

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TAXATION COMMITTEE

Tuesday, August 24, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Dwight Cook, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Dwight Cook, John M. Andrist, Jim Dotzenrod, Joe Miller, George Nodland, Tracy Potter, Bob Stenehjem, Constance Triplett; Representatives Larry Bellew, Wesley R. Belter, David Drovdal, Robert Frantsvog, Glen Froseth, Craig Headland, Jim Kasper, Louis Pinkerton, Gary R. Sukut, Dave Weiler, Lonny Winrich, Dwight Wrangham

Members absent: Representatives Scot Kelsh, Arlo Schmidt

Others present: Senator David O'Connell and Representative Bob Skarphol, members of the Legislative Management, were also in attendance.

See [Appendix A](#) for additional persons present.

It was moved by Senator Potter, seconded by Representative Drovdal, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

PROPERTY TAX RELIEF STUDY

Chairman Cook called on committee counsel to present a revised bill draft [\[10110.0200\]](#) to provide property tax relief through income tax credits. Committee counsel said the bill draft was considered but not given initial approval by the committee at the previous meeting. He said the bill draft considered at the previous meeting did not include dollar amounts based on fiscal analysis by the Tax Department which has now been obtained.

Committee counsel said the revised bill draft includes revisions to incorporate 2009 legislative changes made to allow the credit for certain passthrough entities, trusts, estates, and corporations. He said dollar amounts are inserted to provide that after the first year in effect, the Tax Commissioner would determine if the amount of the credit allowed in the first year exceeds the dollar amount and an adjustment would be made to reduce the credit for the second year of the biennium. He said based on Tax Department fiscal analysis, the bill draft includes a transfer to the general fund of \$300 million from the permanent oil tax trust fund. He said this is the estimated cost of the credits for the biennium.

Committee counsel said the bill draft is effective for 2011 and 2012 tax years. He said some taxpayers claiming the income tax credit for property taxes paid for taxable year 2010 under 2009 Senate Bill

No. 2199 would do so on the 2011 income tax return. He said these taxpayers would have a reduced property tax liability and a smaller credit for that taxable year. He said Ms. Kathy Strombeck, Research Analyst, Tax Department, would describe additional potential concerns in changing from a property tax reduction to an income tax credit to provide property tax relief.

Senator Andrist said he believes the income tax credit is the best vehicle to provide property tax relief. He said providing reduced property taxes on all property is a gift to nonresidents. He said it is more appropriate to provide relief to people who live here, contribute to the economy, and pay taxes.

Representative Bellew said the seller of property during the time the income tax credit was available did not receive any credit for taxes paid. Committee counsel said the tax credit should have been prorated between the seller and buyer based on the sale date. Representative Bellew said he sold property during the tax year the credit was available, and he was not able to claim the credit for the portion of taxes he paid.

Representative Pinkerton said the income tax approach eliminates credits for nonresidents. He said it would be significant to determine how much state money goes out of state with a reduction of taxes for all property.

Senator Andrist said extending the credit to a family farming corporation would also benefit nonresidents because it is likely that some members of the family farming corporation would be out-of-state residents.

Senator Cook said it should be remembered that to claim an income tax credit, a nonresident would have to file a North Dakota income tax return.

Representative Kasper asked if renters would receive no relief under the income tax approach. Committee counsel said renters would not receive relief unless relief received by the landlord is passed on to the tenant. He said the same situation exists under the property tax reduction approach.

Senator Potter said the bill draft provides a \$5,000 limit for commercial property owners. He asked if the \$5,000 limit applies per commercial property or per commercial property owner. Committee counsel said the \$5,000 limit would apply for all commercial property owned in the state by a single corporate or individual taxpayer.

Chairman Cook called on Ms. Strombeck for information on the fiscal effect of the bill draft.

Ms. Strombeck said the estimated fiscal impact of the bill draft would be approximately \$250 million per biennium and an estimate of \$300 million was provided, including a cushion of approximately \$50 million because the range in the estimate is broad.

Representative Kasper said it appears this bill draft would not slow property tax growth. Ms. Strombeck said that is true, and the bill draft would not change anything about the property tax system.

Senator Cook asked about the question raised by Representative Bellew, in which a seller did not receive credit for property taxes paid up to the time of sale of property. She said realtors should have done the transfer of property to allow the seller and buyer to share the property tax credits based on relative shares of taxes paid, but that did not happen in all cases.

Chairman Cook called on Ms. Strombeck to review Tax Department concerns and administrative issues relating to providing property tax relief through income tax credits. She distributed a copy of testimony ([Appendix B](#)) provided by a Tax Department representative in July 2008 to the interim Finance and Taxation Committee. She said the testimony detailed concerns of the Tax Department in administering the program under 2007 Senate Bill No. 2032.

Senator Cook said he recalls that the certificates that were issued to taxpayers entitled to a refund exceeding their tax liability was intended to avoid a constitutional gift issue. Ms. Strombeck said that is correct.

Senator Potter said for the 2007 legislation, he believes the second year of administering the tax credits worked smoother. Ms. Strombeck said that is correct, but many of the problems described in the testimony distributed still remained as problems in the second year of the program.

