

1999 SENATE FINANCE AND TAXATION

SB 2051

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2051

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 1/12/99

Tape Number	Side A	Side B	Meter #
1	X		4,428-end
		X	0-2650
Committee Clerk Signature <i>Shirley Ward</i>			

Minutes:

Senator Urlacher called the meeting to order, roll was taken and all were present.

Senator Urlacher opened the hearing on SB 2051.

John Walstad: My name is John Walstad, I am from the Legislative Council. (Testimony enclosed.)

Senator Urlacher: It requires them to get notification to those entities?

John Walstad: Yes that is correct.

Senator Urlacher: But if they are notified and do not show up?

John Walstad: The language in the bill says the municipality shall include a representative from a school and a township, if they decline to participate I'm not sure what happens.

Senator Urlacher: I guess that's my question, whether not showing constitutes no action of the motion.

John Walstad: The law says that participation is mandatory and if they refuse to participate I'm not sure what that does to the proceeding.

Joy Johnston: My name is Joy Johnston, I am here to testify in favor of SB 2051 on behalf of GNDA and Economic Development Association of ND. (Testimony enclosed.)

Senator Schobinger: You said in your testimony that developers don't always ask for the property tax exemption, could you give me an example.

Joy Johnston: I don't have that information you would have to get it from Kevin Cooper.

Bev Nelson: My name is Bev Nelson, I am with the ND School Board Association, we are in favor of SB 2051. School districts weren't necessarily looking for a vote to veto economic development or property tax exemptions. The very survival of the school depends on a thriving community. We believe that school districts be a part of the discussion from the very beginning.

Senator Urlacher: So communication is the key, and the flexibility lies within exemption of total or in part, so the exemption with the communication can bring about a partial exemption to address your concern.

Bev Nelson: Or exemption or in lieu of type of payment and maybe nothing, but I do think that for the benefit of all entities that all the impacts have to be prepared for.

Senator Urlacher: So the association needs to bring themselves available in the process ahead of any exemptions.

Senator Wardner: Is the concern of the school board the loss of revenue because of the exemption?

Bev Nelson: There normally isn't a lot of income because the land itself isn't exempted, it's a delay in the gain of taxation. There may be an increase in expenses.

Bryan Hoime: My name is Bryan Hoime representing the NDTOA, we are here in favor of this bill. We think that a township should be allowed to sit at the table and at least be a part of the deliberation of these types of tax exemptions.

Senator Urlacher: Would that be handled by official notice to a waiver on your part?

Bryan Hoime: Municipality doesn't need to include but can invite these two entities to attend their meeting, it does mean that they have to correspond somehow with those other entities. I think that if on line 7 on page 3 get rid of the word "include" and "advise when applicable" cause the "when applicable" would apply to both counties and cities.

Senator Urlacher: Couldn't the township write an official letter stating when and where the meeting will be at?

Bryan Hoime: Yes that could be done too.

Connie Sprynezynayk: My name is Connie Sprynezynayk, I am from the ND League of Cities. We are in support of this bill. In regard to Senator Schobinger's question earlier about whether a development organization does not include a property tax exemption, that happens all the time.

Senator Schobinger: If an option is there and I am developing a property in Minot and it's there for me to ask for a property exemption for a certain number of years what it says in the testimony is that it happens where developers will come in there and not ask for that property tax exemption, and my question was has that ever happened where a developer will look at developing a property and have that option to ask to not pay property taxes for a certain amount of years and not ask for it?

Connie Sprynezynayk: We have an expert to answer that.



Lee Peterson: My name is Lee Peterson, I am President of Minot Area Development Corporation. We have a company in Minot who did not want the tax exemption, so yes it does happen but not very often.

Connie Spryneyaynk: There are a number of communities that are happy to include school districts and representatives not only at the table when the actual decision is made, but there are a number of communities that include school district representatives from the beginning.

Senator Wardner: Would you comment on my understanding that the local political subdivisions are going to get their money up front not from the exempt properties but from the other players in the subdivision.

Barry Hasti: The addition of property to a taxing district whether its taxable or one of the discretionary exemptions does give that taxing district authority to increase their levy by the amount of tax that property would have paid had it been taxable. It doesn't add to the tax faze what that will do is increase the mill weight for all the other tax payers in that taxing district.

Senator Wardner: The part of the property tax formula for the tax payer its the valuation that increases.

