

**1999 HOUSE FINANCE AND TAXATION**

**HB 1051**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1051

House Finance and Taxation Committee

Conference Committee

Hearing Date January 11, 1999

Tape Number	Side A	Side B	Meter #
1	x		1 - Side B 0 - 25
		✓	
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

JOHN WALSTAD, LEGAL COUNCIL, LEGISLATIVE COUNCIL - Appeared at the hearing to explain the bill. See attached interium committee report. The interium tax committee recommended HB 1051, 1052, 1053, and 1054. Mr. Walstad gave a report of all of these bills at once, see attached reports.

REP. BEN TOLLEFSON, DIST. 38, MINOT, Testified in support of the bill. He stated he was a member of the interium tax committee where this bill originated. The origination of the bill probably came out as a result of somewhat of a tax revolution that we all recognize is happening here in the state of North Dakota. Property taxes are going up and we have a great concern for that. It seems there are properties exempt from taxes and they should be eligible to pay for support of services, such as emergency, fire, and police protection, those services that are



normally taxed to any property taxpayer in the community. This bill does not include taxing churches.

CONNIE SPRYNCZYNATYK, EXEC. DIR., LEAGUE OF CITIES, Testified in support of the bill. She addressed issues of the mechanics of the bill. She presented a "Hog House" amendment to the committee members and explained what it did. See attached copy.

REP. GROSZ Stated, HB 1051 states you may, and your hog house amendment states you must, I think you put us into the policy of it, and that concerns me. I think the intent of the taxation committee was to allow for the ability to do it. Now this mandates that it be done. I don't think we wanted to state that the charitable organizations had to be taxed. We want to give cities the ability to do it, we didn't want to say they had to do it.

CONNIE SPRYNCZYNATYK, Stated they would be happy to look at alternative language. We wanted to take away the unpredictability of what they would be paying year by year. This would take care of that.

BILL WOCKEN, CITY ADM. OF THE CITY OF BISMARCK, Testified on his own behalf in support of the bill. He felt the amendments presented would lend to the mechanism of the bill to function more cleanly. The costs for providing services in a city, are what we are trying to get a handle on. These costs are considerable. Bismarck is between 35% and 40% exempt, according to our calculations. You can understand this puts considerable burden on properties in the city.

REP. WARNER There seems to be some concern in my area that hospitals are using an umbrella of exemptions to exclude taxation of health clubs, very profitable clinics and some

other things, what entity makes the distinction as to whether a particular thing is charitable or for profit?

BILL WOCKEN Deferred the question.

BEN HUSHKA, CITY ASSESSOR, FARGO, Testified in support of the bill. He commented that the mechanics of the bill were cumbersome to administer.

ARNOLD THOMAS, PRES. OF NORTH DAKOTA HEALTH CARE ASSN. Testified in opposition of the bill. See attached written testimony. Attached also are definitions and measurement tools of the financial conditions of the hospitals of North Dakota compared to the national average and also the margin performance of hospitals in North Dakota by categories.

REP. MICKELSON What about the parking garages, is that covered under the umbrella of the nonprofit?

ARNOLD THOMAS Deferred the question.

REP. GROSZ, Referred to Mr. Thomas' written testimony regarding reasons hospitals should not be required to pay property tax. He felt that all business owners contribute to various organizations, yet they are required to pay property taxes.

REP. MICKELSON Asked how the 5013C's make a petition to be exempt, do they do it annually?

ARNOLD THOMAS That is my understanding.

REP. MICKELSON In the city of Minot, could the hospitals be exempt from property taxes on every square foot of land they own?

ARNOLD THOMAS The burden would be on the facility to show why it should not be taxed.

REP. SCHMIDT Asked how many hospitals were for profit.

ARNOLD THOMAS Two are for profit.

REP. FROELICH Referred to written testimony stating Indians are not taxed. He stated Indians living off of the reservation, are taxed.

ARNOLD THOMAS Stated that was taken from a section of the code, regarding properties that currently are exempt.

REP. GRANDE Asked whether there is something stopping cities at this point, from working with hospitals for a payment schedule or agreement for assessments?

ARNOLD THOMAS We find no one from the cities seeking assistance, there are some contributions, that are used for taxes.

SHELLY PETERSON, PRESIDENT OF THE NORTH DAKOTA LONG TERM CARE ASSN

Testified in opposition of the bill. See attached written testimony, plus a list of nursing facilities showing reimbursement they have lost either to an occupancy limitation or a limit they are exceeding.

REP. MICKELSON Asked if there were any for profit nursing facilities.

SHELLY PETERSON There are five for profit facilities, Minot, Fargo, Carrington, Jamestown, & Hettinger. The rest are individually owned, or corporate owned.

CHRISTOPHER DODSON, EXEC. DIR. OF THE NORTH DAKOTA CATHOLIC

CONFERENCE, Testified in opposition. See written testimony.

REP. GROSZ Stated, the way I read the bill, 10% goes on the ballot for a vote.

CHRISTOPHER DODSON As I read the bill, as you go through the process, it starts with a petition, the only way it stops the process thereafter, is if there is a protest after the resolution is passed.

BRENDA DISSETTE, EXEC. DIR. OF THE NORTH DAKOTA ASSOCIATION OF

NONPROFIT ORGANIZATIONS (NDANO), Testified in opposition of the bill. See attached written testimony.

NORMAN STUHMILLER, REPRESENTING THE PROJECT DIRECTORS OF NORTH

DAKOTA, Testified in opposition of the bill. These people are charged with keeping the senior centers going in North Dakota. The senior centers are more than just a place to meet, for some of the older people, that is the only entertainment they have. An extra financial burden on them would probably threaten the very existence of the senior centers.

JOE FARRELL, MCCABE UNITED METHODIST CHURCH, Testified in opposition of the bill. He stated in reading the Section 8 , I interpret it that churches would be involved on this.

REP. BELTER Stated this is not intended to tax churches.

STEVE SKAUGE, HIT, Inc., Mandan, Testified in opposition of the bill. He felt they are being singled out in this bill. He stated the majority of the income comes from the Department of Human Services, therefore, any income goes back to the Department of Human Services.

CHARLES BISNETT, CEO, PRIDE, INC. Testified in opposition of the bill. Stating all of their funding comes from the Department of Human Services. There are no budget increases to pass on in order to pass on to compensate for this. If this were to go through, the money would have to be paid through the room and board of the people who live in the group homes. There are a few for profit group homes in the state, those group home operators are actually reimbursed above and beyond our cost.

With no further testimony, the hearing was closed.

COMMITTEE ACTION Tape #2, Side A, Meter # 10.9 - 36.3 1-11-99

Committee members had a lengthy discussion regarding tax exempt properties.

REP. NICHOLAS - He stated it was a struggle to keep the doors open of the hospital in Cando and they would not be able to withstand the cost of property taxes.

REP. WIKENHEISER Stated the problems were the same in Linton, and that they have to do fund raisers sometimes just to help out.

REP. HERBEL Stated if this bill did pass, it would still take the vote of the people in the community to tax themselves.

REP. GROSZ Felt everyone was confused, all this bill is, is a way for the local community to decide what they need to do. Maybe a hospital could afford the property taxes but the nursing home cannot, this is a way for one to pay and one does not have to pay. We have a hospital in Turtle Lake, I don't foresee for one minute, that the city would put a tax on it. None of these small towns will. I don't see where all of the charitable organizations will be taxed, some of them should be.

BARRY HASTI, OFFICE OF THE STATE TAX COMMISSIONER, Appeared before the committee to answer questions. This is an assessment rather than a property tax, under Article 10 Section 5, which grants absolute exemption to charitable properties from taxation. A special assessment is something different. Because it is a special assessment, it would not enter into the mill levy calculation of the state foundation for schools.

REP. BELTER Decided to hold the bill awhile and allow committee members to do some more research on the bill and check with their constituents.

COMMITTEE ACTION Tape #1, Side A, Meter #21

REP. WINRICH Submitted amendments to the bill and explained them to the committee.

This amendment changes the first sentence of this Sec. 40-22.2-02 and simply says that a municipality of 15,000 population or more may create one of these special assessment districts.

The 15,000 is completely arbitrary, if someone believes the threshold should be something else it would be acceptable.

The question was asked, how many cities would this affect. Rep. Winrich offered to get that information.

The bill was held until a later date.

COMMITTEE ACTION Tape #1, Side B, Meter 32.1

REP. WINRICH Gave information regarding the amendment he proposed in regard to population of the larger cities in North Dakota and their ability to create and alter a special assessment district by ordinance. His amendment used a 15,000 population and he stated maybe 10,000 population would be better.

REP. GROSZ also presented amendments prepared by the Legislative Council which would allow ten percent of the people to direct the body of the commission to put the measure on the ballot where it would then take the majority of the voters to establish a special assessment district. The governing body can do it on their own, but this would be another way to do it.

REP. GROSZ Made a motion to adopt these amendments.

REP. GRANDE Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. WINRICH Made a motion to adopt his amendments with the change of population from

15,000 to 10,000. REP. FROELICH Second the motion. MOTION FAILED.

REP. WARNER Made a motion for a DO NOT PASS AS AMENDED.

REP. NICHOLAS Second the motion. MOTION CARRIED

11 Yes      4 No      0 Absent

REP. KROEBER Was given the floor assignment.

Please type or use black pen to complete

Date 1-13-99

Roll call vote # 1

### 1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. H.B 1051

House HOUSE FINANCE & TAX Committee

Subcommittee on \_\_\_\_\_

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do not pass as amended

Motion Made By Rep. Warner Seconded By Rep. Nicholas

Representatives	Yes	No	Representatives	Yes	No
BELTER		✓	WINRICH		✓
RENNERFELDT	✓				
CLARK	✓				
FROELICH		✓			
GRANDE	✓				
GROSZ		✓			
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 11 4  
(Yes) (No)

Absent 0

Floor Assignment Rep. Kroeber

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS



**REPORT OF STANDING COMMITTEE**

**HB 1051: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1051 was placed on the Sixth order on the calendar.

Page 1, line 15, after "or" insert "upon presentation to" and replace "shall" with "of a petition to"

Page 1, line 16, remove "upon submission to the governing body of a petition for that purpose"

Page 1, line 18, after "election" insert ", the governing body shall place on the ballot at the next regular or special city election the question of establishing a special assessment district under this chapter. Upon approval by a majority of qualified electors of the city voting on the question, a special assessment district under this chapter is established"

Renumber accordingly

**1999 TESTIMONY**

**HB 1051**

competition. The CCMH for North Dakota was relatively stable at \$8.29 in 1991 and \$8.32 in 1996. Other states in the region have experienced declines in CCMH because of importation of subbituminous coal from Wyoming at a greatly decreased cost. The CCMH in Nebraska has decreased from \$8.72 in 1991 to \$7.88 in 1996. Each state in this region has experienced a decrease in CCMH from 1991 to 1997 except North Dakota, which has experienced an increase of 5.7 percent. This compares with decreases of 34.9 percent for Nebraska, 33.1 percent for Missouri, 28.3 percent for South Dakota, and 19.5 percent in the national average CCMH.

Lignite productivity has remained stable from 1992 to 1996. During that time period productivity for subbituminous coal has increased 49.1 percent, leading to a cost reduction of 21.3 percent. Increased productivity in subbituminous coal is attributable to thicker seams of coal, less overburden to remove and replace, larger mines, and improved equipment for subbituminous mining operations.

