

August 2011

PROPERTY TAX MEASURE QUESTIONS

This memorandum includes provisions of the initiated measure prohibiting property taxes and potential questions that may be submitted to the Attorney General or others for input to assist the committee in determining the estimated fiscal effect of the measure.

SECTION 1

SECTION 1. AMENDMENT. Section 1 of article X of the Constitution of North Dakota is amended and reenacted as follows:

SECTION 1. The legislative assembly shall be and all political subdivisions are prohibited from raising revenue to defray the expenses of the state or political subdivisions through the levying of a tax on the assessed value of real or personal property.

Questions relating to Section 1 of the measure include:

1. Does the lack of underscoring of new language in the section have any effect on the provision?
2. Does the measure affect current laws requiring payments in lieu of property taxes?
3. How are special assessments affected by the measure?
4. How are special fund or debt service levies affected by the measure?

SECTION 2

SECTION 2. AMENDMENT. Section 4 of article X of the Constitution of North Dakota is amended and reenacted as follows:

SECTION 4. ~~All taxable property except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law. The property, including franchises of all railroads operated in this state, and of all express companies, freight line companies, dining car companies, sleeping car companies, car equipment companies, or private car line companies, telegraph or telephone companies, the property of any person, firm or corporation used for the purpose of furnishing electric light, heat or power, or in distributing the same for public use, and the property of any other corporation, firm or individual now or hereafter operating in this state, and used directly or indirectly in the carrying of persons, property or messages, shall be assessed by the state board of equalization in a manner prescribed by such state board or commission as may be provided by law. But should any railroad allow any portion of its railway to be used for any purpose~~

~~other than the operation of a railroad thereon, such portion of its railway, while so used shall be assessed in a manner provided for the assessment of other real property.~~

1. Taxes upon real property which were used before 2012 to fund the operations of counties, cities, townships, school districts, park districts, water districts, irrigation districts, fire protection districts, soil conservation districts, and other political subdivisions with authority to levy property taxes must be replaced with revenues from the proceeds of state sales taxes, individual and corporate income taxes, oil and gas production and extraction taxes, tobacco taxes, lottery revenues, financial institutions taxes, and other state resources.
2. The legislative assembly shall direct as much oil and gas production and extraction tax, tobacco tax, lottery revenue, and financial institutions tax as necessary to fund the share of elementary and secondary education not funded through state revenue sources before 2012. The state cannot condition the expenditure of this portion of elementary and secondary education funding in any manner and school boards have sole discretion in how to allocate the expenditure of this portion of the elementary and secondary funding provided.
3. The legislative assembly shall direct a share of sales taxes, individual and corporate income taxes, insurance premium taxes, alcoholic beverage taxes, mineral leasing fees, and gaming taxes and any oil and gas production and extraction taxes, tobacco taxes, lottery revenues, and financial institutions taxes not allocated to elementary and secondary schools to counties, cities, and other political subdivisions according to a formula devised by the legislative assembly to fully and properly fund the legally imposed obligations of the counties, cities, townships, and other political subdivisions. The allocation of the amount determined by the legislative assembly must be provided to the governing bodies of counties, cities, townships, and other political subdivisions. How counties, cities,

townships, and other political subdivisions choose to allocate the expenditures of this revenue is at the sole direction of the governing bodies of counties, cities, townships, and other political subdivisions.

Questions relating to subsection 1 of Section 2 of the measure include:

5. What is included in "taxes upon real property which were used before 2012 to fund the operations of counties, cities, townships, school districts, park districts, water districts, fire protection districts, soil conservation districts, and other political subdivisions with authority to levy taxes"? Do these taxes include only those resulting from general fund levies or do they include special fund levies, debt service levies, special assessments, and others?
6. Are the revenues from named state sources to replace the "actual amount" of taxes upon real property which were used prior to 2012 or must these revenues replace local taxes at "an amount to be determined by the Legislative Assembly" in accordance with subsection 3 of Section 2 of the measure?
7. If assessment of property ceases, how will the state determine the amount of property tax to replace for each political subdivision in the future? Will population changes affect tax replacement?
8. The state budgets biennially, while political subdivisions budget annually. How will the state determine the level of political subdivisions' budgets for the upcoming two years?