Barry Hasti: When that property comes into the taxing district it is created in the taxing district the amount of tax that that property would have paid had it been in the district in the previous year is the amount of revenue that the taxing district can receive in addition to the revenue that they received from the existing property.

Senator Wardner: The concern of losing revenue because of a property tax exemption in the school district from this year on that should not be a concern.

Barry Hasti: If the players will take it, they could say we will not raise taxes.

Senator Urlacher closed the hearing on SB 2051.

Discussion was held.

If people don't come then their not there. I think in some instances they need to make sure the correct people are there. They need to be notified from the beginning.

Senator Christmann: I think that was covered in deliberation.

Senator Schobinger: What precludes them from being included right now. Why do we need to make them exofiscial members since this has to be advertised anyway? I don't think it would be right for us to do something and then tell local communities they have to do something else.

Senator Kinnoin: These types of meetings have to be advertised in the newspaper for a two week period. It is advertised in papers. I think they feel that they may be missed.

Senator Stenehjem: I agree with Senator Schobinger, but what it might do is include someone from those organizations at the very beginning of negotiations may start with the company that is looking into coming into the area. Obviously they have the right to go into any public meeting. There are a lot of discussions that may come about.

Senator Schobinger: That's true but the arguement could be made that this happens at this level too. We should remain consistent as a body in our philosophy.

Senator Wardner: We have to remember that the way it is now the city council or the county commissioners can make an agreement with a business coming in and it excludes the township that this property is being located in or the school district, they really don't have any say in it.

Senator Stenehjem: That's within the municipality itself. That's the one that makes the decisions.

Senator Christmann: I think it brings the townships and school districts at a point earlier which makes everybody aware of it and there's a lot of things that school districts and townships know that they can bring to the table and advisory capacity whereas the other entities might just forget about them.

Senator Kroeplin: Schools should be notified in writing.

Senator Urlacher: I agree a notice would be required.

Senator Stenehjem: It seems to me the schools come out on this deal anyway.

Senator Urlacher: In some cases it may bring in a bundle of kids.

Senator Schobinger: What does this give them they currently don't have?

Senator Kinnoin: It does not give them a voting right but it at least gives them written notice that the meeting is taking place and they have the opportunity to discuss it with the committee and give them their input.

Senator Schobinger: That's not what is being done, currently these meetings are taking place and the school districts and the townships aren't notified and are not showing up.

Senator Urlacher: Some are unaware of what's going on and this bill requires them to give notice so they are all on an even playing field.

Senator Stenehjem: I believe it gives them someone who can speak for them.

Senator Kroeplin: Are we satisfied with the language?

Senator Urlacher: There has been a suggestion of an amendment. I feel that if a township does not have a reason to be someplace that a written statement could be sent to that municipality.

Senator Christmann: I think the wording is good.

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Senate Finance and Taxation Committee

Bill/Resolution Number Sb 2051

Hearing Date 1/12/99

Senator Urlacher: I think they can remove the town from the notice. You could give a notice to a municipality that you waive your to be at certain meetings.

Senator Kinnoin: Keep it simple.

Senator Stenehjem: Leave it as it is.

Senator Christmann made the motion of Do Pass. Senator Stenehjem seconded. Bill was passed.

Senator Christmann is the carrier.

Date 12/99

Roll call vote # 1

Please type or use black pen to complete

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2051

Senate Fin + Tax Committee \_\_\_\_\_

Subcommittee on \_\_\_\_\_ ( Identify or

Conference Committee \_\_\_\_\_ ( check where appropriate

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Sen. Christmann Seconded By Sen. Stenehjem

Senators	Yes	No	Senators	Yes	No
<del>SENATOR URLACHER</del>	✓				
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER	✓				
SENATOR KINNOIN	✓				
SENATOR KROEPLIN	✓				
_____					
_____					
_____					

Total 7 0  
(Yes) (No)

Absent 0

Floor Assignment Sen. Christmann

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)  
January 12, 1999 1:26 p.m.

Module No: SR-06-0508  
Carrier: Christmann  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2051: Finance and Taxation Committee (Sen. Urlacher, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2051 was placed on the Eleventh order on the calendar.

