

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### LEGISLATIVE COUNCIL

Wednesday, September 24, 2008  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Al Carlson, Rick Berg, Merle Boucher, Jeff Delzer, Lee Kaldor, Shirley Meyer, Phillip Mueller, Chet Pollert, Bob Skarphol; Senators Dick Dever, Tim Flakoll, Joel C. Heitkamp, Ray Holmberg, David O'Connell, Larry J. Robinson, Bob Stenehjem, Rich Wardner

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

**It was moved by Senator O'Connell, seconded by Senator Robinson, and carried on a voice vote that the minutes of the January 29, 2008, meeting be approved.**

#### OPENING REMARKS

Chairman Carlson said the purpose of the meeting is to fulfill the Legislative Council's statutory responsibility to coordinate the determination of the estimated fiscal impact of initiated measures. In 2005, he said, the Legislative Assembly enacted North Dakota Century Code (NDCC) Section 16.1-01-17, which requires the Legislative Council to hold hearings, receive public testimony, and gather information on the estimated fiscal impact of initiated measures. He said this law resulted from the passage of an amendment to the state constitution in 2004 which permits the Legislative Assembly to provide by law a procedure through which the Legislative Council may establish an appropriate method for determining the fiscal impact of an initiated measure and for making the information regarding the fiscal impact of a measure available to the public.

Chairman Carlson said the Secretary of State has notified the Legislative Council office that three initiated measures qualify for the general election ballot--an initiated statutory measure relating to individual and corporate income tax rates, an initiated statutory measure relating to workers' compensation, and an initiated statutory measure relating to tobacco prevention and control.

Chairman Carlson said the procedure for obtaining fiscal information basically tracks that followed during legislative sessions--those state agencies determined to have either the best information on the impact of a measure or the primary responsibility for compiling and maintaining the information that is needed have been invited to present their findings at this meeting. He emphasized the only purpose of holding this meeting is to meet the Council's statutory

responsibility to obtain fiscal information on each measure and the Council is not holding this meeting to hear testimony on the merits of any measure. He said the Council will first hear from the Tax Department on the estimated fiscal impact of the measure that would reduce individual and corporate income tax rates.

#### INITIATED MEASURE REGARDING INDIVIDUAL AND CORPORATE INCOME TAX RATES

This initiated measure ([Appendix B](#)) lowers the state corporate income tax rates by 15 percent and generally lowers the adjusted state income tax rates by 50 percent on individuals.

Ms. Kathryn L. Strombeck, Director of Research and Education, Tax Department, presented information ([Appendix C](#)) on the estimated fiscal impact of this measure.

Ms. Strombeck said the Tax Department has determined that the rate reduction provisions of the initiated measure can be expected to reduce state general fund revenues by an estimated \$414,237,000 in the 2009-11 biennium, based on the *Preliminary Forecast of State General Fund Revenues* that was released in August by the Office of Management and Budget (OMB). This includes \$375,983,000 for individual income tax and \$38,254,000 for corporate income taxes.

Ms. Strombeck said the initiated measure contains three substantive errors in the individual income tax brackets. She distributed a page ([Appendix D](#)) from the initiated measure which depicts the errors. Based on current filing status and income levels, she said, appropriately 325 taxpayers may be affected by these errors--two of which benefit the taxpayer and one of which increases the tax liability of the taxpayer. She said the net result of the errors is to reduce state general fund revenues by \$425,000 for the 2009-11 biennium. She said this amount is not included in the \$414,237,000 figure.

In response to a question from Representative Berg, Ms. Strombeck said the errors cannot be corrected administratively, thus legislative action would be required to correct the errors. She said the fiscal impact estimate is based on the July 2008 forecast and represents growth projections of 6 percent per year.

In response to a question from Senator Dever, Ms. Strombeck said the fiscal impact does not include

secondary impact resulting from additional disposable income in the hands of taxpayers. As a result of discovering the errors, she said, the ballot title for the measure has been revised by the Secretary of State.

Mr. Alvin A. Jaeger, Secretary of State, distributed a letter ([Appendix E](#)) from the Attorney General dated August 29, 2008, approving the "short, concise summary" of the measures on the ballot as required by NDCC Section 16.1-06-09 and a letter ([Appendix F](#)) from the Attorney General dated September 23, 2008, approving the analyses of the measures on the ballot. He said the summary of the initiated measure regarding income tax rates differs from the ballot title approved for the petition because the revised summary reflects the effect of the errors in the tax brackets.

