

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### PROPERTY TAX MEASURE REVIEW COMMITTEE

Wednesday, June 22, 2011  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative David Drovdal, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives David Drovdal, Larry Bellew, Tracy Boe, Chuck Damschen, Glen Froseth, Joyce Kingsbury, Kim Koppelman, Ralph Metcalf, Dan Ruby, Clark Williams, Lonny B. Winrich; Senators Dwight Cook, Joe Miller, Carolyn C. Nelson, Dave Oehlke, Ronald Sorvaag

**Members absent:** Representatives Wesley R. Belter, Steven L. Zaiser

**Others present:** See [Appendix A](#)

The legislative budget analyst and auditor reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

#### COMMENTS BY COMMITTEE CHAIRMAN

Chairman Drovdal said the Property Tax Measure Review Committee's responsibility is to receive factual information relating to the initiated measure prohibiting property taxes that has been accepted for the June 12, 2012, primary election. He said committee meetings will not be a forum for debating the measure.

#### PROPERTY TAX MEASURE REVIEW

At the request of Chairman Drovdal, the Legislative Council staff presented a memorandum entitled [Property Tax Measure Review Committee - Background Memorandum](#) relating to the committee's assigned responsibility to review the potential effects of initiated measure No. 2 appearing on the primary election ballot on June 12, 2012, to prohibit imposition of property taxes.

The Legislative Council staff said North Dakota Century Code Section 16.1-01-17 provides that at least 90 days prior to the statewide election at which an initiated measure will be voted upon, the Legislative Council is to coordinate the determination of the estimated fiscal impact of the initiated measure. The Legislative Management is to hold hearings, receive public testimony, and gather information from agencies and institutions relating to the estimated fiscal impact of the initiated measure. At least 30 days prior to the election, the Legislative Council is to provide information regarding the estimated fiscal impact to the Secretary of State, who shall include a notice within the analysis of the initiated measure

specifying where copies of the statement of the estimated fiscal impact of the initiated measure can be obtained.

#### Property Tax

The Legislative Council staff said property tax is assessed on the value of all real property unless the property is specifically exempted. Except for a one-mill levy for the University of North Dakota (UND) School of Medicine and Health Sciences, property taxes are determined, levied, collected, and expended at the local level for support of schools, counties, cities, townships, and other local political subdivisions. The property tax is determined by multiplying a mill rate times the real property's taxable value. A mill rate is the amount of tax paid per dollar of the taxable value of property. One mill is equal to one-tenth of one cent or \$1 for each \$1,000 of taxable value. The mill rate is determined by dividing the total taxes to be collected (revenue needs) in each taxing district by the total taxable value of property within the district.

#### Taxable Value

The Legislative Council staff said the taxable value of property is determined based on the true and full value and the assessed value of the property. The true and full value of residential and commercial property is the local assessor's estimate of the market value of the property. For residential property, the assessed value is 50 percent of the true and full value, and the taxable value is 9 percent of the assessed value. For commercial property, the assessed value is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

The Legislative Council staff said the true and full value of agricultural property is based on productivity and is calculated by North Dakota State University (NDSU) using the capitalized average annual gross return of the land. The Tax Commissioner receives information from NDSU and certifies to the county directors of tax equalization the estimated average true and full agricultural value of farm and grazing land in each county. The assessed value of agricultural property is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

The Legislative Council staff said property tax assessments for railroads, investor-owned public

utilities, and airlines are determined by the State Board of Equalization. The assessed value of these centrally assessed properties is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

### Other Taxes

The Legislative Council staff said taxes collected in lieu of property taxes include:

