives Mark A. Dosch, Gail Mooney

Others present: John Walstad, Legal Division Director, Legislative Council
See [appendix](#) for additional persons present.

Chairman Dockter said the committee would only be focusing on its study of tax incentives at today's meeting. He said the update the committee had intended to receive from members of the County Social Services Finance Working Group has been postponed until the committee's next meeting as that group had to reschedule its September 2, 2015, meeting to September 16, 2015. He said the committee's study of social services financing will be a large part of the committee's next meeting which will likely be a two-day meeting. He invited the committee's consideration for approval of the July 29, 2015, meeting minutes.

Senator Cook said there was one correction he would like the committee to consider. He said on page 10 of the July 29, 2015, meeting minutes he would like the language ", pertaining to incentives nearing expiring and the automation tax credit," removed from the text of the first motion made on that page. He said it was his intent in making that motion that the committee study all of the incentives recommended by Mr. Alan Anderson, Commissioner, Department of Commerce, in his previous testimony, not just the automation tax credit and those incentives close to expiring. He said the removal of this language will more clearly reflect the intent of his prior motion.

Chairman Dockter called on the Legislative Council staff for some additional corrections. The Legislative Council staff said she had been contacted by Ms. Maggie D. Anderson, Executive Director, Department of Human Services, regarding the testimony Ms. Anderson provided at the July 29, 2015, committee meeting. She said Ms. Anderson requested three edits to the portion of the minutes pertaining to her testimony. She said the first edit identified by Ms. Anderson was on page two of the minutes. She said Ms. Anderson requested the phrase "a central child support office in Bismarck and" be removed from the 10th sentence on page two as only regional child support offices were created in the transition Ms. Anderson had referenced. She said the second edit requested by Ms. Anderson was on page three of the minutes. She said Ms. Anderson requested the word "last" be changed to "2013" in the sixth sentence on page two to provide for additional clarity. She said the final edit requested by Ms. Anderson was on page four of the minutes. She said Ms. Anderson requested the ninth full sentence on page four be removed as it was a misstatement of supervisory roles.

It was moved by Senator Mathern, seconded by Senator Cook, and carried on a voice vote that the minutes of the July 29, 2015, meeting, as amended by the suggested changes, be approved.

ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Analysis Tools Used in Evaluating the Effectiveness of Tax Incentives](#). The Legislative Council staff reviewed three economic analysis tools commonly used in evaluating the effectiveness of tax incentives. She also reviewed the use of alternative sources, such as research agencies and consultants, in conducting a review of the effectiveness of tax incentives.

In response to a question from Senator Mathern, the Legislative Council staff said she was not aware of any national or international body that serves to assess the effectiveness or accuracy of various tools or models used to evaluate tax incentives.

In response to a question from Representative Klemin, the Legislative Council staff said Legislative Council does not currently possess any of the economic analysis tools previously mentioned. She said the Department of Commerce is in the process of assessing whether it will retain the modeling software it currently uses or contract for the use of an alternative type of software. She said under North Dakota Century Code Section 54-35-26, this committee has the ability to request services from various agencies, including the Department of Commerce, so it is possible that economic analysis derived from the use of a modeling tool may come from the Department of Commerce rather than the Legislative Council.

In response to a question from Representative Klemin, the Legislative Council staff said Section 54-35-26 provides a model for how the committee will be reviewing incentives and instructs the committee to take into consideration several factors when reviewing tax incentives. She said the memorandums the committee will be reviewing at today's meeting serve as the first step in the committee's review process. She said each memorandum explains the current workings of each incentive, the perceived intent of the Legislative Assembly in enacting each incentive, and the data and testimony suggested for committee review in studying each incentive. She said statements regarding the perceived intent of the Legislative Assembly in creating or altering each incentive were derived from legislative history and will be used as the base against which the committee will review data and testimony to determine if the incentive is fulfilling the purpose for which it was created.

Chairman Dockter said Section 54-35-26 essentially provides guidelines for the review of economic development tax incentives and lists agencies that may be used as a resource for receiving data and analysis related to the incentives selected for review.

Mr. Walstad said if the committee determines the resources available through other agencies do not meet the committee's needs for purposes of analyzing incentives, the committee has the option of requesting approval from the Chairman of the Legislative Management for funding for additional resources. He said there is no funding directly appropriated to this committee, as there is for the Taxation Committee in its review of enhanced oil recovery, but there is always some funding built into the budget for interim committees for any ad hoc items that might arise. He said the amount of funding is not unlimited but he wanted the committee to be aware of this option should the committee decide it wishes to obtain some independent analysis.

