

Report of the
NORTH DAKOTA LEGISLATIVE COUNCIL

Submitted to the
North Dakota Secretary of State
Under North Dakota Century Code Section 16.1-01-17
Thursday, September 25, 2008

BACKGROUND

In 2004 the electorate of this state approved a constitutional amendment to Article III, Section 2, of the Constitution of North Dakota which authorized the Legislative Assembly to provide by law for a procedure through which the Legislative Council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

In 2005 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 from agencies, institutions, or departments on the estimated fiscal impact of an initiated measure. At least 30 days before the public vote on the measure, the Legislative Council is to submit a statement of the estimated fiscal impact of the measure to the Secretary of State. Within 30 days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the Legislative Council are to submit a report to the Legislative Council on the actual fiscal impact for the first complete fiscal year resulting from the provisions of the initiated measure and a comparison to the estimates provided to the Legislative Council, and the Legislative Council is to issue a report of the actual fiscal impact of the initiated measure.

Three initiative measures qualify for the ballot for the general election on Tuesday, November 4, 2008--an initiated statutory measure relating to individual and corporate income tax rates, an initiated statutory measure relating to tobacco prevention and control, and an initiated statutory measure relating to workers' compensation.

The Legislative Council followed the procedure required by statute, which is similar to the procedure for obtaining fiscal impact information which the Legislative Assembly follows 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 were invited to prepare fiscal notes and present their findings at a meeting held by the Legislative Council on Wednesday, September 24, 2008.

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

This initiated measure, Initiated Statutory Measure No. 2 on the general election ballot, amends NDCC Sections 57-38-30 and 57-38-30.3, which relate to corporate income tax rates and individual income tax rates. As summarized by the Secretary of State:

This initiated measure would amend sections 57-38-30 and 57-38-30.3 of the North Dakota Century Code for tax years beginning after December 31, 2008 by lowering the state corporate income tax rates by fifteen percent and the adjusted state income tax rates by fifty percent, except for one taxpayer bracket where the reduction would be forty-five percent and for two other brackets where some income would not be taxed.

The Tax Department presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as [Appendix A](#).

**Statement of Estimated
Fiscal Impact of the Measure**

The fiscal note prepared by the Tax Department states 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. This includes \$375,983,000 relating to individual income taxes and \$38,254,000 for corporate income taxes. The fiscal note also discusses apparent errors in the initiated measure under which two individual income tax brackets list an incorrect dollar threshold upon which the bracket's rate is applied and a third error appears to use a rate that is not consistent with the overall 50 percent rate reduction shown throughout the rest of the petition. Based on current taxpayers who may be affected by these errors, two of these bracket errors result in additional fiscal losses to the state and the third bracket error potentially increases state revenue--the total effect of which results in an additional estimated net reduction of state general fund revenues of \$425,000 for the 2009-11 biennium, which is not reflected in the

\$414,237,000 state general fund revenue reduction estimate.

INITIATED MEASURE REGARDING TOBACCO PREVENTION AND CONTROL

This initiated measure, Initiated Statutory Measure No. 3 on the general election ballot, enacts seven new sections to the North Dakota Century Code and amends NDCC Section 54-27-25 to establish a tobacco prevention and control program. As summarized by the Secretary of State:

This measure would establish a tobacco prevention and control advisory committee and an executive committee; develop and fund a comprehensive statewide tobacco prevention and control plan; and create a tobacco prevention and control trust fund to receive tobacco settlement dollars to be administered by the executive committee.

The Office of Management and Budget presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as [Appendix B](#).

Statement of Estimated Fiscal Impact of the Measure

The fiscal note prepared by the Office of Management and Budget states the measure changes the allocation of funds received by the state from tobacco settlement payments for the period 2009 through 2017. The Office of Management and Budget notes that while future tobacco settlement payments may vary, its estimate of the fiscal effect of the measure is based on the actual tobacco settlement payments received in 2008. The fiscal note anticipates that for each year from 2009 through 2017 the state will receive an annual payment of \$36.8 million. Of this amount, the measure provides for an estimated \$13.8 million distribution from the strategic contribution share of the 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. The fiscal note states 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.

The fiscal note states it is not possible to estimate the fiscal effect of the following provisions of the measure:

- Establishing an advisory committee and executive committee and providing for meetings and compensation;
- Funding of the statewide tobacco prevention and control program other than as recommended by the Centers for Disease Control;
- Providing for staff and other expenses of the executive committee;
- Requiring the 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;
- Any potential savings in Medicaid and other health care costs from a reduction in tobacco usage; and
- Any potential reduction in state tobacco tax revenue from a reduction in tobacco usage.

INITIATED MEASURE REGARDING WORKERS' COMPENSATION

This initiated measure, Initiated Statutory Measure No. 4 on the general election ballot, enacts two new sections to NDCC Title 65 which relate to Workforce Safety and Insurance. As summarized by the Secretary of State:

This measure would provide for the appointment by the Governor of the director for the Workforce Safety and Insurance agency, 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.

The Office of Management and Budget presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as [Appendix C](#).

Statement of Estimated Fiscal Impact of the Measure

The statement prepared by the Office of Management and Budget states that based on contact with the Governor's office, the Human Resource Management Services division of the Office of Management and Budget, and Workforce Safety and Insurance, there will be no fiscal impact for the measure to make changes to Workforce Safety and Insurance governance and employee status.

ATTACH:3