Representative Kasper asked for further information about the gift clause of the constitution relating to the 2007 legislation. Ms. Dee Wald, General Counsel, Tax Department, said the constitution prohibits the state from making donations. Ms. Wald said case law indicates that a tax credit deducted from tax liability is not a gift, but any amount of credit paid to a taxpayer exceeding the taxpayer's tax liability would be considered a gift of state funds. She said this is the reason the 2007 legislation included issuance of certificates in gifting situations, which would be redeemable against future property tax liability.

Senator Cook asked Ms. Strombeck how many taxpayers filed returns for 2007 only for purposes of claiming the property tax relief credit. She said 5,400 taxpayers filed Form ND-3, which was established for individuals not otherwise required to file a return. In response to another question from Senator Cook, she said, the average for the Form ND-3 returns was a refund of approximately \$313.

Chairman Cook called on committee counsel for presentation of a bill draft [[10028.0300](#)] to provide property tax relief through allocations to school districts. Committee counsel said the bill draft has not been revised and remains as it was reviewed by the committee at the previous meeting. He said the bill draft provides for buying down the mill rate for school districts in an amount up to 75 mills for each school district. He said the appropriation for the 2011-13 biennium is \$341,790,000. He said this amount consists of \$295 million transferred from the property tax relief sustainability fund and \$46,790,000 from the permanent oil tax trust fund. He said the amount in the property tax relief sustainability fund was transferred to that fund by the 2009 property tax relief legislation and was intended to provide for future property tax relief. He said the bill draft also transfers \$341,790,000 from the permanent oil tax trust fund to the property tax relief sustainability fund in 2012, as a set-aside amount to fund property tax relief for the 2013-15 biennium.

Chairman Cook asked Ms. Bev Nielson, Assistant to the Executive Director, North Dakota School Boards Association, if school districts support the approach in this bill draft and 2009 Senate Bill No. 2199. Senator Cook said he understands some districts near the cutoff point for mill reduction were disappointed. Ms. Nielson said there would be some school districts disappointed wherever the cutoff point is established for mill levy relief. She said at a range of 100 mills to 110 mills after the property relief, districts would have authority for increased mill levies. She said moving the mill levy limits to different amounts would just change which districts would be disappointed.

Representative Froseth asked if the \$295 million of property tax relief delivered to school districts was considered new money for schools. Ms. Nielson said the property tax relief allocations were not considered new money but were considered dollar-for-dollar revenue replacement.

Representative Drovdal said the bill draft increases state property tax relief allocations from \$295 million to \$341 million in one biennium. He said in addition, schools will receive added property tax revenue from the growth in valuation in the school district. He said he believes it would be better to keep the legislative funding level at \$295 million.

SOIL SURVEY IMPLEMENTATION IN ASSESSMENTS

Chairman Cook called on Ms. Sara Meier, Property Tax Specialist, Tax Department, for testimony ([Appendix C](#)) on the status of county compliance with required soil survey implementation in agricultural property assessments.

Ms. Meier said 21 of the 53 counties have the soil survey method of valuing agricultural land in place. She said Divide County is implementing the method for 2010. She said the report she provided contains

information on projected implementation for remaining counties, except for counties that have not been contacted or do not have a projected date.

Ms. Meier said the bill draft [10111.0100] being considered by the committee does not contain a deadline date within the taxable year. She said she would suggest February 1 of a taxable year as the deadline date because that is the assessment date set by statute. Committee counsel said to make the change in the bill draft, on page 1, line 8, the word "for" should be overstruck and immediately after that the words "by February first of" should be inserted. He said this would establish the assessment date of February 1 as the annual implementation deadline date for soil survey information in assessments.

Chairman Cook invited county officials in attendance who are interested in the soil survey implementation issue to make comments.

Mr. Jerry Ratzlaff, Director of Tax Equalization, Ramsey County, Devils Lake, said due to issues with changing boundaries of Devils Lake, Ramsey County has problems in implementation of soil surveys in assessments. He said the boundaries of Devils Lake will also cause problems in other counties. He said a February 1 deadline date is based on the assessment date, but local boards of equalization do not meet until April or June. He said this can cause problems with application of modifiers.

Senator Triplett asked if problems in Ramsey County are related to agricultural parcels of property. Mr. Ratzlaff said modifiers must be applied for valuation of individual parcels, but implementation will shift values among properties and each property must be recalculated each time the lake rises.

Mr. Don Flaherty, Director of Tax Equalization, Dickey County, Ellendale, said Dickey County officials intend to conduct a trial run by 2011 so the county will have everything in place by the 2012 deadline to implement soil surveys in agricultural assessments. He said he has encountered some miscalculations and other issues that cause him concerns that problems may arise that would cause Dickey County to miss the deadline despite best efforts of the county. He said he would like to see a grace period in the penalty provision to allow counties making best efforts to avoid penalties.

Mr. Duane Olson, Director of Tax Equalization, Hettinger County, Mott, said Hettinger County is working on the process. He said his is a one-person office, so this project must be done between his other duties. He said penalizing the county for being unable to meet the deadline seems redundant. He said the county is already under financial constraints. He requested the committee to consider a grace period for the penalty provision.

