

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**LEGISLATIVE MANAGEMENT**

Wednesday, September 12, 2018

Prairie Room, State Capitol

Bismarck, North Dakota

Senator Ray Holmberg, Chairman, called the meeting to order at 2:00 p.m.

**Members present:** Senators Ray Holmberg, Joan Heckaman, Jerry Klein, Erin Oban, Donald Schaible, Ronald Sorvaag, Rich Wardner; Representatives Larry Bellew, Al Carlson, Bill Devlin, Kathy Hogan, Scott Louser, Corey Mock, Jim Schmidt, Jay Seibel

**Members absent:** Senator Kelly M. Armstrong; Representative Mike Lefor

**Others present:** Allen H. Knudson and Sheila M. Sandness, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Mock, seconded by Senator Oban, and carried on a voice vote that the minutes of the July 11, 2018, meeting be approved as distributed.**

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

Chairman Holmberg said the Secretary of State notified the Legislative Council office four initiated measures qualify for the general election ballot. He said Measure No. 1 relates to the creation of a constitutional ethics commission; Measure No. 2 relates to elector qualifications; Measure No. 3 relates to the legalization of marijuana; and Measure No. 4 relates to special personalized license plates for volunteer emergency responders.

Chairman Holmberg said the Legislative Council staff requested the state agencies that appear to have the best information on the impact of the measure or the primary responsibility for compiling and maintaining relevant information to present their determinations at this meeting. He said the purpose for holding this meeting is to meet the Legislative Management's statutory responsibility to obtain fiscal information on each measure, not to receive testimony on the merits of any of the measures. He said the committee will consider acceptance of the fiscal impact statements and then consider a motion to direct the Legislative Council to forward accepted statements to the Secretary of State as required by law. He said the Secretary of State is required to make the information available to the public.

**INITIATED CONSTITUTIONAL MEASURE NO. 1**

Chairman Holmberg called on Mr. Joe Morrisette, Director, Office of Management and Budget, to provide a report ([Appendix B](#)) on the estimated fiscal impact of Initiated Constitutional Measure No. 1, which relates to the creation of an ethics commission. Mr. Morrisette said the measure does not provide any details regarding compensation or reimbursement for members of the commission. Therefore, he said, the fiscal impact of the commission is unknown. He said the Legislative Assembly would be required to establish, by law, the commission and address the details such as compensation and reimbursement. He said only the required telephone line is quantifiable. He said the fiscal impact statement does not include any staff costs for answering the telephone calls.

In response to a question from Representative Carlson, Mr. Morrisette said there will be costs for holding commission meetings and likely office expenses. However, he said, the measure did not specify the rate of compensation or frequency of meetings. He said statutes would spell out the details. Without the statutory details, he said, the costs could not be estimated.

In response to a question from Chairman Holmberg, Mr. Morrisette said the Legislative Assembly would be responsible for providing for a transparency website. He said the Legislative Assembly also likely would have to address how to fund the expenses of the commission members and any commission office and staff.

In response to a question from Senator Klein, Mr. Morrisette said it is reasonable to assume someone will be hired to answer the telephone on the confidential whistleblower hotline. However, he said, the Legislative Assembly will have to determine the details.

Representative Schmidt said although the Legislative Assembly will have to make those decisions, legislators will need to know the cost of implementing the measure requirements.

Mr. Morrisette said any bill that would implement the measure requirements likely would require a fiscal note.

In response to a question from Representative Carlson, Mr. Allen H. Knudson, Legislative Budget Analyst and Auditor, said the report to be sent to the Secretary of State for this measure likely would state the fiscal impact of the measure cannot be determined.

### **INITIATED CONSTITUTIONAL MEASURE NO. 2**

Chairman Holmberg called on Mr. John Arnold, Elections Director, Secretary of State's office, to provide a report ([Appendix C](#)) on the estimated fiscal impact of Initiated Constitutional Measure No. 2, which relates to elections in which a qualified elector may vote. Mr. Arnold said the measure is estimated to not have a fiscal impact.