**1999 HOUSE FINANCE AND TAXATION**

**SB 2051**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2051

House Finance and Taxation Committee

Conference Committee

Hearing Date February 24, 1999

Tape Number	Side A	Side B	Meter #
1	x		14.2
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

JOHN WALSTAD, LEGISLATIVE COUNCIL STAFF, Introduced the bill. Gave a background history of the bill. Related back to the 1995 legislative session, stating the law that was put in place at that time, expired in 1997. A study resolution was put in and during the interium the Taxation Committee spent some time considering the issue of possibly giving school districts authority. There was some opposition expressed by various groups. The committee ultimately decided the recommendation of SB 2051. This bill reinstates, as permanent law, what was in place from 1995 to 1997 and that is that a school district or township, that is affected by a decision on a property tax exemption of payments in lieu of taxes for a new business or industry, has the right to have a member on the governing body of the city or township during deliberation



of that exemption or payment in lieu of taxes. But, those representatives would not vote on that decision.

JOY JOHNSTON, EXECUTIVE DIRECTOR OF THE MANUFACTURERS & PROCESSORS DIVISION OF THE GREATER NORTH DAKOTA ASSOCIATION. Testified in support of the bill. See written testimony.

BEV NIELSON, NORTH DAKOTA SCHOOL BOARD ASSOCIATION, Testified in support of the bill. She stated that when school issues are brought to the table, schools should be made aware at the earliest time in a negotiating process of issues that involve schools. There is no reason that the schools wouldn't be very interested in any type of economical development in the community that would relate positively to the help of the school. It would behoove everyone to bring everyone to the table at the earliest time.

REP. WARNER Do you have some language that you recommend to add?

BEV NIELSON She recommended that the words "during negotiating process" should probably be added instead of just "duing deliberation".

REP. WARNER This was in place until 1997, what was in place from 1997 to 1999?

BEV NIELSON Nothing, I think most people didn't even realize that it sunsetted.

REP. GROSZ The bill seems to be trying to cure a problem, I don't know if the problem exists or not. Can you give me an example where county or city commissioners have made a bad decision that hurt school districts, that if this bill would have been in place, it wouldn't hurt school districts?

BEV NIELSON In passing a bill like this, the legislature does make a philosophical statement which is, that schools have a vested interest in the economic growth of their community. Gave

an example of several years ago, where a project was granted, and the people that were brought in to work there, brought with them many children with special needs. Had the school been prepared for that ahead of time, it could have been an easier transition. It wouldn't have lightened the financial load to the school, but it might have given the community a little more sense of what the impact would be expense wise. Also gave another example of when a large influx of people come into a community, it would help to know how large of a group will be coming in, so that for planning purposes, they would have an idea of how many children there would be. If schools were a part of the early part of the process, schools would be better prepared.

REP. GROSZ The project in Wahpeton, a special session was called, they didn't spring it on them overnight, none of these decisions are made in a vacuum, where the school district has no time, there is plenty of time to do the research, get the views of the cities, I don't know what problem you are trying to solve, there is plenty of time. I don't believe any of the examples you gave, that anything would have changed, if this bill had been in place.

BEV NIELSON I think by passing a bill like this, the state is saying that questions about impact on schools should be asked and information should be expected from the perspective developers in relation to experience in other areas and impact that it has had on schools.

NANCY SAND, NORTH DAKOTA EDUCATION ASSOCIATION, Testified in support of the bill. Ideally, we would prefer to have a school board representative with a vote, I don't think that will happen, so we would appreciate your support in this relation. Related to Rep. Grosz' question, stated she felt that to allow a school board representative and even a township representative involved in the discussion from the onset also allows them to do some planning

for the future. What are the plans of the company in the future. Is the exemption granted for five years or ten years, or whatever it might be, or if more employees are being brought in.

BRYAN HOIME, NORTH DAKOTA TOWNSHIP OFFICERS ASSOCIATION, Testified in support of the bill. Would like to be invited during the process so that they have an idea of what is going on. There could be a large business that would impact the township's ability to maintain roads, or zoning issues, or many new residents. Suggested to amend page 3, line 6 by adding "negotiation and deliberation".

With no further testimony, the hearing was closed.

COMMITTEE ACTION 2-24-99, Tape #1, Side B, Meter #21.1

REP. WARNER Made a motion to amend the bill on page 3, line 6, by inserting "negotiation and".

REP. WARNER Made a motion to adopt the amendment as presented.

REP. WINRICH Second the motion. MOTION CARRIED.

REP. WARNER Made a motion for a DO PASS AS AMENDED.

REP. SCHMIDT Second the motion. MOTION CARRIED.

11 Yes      2 No      2 Absent

REP. HERBEL Was given the floor assignment.