Senator Triplett asked if Mr. Olson has asked the Hettinger County Board of County Commissioners for funding to get this project done. Mr. Olson said he has not asked for funding and knows that funds are tight at the county level. Senator Triplett said Mr. Olson should have a discussion with the county

commissioners about funding and the potential penalty.

Representative Froseth said the purpose of required implementation of soil survey use was to make assessments fair across the state. He said in the long run, use of soil surveys in all counties will provide a benefit to taxpayers.

Mr. James Albrecht, Director of Tax Equalization, Kidder County, Steele, said his is also a one-person office. He said on top of his regular duties, implementation of soil surveys in agricultural assessments has greatly increased his workload. He said an additional demand on his office is that flooding damage in Kidder County has been a major concern this year. He said he requests an additional one-year extension on the deadline for implementation of soil surveys in agricultural assessments.

SUBSIDIZED HOUSING

Chairman Cook called on committee counsel to review a bill draft [10047.0200] intended to make clear that subsidized housing is not eligible for property tax exemption. Committee counsel said the bill draft was prepared to remove inconsistencies in application of property tax exemptions for subsidized housing in the state. He said the bill draft is also intended to reduce the likelihood of litigation with respect to decisions of cities to grant or deny the property tax exemption for property eligible for the federal low-income housing income tax credit.

Committee counsel said the exemption for charitable use of property is governed by Section 5 of Article X of the Constitution of North Dakota. He said the bill draft represents a statement of legislative intent regarding interpretation of the constitutional charitable property exemption with regard to residential rental units eligible for the federal low-income housing income tax credit.

Committee counsel said at the previous committee meeting, a bill draft was considered which would have denied exemption for residential rental property leased to tenants based on income restrictions enabling the owner to receive a federal subsidy unless the owner also provides health care to tenants. He said the language in the first draft was drawn from the North Dakota Supreme Court decision in *Riverview Place*. He said committee discussion of the first draft indicated potential confusion of the property tax exemption status of nursing homes and assisted living facilities. He said the second draft was revised to limit the denial of exemption language to property eligible for the federal low-income housing income tax credit.

Chairman Cook called on Ms. Clarice Liechty, Jamestown, who expressed thanks to the committee for the work on this issue of inequity to taxpayers.

It was moved by Representative Drovdal, seconded by Senator Miller, and carried on a roll call vote that the bill draft relating to property tax exemption denial for subsidized housing be approved and recommended to the Legislative Management. Voting in favor of the motion were

Senators Cook, Andrist, Dotzenrod, Miller, Nodland, Potter, Stenehjelm, and Triplett and Representatives Bellew, Belter, Drovda, Frantsvog, Froseth, Headland, Kasper, Pinkerton, Sukut, Weiler, Winrich, and Wrangham. No negative votes were cast.

SOIL SURVEY IMPLEMENTATION

Chairman Cook asked if committee members wish to act on the implementation of soil survey data in agricultural property tax assessments bill draft. Representative Froseth said it appears the bill draft should be amended to incorporate the recommended amendment establishing February 1 as the deadline date within taxable years for implementation of soil survey data. **It was moved by Representative Froseth, seconded by Senator Andrist, and carried on a voice vote that the bill draft be amended to incorporate a deadline date of February 1 within each taxable year for implementation of soil survey data.**

It was moved by Representative Froseth, seconded by Senator Stenehjelm, and carried on a roll call vote that the bill draft, as amended, relating to the deadline for county implementation of soil survey data in agricultural property assessments be approved and recommended to the Legislative Management. Voting in favor of the motion were Senators Cook, Andrist, Dotzenrod, Miller, Nodland, Potter, Stenehjelm, and Triplett and Representatives Bellew, Belter, Drovda, Frantsvog, Froseth, Headland, Kasper, Pinkerton, Sukut, Weiler, Winrich, and Wrangham. No negative votes were cast.

PROPERTY TAX RELIEF

Chairman Cook said on the property tax relief study, the study directive established a goal of achieving a 1.5 percent effective tax rate for property taxes in the state. He said we have achieved a rate of 1.5 percent or less for agricultural and residential property under the 2009 property tax relief approach. He asked for opinions of committee members on the property tax relief bill drafts before the committee.

Representative Kasper said he would not support the income tax approach. He said the income tax approach is complicated, and many individuals would receive no relief--renters of residential property in particular being omitted.

Senator Cook said the 2007 legislation was initiated using school funding allocations to deliver property tax relief. He said during the legislative session, discussion and deliberation on the issue led to using an income tax approach to deliver property tax relief. He said it was found that administrative burdens, practical problems, and constitutional issues complicated the income tax approach. He said a substantial amount of work was done by many people during the 2007-08 interim to develop the 2009 legislation to deliver property tax relief by buying down mill levies of school districts. He said that

system has functioned well, and no flaws have been discovered. He said he believes the property tax relief approved in 2009 has been well-received by taxpayers. He said it is important to maintain certainty in tax policy. He said he thinks it would be wrong to move away from the method of property tax relief enacted in 2009 with a legislative commitment to continue the property tax relief by setting aside funding for the next biennium.