In response to a question from Representative Weisz, the Legislative Council staff said the Department of Commerce has been using Regional Economic Models, Inc. (REMI) to conduct economic analysis but the contract with REMI is currently up for renewal so the Department of Commerce has been assessing alternative options. She said she is not aware of whether the Department of Commerce has decided to select an alternative modeling tool. She said the committee may wish to have the Department of Commerce provide testimony at a later date.

Senator Cook said he attended a demonstration of REMI's software earlier this summer with Representative Toman and was able to view some of the features that product had to offer. He said he is not aware of the capabilities the Department of Commerce has through its current contract with REMI but thinks it would be beneficial for the Department of Commerce to provide the committee with a demonstration of how it currently uses the software.

Chairman Dockter requested the Legislative Council staff to extend an invitation to a representative of the Department of Commerce to provide a demonstration to the committee illustrating the features of this software.

In response to a question from Senator Cook, the Legislative Council staff said there is an upcoming deadline the committee must meet pursuant to the language provided in Section 54-35-26. She said by October 1, 2015, the committee must identify the incentives that will be reviewed over the 2015-16 interim, the data and testimony the committee will need to receive in order to review each of the selected incentives, and the perceived intent of the Legislative Assembly in enacting or modifying each of the selected incentives. She said the committee also has until October 1, 2015, to address a plan for reviewing the remaining incentives identified in Section 54-35-26 over the following two interims. She said the language in Section 54-35-26 does not require the committee to specify which incentives will be reviewed in each of the following two interims or the number of incentives that must be reviewed each interim. She said identification of a plan for purposes of meeting the deadline could be as generalized as a statement that an interim committee will continue reviewing the incentives identified in Section 54-35-26 that were not reviewed over the 2015-16 interim. She said the language in Section 54-35-26 requiring the identification of a plan was purposefully drafted in a general manner because it could not be known which interim committee would be assigned the review in each of the three interims or whether additional incentives may be added to the list over the course of the six-year review.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Confidentiality Statutes - Taxation](#). The Legislative Council staff said the committee requested this memorandum to provide for a listing of all of the confidentiality provisions relating to taxation that the committee may wish to review over the course of its study of tax incentives. She said the document provides confidentiality provisions relating to income, sales and use, and property tax and also contains provisions relating to applicable fines and penalties for improper disclosure of confidential information.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Summary of Mandatory and Discretionary Economic Development Tax Incentives for Purposes of Study Selection](#). The Legislative Council staff said the committee requested this memorandum to provide for a consolidated listing of the information distributed to the committee by the Tax Department and the Department of Commerce at the committee's prior meeting. She said those documents have been attached to the memorandum for the committee's reference. She said the memorandum separates the information provided by the Tax Department and the Department of Commerce into two separate charts. She said the first chart provides details on the incentives mandated for review pursuant to Section 54-35-26 and the second chart lists additional incentives that are within the committee's discretion to review. She said the data provided for each of the mandatory incentives listed in the memorandum includes data relating to the date each incentive was created and expires (if identified), the number of claimants utilizing each incentive, the most recent fiscal information pertaining to each incentive. She reiterated the October 1, 2015, deadlines provided in Section 54-35-26 and noted the manufacturing automation equipment credit, described on page five of the memorandum, has been mandated for review during the 2015-16 interim pursuant to 2015 Senate Bill No. 2340.

In response to a question from Representative Nathe, the Legislative Council staff said the number of claimants and the fiscal impact for coal severance and conversion tax exemptions, oil and gas gross production and oil extraction tax exemptions, and fuel tax refunds for certain users is not provided in the memorandum as this information was not included in the document previously provided by the Tax Department. She said this information is also not provided for those incentives created during the 2015 legislative session as these incentives were created too recently for there to be data available for review.

Chairman Dockter instructed the Legislative Council staff to request the Tax Department provide the committee with any available data related to these incentives at the committee's next meeting.

Chairman Dockter said there are 19 incentives that must be reviewed pursuant to Section 54-35-26 over the next six-year period and there are additional incentives the committee may consider studying.