Another very significant edge for subbituminous coal competitiveness has been deregulation of rail rates, which has substantially reduced shipping costs for coal. Unit trains increased the number of tons that may be shipped. Greater density of track and improved rail technology have also increased the ability to ship coal.

Dr. Ramsett said it is important to remember that North Dakota tax and regulatory policy for the coal industry is not what has created the current economic problems faced by the lignite industry. He said price reductions in subbituminous coal and transportation costs have been so significant that they are responsible for the competitive crisis faced by the industry. He said these events have focused attention on taxation policy because close competitive pricing of coal and electricity produced from coal depends on several variables and very small pricing differences spell success or failure in competition in the open market.

Dr. Ramsett said the continued reductions in the price of delivered subbituminous coal have made it feasible to burn subbituminous coal in North Dakota power plants. He said this fact must be remembered in North Dakota coal taxation and regulatory policymaking. He said North Dakota tax policy was established based on a coal industry that mines lignite coal at the generation plant and produces electric power for sale. He said continuation of current trends will result either in a gradual loss of market share for the electric utility industry or increased use of subbituminous coal in North Dakota power plants. He said either result would cause a reduction in mining of lignite coal in North Dakota. Dr. Ramsett said it might make sense to shift reliance from the coal severance tax to a tax on electric power production, which would generate tax revenues whether the source of generation is lignite or subbituminous coal.

## Testimony

North Dakota Lignite Energy Council representatives said Dr. Ramsett's report underscores that the lignite industry is in a fiercely competitive war in the marketplace. Because Dr. Ramsett's report was received late in the interim, Lignite Energy Council representatives made no recommendation to the committee but stated their intention to work with the Governor, legislators, political subdivisions, and the industry to develop a legislative approach for consideration during the 1999 legislative session.

Lignite Energy Council representatives reviewed the economics of using Wyoming coal in North Dakota. The price of Wyoming coal is \$3.12 per ton compared to \$10.56 per ton for lignite at the plant. The Wyoming coal would be subject to transportation costs of \$8.02 per ton plus the new North Dakota sales tax for imported coal of \$1.02 per ton. This comparison indicates a total cost of Wyoming coal of \$12.16 per ton versus a cost of \$10.56 per ton for lignite. The fact that a ton of lignite is less expensive may be misleading. A more realistic measure of actual cost is converting the cost of coal to a price per million BTUs produced. On this basis, the cost of North Dakota lignite is 78 cents per million BTUs compared to 72 cents per million BTUs for Wyoming coal delivered to the Leland Olds Station in North Dakota. Given this comparison, subbituminous coal is not merely competitive but actually lower in price than lignite coal for burning in North Dakota power plants. Another significant consideration is that subbituminous coal burns with substantially lower levels of sulfur dioxide and nitrate oxide, which means that blending of subbituminous coal with lignite coal for burning in the future may become environmentally significant if air standards become more stringent.

## Conclusion

The committee makes no recommendation regarding the lignite industry study.

## CHARITABLE ORGANIZATIONS' PROPERTY TAX EXEMPTION STUDY

### Background

#### Constitutional and Statutory Provisions

The Constitution of North Dakota provides in Article X, Section 5 that ". . . property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation."

The study resolution focuses only on the charitable organization property tax exemption under NDCC Section 57-02-08(8). North Dakota Century Code Section 57-02-08(8) provides an exemption for:

All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity,

together with the land actually occupied by such institutions not leased or otherwise used with a view to profit . . . .

Most property tax exemptions provided by the Legislative Assembly do not apply to land. The Constitution of North Dakota, Article X, Section 5 provides that ". . . The legislative assembly may by law exempt any or all classes of **personal property** from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. . . ." (emphasis added) This constitutional authority of the Legislative Assembly does not include providing an exemption for land upon which buildings are located. However, the same section of the constitution provides that the "property" used exclusively for charitable purposes shall be exempt from taxation. Because this provision is not limited to personal property, it appears both real and personal property of charities is intended to be exempted by the constitutional provision.

### Unity of Ownership and Use

The statutory requirement that buildings and land, to be exempt, must be property "belonging to" institutions of public charity requires that the property must be owned by the institution of public charity to be eligible for the exemption and ownership by an individual renders property ineligible for the charitable property tax exemption. Vacant lots owned by institutions of public charity are not exempt because they are not "actually occupied" by the charitable institution.

In *Riverview Place, Inc. v. Cass County*, 448 N.W.2d 635 (N.D. 1989), the Supreme Court of North Dakota said:

[T]he determination of whether an institution falls within the exemption is, essentially, a two-step process in which it must be determined "whether the organization claiming the exemption is in fact a charitable one, and whether the property on which the exemption is claimed is being devoted to charitable purposes." . . . ownership of the property in question by an institution of public charity does not, by that fact alone, exempt the property from taxation . . . it is the **use** made of the property . . . which determines whether the property is exempt from taxation. [emphasis in text] The property's use must be devoted to charitable purposes and it must actually be used in carrying out the charitable purposes of the organization claiming the exemption.

### Use With a View to Profit

In *Riverview Place*, the Supreme Court of North Dakota said:

. . . When a charitable organization charges a fee for its services and operates at a small net profit which is reinvested back into the

organization's charitable operations, those facts do not automatically disqualify the entity's property from an exemption on the basis that it was operated "with a view to profit," as the concept of charity encompasses "something more than mere almsgiving" and therefore a "benevolent association is not required to use only red ink in keeping its books and ledgers."

The following conclusions have been reached in application of the exemption by the Attorney General and the Tax Commissioner:

1. Only the amount of land that is reasonably required for a site for the buildings and improvements used for charitable purposes is eligible for the exemption. Excess land used to pasture cattle is "used with a view to profit."
2. The meaning commonly given to "not used with a view to profit" is that no individual stockholder or investor will receive any kind of profit or gain or dividend from the operation of the charity. It does not mean that the charity cannot make some type of charge for certain services.
3. Occasional rental of property owned by a public charity and rented for nonexempt purposes does not destroy the tax-exempt status of the property.
4. If a charitable organization leases a building to another charitable organization at rent substantially below market rental rates so as to constitute financial assistance to the lessee charitable organization, then a charitable use by the lessor can be established.
5. A used clothing store operated by a public charity is not exempt because it is used for profit rather than the charitable uses of the charitable institution.

### Valuation of Exempt Property of Charitable Organizations

For many years, state law has required valuation by assessment officials for all exempt property. However, assessment officials have generally not assessed that property. The reason given is that they believe it is more productive to devote limited time and resources to valuation of taxable property. For this reason, only a limited amount of information has been available from a few jurisdictions on values of exempt charitable property.

In 1995 Senate Bill No. 2081, the Legislative Assembly provided a statutory mechanism to allow the growth in tax-exempt property to be reflected in the amount that may be levied by political subdivisions beginning in 1999, under the reasoning that expanded amounts of exempt property require additional services from local governments and levying authority is required to meet the increased demand. After a 1997 amendment, local assessment officials will be required to establish valuations for property exempted from taxation as

new or expanding businesses, improvements to property, property of institutions of public charity, new single-family residential or townhouse or condominium property, property used for early childhood services, or pollution abatement improvements. These valuations must be in place for taxable year 1999.

### **Acquisition of Agricultural Land by Nonprofit Organizations**

The Governor vetoed 1997 Senate Bill No. 2385, which would have prohibited any nonprofit corporation from acquiring more than 16,000 acres of land in North Dakota. Proponents of this legislation pointed out the potential damage to tax bases of political subdivisions when large amounts of property are removed from the tax rolls and the loss of local economic activity when agricultural land is removed from production. The Governor stated in his veto message that these are valid public policy concerns. The Governor stated that he had initiated a process to carefully consider this issue, and one of the main objectives of this process is to develop agreement regarding "how much is enough" for entities, such as the Nature Conservancy, North Dakota Wetlands Trust, United States Fish and Wildlife Service, and other organizations.

### **Legal Basis for Limiting Land Acquisition**

Attempts to limit alienation and acquisition of property require examination of legal authority regarding the power of states to limit the amount of property that may be acquired by nonprofit organizations.

The 14th Amendment to the United States Constitution provides in part that state law may not deprive any person of life, liberty or property, without due process of law.

It is necessary to balance the unfettered right to ownership and use of property against the public interest. There are situations in which the interest of the general welfare of the public will outweigh the objectives of an individual or corporation in ownership or use of property. Although there is no court decision on the precise issue of whether a state may limit the acreage of property that may be owned by a nonprofit organization, it appears from existing legal authority that:

1. The due process clause of the 14th Amendment of the United States Constitution protects the right to acquire, possess, and use property.
2. Corporations are entitled to protection of the due process clause in their property rights.
3. The constitutional right of property is not absolute and is subject to restraint under the exercise of the police power.
4. In reviewing exercise of the police power, courts will not substitute their judgment for that of the legislature unless it clearly appears that the actions of the legislature have no just foundation in reason or necessity.

5. The legislature may not, under the guise of the police power, arbitrarily interfere with private property or impose unusual or unnecessary regulations on it.

In a challenge to the North Dakota corporate farming law, the United States Supreme Court upheld the authority of North Dakota to exclude corporations from ownership of farm property. The United States Supreme Court said "the Fourteenth Amendment does not deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it." *Asbury Hospital v. Cass County*, 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6, (1945).

Although no discussion of the due process clause was included, the United States Supreme Court upheld an Act of Congress prohibiting religious and charitable corporations from acquiring or holding real estate exceeding a specified value in *Church of Jesus Christ of Latter Day Saints v. United States*, 136 U.S. 1, 10 S. Ct. 792, 34 L. Ed. 478, (1890).

Questions may arise about the right of a landowner to freely choose the party to whom the owner wishes to convey property. It has been held that the owner of property does not have a fundamental right to freely alienate property. *Northwestern Life Insurance Company v. Commodore Cove Improvement District*, 678 F.2d 24 (5th Cir. 1982).

### **State Limits on Charitable Property Tax Exemptions**

Property tax exemptions originated at a time when churches conducted most educational and charitable activities. Because these activities were operated by churches and relieved government of the cost of performing some services or obligations, there was little controversy when property tax exemptions were written into states' constitutions and laws. As other organizations began to offer these services, exemptions were extended to these new activities. However, modern operation of charitable organizations has changed so that they sometimes compete with businesses run on a for-profit basis. A 1990 United States Government Accounting Office report prepared for the House Select Committee on Aging noted these changes and observed that nonprofit hospital goals most often relate to increasing the share of patients within market areas, mirroring the goals of investor-owned institutions. Several observers have suggested that granting and retaining charitable exemptions in the modern political environment have more to do with political clout than benefits to the public and government. The changing nature of charitable organization operation is one of the factors that led assessment officials to more closely scrutinize application of exemptions. Another factor leading to increased scrutiny of claims for exemptions is the proliferation in tax-exempt real property and resulting tax burden shifted to other taxpayers, who voice growing displeasure with property tax levels.



## 1985 Court Decisions

The Supreme Courts of Utah and Pennsylvania decided cases in 1985 which gained national attention regarding property tax exemption application for hospitals. The Utah Supreme Court (*Utah County v. Intermountain Health Care, Inc.*, 709 P.2d 265 (1985)) concluded that two hospitals whose exempt status had been challenged by local assessors lacked sufficient charitable attributes to qualify for property tax exemption. The Pennsylvania Supreme Court (*Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (1985)) concluded that a jointly owned hospital support facility was not an institution of purely public charity. The Pennsylvania decision involved application of a sales tax exemption, but the same standards apply to property tax exemptions in Pennsylvania so the decision meant the facility lost its exempt property tax status.