Senator Potter said he agrees with much of what Senator Cook said. He said he is concerned that relief of approximately 17 percent of property taxes under the 2009 approach costs approximately \$341 million for the 2011-13 biennium while providing 20 percent relief under the income tax approach would cost only \$300 million. He said to him, more relief for less cost is the best approach. He said another concern is that under the property tax approach, increased valuations will mean the state will be committed to spending more money as time goes on.

It was moved by Senator Triplett and seconded by Representative Winrich that the bill draft to provide property tax relief through allocations to school districts be approved and recommended to the Legislative Management.

Representative Drovda said the property tax method seems to work much smoother than the income tax method of delivering property tax relief. He said he believes the property tax delivery approach should be moved forward for consideration by the Legislative Assembly.

Representative Kasper said he supports the property tax relief approach, but the bill draft does not address property tax reform and puts the Legislative Assembly in the position of paying property taxes. He said he believes property tax reform is important, and he will support legislation for property tax reform.

Senator Triplett said she disagrees with the suggestion that the Legislative Assembly would be paying property taxes under the property tax relief approach. She said education has always been a state funding objective, and she believes the bill draft approach is more in the nature of state participation in education funding.

Senator Andrist said we continue to make the tax system more complicated. He said he does not like the approach of property tax relief by allocations to school districts.

Senator Nodland said he supports the property tax buydown approach. He said the income tax delivery approach was a headache as a county commissioner. He said he has not received one negative comment on the property tax approach adopted in 2009, even from school districts levying under 185 mills.

Representative Headland said he supports property tax relief but has concerns with adding \$46 million in additional state funding for next biennium. He said perhaps a better approach would be for the bill draft to move forward without committee recommendation.

Senator Cook said his constituents noticed and expressed appreciation for the property tax relief under the 2009 legislation, which was not the case under the 2007 income tax approach.

Representative Belter said that as legislators, we should remind ourselves that as property valuations increase, school boards will have the option of reducing mill levies.

The question was called and **the motion for approval of the bill draft carried on a roll call vote.** Voting in favor of the motion were Senators Cook, Dotzenrod, Miller, Nodland, Potter, Stenehjerm, and Triplett and Representatives Bellew, Belter, Drovdal, Frantsvog, Froseth, Headland, Kasper, Pinkerton, Sukut, Winrich, and Wrangham. Senator Andrist and Representative Weiler voted "nay."

Representative Wrangham said he voted in favor of the motion to recommend the bill draft to move the bill forward for legislative consideration, but there has been discussion about complications, confusion, and constitutional issues. He said he does not think it is the job of the legislature to circumvent the constitution or to create winners and losers in property tax application. He said in view of these concerns, he **moved that the committee look into the constitutional issues of property tax relief through allocations to school districts before the full Legislative Assembly considers the bill draft.**

Chairman Cook asked Representative Wrangham what he sees as constitutional issues that should be examined. Representative Wrangham said the constitutional issues would include whether the gift clause of the constitution would be violated, whether the state should be involved in paying property taxes, and whether the general fund should be used for other than state funding purposes.

The motion was seconded by Representative Weiler.

In response to a question from Chairman Cook, committee counsel said he does not perceive any issues under the property tax relief bill draft that are constitutionally questionable.

Senator Stenehjerm said if Representative Wrangham believes constitutional issues exist, he has the option of seeking an opinion from the Attorney General.

The question was called and **the motion failed on a roll call vote.** Voting in favor of the motion were Senator Andrist and Representatives Bellew, Froseth, Headland, Kasper, Pinkerton, Weiler, and Wrangham. Voting in opposition to the motion were Senators Cook, Dotzenrod, Miller, Nodland, Potter, Stenehjerm, and Triplett and Representatives Belter, Drovdal, Frantsvog, Sukut, and Winrich.

TAX INCREMENT FINANCING AND RENAISSANCE ZONES

Chairman Cook called on committee counsel for presentation of a memorandum entitled [Tax Increment Financing for Blighted Areas](#). Committee counsel said

tax increment financing was initially enacted in North Dakota in 1973. He said the statutory provisions in place require city approval of a development or renewal plan for a development or renewal area. He said under the statutory provisions, this requires determination that an area is industrial or commercial property or a slum or blighted area. He said the definition of blighted area is rather broad and vague and includes finding of certain conditions and a determination that the property is a menace to the public health, safety, morals, or welfare in its present condition and use. He said whether these conditions exist is a question of fact that must be answered by the city governing body.

Committee counsel said the question of interpretation of blighted area became controversial in 2001 when the City of Fargo designated a tax increment financing district consisting primarily of property that was open land previously used only for agricultural purposes. The Fargo City Commission determined the property to be a blighted area and developed the property. The property in question was located in the West Fargo School District, and the West Fargo School District expressed opposition to the decision. Legislation was introduced in 2003 which would have inserted statutory language that a blighted area does not include predominately open land area that has been developed only for agricultural purposes. He said the bill also required establishment of a joint review board when a city seeks to create a development or renewal area. He said the joint review board would have been required to consist of a representative appointed by the governing body of each city, county, school district, and other political subdivision that has power to levy taxes on the property plus one member chosen to represent the public. He said the city would have been placed in a minority position on the joint review board under the bill draft.