Mr. Duane A. Sand, chairman of the sponsoring committee, addressed the Council. He said there is static fiscal impact and dynamic fiscal impact. He said the fiscal estimate of \$414,237,000 is a static impact. He said dynamic impact would include the effect of more disposable income being spent in the state which would increase state sales tax collections. He said based on an additional \$17 million per month being in the hands of individual taxpayers through reduced income tax collections, an additional \$50 million to \$100 million per year would be generated in sales tax collections. He said this estimate is based on information from the Tax Foundation, Washington, D.C., and professors at Creighton University and the University of North Dakota.

In response to a question from Representative Berg, Mr. Sand said he agreed with the fiscal impact estimate of \$414,237,000 and the members of the sponsoring committee would support action by the Legislative Assembly to correct the errors in the initiated measure.

### **INITIATED MEASURE REGARDING WORKERS' COMPENSATION**

This initiated measure ([Appendix G](#)) provides for the appointment by the Governor of the director of Workforce Safety and Insurance, the placement of its employees into the state personnel system, and for the appointment of independent administrative law judges to conduct hearings and make final decisions.

Ms. Pam Sharp, Director, Office of Management and Budget, reviewed a letter ([Appendix H](#)) by Ms. Sandy Deis, Budget Analyst, OMB, stating that based on contact with the Governor's office, the Human Resource Management Services division of OMB, and Workforce Safety and Insurance, the initiated measure will have no fiscal impact.

Representative Berg said the initiated measure places the employees of Workforce Safety and Insurance under the classified service of the state personnel system and he understands that the classifications of the current Workforce Safety and Insurance system and the state personnel system do

not mesh due to the lower compensation ranges in the state personnel system. Ms. Sharp said she does not anticipate a decrease in compensation of any employee.

Representative Berg said the initiated measure requires Workforce Safety and Insurance to contract with the Office of Administrative Hearings for evidentiary hearings and issuance of final findings. He questioned whether the Office of Administrative Hearings could set any charge for evidentiary hearings and thus increase the costs substantially.

Mr. Allen C. Hoberg, Director, Office of Administrative Hearings, said the office recently entered a contract with Workforce Safety and Insurance to continue to conduct hearings for Workforce Safety and Insurance. He said the caseload as a result of the initiated measure essentially would be the same as that currently experienced. He said the only difference is that the decision of an administrative law judge would be final rather than advisory on Workforce Safety and Insurance. He said appeals currently can be made from the final decision of Workforce Safety and Insurance and under the initiated measure appeals can be made from the final decision of the Office of Administrative Hearings. With respect to whether costs charged to Workforce Safety and Insurance would be unlimited under the initiated measure, he said, the Office of Administrative Hearings conducts hearings related to federal programs and thus is subject to audit by the federal government at any time. A requirement, he said, is that fees must be based on actual costs and must be the same from agency to agency, regardless of whether the agency is involved in federal programs.

### **INITIATED MEASURE REGARDING TOBACCO PREVENTION AND CONTROL**

This initiated measure ([Appendix I](#)) establishes a tobacco prevention and control advisory committee and an executive committee, develops and funds a comprehensive statewide tobacco and prevention control plan, and creates a tobacco prevention and control trust fund to receive tobacco settlement funds to be administered by the executive committee.

Mr. Joe Morrissette, Budget Analyst, Office of Management and Budget, presented information ([Appendix J](#)) on the potential fiscal impact of this initiated measure.

Mr. Morrissette said the measure changes the allocation of funds received by the state from tobacco settlement payments for the period 2009 through 2017. He said although tobacco settlement payments may vary each year, OMB based the fiscal effect on the actual tobacco settlement payments received in 2008. He said OMB anticipates that for each year from 2009 through 2017 the state will receive an annual payment of \$36.8 million. Of this amount, he said, the measure provides for an annual estimated \$13.8 million distribution from the strategic

contribution share of tobacco settlement proceeds to the newly created tobacco prevention and control fund, \$10.35 million to the common schools trust fund, \$10.35 million to the water development trust fund, and \$2.3 million to the community health trust fund. Compared to current law, the \$13.8 million the measure allocates to the tobacco prevention and control fund will result in annual reductions of \$6.2 million to the common schools trust fund, \$6.2 million to the water development trust fund, and \$1.4 million to the community health trust fund. He said the measure also requires a minimum of 80 percent of the tobacco settlement funds allocated to the community health trust fund to be used for tobacco prevention and control which, if the measure is approved, is estimated to be at least \$1.8 million per year.