In response to a question from Representative Headland, the Legislative Council staff said the next nine memorandums the committee will review provide a summary of the current operation of each incentive, the perceived intent of the Legislative Assembly in creating and altering each incentive, and the data and testimony required to conduct a review of each incentive. She said the legislative history relating to each incentive was reviewed to provide the summary of the perceived intent of the Legislative Assembly in creating or altering each incentive. She said the following nine memorandums correspond to the nine incentives the committee selected for review during the 2015-16 interim at its previous meeting based on the recommendations provided by the Department of Commerce. She said the committee will have the ability to make any modifications to the statements of perceived legislative intent and the itemization of data and testimony required to review each incentive as each of the memorandums are presented to the committee. She said final committee approval of the content of each memorandum will serve to satisfy the October 1, 2015, deadline requiring the committee to identify the perceived intent of the Legislative Assembly in creating each of the incentives selected for review during the 2015-16 interim and the data and testimony the committee intends to solicit when studying of each of the incentives selected for review during the 2015-16 interim.

Senator Cook said the committee has seen many instances in which the fiscal impact of an incentive is listed as "not reportable" due to less than five claimants utilizing the incentive. He said various states require claimants to disclose certain information as a condition of being awarded an incentive. He said the committee may wish to review this topic in greater detail as the committee conducts its review.

Chairman Dockter said this topic could be placed on the agenda for a future meeting.

In response to a question from Senator Mathern, the Legislative Council staff said the fiscal information provided by the Tax Department only accounts for the reduction in revenues resulting from the use of an incentive. She said the Tax Department generally only prepares static fiscal notes, which simply take into account the direct effects of an incentive. She said when looking at something like a sales tax exemption for a certain type of manufacturing plant, a fiscal note prepared by the Tax Department would only reflect the amount of revenue that may be lost as a

result of sales tax not being applied to certain purchases. She said the Tax Department does not prepare dynamic fiscal notes, which would take into account the indirect revenue effects that may result from the sales tax exemption. She said examples of these indirect revenue effects could include additional revenue generated from income tax paid by employees hired to work at a plant that expanded as a result of the sales tax exemption, or the amount of sales tax revenue generated from purchases made by those employees.

Representative Hogan said she is interested in reviewing incentives that have not been used in the last five years. She said the committee may wish to consider eliminating incentives that are not being utilized.

Chairman Dockter said he agreed that the committee may benefit from reviewing incentives falling into this category.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Automation Tax Credit](#). The Legislative Council staff said the memorandum provides a description of the incentive, the perceived goals of the Legislative Assembly in enacting or amending the provisions of the incentive, and the data and testimony necessary to conduct a review of the incentive.

Senator Cook suggested adding a 50-state survey of the automation tax credits available in other states to the data the committee should collect when reviewing this incentive. He also asked if the definition of a primary sector business was uniform throughout the Century Code and specifically in regard to the definition as it applied to state versus local programs.

Mr. Walstad said he believed the definition was stated in a uniform manner but had not conducted a review to be certain.

Chairman Dockter requested the Legislative Council staff review the definition of a primary sector business throughout the Century Code and provide the committee with an update regarding her findings at the committee's next meeting.

In response to a question from Senator Burkhard, the Legislative Council staff said the data to be collected regarding any negative impacts created as a result of the incentive may include any unintended consequences or undesirable effects resulting from the use of an incentive.

In response to a question from Senator Bekkedahl, the Legislative Council staff said the memorandum providing a chart of all of the mandatory incentives includes information regarding the year each incentive was created and identifies whether each incentive has a specified expiration date.

Representative Hogan asked if the committee needed to specify whether each of the selected incentives required only a basic fiscal analysis or whether a broader review, using a product such as REMI, would be required. The Legislative Council staff replied that the language provided in each of the memorandums regarding the collection of data on the incentive's fiscal impact was broadly stated to allow the committee flexibility in determining the depth of the fiscal analysis required for each incentive as the committee's review progresses. She said the committee may determine it wishes to take a more in-depth look at the fiscal impact of certain incentives based on the testimony or data received during its review. She said the committee may determine that some incentives require only a static fiscal review while others require a more dynamic fiscal review.

Chairman Dockter said this is something that can be evaluated on a case-by-case basis as the committee reviews each of the selected incentives. He said as the committee proceeds with motions to accept or reject the information and directives contained in each of the following memorandums, any proposed amendments to the content of the memorandums should also be specified in the motion.