Senator Andrist said there may be more questions than agricultural land being included in a tax increment financing district. He said placing all of downtown Bismarck in a tax increment financing district seems outside the definition of property to be included in a development or renewal area.

Chairman Cook called on committee counsel for presentation of a memorandum entitled [Renaissance Zone and Tax Increment Financing District - Possibility of Overlapping Territory](#). Committee counsel said the memorandum was requested to determine whether property may be contained in a renaissance zone and a tax incremental financing district. He said a city may apply for approval of designating a portion of the city as a renaissance zone from the Department of Commerce Division of Community Services. He said the primary incentives for property owners of renaissance zone property are income and property tax exemptions. He said income tax exemptions are available for purchasers of single-family residential property as a primary residence, purchasers or lessors of property deriving business

income from the property, investors in historic preservation or renovation, and investors in a renaissance fund organization. He said property tax exemptions are available for residential property and business or investment property. He said it is significant that the granting of property tax exemptions is optional for cities.

Committee counsel said establishing a tax increment financing district freezes the valuation of property for property tax purposes. He said as improvements are made to the property, valuation increases above the frozen valuation are subject to property taxes, but all revenues from the incremental value are deposited in a special fund used only for repayment of bonds issued to finance the project.

Committee counsel said it appears there is nothing provided in statute to prohibit property from being incorporated in both a renaissance zone and a tax increment financing district. He said renaissance zone property is eligible for a property tax exemption, which would be incompatible with the purpose of a tax increment financing district, which is to continue property tax collection against property but divert part of the revenue to a tax increment fund for financing the improvements. He said the property tax exemption for renaissance zone property is optional for cities. He said a city could establish a renaissance zone to allow income tax credits to property owners. He said the city could deny property tax-exempt status to those properties and include the property in a tax increment financing district to finance improvements.

Representative Headland said an individual or corporation is allowed to invest in a renaissance fund organization and receive a 50 percent income tax credit. He asked if an individual is eligible for this investment credit although the individual is not a renaissance zone resident. Committee counsel said it is not necessary to be a resident of the renaissance zone to qualify for the income tax credit for investing in a renaissance fund organization.

Chairman Cook called on Mr. Jerry Hjelmstad, Assistant Director, North Dakota League of Cities. Mr. Hjelmstad said he was requested to provide information on tax increment financing districts in the state. He distributed a copy of information ([Appendix D](#)) compiled from cities showing tax increment financing districts that have been closed out or are currently in existence. He said the information for districts in existence shows the balance owed and the balance on hand. He said in some cities, there is an overlap of tax increment financing districts and renaissance zones.

Mr. Hjelmstad said he was also asked about the status of the Radisson Hotel in Bismarck. He said the Radisson Hotel is part of the tax increment financing district in Bismarck. He said the hotel was owned by the City of Bismarck at the time the district was created and is now privately owned. He said at the time the district was created, it had a taxable valuation of zero because it was owned by the city and it is now

taxable, so 100 percent of the taxes paid on the hotel go to the tax increment financing district fund.

Representative Weiler said it is surprising that Bismarck has a tax increment financing district balance on hand exceeding \$16 million. Mr. Hjelmstad said that amount is being held pending the outcome of a lawsuit filed to challenge the validity of the district.

Senator Potter asked if the City of Bismarck would be allowed to designate a new tax increment financing district to use the balance on hand in the existing district. Mr. Hjelmstad said that would not be allowed because tax increment financing district funds must be used within the tax increment financing district.

Representative Wrangham said when a tax increment financing district project is completed, the money on hand must be allocated to the taxing districts in which the property is located. He asked why that has not happened in Bismarck. Mr. Hjelmstad said the Bismarck tax increment financing district is an open-ended plan that has been amended several times and is an ongoing project.

Senator Andrist asked how Bismarck has avoided distributing the cash on hand to other political subdivisions. Mr. Hjelmstad said he is not sure how to answer the question. He said Bismarck has had several public hearings regarding the district.

Mr. Hjelmstad said he was also requested to provide information on development and renewal plans for tax increment financing districts. He distributed copies of information ([Appendix E](#)) he collected from cities regarding tax increment financing districts. He said the information was provided by the Cities of Fargo, Mapleton, and Wahpeton.

Representative Skarphol asked what percentage of property taxes collected in Bismarck ends up in the tax increment financing district fund. Mr. Hjelmstad said he can seek information on that question.

Chairman Cook called on committee counsel to present a bill draft [[10157.0100](#)] to provide that property may not be in a renaissance zone and a tax increment financing district. Committee counsel said the bill draft was prepared to eliminate the possibility for property to be included in a tax increment financing district and a renaissance zone. He said it appears property in the state is already located within both types of districts, and the bill draft prohibits property from being in both types of districts for plans or zones established after July 31, 2011. He said there would be legal issues if existing properties were required to be withdrawn from a renaissance zone or tax increment financing district because bonds may have been issued and contracts entered on that basis.