Please type or use black pen to complete

Date 2-24-99

Roll call vote # 1

### 1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. BB 2051

House HOUSE FINANCE & TAX Committee

Subcommittee on \_\_\_\_\_

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number amends

Action Taken adopt

Motion Made By Rep Warner Seconded By Rep Winrich

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT		✓			
CLARK	A				
FROELICH	✓	1			
GRANDE		✓			
GROSZ		✓			
HERBEL	✓				
KROEBER	✓				
MICKELSON		✓			
NICHOLAS	A				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 9 4  
(Yes) (No)

Absent 2

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

Please type or use black pen to complete

Date 2-24-99

Roll call vote # 2

### 1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

## BILL/RESOLUTION NO. SB 2051

House HOUSE FINANCE & TAX Committee

Subcommittee on \_\_\_\_\_

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as amended

Motion Made By Rep. Warner Seconded By Rep. Schmidt

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	A				
FROELICH	✓				
GRANDE	✓	✓			
GROSZ		✓			
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	A				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 11 2  
(Yes) (No)

Absent 2

Floor Assignment Rep. Herbel

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

**REPORT OF STANDING COMMITTEE**

**SB 2051: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). SB 2051 was placed on the Sixth order on the calendar.

Page 1, line 2, after "in" insert "negotiations and"

Page 3, line 6, after "During" insert "the negotiation and"

Renumber accordingly

1999 TESTIMONY

SB 2051

## TAXATION COMMITTEE

The Taxation Committee was assigned six studies. House Concurrent Resolution No. 3044 directed a study of the impact of tax-exempt property on school districts. Senate Concurrent Resolution No. 4050 directed a study of taxation and regulatory incentives for the lignite industry to improve its competitive position in the energy marketplace. House Concurrent Resolution No. 3052 directed a study of the property tax exemption for charitable organizations. House Concurrent Resolution No. 3037 directed a study of the feasibility and desirability of providing property tax relief through alternative state and local revenue sources. The chairman of the Legislative Council directed the committee to study the assessment of agricultural property and inundated lands and directed a study of the application of the farm building property tax exemption.

Committee members were Representatives Wesley R. Belter (Chairman), Grant C. Brown, Chris Christopherson, William E. Gorder, Mick Grosz, Ralph L. Kilzer, Kenneth Kroeplin, Edward H. Lloyd, Ronald Nichols, Alice Olson, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt, and Ben Tollefson and Senators Randel Christmann, Layton Freborg, Meyer Kinnoin, Ed Kringstad, Randy A. Schobinger, Vern Thompson, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

### TAX-EXEMPT PROPERTY IMPACT ON SCHOOL DISTRICTS STUDY

#### Background

The existence of tax-exempt property within a school district affects the school district in two ways—by limiting the amount of property tax revenue the maximum school district levy will generate (but not in all cases) and by excluding the value of exempt property from the equalization factor under the foundation aid allocation formula.

School districts with unlimited levying authority are not restricted in property tax dollars by the existence of tax-exempt property. The Fargo School District has statutory authority for unlimited levies under North Dakota Century Code (NDCC) Chapter 15-51. Under NDCC Section 57-15-14, any school district with a population of more than 4,000 may be granted unlimited levying authority upon approval by a majority vote of electors, and a school district with fewer than 4,000 population may be granted authority to levy any specific number of mills approved by a vote of 55 percent or more of electors.

School districts that have not been granted unlimited levying authority or authority to levy an excess levy are subject to a general fund levy limitation of 185 mills on the dollar of taxable valuation of property in the district

under NDCC Section 57-15-14. A school district subject to this limitation which levied fewer than 185 mills for the prior school year may increase its levy by up to 18 percent in dollars from the prior school year, up to the 185-mill limitation. If a school district has an increase of 20 percent or more in total assessed valuation of property over the prior year, and as a result of the increase the district is to receive less in state foundation aid payments, that school district may levy any specific number of mills more in dollars than was levied in the prior year to make up for the loss of foundation aid revenue but may not exceed the 185-mill limitation.

School districts at or near the general fund 185-mill limitation have been eligible for optional percentage levy increases in dollars in the years since 1981. From 1981 through 1996, taxing districts were allowed a percentage increase in dollars over the base year levy in dollars. Under NDCC Section 57-15-01.1, as amended in 1997, during taxable years 1997 and 1998, a county, city, township, or school district eligible for federal funds on a matching basis as a result of a disaster declared by the President of the United States may levy an amount in dollars equal to the amount required to match federal funds up to an increase of two percent more than the amount levied in dollars by the district in the base year. Except for this authority to match federal disaster funding, taxing districts that are levying at levels in excess of statutory mill levy limits are authorized to maintain the amount levied in dollars in the base year but have no authority to increase levies without voter approval.