It was moved by Senator Cook, seconded by Representative Hogan, and carried on a voice vote that the memorandum [17.9087.01000] be amended to include a 50-state survey in the list of data required to evaluate the incentive and the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Electrical Generating Facilities - Wind-Powered Sales Tax Exemption](#). The Legislative Council staff said the memorandum provides a description of the incentive, the perceived goals of the Legislative Assembly in enacting or amending the provisions of the incentive, and the data and testimony necessary to conduct a review of the incentive.

In response to a question from Representative Lefor, the Legislative Council staff provided examples of the information that may be provided in regard to data on the out-of-state impacts resulting from an incentive. She said this type of data could include information on an out-of-state company that may have been enticed to relocate to North Dakota as a result of the availability of an incentive or a company that may have initially been created in North Dakota as a result of the availability of early-stage incentives but then ultimately relocated out of state once that company became more established.

In response to a question from Senator Cook, the Legislative Council staff said this memorandum only addresses the sales tax exemption available to wind-powered electrical generating facilities as this was the only portion of the incentive recommended for review in the materials provided by the Department of Commerce, upon which the original motion was based. She said the memorandum does not pertain to sales tax exemptions for other electrical generating facilities. She said it would be relatively simple to amend the memorandum, should the committee so desire, to include information on the sales tax exemption for all electrical generating facilities. Senator Cook said it may be beneficial to address coal-powered facilities in light of recent actions by the federal Environmental Protection Agency impacting the coal industry.

Chairman Dockter said he agreed that the review should include the sales and use tax exemption provided to all of the power plants specified in Section 57-39.2-04.2.

Representative Headland expressed concerns regarding the amount of time the committee has to study incentives in terms of a decision to include a review of the sales tax exemption available to all electrical generating facilities. He said it may be better left to the Taxation Committee to address incentives relating to coal-powered facilities in light of the topics being studied by that committee.

Senator Unruh said the Taxation Committee has yet to address specific sales tax exemptions related to coal-powered electrical generating facilities and agreed with Chairman Dockter that information relating to the sales tax exemptions provided to all of these facilities might be intertwined and would be best studied together.

It was moved by Senator Cook, seconded by Senator Unruh, and carried on a voice vote that the memorandum [17.9093.01000] be expanded to pertain to all of the electrical generating facilities specified under Section 57-39.2-04.2, that a 50-state survey be included in the list of data required to evaluate the incentive, that the generation and lignite industries be added to the list of parties the committee intends to solicit testimony from during its review, and that the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Computer and Telecommunications Equipment Sales Tax Exemption](#). Prior to reviewing the memorandum, the Legislative Council staff said she received an email this morning from a representative of the Department of Commerce noting that the title of one of the incentives recommended for study on a chart previously provided by the department was misstated. She said the information provided in the email clarified that the Department of Commerce intended to reference the telecommunications infrastructure sales tax exemption, provided in Section 57-39.2-04.9, rather than the computer and telecommunications equipment sales tax exemption, provided in Section 57-39.2-04.3. She said if the committee wishes, the memorandum could be amended to address Section 57-39.2-04.9 rather than Section 57-39.2-04.3. She said as both sections provide for a sales tax exemption, the stated intent of promoting economic development would still apply to the incentive provided in Section 57-39.2-04.9. She said the data and testimony required to study the incentive would be the same data and testimony currently referenced in the memorandum.

It was moved by Senator Cook, seconded by Senator Bekkedahl, and carried on a voice vote that the memorandum [17.9102.01000] be amended to replace the explanatory and background information pertaining to Section 57-39.2-04.3 with information pertaining to Section 57-39.2-04.9, that a 50-state survey be included in the list of data required to evaluate the incentive, and the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Angel Fund Investment Tax Credit](#). The Legislative Council staff said the memorandum provides a description of the incentive, the perceived goals of the Legislative Assembly in enacting or amending the provisions of the incentive, and the data and testimony necessary to conduct a review of the incentive.

Representative Klemin said when the committee reviews this incentive it should consider adding board-managed limited liability companies to the list of entities that may form a qualified angel fund in light of the inclusion of this type of entity in the updated Limited Liability Company Act provisions that were enacted during the 2015 legislative session.

It was moved by Senator Cook, seconded by Senator Burckhard, and carried on a voice vote that the memorandum [17.9086.01000] be amended to include a 50-state survey in the list of data required to evaluate the incentive and the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Seed Capital Investment Tax Credit](#). The Legislative Council staff said the memorandum provides a description of the incentive, the perceived goals of the Legislative Assembly in enacting or amending the provisions of the incentive, and the data and testimony necessary to conduct a review of the incentive.