The Utah Supreme Court modified a six-factor standard from the Minnesota Supreme Court (*North Star Research Institute v. County of Hennepin*, 236 N.W.2d (1975)) and laid out the factors to be weighed in determining whether a particular institution is using its property exclusively for charitable purposes.

The Pennsylvania case did not involve a hospital. The Hospital Utilization Project was established by an association of hospitals to prepare a statistical abstract of patient information for all the hospitals in the area. The court found the project not to be charitable in nature. The court established criteria to determine that an entity is a purely public charity if it:

1. Advances a charitable purpose;
2. Donates or renders gratuitously a substantial portion of its services;
3. Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
4. Relieves the government of some of its burden; and
5. Operates entirely free from private profit motive.

## Developments in Utah

After *Intermountain Health Care*, the Utah hospital industry prevailed upon the legislature to propose a constitutional amendment specifically granting a property tax exemption for nonprofit hospitals and nursing homes. Despite an extensive campaign by nonprofits, the measure was defeated by the voters in 1986.

A 1986 decision of the Supreme Court of Utah supplemented the guidelines from *Intermountain Health Care*. The Utah Tax Commission found that the guidelines after the court decisions did not produce objective standards to apply to particular fact situations. The Tax Commission conferred with county assessors, other county representatives, representatives of nonprofit hospitals and nursing homes, and representatives of for-profit hospitals and conducted a series of public hearings. The Tax Commission adopted standards for determining applicability of property tax exemptions for

hospitals and nursing homes and the standards were reviewed and approved by the Utah Supreme Court. The six standards adopted are as follows:

1. The institution must be organized on a nonprofit basis and the property in question must be dedicated to its charitable purpose.
2. The institution must demonstrate that net earnings and donations do not inure to the benefit of any private shareholder or individual.
3. The institution must provide open access to medical services regardless of race, religion, gender, or ability to pay and must provide evidence of its efforts to inform the public of its open access policy and of the availability of services for the indigent.
4. The institution must maintain a "charity plan" and must have a governing board consisting of a broad-based membership, operate in an open atmosphere, and meet at least annually to address the needs of the community.
5. The institution must enumerate and total various ways in which it provides unreimbursed service to the community according to specified measurement criteria. The value of unreimbursed care to indigent patients must be measured by the hospital's normal billing rate, reduced by the average of reductions provided to all patients who are not covered by government entitlement programs, plus expenses directly associated with special indigent clinics. The total of unreimbursed service must exceed for each year what would otherwise be the institution's property tax liability for the year.
6. Satellite facilities of an institution are entitled to an exemption if it is shown that these facilities enhance the institution's charitable mission.

## Developments in Pennsylvania

Pennsylvania experienced 12 years of litigation in the wake of *Hospital Utilization Project*. Assessment officials and representatives of charitable organizations have been involved in frequent disputes over application of the five-point standards announced by the Pennsylvania Supreme Court in the *Hospital Utilization Project*. The Commonwealth Court of Pennsylvania has issued a series of decisions denying exemptions for hospitals, nursing homes, private schools, a religious publishing company, a residential program for troubled youth, and a Head Start program. In an effort to end the cycle of litigation and uncertainty, Pennsylvania charities sought a legislative solution that would provide clear, objective standards for determining what is an institution of purely public charity.

Pennsylvania 1997 House Bill No. 55 was passed and was signed by the Governor on November 26, 1997. The bill established five detailed criteria to determine what qualifies as a purely public charity:

1. The institution must advance a charitable purpose. This criterion is satisfied if the institution is organized and operated primarily to fulfill any of six listed purposes.
2. The institution must operate entirely free from private profit motive. Without regard to whether the institution's revenues exceed expenses, this criterion is satisfied if four listed criteria are met.
3. The institution must provide a community service by donating or rendering gratuitously a substantial portion of its services. This criterion is satisfied if the institution benefits the community by meeting one of seven detailed standards.
4. The institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity. "Legitimate subjects of charity" is defined as individuals unable to provide themselves with what the institution provides for them. The bill specifically disqualifies any organization not recognized as exempt under Section 501(c)(3) of the Internal Revenue Code and certain institutions otherwise qualified under Section 501(c)(3) of the Internal Revenue Code.
5. The institution must relieve the government of some of its burden. This criterion is satisfied if the institution meets any one of six criteria.

The bill provides a rebuttable presumption of exemption for institutions that were exempt under prior law but, for institutions having annual program service revenue of \$10 million or more, the presumption applies only if the institution has a voluntary agreement with a political subdivision. A voluntary agreement consists of making voluntary contributions to a political subdivision in the nature of payments in lieu of taxes.

The bill states that it is the policy of the State of Pennsylvania that institutions of purely public charity may not use their tax-exempt status to compete unfairly with small business. The bill prohibits an institution of public charity from funding, capitalizing, guaranteeing indebtedness for, leasing obligations of, or subsidizing a commercial business unrelated to the institution's charitable purpose. A broad range of exceptions are provided for a commercial business intended only for use of employees, staff, alumni, facility, members, students, clients, volunteers, patients, or residents or if the commercial business results in incidental or periodic sales rather than permanent and ongoing sales.

### **Committee Considerations**

A North Dakota Long Term Care Association representative said 90 percent of the 88 long-term care facilities in the state are operated on a nonprofit basis. The representative said the association recognizes the benefits of services provided by political subdivisions. The association representative said it should be remembered

that payment of property taxes, if required by law, might not be allowed from some funds received by nursing homes, and if property taxes are to be paid, state reimbursement to nursing homes may have to be increased accordingly.

Assessment officials expressed concerns about the charitable organizations exemption. One difficulty is determining whether property qualifies and another is dealing with public concerns about possible unfair advantages exempt property provides in competing with taxable property. Assessment officials described the statutory exemption as requiring a great deal of legal interpretation, which can result in differences in administration within and across jurisdictions. Another growing problem is how to approach assessment for hospitals, YMCAs, and other organizations providing an expanded range of services in recent years. These expanded activities generate complaints from private businesses about unfair competition being fostered by a property tax exemption. Assessment issues can become extremely complicated when a property is used for charitable purposes and nonexempt activities. This requires a partial assessment against the property, which becomes difficult when there is mixed usage of certain areas.

A representative of the North Dakota Healthcare Association said nonprofit entities are required by Internal Revenue Code standards to not use earnings or donations to benefit private shareholders or others similarly situated; to not pay compensation to directors, officers, and employees based solely upon financial performance of the organization; and to use any excess revenues to further the organization's nonprofit purposes or fund other nonprofit organizations. The association representative suggested that adding criteria to define charitable activities can become extremely complex and lead to an unworkable, narrow test that becomes an accounting exercise and does not adequately address the range of activities engaged in by nonprofit organizations.

A representative of the Nature Conservancy stated opposition to limiting ownership of property in North Dakota by nonprofit organizations. The Nature Conservancy pays property taxes on all of its property in the state, although the property is exempt by law. The organization is very selective in the property it acquires in the state and seeks to acquire property only having rare, threatened, or endangered species or natural communities. Nearly all of the grasslands owned by the Nature Conservancy are under active grazing.

The committee considered a bill draft patterned after 1997 Pennsylvania law which established specific criteria to determine what constitutes charitable use of property for property tax exemption purposes. Committee members said it would be useful to establish a workable standard for assessors to fairly distinguish charitable activities from those that should not be eligible for property tax exemptions. Committee members were critical of the approach in the Pennsylvania law as being

too complicated and placing too much emphasis on tracking revenues and expenses. Committee members said the Pennsylvania law was obviously directed toward hospitals and does not adequately address other charitable organizations.

The committee considered a bill draft that limited the property tax exemption for property of hospitals to those areas of a building essential to providing inpatient services. Committee members said hospital activities have changed substantially in recent years, hospitals now have enormous budgets, and health care customers are now paying for services that did not exist several years ago like sports medicine, women's health centers, screening services, and other efforts. These activities were described as intended to expand operations and the client base for the hospitals and as encroaching in areas that should be left to private enterprise. Committee members did not support the bill draft approach because of concern about its effect on small town medical facilities and the difficulty assessment officials would have to determine which portions of a facility would be exempt as being essential for inpatient services.

The committee considered a bill draft that limited a nonprofit organization to ownership of no more than 16,000 acres of land in this state. Committee members expressed concern that farm property is being removed from production by acquisition by nonprofit organizations, which hurts the local economy and diminishes the tax base. Committee members said the approach in the bill draft did not address legislative concerns about protecting the tax base and would probably depress land prices. Committee members said legislation should not deprive the owner of property of the opportunity to sell property to whom the owner chooses.

### **Recommendation**

The committee recommends House Bill No. 1051 to allow imposition of special assessments by cities against exempt property of charitable organizations. The bill allows a city to establish a special assessment district composed only of property of charitable organizations. The bill allows imposition of special assessments by the governing body of a city for the proportionate share of costs of police and fire protection and infrastructure expenditures paid from the budget of the city. The bill limits the amounts that may be levied against subject properties based on comparison of the value of those properties to the value of taxable property in the city. Committee members said the bill would provide local flexibility in determining whether and at what level special assessments would be imposed. The bill gives cities an option to require charitable organizations to pay the value of certain city services in the same manner pay special assessments for property

improvements under existing law, because the services contribute to the value of the property

## **PROPERTY TAX RELIEF STUDY**

### **Background**

#### **Property Tax Liability Determination**

Property tax liability is determined by multiplying applicable taxing district mill rates times the taxable value of the property. Property taxes are collected by the county and distributed among taxing districts according to their interests in the revenues.

The mill rate for a taxing district is established through the budget process. Each taxing district prepares a proposed budget based on anticipated expenditures for the upcoming fiscal year. Hearings are held on the budget and adjustments may be made. The deadline for amendments to budgets and for sending copies of the levy and budget to the county auditor is October 10. From October 10 to December 10 the auditor prepares tax lists, which must be delivered to the county treasurer by December 10 and mailed to property owners by December 26.

The amount budgeted by a taxing district may not result in a tax levy exceeding the levy limitations established by law. Since 1981, state law has allowed political subdivisions to levy a percentage increase in dollars over the amount levied in the base year, as an alternative to the use of statutory mill levy limitations. Most taxing districts in the state use this optional method of determining the maximum levy. From 1981 through 1996, taxing districts were allowed a percentage increase in dollars over the base year levy amount in dollars. After 1996 NDCC Section 57-15-01.1 allows taxing districts using the optional method of determining levy limits to maintain the amount levied in dollars in the base year, but levies subject to this limit may not be increased without voter approval. During taxable years 1997 and 1998, an exception is provided for a county, city, township, or school district eligible for federal funds on a matching basis as a result of a disaster declared by the President of the United States to allow an increased levy in dollars equal to the amount required to match federal funds, up to an increase of two percent more than the amount levied in the base year.

The county auditor determines whether the amount levied by a taxing district is within the statutory limitations that apply to the district levy and divides the total property taxes to be collected for the taxing district by the taxing district's total taxable valuation. The result is a percentage that is the mill rate for the district.

Real property must be assessed with reference to its value on February 1 of each year. All property must be valued at its true and full value. True and full value is defined as the value determined by considering any earning or productive capacity, the market value, and all other factors that affect the actual value of the property. For agricultural property, valuation is determined by a



productivity formula. The assessed valuation of property is 50 percent of true and full value. Taxable valuation of property is nine percent of assessed valuation for residential property and 10 percent of assessed valuation for agricultural, commercial, and centrally assessed property. Taxable valuation is the amount against which the mill rate for the taxing district is applied to determine tax liability for individual parcels of property.