Questions relating to subsection 2 of Section 2 of the measure include:

9. Will the Legislative Assembly have any discretion in determining the level of local education spending or will school districts have sole discretion on spending education funding?
10. What is the definition of "the share of elementary and secondary education not funded through state revenue sources before 2012"? Does this share include federal funds?
11. If the state revenue sources identified are not adequate to provide the level of funding necessary:
 - a. Would the allocation of oil and gas gross production tax and oil extraction tax collections for other purposes based on constitutional or statutory provisions be affected?
 - b. Would the Legislative Assembly be required to raise the tax rates on these sources of revenue to generate the funding needed?

Questions relating to subsection 3 of Section 2 of the measure include:

12. What is the definition of "to fully and properly fund"?
13. What is the definition of "legally imposed obligations"?
14. Will the state be responsible for payment of local governments' outstanding bonds?
15. Will the state be responsible for payment of local governments' future indebtedness? If so, will the state have any way to limit the cost of building projects and other expenditures funded by indebtedness?

SECTION 3

SECTION 3. AMENDMENT. Section 14 of article X of the Constitution of North Dakota is amended and reenacted as follows:

SECTION 14.

1. Notwithstanding any other provision in the constitution, and for the purpose of promoting the economic growth of the state, the development of its natural resources, and the prosperity and welfare of its people, the state may issue bonds and use the proceeds thereof to make loans to privately or cooperatively owned enterprises to plan, construct, acquire, equip, improve, and extend facilities for converting natural resources into power and generating and transmitting such power, and to acquire real and personal property and water and mineral rights needed for such facilities.
2. The state may issue general obligation bonds for this purpose to an amount which, with all outstanding general obligation bonds, less the amount of all money on hand and taxes in process of collection which are appropriated for their payment, will not exceed five percent of the ~~full and true market~~ value of all of the ~~taxable~~ property in the state, to be ascertained by the last assessment made for state and county purposes: ~~but nothing herein shall.~~ The provision does not increase or diminish the limitations established by other provisions of the constitution on the amount of bonds therein authorized to be issued.
3. The state may also issue revenue bonds for the purpose of providing part or all of the funds required for any project undertaken under subsection 1, payable solely from sums realized from payments of principal and interest on money loaned for such project, and from other similar projects if so determined by the ~~legislature~~legislative assembly, and

from the liquidation of security given for such payments. Revenue bonds issued for any project shall not exceed the cost thereof, including all expenses reasonably incurred to complete and finance the project, but shall not be subject to any other limitation of amount.

4. The full faith and credit of the state shall be pledged for the prompt and full payment of all bonds issued under subsection 2. Its obligation with respect to bonds issued under subsection 3 shall be limited to the prompt and full performance of such covenants as the ~~legislature~~legislative assembly may authorize to be made respecting the enforcing of the provisions of underlying loan agreements and the segregation, accounting, and application of bond proceeds and of loan payments and other security pledged for the payment of the bonds. All bonds authorized by subsections 1 to 3, inclusive, shall mature within forty years from their respective dates of issue, but may be refunded at or before maturity in such manner and for such term and upon such conditions as the ~~legislature~~legislative assembly may direct. Any such bonds may, but need not be, secured by mortgage upon real or personal property acquired with the proceeds of the same or any other issue of general obligation or revenue bonds, or upon other property mortgaged by the debtor. Pledges of revenues and mortgages of property securing bonds of any issue may be prior or subordinate to or on a parity with pledges and mortgages securing any other issue of general obligation or revenue bonds, as determined by the ~~legislature~~legislative assembly from time to time in conformity with any provisions made for the security of outstanding bonds.
5. The ~~legislature~~legislative assembly shall pass such laws as are appropriate to implement this amendment.
6. If any subsection of this amendment, or any part of a subsection, or any application thereof to particular circumstances should be held invalid for any reason, such invalidity shall not affect the validity of all remaining provisions of this amendment which may be given effect without that which is declared invalid, as applied to any circumstances and for this purpose all subsections and parts of subsections and applications thereof are declared to be severable.