Representative Klemin said the amount claimed for this credit appears to be declining each year. He said he wonders if this decline is linked to the fact that individual and corporate income tax rates have decreased each legislative session.

Chairman Dockter requested that the Legislative Council staff invite a representative from the Tax Department to present information illustrating whether there appears to be a link between the declining use of income tax credits and the reduction in individual and corporate income tax rates.

In response to a question from Senator Cook regarding how investments by angel funds might qualify for seed capital investment tax credits, the Legislative Council staff replied that any credits or liabilities flow through in various ways depending on the type of entity investing in the angel fund and the manner in which the angel fund structures its investments. She said the Tax Department may be able to provide a more detailed illustration of how certain credits are passed through and claimed by various types of entities, especially when multiple types of credits are involved.

Chairman Dockter said it would be beneficial for the committee to receive more detailed information from the Tax Department when the committee begins its review of the seed capital investment tax credit and angel fund investment tax credit.

It was moved by Representative Klemin, seconded by Senator Cook, and carried on a voice vote that the memorandum [17.9090.01000] be amended to include a 50-state survey in the list of data required to evaluate the incentive and the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Agricultural Commodity Processing Facility Investment Tax Credit](#). The Legislative Council staff said the memorandum provides a description of the incentive, the perceived goals of the Legislative Assembly in enacting or amending the provisions of the incentive, and the data and testimony necessary to conduct a review of the incentive.

Representative Klemin said the use of this credit seems to be declining each year as well.

Senator Cook asked how a business becomes a qualified business and how many qualified businesses are currently in this state. In response, Mr. Anderson said he could provide the committee with the number of businesses that have qualified for the credit. Mr. Anderson reviewed the requirements for a business becoming a qualified business and said the Department of Commerce determines whether a business is a qualified business. He said the Department of Commerce could provide additional information on the process of becoming a qualified business.

Chairman Dockter requested the Department of Commerce provide this information to the committee at a future meeting.

It was moved by Senator Bekkedahl, seconded by Senator Mathern, and carried on a voice vote that the memorandum [17.9085.01000] be amended to include a 50-state survey in the list of data required to evaluate the incentive, that the Department of Agriculture be added to the list of parties the committee

intends to solicit testimony from during its review, and that the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Research Expense Tax Credit](#). The Legislative Council staff said the memorandum provides a description of the incentive, the perceived goals of the Legislative Assembly in enacting or amending the provisions of the incentive, and the data and testimony necessary to conduct a review of the incentive.

Representative Klemin asked what the definition of "qualified research expenses" was pursuant to Section 41 of the Internal Revenue Code [26 U.S.C. 41] as this definition was not provided in the memorandum. The Legislative Council staff replied that she had considered summarizing the federal definition of "qualified research expenses" and "base amount" within the memorandum but after reviewing the length of these definitions it did not seem feasible to summarize the information in any digestible manner within the memorandum. She said the text of the federal definitions span several pages of material that could be provided to the committee members for further review.

Chairman Dockter instructed the Legislative Council staff to provide the committee members with a copy of the federal definitions.

Representative Hogan said it appears that the use of this credit has not declined as sharply as the use of some of the other income tax credits the committee has reviewed.

Chairman Dockter said the main difference between this credit and those previously reviewed is the ability for this credit to be transferred to other taxpayers.

In response to a question from Representative Klemin, the Legislative Council staff said the transferable nature of this tax credit is not linked to any federal provisions.

Chairman Dockter said the decision of whether a credit will be transferable is left to the Legislative Assembly enacting or amending the credit.

It was moved by Representative Hogan, seconded by Representative Lefor, and carried on a voice vote that the memorandum [17.9089.01000] be amended to include a 50-state survey in the list of data required to evaluate the incentive and the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Wage and Salary Credit](#). The Legislative Council staff said the memorandum provides a description of the incentive, the perceived goals of the Legislative Assembly in enacting or amending the provisions of the incentive, and the data and testimony necessary to conduct a review of the incentive.

Chairman Dockter said this is another incentive that does not appear to be getting much use. He said part of the reason 2015 Senate Bill No. 2057 was passed was to allow for an assessment of which incentives are effective, which incentives are not being used, and which incentives should remain on the books. He said this incentive is a good example of an incentive that has been on the books since 1969 and is not being used very frequently.

Representative Nathe asked whether the committee should consider recommending the elimination of this credit at today's meeting.