Many school districts in the state are levying an amount exceeding 185 mills for general fund purposes as a result of the compounding of percentage increase allowances during taxable years 1981 through 1996. However, the levy under NDCC Section 57-15-01.1 is not a levy in mills but is a levy of a specific amount in dollars which is converted to mills by the county auditor. The significance of this distinction is that when a levy limit is based on dollars levied in a prior year, that amount is unaffected by increases or decreases in the taxable valuation of property within the district. If a district is levying under this authority, an increase in valuation in the district with the same number of dollars levied will result in a lower mill rate but no change in the amount of property taxes collected, and a decrease in valuation will result in a higher mill rate but no change in taxes collected.

When a school district levy is limited to the statutory number of mills, the maximum amount a district can levy rises and falls with the taxable valuation of property within the district. It is within these districts that exemptions from property taxes have the most significant direct effect on property taxes.

An alternative to an unlimited levy is an excess levy under NDCC Chapter 57-16. If the governing board of



the school declares that funds available at the maximum levy otherwise allowed by law are insufficient, the question may be placed on the ballot of increasing the legal limitation by a specified percentage of up to 75 percent. An excess levy may be authorized for up to five years and may be extended indefinitely in five-year increments by unanimous approval of the governing board of the school district.

School districts have authority to levy for various special fund purposes. School districts may levy without limitation for board and lodging or transportation allowance for high school students sent to another high school district, high school tuition, judgments, compromise of a judgment for injury, asbestos removal, special assessments, and bond sinking and interest funds. Upon approval by a vote of 60 percent or more of qualified electors, a school district may levy up to 20 mills for a building fund. A school district may levy up to three mills for a special reserve fund. School districts may levy for support of a junior college or off-campus educational center, municipal or regional airport authority, plant pest control, railroad purposes, asbestos abatement, and long-distance learning technology.

School districts levy more property taxes than all other taxing districts combined. For taxable year 1995, school district property taxes exceeded \$230 million and comprised 54.5 percent of all property taxes collected in the state.

The effect of the existence of tax-exempt property on school district tax revenues depends upon how the maximum levy for the district is determined. However, all taxing districts' taxpayers are affected by the existence of tax-exempt property. In districts with a limitation of a number of mills, reduced taxable valuation due to tax-exempt property means a higher number of mills must be imposed against each parcel of property. In districts in which the levy is unlimited or limited based on dollars levied in a previous year, the number of tax dollars raised could be spread against a greater amount of property if tax-exempt property were added to the tax rolls.

Foundation aid allocations are determined under NDCC Chapter 15-40.1 and the appropriation made for that purpose by the most recent Legislative Assembly. The foundation aid allocation formula for school districts includes a variety of factors. The formula includes an equalization factor, applied to reduce the payment to the school district. For the 1996-97 school year and thereafter, 32 mills is multiplied times the latest available net assessed and equalized valuation of property in the school district and the resulting amount is subtracted from the payment to be made to the school district. For years after 1996-97, the number of mills in the factor must be adjusted by determining a percentage by dividing the number of mills used in the computation in the previous year by the state average school district general fund mill levy plus 40 percent of the percentage increase in foundation aid distributions and multiplying

the amount times the state average school district general fund mill levy.

Because the equalization factor is multiplied times the assessed valuation of property in the taxing district, the more taxable property that exists in the district the greater the amount deducted from foundation aid payments for the district. Property that is not on the tax rolls generates no revenue for a school district, unless payments in lieu of taxes are received, and does not decrease foundation aid to the district.

Property tax exemptions exist for numerous kinds of property under many kinds of ownership. Thirty-nine subsections of NDCC Section 57-02-08 provide specific exemptions for different classifications of property. Several other provisions of law exempt property from taxation. However, it is exemptions granted at the discretion of city or county governing bodies that are of greatest concern to school district officials, who provided the impetus for 1997 legislation that was defeated and for introduction of the study resolution leading to this study. Discretionary exemptions allowable by cities and counties include exemptions for new residential property, day care property, pollution abatement improvements, residential and commercial property improvements, and exemptions or payments in lieu of taxes for new and expanding business.