Questions relating to subsection 2 of Section 3 of the measure include:

16. What effect does the change from "full and true value of all of the taxable property in the state" to "market value of all of the property in the state" have on the amount of general obligation bonds that may be issued by the state?
17. Who will determine the "market value of all of the property in the state," assuming there will not be assessment officials if property taxes are eliminated? In addition, "market value of all of the property in the state" is not limited to real property, so will it become necessary to determine market value for personal property as well?

SECTION 4

SECTION 4. AMENDMENT. Section 15 of article X of the Constitution of North Dakota is amended and reenacted as follows:

SECTION 15. The debt of any county, township, city, ~~town~~, school district, or any other political subdivision, shall never exceed five per centum upon the ~~assessed~~market value of the ~~taxable~~ property therein; provided that any incorporated city may, by a two-thirds vote, increase such indebtedness three per centum on such ~~assessed~~market value beyond said five per centum limit, and a school district, by a majority vote may increase such indebtedness five percent on such ~~assessed~~market value beyond said five per centum limit; provided also that any county or city by a majority vote may issue bonds upon any revenue-producing utility owned by such county or city, or for the purchasing or acquiring the same or building or establishment thereof, in amounts not exceeding the physical value of such utility, industry or enterprise.

In estimating the indebtedness which a city, county, township, school district, or any other political subdivision may incur, the entire amount, exclusive of the bonds upon said revenue-producing utilities, whether contracted prior or subsequent to the adoption of this constitution, shall be included; provided further that any incorporated city may become indebted in any amount not exceeding four per centum of such ~~assessed~~market value without regard to the existing indebtedness of such city for the purpose of constructing or purchasing waterworks for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purposes whatever. All bonds and obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, ~~town~~, school district, or any other political subdivision shall be void.

Questions relating to Section 4 of the measure include:

18. Will the bonding capacity for local governments increase because the initiated measure replaces "assessed" value with "market" value?
19. How will market value be determined for all types of property?
20. What effect does removal of the term "taxable" have when referring to the value of property in a political subdivision?
21. What would be the impact on a political subdivision's general obligation bonds if there is no property tax revenue to be used as collateral?

SECTION 5

SECTION 5. AMENDMENT. Section 16 of article X of the Constitution of North Dakota is amended and reenacted as follows:

SECTION 16. Any city, county, township, town, school district, or any other political subdivision incurring indebtedness shall, at or before the time of so doing, provide for ~~the collection of an annual tax revenues~~ sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

Questions relating to Section 5 of the measure include:

22. Could political subdivisions use the special assessments process to replace property tax revenues?
23. If the state is to be the funding source for repayment of political subdivisions' indebtedness, will political subdivisions need legislative approval prior to issuing debt?

SECTION 6

SECTION 6. REPEAL. Sections 5, 6, 7, 9, and 10 of article X of the Constitution of North Dakota are repealed.

SECTION 7

SECTION 7. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on January 1, 2012.

Questions relating to Section 7 of the measure include:

24. If the measure is approved by voters in June 2012, may political subdivisions retain property tax revenues collected from January through June 2012?
25. If the measure is approved by voters in June 2012, will all statutory provisions related to property taxes and budgets of political subdivisions become void or will a determination need to be made regarding which ones remain effective?
26. Would the Legislative Assembly need to provide funding to replace property taxes for all of calendar years 2012 and 2013? What are the potential amounts necessary for 2012 and 2013? What are the potential sources of funding available to replace property tax revenues, including tax rate changes necessary to generate the funding necessary? When would the Legislative Assembly need to meet to appropriate this funding? What would be the estimated impact for the 2013-15 biennium?

Other questions relating to the measure include:

27. May a political subdivision foreclose on property for nonpayment of property taxes if the taxes were not paid prior to the effective date of the initiated measure?
28. Will home schools or schools on Indian reservations be affected by the initiated measure?
29. What effect will the initiated measure have on tax increment financing?
30. What effect will the initiated measure have on the ability of political subdivisions to consolidate?