Representative Klemin said the committee may not want to be too hasty in recommending the elimination of this credit prior to conducting a more in-depth review.

Senator Cook agreed and said the committee should undertake a thorough study of each of the incentives for which it makes any recommendations in order to give credibility to the process and ensure that committee members are prepared to explain the rationale behind any proposed changes that may be introduced as legislation during the 2017 legislative session.

Chairman Dockter agreed and said the committee needs to do its due diligence in reviewing each of the incentives it selects.

Representative Weisz said the reason this credit may not be utilized as frequently is because taxpayers receiving a property or income tax exemption as a new and expanding business may not qualify for this credit. He said the data may not indicate that few taxpayers meet the qualifications for this credit, but may rather indicate that taxpayers are simply opting to use a credit with more favorable provisions.

Senator Dotzenrod agreed and said provisions of the property and income tax exemptions for new and expanding businesses have been greatly expanded by the last few Legislative Assemblies which could account for a large number of taxpayers becoming disqualified to claim this credit.

It was moved by Senator Mathern, seconded by Senator Cook, and carried on a voice vote that the memorandum [17.9091.01000] be amended to include a 50-state survey in the list of data required to evaluate the incentive and the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Economic Development Tax Incentive Study - Microbusiness Income Tax Credit](#). The Legislative Council staff said the memorandum provides a description of the incentive, the perceived goals of the Legislative Assembly in enacting or amending the provisions of the incentive, and the data and testimony necessary to conduct a review of the incentive.

Representative Klemin said this credit seems to be used vary sparingly. He questioned whether the public was aware that this credit was available.

Representative Hogan said the committee may have a difficult time studying incentives having less than five claimants over the last few years.

Senator Mathern said the availability of credits and incentives are well publicized in materials generated by the Department of Commerce. He said information is available for those individuals who may be looking for it. He said the degree to which a credit is claimed may be linked more to whether a credit's provisions are workable for a certain taxpayer or whether a taxpayer is interested in disclosing the workings of its business to a particular government agency in order to claim the credit.

Representative Headland said the limitations imposed on a business in regard to the definition of an "economically viable small community" say a lot in explaining why this credit is not widely used.

Chairman Dockter agreed and said the scope of this credit is very narrow.

It was moved by Senator Mathern, seconded by Senator Bekkedahl, and carried on a voice vote that the memorandum [17.9088.01000] be amended to include a 50-state survey in the list of data required to evaluate the incentive and the memorandum, as amended, be approved as the basis for which the committee will review the incentive over the 2015-16 interim.

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled [Saleability and Transferability of Tax Credits](#). The Legislative Council staff said the memorandum was requested at the committee's previous meeting to provide information on the history of saleable or transferable tax credits in this state and provide an overview of the transferable features of angel fund credits and wind device credits in other states. She reviewed the history of transferable credits in this state and noted in her review of transferable credits in other states, transferable credits offered for angel fund investments seemed to be much more prevalent than credits offered for investments in wind energy devices. She said the transferable nature of credits for these devices seemed to be being phased out across the country.

Representative Klemin asked whether credits in this state allowing for transferability were currently being tracked. In response, Mr. Joseph Becker, Auditor III, Tax Department, said the Tax Department tracks these credits and reviews information including the identity of the transferor and transferee on forms remitted to the Tax Department. He said in regard to the research tax credit, a company would also have to be certified as a developing company before it could transfer credits.

Representative Klemin asked if information regarding transferability could be made available to the committee by the Tax Department. Mr. Becker said the Tax Department could provide this information to the committee.

Representative Headland said the research expense tax credit appears to be the only transferable credit and it does not appear that the credit was reviewed by a taxation committee prior to its enactment.

In response to a question from Senator Cook, the Legislative Council staff said information regarding the transferable nature of credits for wind devices was not included for those states in which date for installing a wind device in order to qualify for the credit has already lapsed, regardless of whether language relating to the transferable nature of credits for wind devices installed in prior years was still on the books.

Representative Headland said he believes the allowance of transferable tax credits is contrary to good tax policy.

Senator Cook said if income tax were eliminated, it would result in a large volume of earned tax credits going unused and essentially becoming worthless. He said the committee should be aware of the amount of unused credits that currently exist and what these unused credits mean to a business. He said the committee needs to understand the impact to a business's financial statement in the event unused credits would become worthless. He said this topic needs to be part of the committee's discussion.