It was moved by Senator Andrist and seconded by Representative Wrangham that the bill draft prohibiting property from being included in a renaissance zone and a tax increment financing district be approved and recommended to the Legislative Management.

Senator Triplett said unless there is more information indicating abusive double use of

renaissance zones and tax increment financing, she does not see the need to limit local decisions.

Representative Kasper said he agrees with Senator Triplett. He said renaissance zones have been a good local development tool, and he does not see the problem to be solved by excluding use of these zones and districts.

Senator Andrist said because a renaissance zone city does not have to provide a property tax exemption, income tax credits provided by the state seem like a tool by which the state could be investing in local development while local government does not.

Senator Dotzenrod said these laws have been on the books for several years, and he has not seen evidence of abuse.

Representative Wrangham said it appears there is a need to discuss this issue further, and he would support moving the bill forward for legislative consideration so information can be gathered during the legislative session.

The question was called and **the motion carried on a roll call vote**. Voting in favor of the motion were Senators Cook, Andrist, Miller, and Nodland and Representatives Bellew, Belter, Drovda, Frantvog, Froseth, Headland, Pinkerton, Weiler, and Wrangham. Voting in opposition to the motion were Senators Dotzenrod, Potter, and Triplett and Representatives Kasper, Weiler, and Winrich.

Representative Froseth said the 2003 legislation to restrict tax increment financing districts contained a requirement for a joint review board. He said standing alone, that provision would be good protection for taxing districts. He said limiting tax increment financing districts to no more than 20 years' existence would also be useful protection for taxpayers.

Representative Winrich said a bill draft should be prepared for committee consideration that would incorporate provisions of the 2003 legislation relating to the definition of blighted area and establishment of a joint review board and include the limited duration of 20 years for tax increment financing districts. Chairman Cook directed committee counsel to prepare a bill draft with those provisions.

Senator Dotzenrod said he received a letter from the superintendent of the LaMoure Public School District relating to property tax relief allocations. He distributed a copy of the letter ([Appendix F](#)) to committee members. He said the letter points out a perceived inequity in the allocation of property tax relief and suggestions for possible changes. He said he wanted committee members to review the letter and enter it in the committee record.

MINERAL STUDY

Chairman Cook called on Mr. Jim Guilinger, Entrée Gold, Arvada, Colorado, for information on company plans for uranium mining in North Dakota. Mr. Guilinger said Entrée Gold is in the early stages of its Sentinel Project, seeking recovery of germanium, molybdenum, and uranium. He said test holes have been and are being drilled, which are 50 feet to

100 feet in depth and which are reclaimed after drilling. He said the project is located near Belfield. He said the project focuses on what was the Fritz pit mine in the 1960s. He said a seam of lignite in that area contains the metals the company is seeking.

Senator Cook asked if Entrée Gold would be conducting all open pit mining for metals in the Sentinel Project. Mr. Guilinger said the proposal is for open pit mining of the project.

Senator Potter asked if the lignite mining reclamation rules in place in North Dakota would apply to reclamation of the area after mining for metals. Mr. Guilinger said the existing lignite mining reclamation rules would apply.

In response to questions from Representative Kasper, Mr. Guilinger said no dollar value estimate has been established for revenue from the mining operation. He said the payroll of the project would include fewer than 100 employees, but the jobs would have high pay rates for employees like chemical engineers and similar professionals. He said the estimated length of the mining operation would be a decade or more, and it will probably be five years from now before mining would begin.

Senator Cook asked if Entrée Gold would use the lignite coal from the seam being mined. Mr. Guilinger said the coal is not economically usable. He said it is a very low grade of lignite containing 50 percent or more moisture.

In response to a question from Senator Nodland, Mr. Guilinger said Entrée Gold is also looking at other areas in North Dakota for mining potential.

Representative Belter asked if uranium, germanium, and molybdenum resources are being exhausted in other areas of the United States. Mr. Guilinger said resources are not being exhausted. He said the fact that these metals are very shallow beneath the surface in North Dakota is the primary reason the North Dakota mining potential is attractive.

Representative Froseth asked, if Mr. Guilinger could choose, which of the states in the area have the most fair tax system for uranium mining. Mr. Guilinger said Wyoming appears to be the fairest of the taxing states for uranium mining.

Senator Potter asked where the germanium, uranium, and molybdenum would be separated from the lignite. Mr. Guilinger said the metals would be separated from the lignite here in North Dakota before the metals are shipped.

Chairman Cook called on Mr. Ryan Rauschenberger, Deputy Tax Commissioner, Tax Department, for a presentation of a bill draft ([Appendix G](#)) prepared by Tax Department staff for taxation of potash.

Mr. Rauschenberger said the bill draft was prepared by the Tax Department staff after extensive review of potash mining laws in other states. He said the bill draft was prepared with the hope that the provisions could be adapted to uranium mining and mining of other subsurface minerals. He said it appears that recent developments in proposed

uranium mining by open pit extraction may cause plans to be adjusted.