Mr. Morrissette said OMB is unable to estimate the fiscal effect of other provisions of the measure. These relate to advisory committee and executive committee compensation, funding of the statewide tobacco prevention and control program, staff and other expenses of the executive committee, potential health care savings, potential reduction in state tobacco tax revenue, and the potential transfer of additional funds from the water development trust fund to the tobacco prevention and control trust fund if adequate funds are not available in the tobacco prevention and control trust fund for the comprehensive statewide tobacco prevention and control program.

Representative Boucher said his interpretation of the analysis is that there is no fiscal impact to the state, just different uses of the tobacco settlement funds.

Representative Carlson said the fiscal analysis is a moving target, depending on receipt of tobacco settlement proceeds which are affected by tobacco use.

Senator Heitkamp inquired why the fiscal analysis goes to 10 years when other fiscal analyses were for one biennium. He also inquired as to how speculative everyone will be as to different scenarios. Mr. Morrissette said 10 years was used because that is the period for receipt of the enhanced strategic contribution share of tobacco settlement funds. He said he looked at how various funds are affected. Senator Heitkamp said his point is that the fiscal impact to the state does not change with or without the initiated measure. He said it is a policy decision on how the funds are spent.

Representative Carlson said the fiscal impact statement is complicated and extensive and he requested the Legislative Council staff to summarize the statement as concisely as possible.

Ms. Rosellen Sand, a sponsor of the initiated measure, presented testimony ([Appendix K](#)) pointing out two concerns with the numbers in the fiscal statement prepared by OMB. First, she said, the negative fiscal impact of the measure is inflated because the cost of the comprehensive statewide tobacco prevention and control plan is indexed based

on the consumer price index but money received by the state is not, even though the Master Settlement Agreement provides for an inflation adjustment of at least 3 percent per year. Second, she said, there is no recognition of the positive fiscal impact of a comprehensive tobacco prevention and control plan. She said Ms. Kathleen Mangskau will present information from the Centers for Disease Control and Prevention (CDC) as to the positive fiscal impact of tobacco use cessation.

Ms. Sand pointed out the initiated measure does not appropriate funds for the program. She said the Legislative Assembly is responsible for appropriating funds and the intent of the measure is to develop a plan and present the plan and its costs to the Legislative Assembly. She said the plan would be based on the CDC-recommended funding levels. Although the Legislative Assembly could appropriate less than the funding required, she said, she assumes the Legislative Assembly would not ignore the decision of the electorate to provide for such a program.

In response to a question from Representative Carlson, Ms. Sand said she does not agree with the fiscal impact analysis prepared by OMB because of the lack of an inflationary factor for tobacco funds received by the state and the lack of any identification of health cost savings.

Ms. Mangskau, a sponsor of the initiated measure, presented testimony and information ([Appendix L](#)) regarding the potential health care savings. She said a fully funded tobacco prevention and cessation effort program at the CDC-recommended level would reduce youth smoking by 12.7 percent, stop 4,570 North Dakota kids from becoming addicted adult smokers, save 1,460 kids from dying from smoking, prompt more than 3,480 current adult smokers to quit for good, and save more than 920 North Dakota adults from dying prematurely from smoking. She requested the fiscal note be amended to include a statement that a fully funded program with average results in the first five years would reduce smoking-caused health expenditures by more than \$113 million, including more than \$11.9 million in state Medicaid program expenditures.

## COMMITTEE DISCUSSION

Representative Kaldor said the fiscal impact statement relating to the tobacco prevention and control initiated measure should reflect an annual inflationary increase of 3 percent in tobacco settlement funds received by the state. Representative Carlson said NDCC Section 16.1-01-17 does not provide for revision of fiscal impact statements, but the report to the Secretary of State can reflect that revenues are variable.

Chairman Carlson called on the director who said the information provided by the state agencies will be compiled by the Legislative Council staff and will be submitted as a report to the Secretary of State.

**It was moved by Senator Wardner, seconded by Representative Skarphol, and carried on a roll call vote that the Legislative Council accept the fiscal notes prepared on the initiative measures and forward the information to the Secretary of State as provided by NDCC Section 16.1-01-17.** Representatives Carlson, Boucher, Delzer, Kaldor, Meyer, Mueller, Pollert, and Skarphol and Senators Dever, Flakoll, Heitkamp, Holmberg, O'Connell, Robinson, Stenehjem, and Wardner voted "aye." No negative votes were cast.

No further business appearing, Chairman Carlson adjourned the meeting at 11:55 a.m.

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Jay E. Buringrud  
Assistant Director

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Jim W. Smith  
Director

ATTACH:12