### **INITIATED STATUTORY MEASURE NO. 3**

Chairman Holmberg called on Mr. Morrisette to provide a report ([Appendix D](#)) on the estimated fiscal impact of Initiated Statutory Measure No. 3, which relates to the legalization of marijuana. Mr. Morrisette said 10 agencies were contacted for information regarding potential fiscal impacts of the measure.

In response to a question from Representative Mock, Mr. Morrisette said the educational campaign included in the fiscal impact statement from the State Department of Health is not required by the measure. He said the department included the educational program in the statement because the role of the department is to protect the health and safety of the residents of the state.

In response to a question from Representative Louser, Mr. Morrisette said without any legislative action, marijuana would be subject to the general sales tax. He said a seller would be required to possess a sales tax permit and remit the sales tax to the Tax Commissioner.

Representative Carlson said the educational campaign would be needed if the measure passes. He said the anti-smoking campaigns have spent millions of dollars as a result of an initiated measure. He said to ignore the fact an educational program will be needed would be a serious mistake.

Senator Oban said although an educational program would be crucial, the campaign contemplated in the fiscal impact statement is not required by the measure.

Representative Mock said any educational program would need to be considered by the Legislative Assembly. He said the measure does not require an educational program. Although such a program may be desirable and necessary, he said, that decision is for the Legislative Assembly, not the State Department of Health. He said the fiscal note should reflect the cost is unknown, similar to the fiscal impact statement for Measure No. 1.

Representative Hogan said the cost estimate provided by the Department of Human Services properly indicates the fiscal impact is not known. She said there is a problem with the inconsistencies in preparation of the fiscal impact statements.

Mr. Ryan Rauschenberger, Tax Commissioner, said without any other legislation, marijuana is subject to the general sales tax. He said a seller would have to possess a sales tax permit to legally sell marijuana.

In response to a question from Representative Louser, Mr. Rauschenberger said the measure does not specifically require a sales tax permit. However, he said, under the general tax laws, sellers of products are required to have a permit.

In response to a question from Representative Hogan, Mr. Rauschenberger said although there likely will be revenue from the sale of legalized marijuana, the Tax Department cannot predict the amount of revenue. He said the amount of revenue would be dependent upon the volume of marijuana sold and the price of the product. Without a regulatory structure in place, he said, the amount of revenue would be impossible to predict.

In response to a question from Senator Oban, Mr. Rauschenberger said the Legislative Assembly likely could impose an additional tax on marijuana, which has been done in several other states that have legalized marijuana.

In response to a question from Representative Carlson, Major Aaron Hummel, Chief of Staff, Highway Patrol, said there are many unknowns with respect to the fiscal impact of the measure on the Highway Patrol. He said there likely will be a need to replace the drug dogs because it would not be possible to retrain the dogs to not detect marijuana and avoid false positive detections.

In response to a question from Representative Hogan, Major Hummel said local law enforcement service animals also would be affected. He said about 25 to 30 law enforcement service animals are in service in the state.

#### **INITIATED STATUTORY MEASURE NO. 4**

Chairman Holmberg called on Ms. Lindi Michlitsch, Director, Motor Vehicle Division, Department of Transportation, to provide a report ([Appendix E](#)) on the estimated fiscal impact of Initiated Statutory Measure No. 4, which relates to personalized vehicle plates for volunteer emergency responders.

In response to a question from Representative Devlin, Ms. Michlitsch said she is not sure of the intent of the measure sponsors, but the measure clearly provides for no initial or annual renewal costs for the personalized license plates. She said the Department of Transportation does not charge an annual fee for a license plate, but charges annual registration fees.

In response to a question from Chairman Holmberg, the Legislative Council Director said the Legislative Council agreed with the conclusion by the Department of Transportation regarding the effect of the measure eliminating all annual renewal fees for the owners of vehicles with volunteer emergency responder license plates.

Senator Oban said whether the drafters intended to eliminate the annual renewal fees is irrelevant because the effect of the language in the measure includes the annual registration fees.

Senator Sorvaag said license plate fees and registration fees go together and cannot be separated.