House Bill No. 1318 (1997), introduced on behalf of the North Dakota School Boards Association, would have allowed school districts the opportunity to decide whether property tax exemptions or payments in lieu of taxes for new business would be granted to the extent of the school district property tax levy. The bill failed to pass and the decision on whether to grant exemptions or payments in lieu of taxes for new business remains in the discretion of the governing body of the city or county.

Senate Bill No. 2322 (1995) was enacted to provide that during deliberation on a property tax exemption or option to make payments in lieu of taxes for new business, a city or county must include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each affected school district and a representative appointed by the Board of Township Supervisors of each affected township. This law was adopted with an expiration date of July 31, 1997, and no attempt was made during the 1997 legislative session to extend the expiration date.

### **Committee Consideration**

The North Dakota School Boards Association supported 1997 House Bill No. 1318 to allow school districts to opt out of property tax exemptions or payments in lieu of taxes granted by cities and counties. The association supports introduction of similar legislation in 1999. Association representatives stressed that it is not the intention of the association to obstruct economic development efforts, but rather to allow school districts to make their own decisions on exemptions to

the extent of their property tax levies. The association does not seek authority to veto tax exemption decisions by cities or counties. They said that school districts are the appropriate body to decide whether to grant exemptions from school levies, and that school districts may experience greater immediate impact from economic development than other political subdivisions. They said school districts levy the majority of property taxes in dollars because school districts have greater need for revenues. They said a city or county may be able to forego property tax revenue for several years, and may base property tax exemption decisions on that fact. They said a city or county granting an exemption may not consider that economic development may cause an increase in students, which immediately impacts the school district budget.

School board representatives believe that some type of property tax incentive is necessary to successfully compete for new and expanding business opportunities. They are concerned that the school board is left out of the decisionmaking process and another entity may grant an exemption or payments in lieu of taxes that could last for up to 20 years with no real participation in the decision by the school board.

The North Dakota Industrial Development Association opposed allowing school districts to opt out of property tax exemptions for new businesses. A representative of the association said that North Dakota has a great need for economic development and the concept of providing tax incentives is that the community invests now to receive benefits later. An association representative said economic development professionals do not consider it a property tax revenue loss when a new project is established with a property tax exemption because if the project did not exist there would be no additional tax base. Eventually property will become taxable, so the association views new businesses established with property tax exemptions as a net gain.

An Industrial Development Association representative said there was concern in early stages of economic development efforts that businesses would take advantage of exemptions and, after the exemptions expired, would leave the state or community. It has not been proven that businesses have taken advantage of exemptions in that fashion. Businesses that have been granted exemptions were carefully evaluated by local officials and have proven to be solid corporate citizens of their communities. The association surveyed city economic development officials and found no example of a business that had taken advantage of an exemption and then moved elsewhere. In the survey, local economic development officials supported the economic development tools that have been provided by state law, particularly emphasizing the importance of property tax exemptions. Economic development officials suggested that allowing school districts to opt out of property tax exemptions would dilute the incentives that could be offered to new

business. They suggested that the city or county is the appropriate decisionmaking authority for property tax exemptions because economic development professionals are involved at those levels of government.

The Greater North Dakota Association opposed allowing school districts to opt out of property tax exemptions granted by cities or counties. The association supports allowing a school district representative as a nonvoting member of a city or county governing body in considering property exemption decisions.

The North Dakota League of Cities opposed granting school districts authority to opt out of property tax exemption decisions made by cities or counties. A league representative said the Legislative Assembly gave authority to grant property tax exemptions in recognition of the importance of economic development to the state. He said the Legislative Assembly chose to have cities and counties make the decisions about granting exemptions because cities and counties are in the best position to weigh the benefits and assess the costs of a project and the needs of the community.

The North Dakota Association of Builders, the North Dakota Home Builders Association, and the Bismarck-Mandan Development Association expressed support for preserving the existing status of property tax exemption decision authority.

### **Bill Draft Consideration**

The committee considered a bill draft to provide school districts authority over whether school district property tax levies would apply to property for which the city or county has granted a property tax exemption or payments in lieu of taxes as a new or expanding business under NDCC Chapter 40-57.1.

Some committee members said school districts should have decisionmaking authority over property tax exemption decisions to the extent of the school district property tax levy. However, the majority of committee members did not support recommending the bill draft and expressed the opinion that North Dakota's economy seems to be growing, and there is evidence that much of the growth is attributable to local economic development efforts. Committee members said diluting authority over exemption decisions would diminish the tools available to local economic development officials and would make it difficult for a taxpayer to know to whom complaints should be made about exemption decisions. Committee members said extending this authority to school districts would also serve as an argument that the authority should be extended to all political subdivisions having taxing authority.