### **Committee Considerations**

In 1960 property taxes accounted for 55 percent of all taxes collected in North Dakota. In 1992 property taxes accounted for less than 34 percent of all taxes collected in North Dakota. From 1960 to 1984, property taxes as a percentage of all taxes steadily decreased. Taxes collected by the state were about equal to property tax collections in 1970. By 1984 the state share of total tax collections was at 73 percent, a maximum for the period from 1960 through 1992. Since 1984 the trend has reversed and property taxes as a share of total tax collections are increasing.

The relative share of collections among tax types shifted since 1960. The most notable change is that property taxes decreased as a percentage of total tax collections since 1960. The greatest reduction in property tax collections occurred after 1969 when personal property was exempted and eliminated from the local property tax base. Increases in the sales tax rate and a business privilege tax were used to offset the loss of tax revenue resulting from exemption of personal property. Energy tax collections peaked in 1982 due to high prices but declined substantially after 1982. The loss in energy tax revenues after 1982 was replaced by increasing sales tax and individual income tax revenues. State sales and use taxes are the dominant force in state and local tax collections in North Dakota, exceeding property tax collections. Reliance on sales and property taxes is heavy, accounting for almost three-fourths of all taxes collected in North Dakota.

Shares of the total property tax burden for residential and commercial properties have increased. Agricultural property owners paid 38.2 percent of statewide property taxes in 1984 and that percentage declined to 31.7 percent in 1998 while residential property owners' share of statewide property taxes increased from 33.2 percent to 38.1 percent in the same period. Centrally assessed and commercial properties retained approximately equal shares of the tax burden during that time period. It appears there has been a shifting of tax burden from agricultural to residential property, but examination of county data shows this has not been uniform in all counties. Only eight counties collect more property taxes from residential than agricultural property but because these are the eight highest population counties, their effect skews statewide comparisons. Lower population counties still place an extremely high reliance on property tax revenue from agricultural property.

During the years 1981 through 1997, statewide agricultural property valuation declined by 1.5 percent while residential property valuation increased 57.6 percent and commercial property valuation increased 52.3 percent. In the years from 1993 through 1997, agricultural property had valuation increases of 3.3 percent or less per year, except for a 9.3 percent valuation increase in 1996. In the same time period residential property valuations statewide increased by almost seven percent per year and commercial property increased approximately 3.5 percent per year. The fact that valuations increase does not mean that property taxes will increase, because property tax liability is a function of valuation, rate of tax, and the mix of property types in the jurisdiction. If property taxes in a jurisdiction remain the same, a property's valuation could increase, but the property tax bill for the property would go down if the valuation of other property in the jurisdiction has a greater percentage increase in value.

The committee reviewed information on major state and local tax collections to try to determine whether an abnormal increase has occurred in property taxes in North Dakota over a period of 20 years. Reliance on property taxes as a percentage of total tax collections declined slightly from 1992 through 1997. Property taxes have shown a steady rate of growth in recent years, but the increase is slightly less than the increase for other tax types.

School district property taxes are responsible for most of the increase in property taxes from 1983 through 1997. In 1983 school districts levied 43 percent of all property taxes, and in 1997 they accounted for 51 percent of the total. Increases in property tax reliance across the state have not been uniform, and there is evidence that tax increases for agricultural property in certain areas of the state have been more severe than in other areas.

The committee reviewed information comparing effective tax rates for various property classifications. Effective tax rate is calculated by dividing the amount of property tax by the market value of the property. The purpose of the comparison is to determine whether property taxes are increasing or decreasing more than the market value of property. A higher effective tax rate means a higher property tax compared to market value. The 1996 effective tax rate for agricultural property was 1.04 percent compared to 1.86 percent for residential property, 2.24 percent for commercial property, and 1.74 percent for utility property. Although agricultural property has the lowest effective tax rate, the effective tax rate for agricultural property doubled from 1983 to 1991 and has remained approximately stable since then.

The committee reviewed information comparing average income among regions of the state on a per capita basis. In 1986 per capita income among regions was in a relatively narrow range from \$11,157 to \$13,461. By 1996 per capita income had stratified to show greater income differences from \$15,905 to

\$23,117 among the regions. Areas with lower per capita income generally coincide with areas where heavy reliance for property tax revenues is placed on agricultural property. This creates concern that the impact of property taxes is felt more keenly in some areas of the state, particularly where agricultural income has been below

Most concerns expressed to the committee about the need for property tax relief related to agricultural property. Because these issues led the committee into examination of the agricultural property valuation formula and classification and assessment of inundated agricultural property, the committee requested and received authority from the Legislative Council chairman to conduct a separate study of assessment and taxation of agricultural property and inundated lands. The results and recommendation of that study are described under **Agricultural Property Assessment Study** in this report.

As property valuations and property taxes continue to increase, concerns were raised about the impact on persons 65 years of age or older with limited income. Such people are eligible for the homestead credit to relieve some of the impact of property taxes. The homestead credit is limited based on income, and committee members were concerned that these income limitations must keep pace with inflation so the benefit of the credit is not lost to those it was intended to help.

### **Recommendation**

The committee recommends House Bill No. 1052 to raise income limits for eligibility for the homestead credit by \$500 in each income category. The credit is based on five income categories, with the maximum benefit available to a person whose annual income is \$7,500 or less and no benefit to a person whose income exceeds \$13,500. The bill would raise the maximum annual income to qualify for the exemption from \$13,500 to \$14,000. Committee members said state law must preserve the benefit of the homestead property tax credit for persons 65 years of age or older with fixed or limited income. If those individuals receive a modest cost of living increase in income but lose the homestead credit as a result, the net effect would impose a hardship. Because the state reimburses political subdivisions for the cost of the homestead credit, the bill is anticipated to have a fiscal impact to the state, and it is estimated that the increased cost will be less than \$200,000 per biennium.

## **AGRICULTURAL PROPERTY ASSESSMENT STUDY**

### **Background**

True and full value of agricultural property for property tax purposes is based on productivity, as established through computation of the capitalized average annual gross return of the land made by the North

Dakota State University Department of Agricultural Economics. Annual gross return for rented land is determined from crop share or cash rent information and for other land is 30 percent of annual gross income for cropland used for growing crops other than sugar beets or potatoes, 20 percent of annual gross income for cropland used for growing sugar beets or potatoes, and 25 percent of gross income potential based on animal unit carrying capacity of the land for land used for grazing animals. Average annual gross return for each county is determined by using annual gross returns for the county for recent years, discarding the highest and lowest annual gross returns from those years, and averaging the returns for the remaining years. Passage of House Bill No. 1069 (1997) extended the number of years of production data used in the agricultural property valuation formula from six years to 10 years. The bill makes this change in increments by use of seven years' data in 1997, eight years' data in 1998, nine years' data in 1999, and 10 years' data after 1999. Average annual gross return is then capitalized using a 10-year average of the most recent 12-year period for the gross Farm Credit Services mortgage rate of interest. An average agricultural value per acre is established for cropland and noncropland on a statewide and countywide basis. This information is provided to the Tax Commissioner by December 1 of each year and then provided by the Tax Commissioner to each county director of tax equalization. The county director of tax equalization provides each assessor with an estimate of the average agricultural value of agricultural lands within the assessor's district. The assessor determines the value of each assessment parcel within that district. Within each county and assessment district, the average of values assigned must approximate the averages determined under the formula for the county or assigned to the district by the county director of tax equalization. In determining relative values, local assessment officials are to use soil type and soil classification data whenever possible.

### **Committee Considerations**

Recent increases in agricultural property valuations in the state generated many complaints to legislators. Many farmers in the state are frustrated because a time of poor production and low commodity prices has been accompanied by increased agricultural property valuations and property tax burdens.

In 1996 average assessed value of agricultural land increased more than nine percent statewide. This substantial jump in values resulted because of the years used in the formula. For 1996 assessments, the 1988 drought year was replaced by 1994 good production year statistics. In addition, the capitalization rate has been declining steadily, which produces higher valuations. Passage of 1997 House Bill No. 1069 eased the effect of these factors by including an additional year of

production data to computation of agricultural property valuations, resulting in a decrease of almost 3.5 percent in 1997 average agricultural values per acre statewide compared to what would have been determined under the formula before the 1997 amendment. As additional years of data are added to the formula, the formula should generate more stable property valuations.

The committee reviewed detailed data on calculation of county average agricultural values per acre for several individual counties, including counties in the Devils Lake Basin experiencing difficulties because of inundation of agricultural property. The formula reflects the fact that land has been flooded because reported cropland acreage under the formula has diminished. However, nonproducing cropland is ignored in the formula and the average agricultural value per acre for the county is determined only on the basis of statistics for producing acreage. This artificially inflates the average agricultural value per acre for the county because the valuations for all agricultural property in the county must approximate the county average valuation as determined under the formula, and inundated land must be assessed as agricultural property. If the county assigns lower values to inundated lands, values of other agricultural property must be inflated to allow the average for all agricultural property to approximate the county average. The county is faced with the choice of keeping an unnaturally high valuation for inundated land or placing an unnaturally high valuation on property that remains in production. Representatives of counties in the Devils Lake Basin told the committee that they are having enormous difficulties with requests for abatement of inundated property, and that this in turn causes substantial problems for valuation of agricultural property that remains in production. It was suggested that the formula be adjusted to allow inundated lands to be excluded from consideration in agricultural property valuations. It was suggested that in addition to existing agricultural property classifications of cropland or noncropland, a third category should be created for inundated agricultural property.

The committee received a resolution signed by county commissioners from 10 counties stating that an increase in valuation for agricultural property is unacceptable in view of the current farm economy. The resolution requested assistance from the Legislative Assembly in restraining agricultural property valuations, particularly in counties in the Devils Lake Basin, where the lake has inundated vast amounts of farmland. The State Board of Equalization has recently granted several counties authority to reduce agricultural property valuations below the statewide average agricultural value per acre as determined under the valuation formula. The board concluded that following the law precisely would impose a hardship within these counties. This action was cited as evidence that the agricultural property valuation formula does not adequately address problems that arise in agricultural property valuation when a substantial amount of agricultural property is inundated.

The capitalization rate used in the agricultural property valuation formula was criticized as being too influential on valuations because a minor reduction in interest rates results in significant increases in valuation as established by the formula. The formula was also criticized for failing to account for costs of production because if farmers' costs of production increase while all other factors remain stable, farmers' net income will decrease but land valuation will remain the same. This was described as a deficiency in the formula because the formula is supposed to measure productivity, which should include consideration of all factors affecting farm income. The committee received information that farm production costs have increased approximately 67 percent in 10 years while yields have increased by 7.5 to 8 percent over that time period and prices received for products have declined.

The committee reviewed an analysis of the effect of restricting changes in the capitalization rate used in the agricultural property valuation formula. Based upon assumptions about what will happen to interest rates, it was estimated that limiting the capitalization rate to no less than 10 percent would result in land valuation reductions of approximately 2.5 percent per year, with a total reduction of approximately 14 percent by the year 2007.

The committee obtained an analysis of the effect on agricultural property valuation of including a component in the valuation formula based on the National Agricultural Statistics Service annual index of prices paid by farmers. It was estimated that use of this component would decrease agricultural property valuations statewide by approximately two percent per year. The cumulative effect of this change would be a reduction of approximately 25 percent in agricultural property assessed valuation by the year 2010 as compared to values determined under the formula without use of the cost index.