Mr. Rauschenberger reviewed the provisions of the bill draft. He said the bill draft provides a property tax exemption and sales tax exemption for minerals subject to tax under the new chapter created by the bill draft. He said the bill draft establishes a tax at a rate of 5 percent on potash, and the tax is imposed on the annual average price of potash based on the potash producer price index determined by the United States Department of Labor, Bureau of Labor Statistics. He said a byproducts tax of 4 percent on gross value of byproducts is imposed. He said the bill draft provides administrative provisions similar to provisions of other North Dakota tax laws.

Representative Weiler asked how the tax rate in the bill draft would compare to neighboring states. Mr. Rauschenberger said it is hard to compare because other states have royalty charges in addition to extraction taxes, but the rate would be in the same range.

Representative Drovdal asked how potash well spacing would be regulated. Mr. Lynn Helms, Director, Department of Mineral Resources, said spacing for potash wells in North Dakota is expected to be similar to Bakken oil wells, but the laterals in potash wells are not as long. He said he would anticipate 640-acre spacing units. Representative Drovdal asked about water needs for potash wells. Mr. Helms said the best water for potash extraction is saltwater waste from oilfields. Representative Drovdal asked how many gallons of water would be needed, for a potash well. Mr. Helms said 1 million gallons of water per well would be needed, but use of wastewater from oil operations means little fresh water would be required.

In response to a question from Senator Potter, Mr. Helms said 6,000 feet to 9,000 feet is the depth of potash deposits in North Dakota.

Senator Triplett asked if road impacts for potash mining would be significant. Mr. Helms said Divide, Burke, Renville, and Bottineau Counties would be the focus of initial potash extraction. He said road impacts would be similar to oil impact because the drilling rigs are very similar, and significant amounts of water must be hauled by road.

In response to a question from committee counsel, Mr. Helms said potash bonding, reclamation, spacing, and other regulatory issues would be covered by existing rules, but the rules will need to be updated.

Representative Skarphol asked how tax collections from potash mining could cover costs of impact. Mr. Helms said a smaller area of impact will be involved with potash extraction than with the oil extraction from the Bakken Formation. Representative Skarphol asked committee counsel if potash would be subject to property taxes if the bill does not pass. Committee counsel said he believes potash would be exempt from property taxes but would do additional research on the question.

Chairman Cook called on Mr. Helms for information ([Appendix H](#)) on the discount that applies to North Dakota crude oil.

Mr. Helms reviewed the information on the handout. He said the discount varies from month to month. He said the combined effect of the discount on reductions of state tax revenue and state royalties is \$34 million per year.

In response to a question from Senator Cook, Mr. Helms said a 10 percent discount would be considered normal because the company needs an operating cost margin. He said the impact amounts shown in the chart for tax and royalty revenue are when the discount exceeds 10 percent.

In response to a question from Representative Pinkerton, Mr. Helms said Enbridge believes that mixture of oil for pipeline shipping to combine North Dakota sweet crude oil with viscous sour crude increases shipping volume. He said an application for this approach is pending with the Federal Energy Regulatory Commission, and the comment period is open. Senator Cook asked how long the comment period will remain open, and Mr. Helms said perhaps two weeks remain to file comments.

Committee members suggested a letter of support to the Federal Energy Regulatory Commission for the application. Chairman Cook said a letter of support from the committee would require prior approval from the chairman of the Legislative Management. **It was moved by Representative Pinkerton, seconded by Senator Miller, and carried on a voice vote that the committee seek approval from the chairman of the Legislative Management and forward a letter of support to the Federal Energy Regulatory Commission for the pending application of Enbridge for pipeline transportation of blended sweet and sour crude oil.** Chairman Cook said the committee would appreciate the assistance of Mr. Helms to prepare the letter of support, the letter would be forwarded to the chairman of the Legislative Management for approval, and upon approval the letter would be forwarded to the Federal Energy Regulatory Commission.

Chairman Cook called on Mr. Jeff Engleson, Director, Energy Development Impact Office, Land Department, for testimony ([Appendix I](#)) on the 2010 oil impact grant round.

Mr. Engleson said the flexibility in the oil and gas impact grant program has allowed the program to adapt to changing needs as drilling activity has moved from one area of the state to another. He said the information in a chart attached to his testimony shows how the program has adapted to changing circumstances. He said the tables provide information over the past five bienniums by political subdivision type, by county, and by function.

Mr. Engleson said the share of grant awards that has gone to counties has decreased over the past nine years. He said the primary reason is direct allocations of tax revenue to counties has substantially increased. He said the amount awarded

to townships, volunteer fire departments, and ambulance services has substantially increased because those entities do not receive direct allocation of tax revenues. He said the focus areas of the program have changed as exploration and drilling activity have moved. He said the focus of development activity was in Bowman County in the late 1990s and has now shifted with Bakken Formation activity in Mountrail and Dunn Counties and other counties. He said grant funding has followed the shift in area of activity.