#### **PUBLIC COMMENTS AND COMMITTEE DISCUSSION**

Mr. Bob Wefald, Chairman, North Dakotans Against the Legalization of Recreational Marijuana, said it will be enormously expensive to expunge all affected records as required by the measure. Because of the difficulty in expunging the records, he said, it likely could not be accomplished. He said the provision in the measure which states conflicting laws are nullified and repealed likely would preclude applying the general sales tax to marijuana sales. He said if the measure passes, there will be no limits on the sale and use of marijuana and there will be a significant fiscal impact on the state and local governments. He said Colorado has restrictions on the sale and use of recreational marijuana and none of the tax revenue collected has been used to support schools.

**It was moved by Representative Mock and seconded by Senator Heckaman that the committee accept the submitted fiscal impact statements for Measure No. 1, Measure No. 2, and Measure No. 4 and request the Legislative Council to forward the accepted fiscal impact statements to the Secretary of State.**

Senator Klein said the fiscal impact statement for Measure No. 1 is not complete and not reflective of the cost of the measure. He said the fiscal impact of that measure should be considered separately or all measures should be considered together.

Senator Schaible said although it is clear the measure will have a fiscal impact, the problem is how to relay that to the voters.

In response to a question from Chairman Holmberg, the Director said the Legislative Council is required by statute to submit a statement of the estimated fiscal impact of each measure to the Secretary of State.

In response to a question from Representative Carlson, Mr. Knudson said based upon the statements provided to the committee, the statement sent by the Legislative Council to the Secretary of State would indicate the estimated fiscal impact for Measure No. 1 cannot be determined, the estimated fiscal impact for Measure No. 2 is no fiscal impact, and the estimated fiscal impact for Measure No. 4 is a reduction to the highway tax distribution fund for the 2019-21 biennium of \$2,867,740 and \$2,750,000 each biennium thereafter and a reduction to the Parks and Recreation Department of \$77,000 for each biennium.

Senator Oban said even if an amount cannot be determined, a statement could indicate the effect of a measure would be an appropriation would be required.

Mr. Knudson said a statement for Measure No. 1 could indicate there will be a cost for a commission but the cost is unknown at this time.

**After this discussion, the motion carried on a roll call vote.** Senators Holmberg, Heckaman, Oban, Sorvaag, and Wardner and Representatives Carlson, Hogan, and Mock vote "aye." Senators Klein and Schaible and Representatives Bellew, Devlin, Louser, Schmidt, and Seibel voted "nay."

In response to a question from Chairman Holmberg, Mr. Knudson said the statement for Measure No. 3 likely would identify the costs listed by each agency and other impacts to agencies which could not be determined.

Representative Mock said the Legislative Assembly would have to consider the extent to which an education program would be necessary and the amount that would be necessary to operate the program. He said the State Department of Health cannot obligate the Legislative Assembly to fund those costs. He said the educational program costs should be removed from the fiscal impact statement.

**It was moved by Representative Mock and seconded by Representative Hogan that the committee accept the submitted fiscal impact statement for Measure No. 3, with the cost of the educational program by the State Department of Health removed, and request the Legislative Council to forward the accepted fiscal impact statement to the Secretary of State.**

Representative Louser said he is not certain the committee is authorized to change fiscal impact statements.

In response to a question from Senator Klein, Mr. Knudson said in the submission to the Secretary of State, the Legislative Council generally creates a summary of the fiscal impact statements, with the fiscal impact detailed by biennium, and attaches the documents submitted by the agencies.

Senator Sorvaag said the fiscal impact statement either should be accepted or rejected, but should not be changed.

In response to a question from Representative Mock, the Director said even if the committee does not take action with respect to a fiscal impact statement, the Legislative Council has a statutory duty to submit a fiscal estimate to the Secretary of State.

Chairman Holmberg said the report to the Secretary of State must be the information provided by the affected agencies, not what the Legislative Council believes the impact is.

Senator Klein said the voters can review the information from the State Department of Health and make a determination whether the amount is appropriate.

Chairman Holmberg said advocates for and against a measure have some responsibility to address the accuracy of the estimated fiscal impact statement.