The committee recognized that including a production cost index in the agricultural property valuation formula would decrease agricultural property values, and that this change would have differing effects in different counties. Whenever agricultural property valuations are decreased, there will be a resulting shift of tax burden to other types of property unless valuations of those properties decrease even more. Because the mix of agricultural, residential, commercial, and utility property within counties is different, the effect of reduction of agricultural property valuations and resulting shift of property tax burden is different for each county. This effect will be minimal in counties in which substantial amounts of residential, commercial, and utility property exist to absorb the shifting tax burden but will have a more pronounced effect in counties in which agricultural property makes up a high proportion of the property tax base. The committee requested an analysis of this change, which was completed after the committee's final meeting and which bears out the committee's concern. The analysis shows that effects on agricultural property valuations are



variable for different counties. Over a period of 10 years, including a production cost index in the agricultural property valuation formula, and assuming all other factors remain the same, could result in an agricultural property tax decrease of 5.3 percent and a residential property tax increase of 17.1 percent in Benson County, an agricultural property tax decrease of 5.7 percent and a residential property tax increase of 15.1 percent in Nelson County, and an agricultural property tax decrease of 8.5 percent and a residential property tax increase of 10.6 percent in Walsh County. For the same time period, an agricultural property tax decrease of 21.4 percent would be accompanied by a residential property tax increase of 1.4 percent in Grand Forks County, an agricultural property tax decrease of 11.6 percent would be accompanied by a 1.1 percent residential property tax increase in Cass County, and a 12.9 percent agricultural property tax decrease would be accompanied by a 2.9 residential property tax increase in Williams County.

### **Recommendations**

The committee recommends Senate Bill No. 2052 to create a separate category for inundated agricultural land for valuation purposes. The bill limits the county average valuation for inundated lands to 10 percent of the valuation of noncropland for the county. Establishing a separate classification category for inundated land will allow these lands to be assigned reduced valuations without affecting the valuation of other agricultural property in the county. This will address a significant problem that has arisen for counties in the Devils Lake Basin, where it has been necessary to transfer valuation from inundated agricultural lands to agricultural lands that remain in production. This will not solve the problem of loss of property tax revenue from inundated lands but will give counties a way to avoid the need to receive requests for abatements for inundated lands and the need to artificially inflate valuations of productive agricultural property. The bill defines inundated agricultural land as property that is unsuitable for growing crops or grazing farm animals for a full growing season or more due to the presence of water. The bill requires that classification of a parcel of property as inundated agricultural property must be approved by the county board of equalization for each taxable year. This will avoid the need for granting abatements but still allow the county to have decisionmaking authority to review the productive status of the property. The bill provides that valuation of individual parcels of inundated agricultural property may recognize the probability of whether or not the property will be suitable for production in the future.

The committee recommends Senate Bill No. 2053 to limit the capitalization rate in the agricultural property valuation formula to no less than 10 percent and no more than 11 percent. Under current law, the capitalization rate is one-half of the determinant of agricultural

property valuations. Limiting the capitalization rate fluctuation will avoid extreme effects on agricultural property values when interest rates are abnormally high or low.

The committee recommends Senate Bill No. 2054 to incorporate use of an index of prices paid by farmers in the agricultural property valuation formula. The bill requires establishing a base year index of prices paid by farmers which would be compared with an average of those costs over the most recent 10 years. Changes in prices paid by farmers would be factored into the valuation formula to increase valuations if costs decline or decrease valuations if costs increase. The index would be based on annual statistics prepared by the National Agricultural Statistics Service.

## **FARM BUILDINGS PROPERTY TAX EXEMPTION STUDY**

### **Background**

Farm residences and farm buildings other than residences are exempt from property taxes under NDCC Section 57-02-08(15). The provision relating to farm residences is much more detailed than the provision relating to other farm buildings. The exemption for residences provides criteria to determine what qualifies as a farm and who qualifies as a farmer and imposes income limitations. The exemption for farm buildings other than residences does not apply to any structure or improvement used in connection with a retail or wholesale business other than farming, any structure on platted land within the corporate limits of a city, or any structure located on railroad-operating property.

The North Dakota Supreme Court decision in *Butts Feed Lots v. Board of County Commissioners*, 261 N.W.2d 667 (1977) concluded that a feedlot operation was an industrial activity and the property did not qualify for the farm buildings exemption. The Supreme Court found that contract feeding of cattle not owned by the owner of the facility is an industrial activity and that raising cattle owned by the owner of the facility is an industrial activity if the feed for the cattle is not grown onsite. The Supreme Court also said an operation may be industrial if replacement animals are not raised onsite. The Tax Commissioner adopted guidelines that are intended to follow the Supreme Court decision. The guideline for animals raised and owned by the operator provides that the feed must be primarily grown by the person raising the animals and the enterprise must be operated in connection with or incidental to an ordinary farming operation.

### **1995-96 Interim Committee Considerations**

The 1995-96 interim Taxation Committee study of the farm buildings exemption arose because of events that transpired in Richland County, although the topic is of relevance in each county in the state. In 1995 a large turkey-raising operation was established in Richland County. Richland County officials assumed that the

property would not qualify for the farm buildings exemption under the *Butts* analysis. During consideration of this issue, however, Richland County officials recognized that several existing operations raising turkeys, cattle, or hogs would also become taxable under the Tax Commissioner's guidelines adopted to implement *Butts*. Several issues arose regarding application of these guidelines in specific instances and Richland County officials decided to seek a legislative solution to clarify when the farm buildings exemption applies.

Richland County officials said the impact to Richland County's road budget for maintenance of the road to the new turkey facility exceeds normal costs of maintenance for a county road by approximately \$28,000 per year. The road in question is subjected to high-volume truck traffic due to the existence of the turkey-raising operation. Committee members asked whether granting county authority to levy special assessments for road damages would alleviate the problem. Richland County officials said levying special assessments in the situation at hand would not resolve the problem because several properties under different ownership abut the road, but traffic attributable to only one property is responsible for most of the road deterioration.

The committee considered several factors to distinguish industrial or commercial operations from agricultural operations, but none of the factors provided a solution without problems. Basing the exemption on whether the farmowner owns the animals that are being fed would require monitoring ownership of animals. Basing qualification for the exemption on the source of feed, as was done by the Supreme Court in *Butts*, requires monitoring feed and may force operators to grow their own feed when it could be a better management decision to purchase feed from off the farm. Basing the exemption on whether the owner lives on the site might unduly restrict a person's freedom to choose where to live. Limiting the number of paid employees could result in loss of jobs for employees above the limit. Limiting the value of farm buildings eligible for exemption would require assessment of all farm buildings. Causing excessive road repairs for the county or township could involve arbitrary decisions on who is responsible for road damage. Limiting the number of animals raised would require establishment of an accurate count of animals at any time of year and different limitations would be required for different kinds of animals. Basing the exemption on whether replacement animals are raised on the farm, as was discussed by the Supreme Court in *Butts*, was described as inappropriate for some kinds of animals and an interference with management decisions.

The committee discussed eliminating the farm buildings exemption and offsetting the property tax increase by a corresponding reduction in taxes against agricultural land. This would eliminate the need to determine who qualifies for the farm buildings exemption. However, this would reduce the tax burden for persons who own agricultural land but have few or no buildings or

do not actively farm the land, including nonresident landowners.

The 1995-96 interim Taxation Committee made no recommendation on the farm buildings exemption study. The committee did not agree with the criteria established under the Supreme Court's *Butts* decision but could not find a workable, fair method to distinguish farming operations. Committee members expressed preference for flexibility to allow common sense decisions by local governing bodies, over establishing statutory criteria that might be excessively rigid and unfair in some situations. Recent events in other counties indicate there is likely to be continued growth in the number and impact of livestock and poultry feeding operations, and the chairman of the Legislative Council assigned this subject to the interim Taxation Committee to continue the study.

### Committee Considerations

The income limitations for the farm residence exemption were examined. Net income from farming or ranching as interpreted by the Tax Commissioner includes income from producing unmanufactured products of the soil, poultry, or livestock, or from dairy farming. This includes taxable farm income for income tax purposes and excludes income from custom work. Interest expense is deducted from income if it was incurred in the farm or ranch operation and was deducted in computing taxable income. Net income from farming or ranching does not include cash rent, mineral leases or royalties, wages or salaries, interest income from contract for deed payments on sale of farmland, or any other income not specifically included in farm income for federal income tax purposes. Depreciation of farm equipment is treated like other farming expenses and is deducted from gross revenues to determine net income from farming activities. A Tax Commissioner representative said obtaining and verifying net farm income information can be difficult.

Ward County officials informed the committee that it recently came to their attention that a beginning farmer cannot qualify for the farm residence exemption because the statutory provision defines a farmer as one who has not received more than 50 percent of annual net income from nonfarm sources during any one of the three preceding calendar years. The problem with this provision is that any individual who is just starting farming will be disqualified from the exemption because the person would have no farm income history to qualify under the statutory provision. Committee members were surprised that this statutory provision has existed for many years and has not been interpreted to cause problems for beginning farmers. Committee members said it would be appropriate to change the statutory provision to encourage efforts of individuals to begin farming.

The North Dakota Ag Coalition, Stockmen's Association, Turkey Growers Association, and Farm Bureau suggested that the criteria established by the North

Dakota Supreme Court in *Butts* are inappropriate in the current farm economy. These criteria were described as management decisions that are based on economics and efficiency. The Ag Coalition recommended limiting definition of farm activities to raising or growing processed agricultural products, regardless of feed source. An Ag Coalition representative said determining what constitutes processing of agricultural products should be the key to whether the exemption applies and suggested that anything involved with final preparation of the product for human consumption would be considered processing.

Another issue that was brought to the committee's attention involves establishing assessed valuations for tax-exempt farm buildings and residences. The state supervisor of assessments said farm buildings and residences are not required to be assessed or valued under 1997 legislation but a preexisting law originally enacted in 1897 requires assessors to establish values for all property except governmental property. It was suggested that the law be amended to exclude farm buildings and residences from the properties for which values must be established.

### **Recommendations**

The committee recommends House Bill No. 1053 to allow beginning farmers to qualify for the farm buildings

property tax exemption. The bill defines a beginning farmer as one who has begun occupancy of a farm within the three preceding calendar years, who normally devotes the majority of time to farming activities, and who does not have a history of farm income for each of the three preceding calendar years.

The committee recommends House Bill No. 1054 to eliminate consideration in farm buildings tax exemption decisions of the criteria established by the North Dakota Supreme Court in *Butts*, based on whether the farmer grows or purchases feed for animals, whether the farmer owns the animals, whether replacement animals are produced on the farm, and whether the farmer is engaged in contract feeding of animals. The bill provides that buildings are not eligible for the exemption if they are primarily used for processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale. The language is intended to allow flexibility of interpretation by assessment officials to recognize ordinary farm practices but exclude processing that goes beyond ordinary handling.

The committee recommends House Bill No. 1055 to provide that farm buildings and residences are not among the properties for which assessors must establish a valuation.