Among the observations in Mr. Engleson's testimony is that the Legislative Assembly may want to consider changing North Dakota Century Code Section 21-06-10, which is the law that dictates how money received through leasing of federal lands under Lake Sakakawea is to be distributed. He said under the current formula, a small township in Mountrail County has received more than \$4 million of bonuses and the New Town School District has collected more than \$22 million. He said the formula may have made sense in the past, but with the millions of dollars of royalty and bonus payments, it might be a good time to revisit the formula.

Chairman Cook directed committee counsel to prepare a memorandum on the funding formula in Section 21-06-10 and gather information available on allocation of revenues under that section.

Chairman Cook called on Ms. Marcy Dickerson, State Supervisor of Assessments, Tax Department, for testimony ([Appendix J](#)) relating to county road levies.

Ms. Dickerson said a question arose at the previous committee meeting regarding whether counties receiving oil tax revenue allocations are complying with the requirement of a 10-mill levy to receive tax revenues.

Ms. Dickerson said the table attached to her testimony indicates that for the county road and bridge, farm-to-market and federal-aid road, and county road fund levies, Bowman County levied a combined subtotal of 0.25 mill and Slope County levied 0.00 mill. She said Bowman County levied 9.75 mills for county general fund purposes, and Slope County levied 10.00 mills for county general fund purposes. She said only if the entire general fund levy for Bowman County and Slope County is considered to be levied for road purposes would those counties qualify for the requirement of Section 57-51-15 that a county levy at least 10 mills for road purposes to qualify for any allocation of funds from the oil and gas gross production tax.

Representative Skarphol asked how we can determine how much counties spent on roads. Ms. Dickerson said there is no way to know at this point, but a new reporting system is coming under 2009 House Bill No. 1304 that will provide information.

Senator Triplett said it would be possible to examine audit reports of counties to see what expenditures have been made.

Representative Headland said counties are subject to a 23-mill levy cap, and most counties listed in the information provided are levying more than 23 mills. He asked how this is possible. Ms. Dickerson said home rule has been approved in some counties to levy a higher amount, but counties also could reach a higher levy amount under Section 57-15-01.1 and its preceding provisions. She said beginning in 1981 counties were allowed to levy a percentage increase in dollars each year above the highest levy from the previous three years. She said counties that took advantage of the percentage increase could now be at a substantially higher mill levy limit.

Senator Cook said the information reporting required by 2009 House Bill No. 1304 will not be available until later this year. He said the information will not be available to the interim committee but will be available for the legislative session.

Chairman Cook called on Mr. Rauschenberger for presentation of information ([Appendix K](#)) on distribution of gross production tax revenues for fiscal year 2010.

Mr. Rauschenberger said the table shows the actual distributions for the first fiscal year under the allocation formula changes made by 2009 House Bill No. 1304. He said the table also provides, for comparison purposes, the distributions that would have been made for fiscal year 2010 under the law prior to the allocation changes made by House Bill No. 1304. He said the bottom portion of the table provides information on the changes in allocations for fiscal year 2010 with the allocation enhancements under House Bill No. 1304.

Mr. Rauschenberger said the net effect of the 2009 changes was an increase of \$11 million in allocations to counties, an increase of over \$6 million in allocations to cities, and a new allocation of more than \$7.8 million to county infrastructure funds. He said the net increase for the year was \$24.9 million to political subdivisions.

Representative Drovdal said 2009 House Bill No. 1304 created a city cap of \$750 per capita in allocation of funds. He asked which cities hit that cap for fiscal year 2010. Mr. Rauschenberger said the information collected does not provide that level of detail. He said information can be provided on cities that reached that cap for fiscal year 2010.

Senator Nodland asked how many counties have reached the level of receiving a 10 percent allocation of revenues for fiscal year 2010. Mr. Rauschenberger said five counties reached the 10 percent allocation level, including Mountrail, McKenzie, Dunn, Williams, and Bowman Counties.

COMMITTEE DISCUSSION

Chairman Cook asked committee counsel if the potash tax bill draft would have to be prepared as a Legislative Council bill draft for committee approval. Committee counsel said the bill would be prepared as a Legislative Council bill draft.

Representative Kasper asked if there is anything in the potash tax bill draft that would require any tax revenue to be placed in the legacy fund, if that fund is approved by the voters. He said the revenues should be treated the same as oil tax revenues because potash is a depletable resource.

Senator Potter said because the potash tax bill draft provides for allocation of funds only after production begins, Burke County will not receive any tax revenue until production begins, but the impact of potash drilling activity will come sooner.

Representative Drovdal said he believes the provisions in 2009 House Bill No. 1304 imposing a cap of \$750 per capita on city allocations has problems. He said the census does not reflect individuals residing in cities in the oil exploration area

who claim another state as their permanent residence. He said limiting infrastructure fund grants to school districts to be used only for schoolbuses should be revised to provide that those grants would not be imputed funds for schools under the state aid formula.

Chairman Cook said he hopes the committee will conclude its activities at the next meeting.

No further business appearing, Chairman Cook adjourned the meeting at 4:30 p.m.

John Walstad
Code Revisor

ATTACH:11