- **Telecommunications carriers** - Telecommunications carriers are assessed a tax of 2.5 percent of their adjusted gross receipts by the State Board of Equalization.
- **Rural electric cooperatives** - Effective January 1, 2010, property of rural electric cooperatives is subject to generation, distribution, and transmission taxes pursuant to Chapter 54-33.2.
- **Coal conversion facilities** - The coal conversion tax is in lieu of property taxes on investor-owned or cooperative electrical generating plants which have at least one unit with a generating capacity of 10,000 kilowatts or more of electricity, other coal conversion facilities which consume 500,000 tons or more of coal per year, or coal beneficiation plants. The lands on which the plants are located remain subject to the ad valorem property tax.
- **Oil and gas gross production tax** - Oil and gas gross production tax is imposed in lieu of property taxes on oil and gas-producing properties. The gross production tax for oil is based on the gross value at the well of oil produced. The gross production tax for gas is an annually adjusted flat rate per thousand cubic feet of all nonexempt gas produced in the state.
- **Tourism or concession license fee** - A license fee in lieu of property taxes is imposed for state-owned property leased from the superintendent of the State Historical Board or the director of the Parks and Recreation Department and used for tourism or concession purposes.
- **Potash** - A tax of 2 percent on the sale price of potash and 4 percent on the gross value of all subsurface mineral byproducts of potash production has been imposed in lieu of property taxes for taxable production occurring after June 30, 2011. The land and processing facility, mining facility, or satellite facility is assessed and taxed the same as other property within the taxing district in which the potash property is located.

### Statewide Property Taxes

The Legislative Council staff presented the following information relating to statewide average mill rates, property tax valuations, and ad valorem

property taxes levied for taxes payable in 2001 through 2010:

|      | Average Mill Rate | Taxable Value   | Taxes Levied <sup>1</sup> |
|------|-------------------|-----------------|---------------------------|
| 2001 | 392.07            | \$1,298,333,166 | \$509,032,721             |
| 2002 | 390.33            | \$1,364,577,713 | \$532,629,675             |
| 2003 | 392.78            | \$1,427,642,584 | \$560,751,909             |
| 2004 | 399.24            | \$1,468,874,722 | \$586,412,017             |
| 2005 | 402.70            | \$1,534,816,263 | \$618,065,693             |
| 2006 | 401.66            | \$1,642,672,714 | \$659,789,374             |
| 2007 | 397.41            | \$1,777,593,059 | \$706,427,621             |
| 2008 | 392.15            | \$1,888,388,390 | \$740,540,738             |
| 2009 | 390.02            | \$1,990,645,138 | \$776,398,475             |
| 2010 | 319.37            | \$2,125,303,286 | \$678,749,378             |

<sup>1</sup>The amounts shown include ad valorem property taxes only and do not include payments in lieu of taxes.

Source: Tax Commissioner

### Related Legislation

The Legislative Council staff said Section 16.1-10-02(1) provides that no person may use any property belonging to or leased by the state or any state agency or any service which is provided by the state or a state agency or political subdivision for any political purpose. The definition of political purpose included in Section 16.1-10-02(2) was amended by the Legislative Assembly in 2011 Senate Bill No. 2327 to include a statewide initiated or referred measure, a constitutional amendment or measure, and a political subdivision ballot measure. The 2011 Legislative Assembly also amended subsection 2 to provide that "[f]actual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question."

### Proposed Study Plan

The Legislative Council staff presented the following proposed study plan for the committee's consideration:

1. Receive testimony from initiative sponsoring committee representatives regarding the provisions of the property tax measure.
2. Receive and review information regarding the types of tax levies imposed on real property and total revenues generated by taxes on real property.
3. Receive testimony from political subdivisions regarding the potential effects on county, city, and school district revenue sources.
4. Receive testimony from other interested persons regarding the committee's study of the initiated constitutional measure to prohibit imposition of property taxes.
5. Receive testimony from the Attorney General's office regarding the provisions of the initiated measure.

6. Receive testimony from agencies, institutions, and departments regarding the estimated fiscal impact of the initiated measure.
7. Determine the estimated fiscal impact of the initiated measure and provide the information to the Secretary of State at least 30 days prior to the June 12, 2012, primary election.
8. Develop recommendations and any bill drafts necessary to implement the recommendations.
9. Prepare a final report for submission to the Legislative Management.