CONNIE S

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1051

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsections 8, 10, 11 and 31 of section 57-02-08 of the North Dakota Century Code, relating to taxation for the cost of police and fire protection services provided to certain charitable organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 8, 10, 11, and 31 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

8. All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, and this includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United State Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner. Provided, that all property described in this subsection shall be subject to taxation for the cost of police and fire protection services furnished by any municipal corporation in which said property is located.
10. Property of an agricultural fair association duly incorporated for the purpose of holding agricultural fairs, and not conducted for the profit of any of its members or stockholders; provided that all property described in this subsection shall be subject to taxation for the cost of police and fire protection services furnished by any municipal corporation in which said property is located.
11. Property owned by lodges, chapters, commanderies, consistories, farmers' clubs, commercial clubs, and like organizations, and associations, grand or subordinate, not organized for profit, and used by them for places of meeting and for conducting their business and ceremonies, and all property owned by any fraternity, sorority, or organization of college students if such property is used exclusively for such purposes; provided, further that any portion of such premises not exclusively used for places of meeting and conducting the business and ceremonies of such organization shall be subject to taxation.

Provided, further, that if any such organization as contemplated by this subsection is licensed for the sale of alcoholic beverages as defined by the statutes of the state of North Dakota, such portion of such premises where such alcoholic beverages are consumed or sold shall be deemed not to be so

used exclusively for conduct of its business and meeting if such beverages are sold at a profit.

Provided, further, that if food other than that served at lodge functions and banquets and food sold or consumed in any fraternity or sorority house, is sold at a profit on the premises, that portion of the premises where such food is sold at a profit shall be deemed not to be used exclusively for places of meeting or conducting the business and ceremonies of such organization; provided, that all property described in this subsection shall be subject to taxation for the cost of police and fire protection services furnished by any municipal corporation in which said property is located.

31. All group homes owned by nonprofit corporations, not organized with a view to profit and recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)] including those for persons with developmental disabilities as defined in section 25-01.2-01, and the real property upon which they are located during the period in which the group homes are under construction or in a remodeling phase and while they are used as group homes. For the purposes of this subsection, the term "group home" means a community-based residential home which provides room and board, personal care, habilitation services, or supervision in a family environment, and which, once established is licensed by the appropriate North Dakota licensing authority. Provided, that all property described in this subsection shall be subject to taxation for the cost of police and fire protection services furnished by any municipal corporation in which said property is located."

Renumber accordingly

Submitted by: North Dakota League of Cities





**Vision**

*The North Dakota Healthcare Association will take an active leadership role in major healthcare issues.*

**Mission**

*The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.*

## TESTIMONY HB1051

Mr. Chairman, members of the Finance and Tax Committee, my name is Arnold Thomas. I am President of the North Dakota HealthCare Association (NDHA). I appear before you today on behalf of the Association in opposition to HB 1051.

House Bill No. 1051 is a relatively simple bill. It authorizes Municipalities to tax the property of charitable organizations for police, fire, and infrastructure costs. But, if you read the bill, you'll find that it doesn't authorize municipalities to tax the property of all charitable organizations. It singles out hospitals, nursing homes, and group homes. That's what is meant by the reference in line 10 to "subsection 8 or 31".

If this bill was interested in promoting a public policy calling for each property owner, regardless of tax status, to support community services such as police and fire, along with infrastructure costs, it would seem appropriate for municipalities to place this assessment on the full range of properties listed in North Dakota Century Code section 57-02-08. But, it does did not.

Let's look at who and what would NOT be included in the special assessment districts proposed by House Bill No. 1051:

- Property owned by the federal government.
- Property owned by the state of North Dakota.
- Property owned by a political subdivision.
- Property owned by Indians.
- Cemeteries.
- Property owned by nonprofit schools, academies, colleges, and **universities**.
- Churches and residences of church leaders.
- Property of an agricultural fair association.
- Property owned by lodges, chapters, commanderies, consistories, farmers' clubs, commercial clubs, and like organizations, and used **by them** for places of meeting and for conducting their business and ceremonies.
- Property owned by fraternities and sororities.
- Property used as public parks.

- Property belonging to military organizations and used as monument grounds.
- The armory.
- Farm structures and improvements.
- Farm residences.
- Property used for athletic purposes.
- The homesteads of disabled veterans.
- The homesteads of individuals permanently confined to wheelchairs.
- The homesteads of blind persons.
- Automobile parking lots.
- Property owned by cooperatives or nonprofit corporations and used to furnish potable water for uses other than the irrigation of agricultural land.
- Property owned by a city and leased to a hospital or to a public school district.
- Property used for athletic or recreational activities when owned by a political subdivision and leased to a nonprofit corporation
- Any building located on land owned by the state if the building is used at least in part for academic or research purposes by students and faculty of a state institution of higher education.
- Property owned by the state and leased for pasture or grazing purposes.

It certainly seems this bill is not interested in promoting a public policy calling for each property owner, regardless of tax status, to support community services such as police and fire, and infrastructure costs. Let's face it. This legislature is not very likely to recommend that we tax the property of disabled veterans. It's not very likely to recommend that the surviving nieces and nephews of dearly departed Aunt Martha pay an annual police, fire, and infrastructure assessment either. I also don't see it enduring the uproar that would be created if we taxed any of the private K-12 schools or private colleges in this state, all of whom have had, or in the future might have, the need for police, fire, and infrastructure services.

As NDHA indicated in testimony to the interim committee this past year, this bill is nothing more than the embodiment of a mistaken belief that the hospitals of this state have deep pockets and would serve as a ready source of cash for the insatiable spending habits of certain local political subdivisions.

As an association, we monitor very closely the financial status of our member hospitals. In this state, we have forty-four hospitals. The membership includes small, medium, and large, rural and urban facilities. Each of the facilities, regardless of size or location, has three principal sources of income -- federal Medicare, state Medicaid, and private insurance, which in this state is predominantly Blue Cross Blue Shield of North Dakota.

In each of these relationships, the source of income and payment scale for hospitals is controlled by the source, not by the hospital.

Medicare and Medicaid have evolved to the point where they are now very complex payment systems based on "averages." They generally work this way. A gall bladder operation might have been determined to be worth \$5000 with an average hospitalization of 3 days. If a patient required additional days in the hospital or services which exceeded this payment average, the hospital isn't paid any more than the \$5000. It has incurred a \$200 loss for that particular patient. By the same token, if the hospital was able to deliver the requisite services for \$4800, it would still be paid the \$5000 and have a \$200 surplus.

Because this is the only way to generate the moneys necessary to pay for salaries, to pay for utilities, to pay for equipment, etc., hospitals have had to implement aggressive cost control measures. They have had to become as efficient as possible given the payment incentives. However, instead of being lauded for their efforts, government is now penalizing facilities for being efficient. It does this by arbitrarily modifying the reimbursement incentives that were designed to reward efficiency and it does this in order to reach political spending goals that have no actuarial foundation. To compound the problem for hospitals, the private payer sector has not been far behind.

While there was a time when private insurance companies made an effort to recognize increasing input costs, such as salaries, supplies and utilities, this is no longer the case. During the last two year period, hospitals in North Dakota received less than a 1% increase in rates from their largest private payer, Blue Cross Blue Shield of North Dakota.

Is this financial treatment because of something the hospitals have done -- or not done? The answer is neither. Private insurance in this state is highly market focused. Fearing any competition, they appear to have kept premiums artificially low. Unfortunately, the population has gotten older and their utilization of services has increased. The private insurance companies weren't prepared for this, resulting in two choices: they could pass the costs on to your constituents in the form of premium increases or they could elect to underpay the hospitals.

If the committee is interested, I'd be happy to bring in some of the hospitals' chief financial officers and let them walk you through the details of federal, state, and private reimbursement mechanisms and what this means for our hospitals. What I can tell you right now is that many of our facilities are facing precarious financial situations. Their reimbursement rates are subject to the whims of others. They have aging physical

plants. Lenders find them high risk for remodeling loans much less loans for construction. Many face factors of changing demographics and a willingness of local residents to travel greater distances for medical services. This is a cyclical effect.

Getting back to House Bill No. 1051, I think of the community events that have occurred to raise dollars for the local hospitals. I think of farmers donating bushels of wheat so that their local hospital could remain open just a little while longer. And I think of your past legislative efforts to try and ensure the continued viability of our rural hospitals so that the health care needs of our rural residents can be met.

These facilities have all, if not more than they can handle, right now. They aren't going to be able to further support their local political subdivisions and I don't believe this bill was aimed at them. I think it was instead aimed at the perceived deep pockets of our larger institutions.

Even though their financial situation is not as precarious at this time as some of our smaller facilities, their income distribution is subject to choices too. Think of your family budget. If you are required to pay more for one commitment, and you don't have an increase in revenue, another commitment is going to be shorted. There is only so much money to go around.

All of our hospitals, to the extent they can, and especially our larger facilities, have been exemplary stewards of their corporate trust. Think about the multitude of ways they benefit our lives and the lives of others in our communities and across this state. Our hospitals sponsor well baby clinics, diabetes screening, and blood and cholesterol testing. They sponsor ask-a-nurse programs. They support local voluntary ambulance services, and engage in telemedicine outreach. They offer tuition assistance and academic scholarships and they play a major role in the education and training of our young doctors, nurses, and other medical professionals.

They also do much more than that. They are the ones that you turn to when your local sports booster club is looking for support. They participate in school fairs, scout camps, local community fairs, and sportsmen shows. They are generally the principal corporate sponsor for your local museums, art galleries, and symphonies. They support community fund drives such as the United Way. They support the local and state chambers of commerce and they are the driving force behind most community economic development efforts.

Some of these efforts are quantifiable. Most of them are not. How do you place a dollar value on the smile of a child scoring the winning goal in a soccer tournament

made possible by your hospital, or in the reassurance given to an uninsured new Mom at a well-baby clinic sponsored by your local hospital. How do you quantify the peace of mind a community can have knowing that if one of their own gets sick or injured, there is a fully staffed local hospital available twenty-four hours a day, seven days a week? How do you go back to your constituents and say that as a result of this bill, St. A's now has an additional financial factor to consider in determining its support for the Turtle Lake Hospital and consequently the community of Turtle Lake or that Trinity Health must now weigh an additional financial component in its relationship with the Stanley facility.

Mr. Chairman, members of the committee, there are no free lunches. Instead of jumping on the band wagon and trying to feed the insatiable local need for additional dollars, take this opportunity and challenge your local political subdivisions. Ask your local representatives to explain why they need yet another source of revenue. Challenge them to explain how this bill will benefit their communities. Find out specifically how much property tax relief this bill will generate. Query them about the next item on their wish list. Who or what will be their next target or source for additional dollars? Finally, ask them what prohibits local elected leaders from presenting their case for additional supports from the tax-exempt entity?

Mr. Chairman, members of the committee, we believe the formulation of tax policy must have as its basis, a thoughtful, well-reasoned approach to our collective and individual needs. This bill does not meet that criterion. This is not tax policy. This is a politically expedient singling out of hospitals for an ill conceived attempt to line the coffers of local political subdivisions, with no apparent intention of questioning either the need for or the consequences of such an action.

We ask the committee for a Do Not Pass on HB 1051.