### **Recommendation**

The committee recommends Senate Bill No. 2051 to give school districts and townships the right to each have a member participate as a nonvoting, ex officio member of the governing body of the city or county when the

governing body is considering granting of an exemption or the right to make payments in lieu of taxes for a new or expanding business under NDCC Chapter 40-57.1. The bill is identical to 1995 Senate Bill No. 2322, which was in effect through July 31, 1997, except that the bill creates permanent law. The bill is intended to allow school districts and townships to participate in discussions about property tax-exemption decisions, to make city or county officials aware of any special concerns of the school district or township.

## LIGNITE INDUSTRY STUDY

### Background

#### Coal Severance Tax

The coal severance tax was enacted as a temporary law in 1975 and was essentially reenacted in 1977, again as a temporary law. In 1979 the coal severance tax became permanent law. Under the 1975 law, the coal severance tax rate was set at 50 cents per ton plus an amount determined by an escalator clause that provided for an increase in the tax of one cent per ton for every three-point increase in the index of wholesale prices for all commodities as prepared by the United States Department of Labor, Bureau of Labor Statistics. The 1977 Legislative Assembly increased the base rate of the tax to 65 cents per ton plus the amount determined under an escalator clause, equal to one cent per ton for each one-point increase in the index of wholesale prices for all commodities. In 1979 the coal severance tax base rate was increased to 85 cents per ton with an escalator of one cent per ton for every four-point increase in the index of wholesale prices for all commodities. It was provided that, even though the wholesale price index may decline, the rate of severance tax would not be reduced. The coal severance tax rate formula remained in place and the rate reached a high of \$1.04 per ton until passage of 1987 House Bill No. 1065, which reduced the general coal severance tax rate to 75 cents per ton, eliminated the escalator provision, and imposed an additional separate tax of two cents per ton, with the proceeds of the separate tax allocated to the lignite research fund. The 77 cents per ton rate of tax has been unchanged since 1987.

The coal severance tax is in lieu of sales or use taxes. Any coal that is exempt from the severance tax is subject to sales and use taxes unless a sales or use tax exemption exists. Severance tax exemptions are provided for coal used primarily for heating buildings and coal used by the state or any political subdivision. Coal used for heating privately owned buildings is not exempt from the sales tax. A severance tax exemption was created in 1985 for coal used in agricultural processing or sugar beet refining plants located in North Dakota or adjacent states. Other 1985 legislation provided that the severance tax rate is reduced by 50 percent if the coal is to be burned in a cogeneration facility. Coal mined for

out-of-state shipment is subject to a reduced tax rate from July 1, 1995, through June 30, 2000.

Coal shipped into North Dakota for use in a coal conversion facility would not be subject to North Dakota's severance tax. Passage of 1997 House Bill No. 1467 provided that such coal would be subject to a special sales tax of six cents per million BTUs, and that revenue from the special sales tax would be allocated in the same manner as coal severance tax revenues. This tax has been challenged in a lawsuit filed by Montana coal producers, and the lawsuit was pending at the time of this report.

An exemption from the state's share of coal severance or sales taxes was created under 1997 House Bill No. 1467 for coal burned in smaller generating stations in this state or an adjacent state. This exemption does not apply to the coal development trust fund share of revenue, but the bill allows political subdivisions to individually give up their share of tax revenues on such coal.

All severance taxes, penalties, and interest collected by the Tax Commissioner are transferred to the State Treasurer within 15 days of receipt and are credited to a special fund called the coal development fund. The revenue in the coal development fund is allocated 50 percent to the state general fund, 35 percent to producing counties, and 15 percent to the coal development trust fund. The coal development trust fund is held in trust and administered by the Board of University and School Lands for loans to coal-impacted counties, cities, and school districts. Seventy percent of deposits in the trust fund are to be transferred to the lignite research fund.