Chairman Dockter agreed and said a business needs to show that information on its financial statements in order for investors to review it.

Chairman Dockter requested the Legislative Council staff prepare a memorandum to address this topic.

Mr. Walstad said there are potential effects that may result not only from the elimination of income tax but also from rate cuts. He said if you only have a specified number of years to carry forward unused credits, and a taxpayer's liability is reduced, there is potential for the taxpayer to lose the value of those unused credits.

In response to a question from Senator Dotzenrod, the Legislative Council staff said the expiration of transferability features that were previously allowed on certain credits would not negatively impact secondary transfers because even when those provisions were in effect, the credit could only be transferred one time. She said the transferee could not subsequently transfer the credit to another taxpayer.

In response to a question from Senator Cook, the Legislative Council staff said although the number of incentives listed on the charts previously provided by the Tax Department and the Department of Commerce may appear to be different from the number of incentives listed on the memorandum provided by the Legislative Council, all of the credits noted in the Tax Department's materials and the Department of Commerce's materials have been accounted for in the memorandum prepared by the Legislative Council. She said the memorandum simply breaks those incentives out into a mandatory list and a discretionary list for purposes of the review directed under Section 54-35-26.

In response to a question from Senator Cook, Mr. Walstad said the credits contained within the discretionary list were purposefully excluded from the list provided in Section 54-35-26.

Senator Cook suggested the committee expand the list of incentives to be studied over the 2015-16 interim to include all income tax incentives.

Chairman Dockter explained the parameters of the committee's selection of a plan to study incentives over the next two interims. He said the committee is not limited to studying a certain number of incentives in any one interim. He said the committee has the discretion to select the number of incentives it wishes to study. He said the only requirement is that all of the mandatory incentives listed in Section 54-35-26 are reviewed over a six-year period.

It was moved by Senator Cook and seconded by Representative Headland that the committee study all income tax incentives, whether listed as mandatory or discretionary, over the 2015-16 interim.

The Legislative Council staff reminded the committee that the October 1, 2015, deadline specified in Section 54-35-26 does require the committee to identify the perceived legislative intent of enacting all of those income tax incentives and the data and testimony that will be required when reviewing those incentives so these items would have to be generally specified within the motion if the committee does not intend to meet again prior to October 1, 2015, to individually walk through each of those incentives.

In response to a question from Senator Dotzenrod, the Legislative Council staff said the income tax incentives specified within Senator Cook's motion would include two income tax incentives listed on page eight of the memorandum identifying discretionary incentives as well as various additional incentives identified within the mandatory incentives specified for review under Section 54-35-26.

In response to a question from Senator Mathern, Senator Cook said the intent of his motion was to add to the list of incentives the committee had already selected for review during the 2015-16 interim.

In response to a question by Chairman Dockter, the Legislative Council staff said the motion would entail the addition of the certified nonprofit development corporation investment credit; the geothermal, solar, wind, or biomass energy device tax credit; renaissance zone income tax credits and exemptions; biodiesel fuel production facility construction or retrofit credit, biodiesel fuel blending credit, and biodiesel fuel equipment credit; internship program credit; workforce recruitment credit; soybean or canola crushing facility construction or retrofit credit; the new or expanding business exemption; and the new jobs credit from income tax withholding for purposes of review during the 2015-16 interim.

Senator Unruh said the number of incentives the committee is looking to review may seem aggressive but noted the committee has some catching up to do as this is the first time some of these incentives have been reviewed. She said it makes sense to study income tax incentives as a group.

The motion was amended and it was moved by Senator Cook, seconded by Representative Headland, and carried on a voice vote that the committee study all income tax incentives over the 2015-16 interim, whether mandatory or discretionary, that the same data and testimony listed as a base set in the previous memorandums be listed as the data and testimony to be solicited in reviewing income tax incentives, and that the perceived intent of the Legislative Assembly in enacting income tax incentives be listed as an intent to encourage economic development.

Chairman Dockter instructed the Legislative Council staff to prepare corresponding memorandums for each of the additional incentives selected by the committee for study during the 2015-16 interim and reiterated the consensus of the committee that the remaining incentives listed in Section 54-35-26 be reviewed over the following two interims. He said it is his intention that the committee will be holding two-day meetings going forward considering the volume of information the committee will be reviewing.

No further business appearing, Chairman Dockter adjourned the meeting at 1:55 p.m.

Emily L. Thompson
Counsel

ATTACH:1