1051  
Arnold Thomas

## Definitions

The Financial Flexibility Index is a composite of seven financial ratios: total margin, return on investment, replacement viability, equity financing, days cash on hand, cash flow to total debt, and average age of plant. It results from an assumption about the importance of funds flow in an enterprise. Enterprises likely to thrive are those that can better control the relationship between source of funds and uses of funds and to increase the differences between them. These seven ratios are all measures of various dimensions of the funds flow construct. Source: *Center for Healthcare Industry Performance Studies. Columbus, Ohio*

Trend: Increasing values are favorable  
Median: Values above the median are favorable

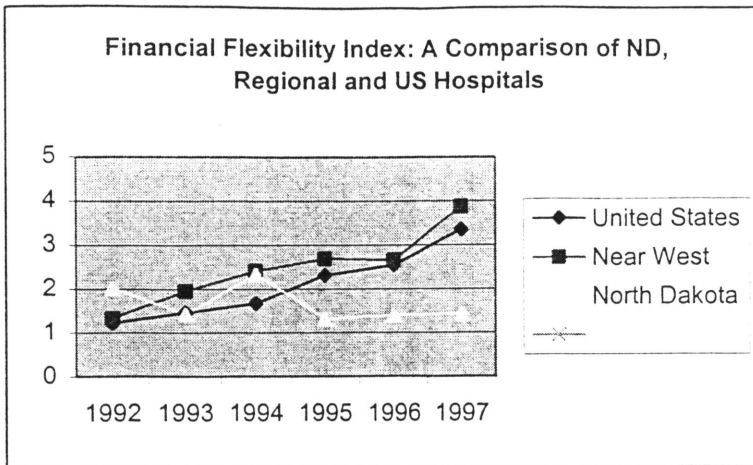
“This composite measure of financial position indicates North Dakota hospitals are in a relatively poor position. At the present time, North Dakota hospitals are weak in three areas. First, North Dakota hospitals have significantly older physical plants that are in need of major capital financing. Second, North Dakota hospitals have lower margins than do hospitals in the comparative groups shown in this report. Third, North Dakota hospitals have lower levels of funded depreciation reserves.” Source: *Financial Review of North Dakota Hospitals: 1995-1997. Center for Healthcare Industry Performance Studies. Columbus, Ohio*

\*\*\*

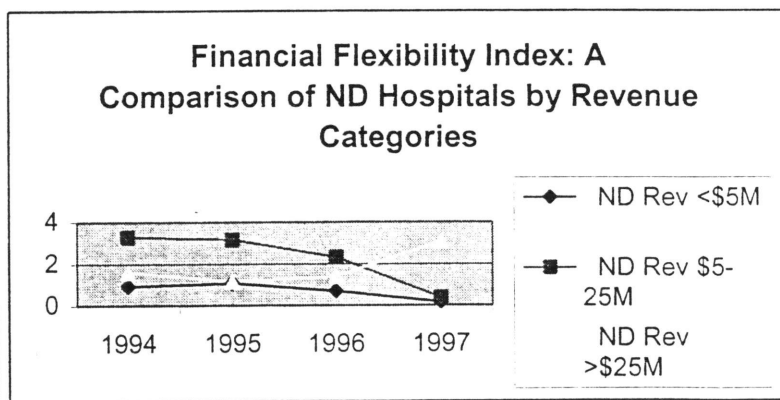
The Total Margin ratio defines the percentage of total revenues that has been realized in the form of net income, or excess of revenues over expenses. It is used by many analysts as a primary measure of total hospital profitability.

Trend: Increasing values are favorable  
Median: Values above the median are favorable

MULTI-YEAR PERFORMANCE COMPARISON OF NORTH DAKOTA HOSPITALS



	1992	1993	1994	1995	1996	1997
United States	1.222	1.471	1.676	2.308	2.545	3.346
Near West	1.338	1.951	2.412	2.683	2.663	3.867
North Dakota	2.017	1.43	2.335	1.323	1.398	1.427

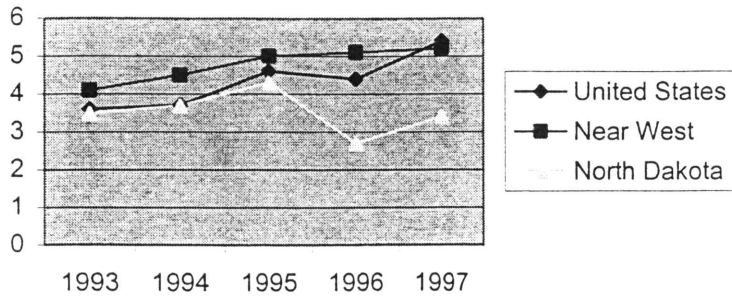


	1994	1995	1996	1997
ND Rev <\$5M	0.913	1.079	0.693	0.173
ND Rev \$5-25M	3.287	3.15	2.308	0.378
ND Rev >\$25M	1.596	1.143	1.398	3.081



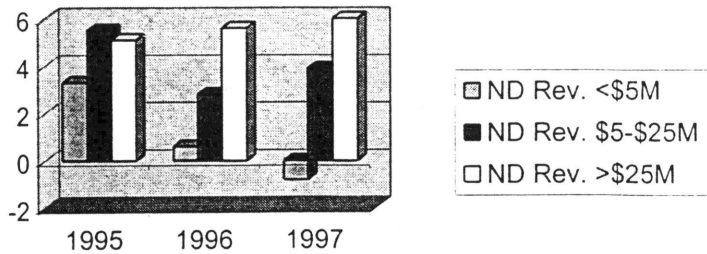
MULTI-YEAR PERFORMANCE COMPARISON OF NORTH DAKOTA HOSPITALS

**Total Margin: A Comparison of US, Regional and North Dakota Hospitals**



	1993	1994	1995	1996	1997
United States	3.6	3.7	4.6	4.4	5.4
Near West	4.1	4.5	5	5.1	5.2
North Dakota	3.5	3.7	4.3	2.7	3.4

**Total Margin: A Comparison of ND Hospitals by Revenue Category**



	1995	1996	1997
ND Rev. <\$5M	3.3	0.6	-0.8
ND Rev. \$5-\$25M	5.5	2.8	3.9
ND Rev. >\$25M	5.1	5.6	6



**Testimony on HB 1051**  
**House Finance and Taxation Committee**  
**January 11, 1999**

Chairman Belter and members of the House Finance and Taxation Committee, thank you for the opportunity to testify on HB 1051. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. Our Association represents basic care and nursing facility providers. I am here today to testify on their behalf.

We are in opposition to HB 1051. This legislation was debated at our December 1998 membership meeting and that is when we finalized our position. Let me share with you why we are opposed to the merits of HB 1051.

1. Currently nursing facilities pay many special assessments, so we are already contributing to property improvement.
2. Non-profit nursing facilities pay property taxes on projects and activities not directly related to their nursing facility business. Many facilities have ventured into assisted living, supportive apartments and other activities and services to help the elderly remain independent. In most instances, unless the city and facility have negotiated another arrangement, they are paying property taxes and special assessments on these new ventures.
3. In many rural communities where the nursing facility is the only institutional provider and a hospital is not in that community, the nursing facility is the twenty four hour emergency dispatcher and operator. This is a valuable community service, one which assures a vital link to emergency health services. Nursing facilities have actually been called upon to deliver babies, examine sick children and even to provide insulin to diabetics unable to get necessary medication.
4. Each year many nursing facilities provide care to residents not covered by Medicaid, Medicare or private resources. With 90% of North Dakota nursing facilities charitable non-profits, we will continue with this mission of charitable care. In the rest of the United States, 80% of the nursing facilities are for-profit corporations. Their mission is not to deliver charitable care or to be the stop gap when emergency health services are needed. We are proud of our community non-profits who far deliver much more than just nursing home care.
5. Currently sixty-six percent of the nursing facilities are exceeding cost limits or have an occupancy limitation. In 1999 this loss will amount to 6.8 million dollars. Attached is a list of the nursing facilities experiencing this financial difficulty. As a legislative body we will be asking you for more money for nursing facilities. HB 1051 will have a financial impact on facilities and the State and it has not been budgeted into the Department of Human Services Budget. Most facilities are not in position to pay this increased cost.

Thank you for the opportunity to testify on HB 1051 and explain why we are opposed to it. I clearly understand why the legislation is being sought. All of us as tax payers are carrying the burden of paying for government services and an infrastructure that needs to remain strong. We believe nursing facilities are contributing to communities in many ways and request not to be burdened with this expenditure.

I would be happy to answer any questions you might have.

Shelly Peterson, President  
North Dakota Long Term Care Association  
120 West Thayer Avenue  
Bismarck, ND 58501  
(701) 222-0660

1999

**Fifty five nursing facilities exceed at least one limit or have a occupancy limitation,  
this lost reimbursement amounts to \$6,842,773**

		<i>Lost</i>	
<u>Name of Facility</u>	<u>City</u>	<u>Reimbursement</u>	<u>Occupancy</u>
1. Trinity Nursing Home	Minot	\$590,075	94.23%
2. Missouri Slope Lutheran Care Center, Inc.	Bismarck	\$579,029	99.55%
3. Almonte Living Center	Grand Forks	\$280,683	91.61%
4. Valley Memorial Homes	Grand Forks	\$267,996	99.21%
5. Bethany Homes	Fargo	\$475,870	99.23%
6. ND Veterans Home	Lisbon	\$418,567	97.28%
7. Hillsboro Medical Center	Hillsboro	\$330,026	81.95%
8. St. Vincent's Care Center	Bismarck	\$300,949	99.60%
9. Heart Of America Medical Center	Rugby	\$270,426	97.10%
10. Tioga Medical Center	Tioga	\$254,455	98.26%
11. Sargent Manor Healthcare Center	Forman	\$221,057	58.46%
12. Carrington Health Center Long Term Care	Carrington	\$214,992	93.10%
13. Lutheran Sunset Home	Grafton	\$211,161	96.65%
14. Wedgewood Manor	Cavalier	\$207,092	97.58%
15. Pembilier Nursing Center	Walhalla	\$173,940	86.91%
16. Baptist Home, Inc.	Bismarck	\$159,872	99.04%
17. Lisbon Medical Center	Lisbon	\$137,503	94.64%
18. Northwood Deaconess Health Center	Northwood	\$132,653	92.61%
19. St. Luke's Home	Dickinson	\$131,661	99.15%
20. Ashley Medical Center	Ashley	\$121,800	93.00%
21. Presentation Care Center	Rolette	\$116,895	94.70%
22. North Central Good Samaritan Center	Mohall	\$108,583	98.89%
23. Aneta Parkview Health Center	Aneta	\$104,696	89.86%
24. Larimore Good Samaritan Center	Larimore	\$103,048	91.08%
25. Griggs County Nursing Home	Cooperstown	\$ 84,171	91.94%
26. St. Andrew's Health Center	Bottineau	\$ 67,286	92.38%
27. Luther Memorial Home	Mayville	\$ 67,207	96.31%
28. Parkside Lutheran Home	Lisbon	\$ 65,148	91.00%
29. Knife River Care Center	Beulah	\$ 50,151	98.68%
30. Medcenter One Care Center	Mandan	\$ 46,342	99.46%
31. Westhope Home	Westhope	\$ 43,057	91.06%
32. Heartland Care Center	Devils Lake	\$ 40,401	98.18%
33. Rock View Good Samaritan Center	Parshall	\$ 40,045	88.05%
34. Prince of Peace Care Center	Ellendale	\$ 38,971	85.63%
35. Hi-Acres Manor Nursing Center	Jamestown	\$ 35,409	97.87%
36. New Town Good Samaritan Center	New Town	\$ 33,987	93.10%
37. Kenmare Community Hospital	Kenmare	\$ 33,658	100%
38. Lakota Good Samaritan Center	Lakota	\$ 32,941	94.89%
39. Arthur Good Samaritan Center	Arthur	\$ 32,471	92.66%
40. Osnabrock Good Samaritan Center	Osnabrock	\$ 31,363	85.91%
41. Crosby Good Samaritan Center	Crosby	\$ 27,536	92.66%
42. Dunseith Community Nursing Home	Dunseith	\$ 22,800	87.75%
43. Garrison Memorial Hospital & NF	Garrison	\$ 17,492	98.48%
44. Good Shepherd Home	Watford City	\$ 17,066	86.80%
45. Rosewood On Broadway	Fargo	\$ 16,545	99.09%
46. St. Gerard's Community Nursing Home	Hankinson	\$ 16,105	97.70%
47. Mountrail Bethel Home	Stanley	\$ 14,599	99.42%
48. Hillcrest Manor	Enderlin	\$ 14,030	88.49%
49. ManorCare Health Services	Fargo	\$ 13,394	95.86%
50. Jacobson Memorial Hospital Care Center	Elgin	\$ 10,677	99.72%
51. Bethel Lutheran Home	Williston	\$ 9,674	90.97%
52. Nelson County Health System Care Center	McVille	\$ 4,832	88.28%
53. Elim Home	Fargo	\$ 1,415	97.82%
54. Devils Lake Good Samaritan Center	Devils Lake	\$ 671	95.96%
55. Souris Valley Care Center	Velva	\$ 300	98.58%



*Representing the Diocese of Fargo  
and the Diocese of Bismarck*

Christopher T. Dodson  
Executive Director

**To:** House Finance and Taxation Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** House Bill 1051  
**Date:** January 11, 1999

Mr. Chairman, members of the committee, I am Christopher Dodson, the executive director of the North Dakota Catholic Conference. The North Dakota Catholic Conference opposes HB 1051.