Representative Carlson said even if the law does not require acceptance of the fiscal impact statement, the committee has the responsibility to provide something to the Secretary of State. He said the cost of the measure as determined by the affected agencies cannot be ignored.

Senator Sorvaag said there is no information upon which to base any revisions in the fiscal impact as submitted by the agencies.

Representative Mock said the State Department of Health estimate does not directly relate to the measure. He said it should be up to advocates to push for education programs during the legislative session.

**After this discussion, the measure failed on a roll call vote.** Senators Heckaman and Oban and Representatives Devlin, Hogan, and Mock voted "aye." Senators Holmberg, Klein, Schaible, Sorvaag, and Wardner and Representatives Bellew, Carlson, Louser, Schmidt, and Seibel voted "nay."

Senator Oban said including the State Department of Health estimate is approving a number that is not correct. She said the department does not have authority to decide whether a program will be implemented. She said although an education program will be necessary, the Legislative Assembly will be responsible for determining the cost of the program.

**It was moved by Representative Carlson, seconded by Senator Schaible, and carried on a roll call vote that the committee accept the submitted fiscal impact statement for Measure No. 3 and request the Legislative Council to forward the accepted fiscal impact statement to the Secretary of State.** Senators Holmberg, Klein, Schaible, Sorvaag, and Wardner and Representatives Bellew, Carlson, Hogan, Schmidt, and Seibel voted "aye." Senators Heckaman and Oban and Representatives Devlin, Louser, and Mock vote "nay."

In response to a question from Representative Carlson, Senator Oban said the Initiated and Referred Measures Study Commission recommended a bill draft that would require fiscal impact statements for initiated measures to be printed on the ballot.

### **STATEMENTS OF ACTUAL FISCAL IMPACT OF 2016 GENERAL ELECTION BALLOT MEASURES**

Chairman Holmberg called on Mr. Morrissette to present the statement ([Appendix F](#)) of the actual fiscal impact of 2016 general election Initiated Constitutional Measure No. 3, which related to the rights of crime victims.

Chairman Holmberg called on Mr. Jason Wahl, Director, Division of Medical Marijuana, State Department of Health, who presented written testimony ([Appendix G](#)) on behalf of the department with respect to the actual fiscal impact of 2016 general election Initiated Statutory Measure No. 5, which related to the medical use of marijuana.

Mr. Wahl said the changes to the measure by the 2017 Legislative Assembly reduced the actual cost of the medical marijuana program.

Chairman Holmberg said the fiscal impact statement for the medical marijuana measure did not appear to negatively impact the vote on the measure.

In response to a question from Representative Carlson, Mr. Wahl said the expected cost of the medical marijuana program through the end of the biennium is expected to be about \$1 million. He said the department will incur additional travel and operational costs.

In response to a question from Representative Bellew, Mr. Wahl said the special funds revenue includes the nonrefundable application fees.

In response to a question from Representative Mock, Mr. Wahl said additional revenue will be collected through dispensary application fees, agent applications, and applications for patient cards. He said the impact of the legalization of marijuana on the medical marijuana program is unknown.

### **CONSIDERATION OF APPOINTMENTS TO THE STATE BOARD OF HIGHER EDUCATION GRANT REVIEW COMMITTEE**

The Director said the State Board of Higher Education requested consideration under Section 15-10-51 of the appointment of Mr. Nicholas Hacker and Ms. Kathleen Neset to the State Board of Higher Education Grant Review Committee.

**It was moved by Representative Carlson, seconded by Representative Seibel, and carried on a roll call vote to consent to the appointment of Mr. Nicholas Hacker and Ms. Kathleen Neset to the State Board of Higher Education Grant Review Committee.** Senators Holmberg, Heckaman, Klein, Oban, Schaible, Sorvaag, and Wardner and Representatives Carlson, Devlin, Hogan, Louser, Mock, and Seibel vote "aye." No negative votes were cast.

No further business appearing, Chairman Holmberg adjourned the meeting at 3:55 p.m.

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John Bjornson  
Director

ATTACH:7