Thirty-five percent of the revenue in the coal development fund is allocated to coal-producing counties in the proportion that the number of tons of coal severed in each county bears to the total number of tons of coal severed in the state. Of the 35 percent portion of the coal development fund which is distributed to coal-producing counties, 30 percent is paid by the county treasurer to incorporated cities of the county based upon population, 40 percent is deposited in the county general fund, and 30 percent goes to school districts within the county in proportion to average daily membership. The distribution formula within counties also provides for recognition of impact on surrounding areas not within the county. If the tipple of a currently active coal mining operation in a county is within 15 miles of another county in which no coal is mined, revenue apportioned from that coal mining operation is apportioned according to the same formula as county revenues with inclusion of cities, school districts, and the general fund of the non-coal-producing county within certain geographical limits.

Coal severance tax revenues for the 1997-99 biennium are estimated to be \$45,846,000. Of this amount, the state general fund is estimated to receive \$22,310,000, allocations to political subdivisions are estimated to be \$15,640,000, and the coal development



Proponent Testimony for SB 2051  
House Finance and Taxation Committee  
Greater North Dakota Association and  
The Economic Development Association of North Dakota

Mr. Chairman, members of the Finance and Taxation Committee,

My name is Joy Johnston. I am the Executive Director of the Manufacturers and Processors Division of the Greater North Dakota Association. This morning I am testifying in favor of SB 2051 on behalf of GNDA, its divisions and the Economic Development Association of North Dakota.

The Greater North Dakota Association is the North Dakota Chamber of Commerce. GNDA is the voice of business and principal advocate for positive change for North Dakota.

The Economic Development Association of North Dakota, formerly known as the Industrial Development Association has a membership of professional developers, banks, utility companies and other entities committed to enhancing the standard of living of North Dakotans by encouraging economic development opportunities. GNDA is a member of the Economic Development Association of North Dakota.

SB 2051 puts back into effect what was the law until 1997. Prior to 1997 the law stated that when the municipality was discussing a property tax exemption, school districts and townships in the affected areas were at the table during the negotiation process. It was right in 1997 and should be made permanent in 1999.

Property tax exemptions are an important short-term economic development incentive offered by local governments that can be accessed by developers in the quest for new wealth creation in North Dakota.

Property tax exemptions can be for up to 5 years in duration for businesses creating new wealth. Property tax exemptions extended beyond 5 years and capping to 10 years are limited to projects that manufacture a product from agricultural commodities.

Property taxes may be granted in whole or in part.

When the discussion of whether or not to grant a property tax exemption in whole or in part arises, it is important for the local governmental entity to look at the long-range vision as well as the short-term impact. There needs to be a balance between the long-



term wealth that will be created versus the short-term revenue lost from a property tax exemption granted. The initial question is to analyze whether a property tax exemption in whole or in part is appropriate? And if appropriate, how much should a property tax exemption be in terms of time and amount?

School district representation plays a critical part in the discussion. A property tax exemption in whole or in part may create a 5-year loss of immediate revenue to city and county services as well as to a school district. However, the project may include new families moving to the community and add new residential property owners. Cities and counties know what the costs will be to its city and county services like fire, police, etc. The school district can provide the best information on the balance of revenues lost from the exemption; revenues gained from new property owners in the community and the change in school services needed to accommodate new families. A clearer picture evolves when the school district participates in the discussion.

Property tax exemptions are not always granted to projects coming into a community. Developers are not granted property tax exemptions automatically. Developers don't ask for property tax exemptions for every project. A property tax exemption in whole or in part may be a portion of an incentive package available. One-size does not fit all. Economic Development Association of North Dakota President Kevin Cooper testified before the Interim Taxation Committee on July 7, 1998 that he polled developers about the number of times property tax exemptions in whole or in part were granted. His best estimate is that only 30% of all economic development projects receive some kind of short-term exemption. And when he balanced the number of jobs created, the wages of the jobs and the cost of short-term exemptions granted, the state was a winner every time. And what happens when the tax exemption expires? The companies are still in North Dakota on the tax rolls.

A property tax exemption is a critical part of the package used to get a project here. Developers need every tool available when expanding the wealth base of North Dakota. Project development is extremely competitive. But without those projects North Dakota will never collect a penny of additional property tax.

However, a tax exemption in whole or in part must be granted prudently. SB 2051 does exactly that. It includes participation of the impacted entities to discuss when a property tax exemption is appropriate. The Interim Committee on Taxation passed the proposed bill 18-0 on September 3, 1998. The Senate concurred 49-0 on January 14, 1999. The Greater North Dakota Association and the Economic Development Association of North Dakota urge the House Finance and Taxation Committee recommend a "do pass" of SB 2051.

Thank you for the opportunity to testify. Mr. Chairman, I will try to answer any questions of the committee.