Ms. Marcy Dickerson, State Supervisor of Assessments, and Director, Property Tax Division, Tax Department, presented testimony ([Appendix B](#)) relating to property tax levies and provisions included in initiated measure No. 2. Ms. Dickerson said counties may levy mills for 68 purposes, townships for 34 purposes, cities for 67 purposes, and school districts for 19 purposes. She said other political subdivisions may levy mills for multiple purposes. She said total ad valorem and special taxes levied for 2010 total \$733.8 million. She said special taxes include mobile home taxes; electric generation, distribution, and transmission taxes; forest stewardship taxes; and payments in lieu of taxes.

Ms. Dickerson said in addition to property taxes levied on taxable property, payments in lieu of property taxes are levied on land owned by the Game and Fish Department, Board of University and School Lands or State Treasurer, National Guard, nonprofit organizations if used for conservation purposes, Workforce Safety and Insurance, the carbon dioxide pipeline, and land acquired by the State Water Commission for the Devils Lake project. She said the properties are valued the same as similar properties in their districts and are subject to the same mill rate. She said the properties generated approximately \$1.6 million in payments in lieu of taxes for participating political subdivisions for 2010.

Ms. Dickerson said language in the initiated measure relating to taxes levied for 2011 and collected in 2012 is confusing. She said the initiated measure raises questions relating to market value, assessments, bonding capacity, and the effective date of the initiated measure.

In response to a question from Representative Winrich, Ms. Dickerson said true and full value is defined in statute and can include market value. However, she said, market value is not defined in statute.

In response to a question from Representative Ruby, Ms. Dickerson said it would be difficult to determine the market value of agricultural land since there are very few sales of agricultural land.

Mr. Mark A. Johnson, Executive Director, North Dakota Association of Counties, presented testimony ([Appendix C](#)) relating to the provisions of initiated measure No. 2 and its potential effects on county revenue sources. Mr. Johnson said the initiated measure raises several questions for which the

answers will affect the potential fiscal effect of the measure. He said questions raised by county officials relate to the effective date of the initiated measure, payments in lieu of taxes, bonded indebtedness, special assessments, and enforcement of statutory responsibilities of landowners.

Representative Ruby suggested the North Dakota Association of Counties survey all counties to identify the value of property which has been foreclosed on, the amount recovered when the foreclosed property was sold, and the percentage of exempt properties in each county.

In response to a question from Representative Ruby, Mr. Johnson said counties did not have the same concerns when personal property tax was repealed in the 1970s as they do relating to the property tax measure because funding mechanisms were already in place to replace personal property tax before it was repealed.

Mr. Jerry Hjelmstad, Assistant Director, North Dakota League of Cities, presented information ([Appendix D](#)) relating to taxable valuations and tax levies in North Dakota cities. Mr. Hjelmstad said there is a wide range of mills levied at the city level. He said currently each city determines the services to provide and the level of property taxes levied. He said the initiated measure may result in the loss of decisionmaking at the city level. He said a distinction needs to be made between special assessments and special levies. He believes the initiated measure would result in special levies no longer being allowed, but special assessments may be allowed.

Ms. Kirsten Baesler, Southwest Director, North Dakota School Boards Association, said the North Dakota School Boards Association has not taken a position on initiated measure No. 2. Ms. Baesler said the association has concerns relating to how the initiated measure may affect the state's ability to raise new revenues to replace political subdivisions' property tax collections. She said the initiated measure provides that funding will be made available to school districts so that services currently being provided will remain funded. However, she said, the initiated measure does not provide a means for school districts to construct additional buildings or update and improve existing facilities and systems. She said total dependence on state funding would prevent school districts from addressing unique needs of each school district.

The committee recessed for lunch at 11:45 a.m. and reconvened at 12:30 p.m.