There are twenty-six Catholic hospitals and nursing homes in North Dakota. These facilities have one purpose -- to continue the healing ministry of Jesus Christ. That is why the sisters, often facing seemingly unsurmountable challenges and making great sacrifices, built these charitable institutions. While the look of Catholic health care may have changed through the years, the purpose remains the same.

Our ability to continue this ministry is increasingly threatened. Decreased reimbursements, a reduced ability to control costs and payments, and a declining rural population are some of the problems already threatening this ministry's future. We do not need HB 1051 to make things worse and nor do the people of North Dakota.

As stated by others, the taxation proposed by HB 1051 seems to ignore that even as our charitable institutions struggle to continue their mission, they provide important community benefits, contribute significantly to local economies, and never turn anyone away because of inability to pay. Besides these points, this committee must recognize that HB 1051 is fundamentally flawed, misdirected, politically dangerous, and unjust.

It is fundamentally flawed and misdirected because it targets only certain tax-exempt institutions with virtually no regard for treating like-situated tax exempt institutions in a similar manner.

It is dangerous because it increases the chance of ideologically motivated attacks on Catholic health care. There is a well-funded, well-organized, determined effort in this nation to, by their own admission, get the Catholic church out of health care.

227 W. Broadway, Suite 2  
Bismarck, ND 58501

(701) 223-2519  
Fax # (701) 223-6075

The organizations involved in this effort are using every available means to shut down or cripple Catholic health care institutions across the nation, including the use of property taxation. This bill would provide a means for these organizations to do this in North Dakota.

This would be possible, in part, because the bill requires little in actual showing that the affected properties actually cause a burden on fire and police services. It would be possible, in part, because it takes merely a petition with only ten percent of the qualified electors to create a special assessment district. Moreover, the bill actually provides little discretion to the governing body of the municipality. In short, there is little in this bill to prevent it from being used by those with motives other than providing property tax relief.

On the subject of property tax relief, the bill is again misdirected. First, nothing in this bill guarantees property tax relief. Second, if its purpose is to address property tax burdens, the bill fails to address the real issue. If there is a need for property tax relief, principles of justice demand that any solution take the form of real and substantial reform of our tax system so that it is consistent with the demands of justice and the common good. We should resist the temptation to embrace short-sighted proposals that threaten our charitable ministries.

Mr. Chairman Belter and Members of the Finance and Taxation Committee.

My name is Brenda Dissette, Executive Director of the North Dakota Association of Nonprofit Organizations (NDANO) located in Bismarck.

NDANO would like to go on record as opposing House Bill 1051.

NDANO is a statewide nonprofit membership association. Our membership currently consists of 133 nonprofit members. These members represent a large diverse group of nonprofit organizations such as: Catholic Family Services, the Ruth Meiers Hospitality House, ND FFA Foundation, ND Council on Abused Women's Services and the State Historical Society of ND Foundation to name a few. The statewide efforts of NDANO focus on providing advocacy, leadership, technical assistance, and a unified nonprofit voice on a statewide level concerning public policy issues. Providing accurate information about the social and economic impacts of North Dakota nonprofit organizations is the foundation of our work.

North Dakota's nonprofit sector provides significant contributions to the daily lives of North Dakota residents and they also address the many demands for cultural, social, educational and environmental services that would otherwise would go unmet or become a burden on the tax payers of North Dakota.

The passage of this bill would adversely affect the nonprofit organizations that have purchased real property such as spouse abuse centers, transitional housing for those that are homeless, Ronald McDonald Houses etc. Under this bill a municipality could tax all of that property. Many of these organizations rely heavily on volunteers and charitable giving in order to provide the services that allowed them to become a tax-exempt 501-©-3 organization. Most of these organizations operate on a shoestring budget and the reallocation of funds to pay for property taxes will likely result in a decrease of services to victims, clients, disabled individuals and the elderly in North Dakota.

NDANO strongly urges a do not pass of House Bill 1051.

Thank you for your time and I will take any questions your committee may have.



January 11, 1999

*Handout given to Rep. Warner*

Representative Warner,

During questioning relative to House Bill 1051 you asked how a city deals with private clinics, pharmacies and other businesses operating in public hospitals which are exempt from property taxation. I could not answer your question without research. Following are the findings of this research.

Businesses which are not owned by the hospital, whether on site or at remote locations, are taxed on the square footage they occupy. Businesses which are owned by the hospital and doing health care business within the statutory exemption, whether they be pharmacies, health centers, clinics or other businesses, and no matter whether they are located on the same site or apart from the main hospital are not subject to property tax. So a clinic owned by a hospital may be eligible for exemption whether attached to the hospital or in another location, even in another city.

In addition I have enclosed a copy of a 1993 law which clarifies the effect of a merger between a hospital and other business relative to the property tax status of each business.

CHAPTER 10-25

NORTH DAKOTA NONPROFIT CORPORATION ACT — MERGER, CONSOLIDATION, AND SALE OF ASSETS

Section 10-25-01.1. Merger of nonprofit corporation doing business as a hospital with a corporation organized	Section for profit — Retention of property tax status. 10-25-04. Articles of merger or consolidation.
--	---

10-25-01.1. Merger of nonprofit corporation doing business as a hospital with a corporation organized for profit — Retention of property tax status. Notwithstanding any provision of chapters 10-19.1 and 10-25, a nonprofit corporation doing business as a hospital may merge with a corporation organized for profit and form a nonprofit corporation. Notwithstanding any provision of chapter 57-02 or any other provision of law, any interest in property of corporations merging under this section retains the same property tax status after the merger as it had in the taxable year before the merger. Notwithstanding any provision of chapters 57-39.2 or 57-40.2 or any other provision of law, the sale, purchase, or use of any property by a corporation merging under this section retains the same status under the sales and use tax laws after the merger as it would have had before the merger.

10-25-04

CORPORATIONS

Source: S.L. 1993, ch. 5, § 12.

Effective Date.

This section became effective May 3, 1993.

*Above From NDCC - 1993 Cumulative Supplement*

**North Dakota Council on Abused Women's Services/  
Coalition Against Sexual Assault in North Dakota**

418 East Rosser Ave. #320

Bismarck, ND 58501-4046

☎ 1-701-255-6240, Fax 1-701-255-1904 Document #1-0199-002

*Submitted after  
the Hearing*

CAWS MEMBERS

Testimony HB1051  
House Finance and Tax  
January 11, 1999

Chair Belter and Members of the Committee:

My name is Bonnie Palecek and I am speaking on behalf of the ND Council on Abused Women's Services in opposition to HB1051.

We realize that this legislation is being put forward as enabling legislation allowing cities, if they choose, to tax properties of charitable organizations. We recognize that cities are having a difficult time supporting basic services. We also acknowledge and deeply appreciate the good working relationship and generous spirit which exists between city governments and virtually all of our shelter programs.

We must express our concern, however, that this effort could represent a further shifting of public responsibility to the non-profit sector.

There are currently six domestic violence shelters in the state. A couple of programs own their own offices, and one maintains a transitional housing facility. All struggle to meet budgets from a complicated patchwork of sources.

In recent years, property and liability insurance premiums have skyrocketed; costs of required background checks have continued to rise; costs of maintaining facilities have certainly risen; and in some cases access to the courts costs more as well. Even the costs of filing reports needed to maintain our non-profit status have been increased, and I understand may be raised again!

We have no one to pass these increased costs along to. The nature of our work demands that our services to the community, including public education, prevention work, and direct services, all are free.

We would submit that we provide the community with enough free services that we have in fact earned a tax credit in return. Indeed, it does seem ironic that at the same time we hear talk of property tax relief we hear about taxing charitable organizations.

We ask that you seriously consider the ramifications of taxing non-profits as you deliberate on HB1051.

Thank you.

*Bonnie Palecek*

- Bismarck**  
*Abused Adult Resource Center*  
222-8370
- Bottineau**  
*Family Crisis Center*  
228-2028
- Devils Lake**  
*Safe Alternatives for Abused Families*  
1-888-662-7378
- Dickinson**  
*Domestic Violence & Rape Crisis Ctr.*  
225-4506
- Ellendale**  
*Kedish House*  
349-4729
- Fargo**  
*Rape and Abuse Crisis Center*  
293-7273
- Fort Berthold Reservation**  
*Coalition Against Domestic Violence*  
627-4171
- Fort Yates**  
*Tender Heart Against DV*  
1-3402
- Grand Forks**  
*Tri-County Crisis Intervention, Inc.*  
742-1442
- Grand Forks**  
*Community Violence Intervention Ctr.*  
746-0405
- Jamestown**  
*S.A.F.E. Shelter*  
251-2300
- McLean County**  
*McLean Family Resource Center*  
462-8643
- Mercer County**  
*Women's Action and Resource Center*  
873-2274
- Minot**  
*Domestic Violence Crisis Center*  
852-2258
- Ransom County**  
*Abuse Resource Network*  
683-5061
- Stanley**  
*Domestic Violence Program, NW, ND*  
628-3233
- Valley City**  
*Abused Persons Outreach Center*  
845-0078
- Wahpeton**  
*Three Rivers Crisis Center*  
642-2115
- Williston**  
*Family Crisis Shelter*  
772-0757

**Population of North Dakota Cities: 1990, 1996***Re: Rep. Winrich's amend*

City	1990	1996
Fargo	74,111	83,778
Bismarck	49,256	53,514
Grand Forks	49,425	50,675
Minot	34,544	35,926
Dickinson	16,097	16,094
Mandan	15,177	15,648
Jamestown	15,571	14,983
West Fargo	12,287	13,566
Williston	13,131	12,718
Wahpeton	8,751	9,039
Devils Lake	7,782	7,672
Valley City	7,163	6,927

January 11, 1999

**Amendment to House Bill No. 1051**

Introduced by Rep. Lonny Winrich

Page 1, Line 12 and following to read:

**40-22.2-02. Special assessment district - Creation.** For imposition of special assessments under this chapter, a municipality with a population of ~~15,000~~ or more may create and alter a special assessment district by ordinance. 10,000

*rejected*