Ms. Charlene Nelson, chairman, and Mr. Robert L. Hale, committee member, sponsoring committee for initiated measure No. 2, presented testimony ([Appendix E](#)) regarding the initiated measure. Ms. Nelson said if the property tax is repealed, homeowners would own their home when their mortgages are paid and would not be concerned with losing their home for their inability to pay property taxes. She said the benefits of repealing the property tax include creating a statewide economic

development zone, keeping young people in the state, and providing a housing market that young homeowners can participate in.

Mr. Hale said one purpose of the initiated measure is to give schools more control over their budgets.

In response to a question from Senator Sorvaag, Mr. Hale said the initiated measure is not intended to disallow special assessments. He said local jurisdictions can vote to impose special assessments.

In response to a question from Representative Koppelman, Mr. Hale said there is a legal distinction between a special assessment and a special levy. He said only the Legislative Assembly may authorize special levies.

In response to a question from Senator Cook, Mr. Hale said the initiated measure would allow a school district to impose a special assessment for capital improvements.

In response to a question from Senator Cook, Mr. Hale said the initiated measure would not allow for payments in lieu of property taxes if the in lieu of payments are based on the value of the property, but if the payments in lieu of taxes are based on services received, they could continue.

In response to a question from Senator Miller, Ms. Nelson said the initiated measure requires the Legislative Assembly to develop a formula for distribution of funds to counties, cities, and townships. She suggested the formula could include a combination of miles of road, infrastructure costs, and population. She said state and local governments should budget for major capital improvements over time so there would be minimal need for special assessments.

In response to a question from Representative Boe, Mr. Hale said if voters approve the initiated measure, the state would be responsible for providing the funding to retire outstanding bonds that are for legal obligations defined in statute for political subdivisions.

In response to a question from Representative Koppelman, Mr. Hale said if voters approve the initiated measure, the state would be required to replace funding for the one mill that is levied for the UND School of Medicine and Health Sciences.

## **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

Committee members identified the following questions which should be answered to clarify the intent of the initiated measure and to assist in the determination of the measure's fiscal impact:

1. Will payments in lieu of property taxes be eliminated?
2. How are special assessments affected by the initiated measure?
3. 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?

4. How will market value be determined for all types of property?
5. Can land be repossessed for nonpayment of property taxes if the taxes were not paid prior to the effective date of the initiated measure?
6. Will the bonding capacity for local governments increase because the initiated measure replaces assessed value with true and full value?
7. Can political subdivisions use the special assessments process to replace property tax revenues?
8. Will home schools or schools on Indian reservations be affected by the initiated measure?
9. Will the state be responsible for payment of local governments' outstanding bonds?
10. What would be used for collateral for general obligation bonds if there is no property tax revenue?
11. What is the definition of legal obligation?
12. How will special levies imposed at the local level be affected by the initiated measure?
13. What effect will the initiated measure have on tax increment financing?
14. What effect will the initiated measure have on the ability of political subdivisions to consolidate?

Senator Miller suggested the committee receive information regarding the amount of outstanding bonds for all political subdivisions.

Senator Cook suggested the Secretary of State provide information at the next committee meeting regarding the effective dates included in the initiated measure.

Senator Cook suggested the committee receive information on North Dakota Century Code sections that would need to be repealed or amended if the initiated measure is approved.

Senator Cook suggested an attorney specializing in bonded indebtedness be invited to the next committee meeting to discuss general bond obligations.

Representative Froseth suggested the committee receive information regarding funding mechanisms of local governments in other states that do not have a property tax.

Senator Miller suggested the committee receive information regarding court rulings or precedence involving initiated measures with discrepancies.

Representative Ruby suggested the fiscal impact of the initiated measure should include the potential increase in other state revenue sources due to residents no longer having to pay property taxes.

Senator Sorvaag suggested the committee receive information on the number of property taxpayers who are residents of another state.

Chairman Drovdal said the committee will be notified of the next meeting date.

No further business appearing, Chairman Drovdal adjourned the meeting at 2:40 p.m.

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Becky Keller  
Senior Fiscal Analyst

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

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