



**Forth Meeting
November 14, 2008**

**LCR 1 & 2
State Capitol Building
Pierre, South Dakota**

Friday, November 14, 2008

The forth meeting of the Ag Land Assessment Implementation and Oversight Advisory Task Force was called to order by Senator Dave Knudson, Chair, at 10:32 a.m. (CDT) in Legislative Conference Rooms 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Alan Hoerth, Dave Knudson, and Jim Peterson; Representatives H. Paul Dennert, Kristi Noem, Larry Rhoden, and Steve Street; and Public Members Walter I. Bones III, Kirk Chaffee, Curt Everson, Larry Gabriel, and Ron Olinger. Senator Kenneth McNenny and Public Member Duane Sutton were excused.

Staff members present included: Jim Fry, Director; Fred Baatz, Principal Research Analyst; and Lisa Shafer, Legislative Secretary.

(NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council (LRC). This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas".)

Approval of Minutes

(Located on the LRC Archived Audio – 00:01:08)

SENATOR HOERTH MOVED, SECONDED BY KIRK CHAFFEE, THAT THE MINUTES FROM THE THIRD MEETING OF THE AG LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE ON OCTOBER 14, 2008 BE APPROVED. The motion prevailed unanimously on a voice vote.

Comments from the Chair

(Located on the LRC Archived Audio – 00:01:32)

Senator Dave Knudson told the task force that the principal action today is to provide recommendations to the 2009 Legislature. There were pieces from the 2008 legislative bills that need to be finalized. The task force will receive an update on final numbers for the assessment from the Department of Revenue and Regulation (DRR) and South Dakota State University (SDSU). Draft legislation will also be presented for the task force to vote on. He thanked all the people involved with the process for their hard work and efforts.

Ag Land Assessment – Report on Data and Findings (Located on the LRC Archived Audio – 00:04:50)

Mr. Michael Kenyon, Director of Property and Special Tax Division with the Department of Revenue and Regulation, provided an update to the task force on the ag land assessment process. He distributed to the task force three handouts: a table entitled “Ag Land Assessment Advisory Task Force” (**Document #1**), a set of maps entitled “2008 Productivity Dollar Per Acre” (**Document #2**), and a set of maps entitled “2008 Equalized Dollar Per Acre” (**Document #3**).

Mr. Kenyon informed the members that after the maps were distributed at the last meeting, there were a number of areas that needed to be addressed. SDSU made corrections to the data after reviewing the data and prior assumptions. The most significant impact to the values was the change the task force requested – an adjustment to revenue data based on irrigated land and non-irrigated land and removing the influence that irrigated land had on production in the model.

SDSU corrected one year of data for Day County. In addition, the National Agricultural Statistic Service (NASS) reported the price for crop sorghum in price per hundred, not the price per bushel, which was also corrected by SDSU. There was an error involving corn acres being used for silage. After SDSU reviewed the data, the corn acres that were counted twice were removed.

Mr. Kenyon said that all the issues were looked at and addressed for the revision of the maps. The counties that changed were the counties that had a significant amount of irrigated acres.

In response to **Mr. Ron Olinger’s** question regarding net income including gross input cost, Mr. Kenyon said that the model used thirty-six percent of the gross revenue to reflect the return on the investment from the landlord owning the land. The thirty-six percent is based on obtaining a minimal shift between cropland and noncropland. DRR will collect information regarding input costs for the task force to monitor.

Senator Knudson stated that the people involved recognize that input costs are an important feature. As the new system is started, the task force is interested in minimizing the shift between cropland and noncropland. Any dramatic changes in the gross revenue input costs can be addressed by the oversight task force through an adjustment to the percentage of gross revenue used in the model.

Senator Jim Peterson said that the whole process needs to be looked at. Although thirty-six percent may be high for the landlord share, there is about \$12 billion forgiven in total land valuation if market values were used to determine the assessed valuation. The actual percentage for landlord share used in a typical contract is about twenty-five percent

Mr. Kenyon stated that the task force is achieving the primary goal of rationality between the assessed values for counties. When DRR shifts from the 2008 equalized maps (Document #2) to the productivity maps (Document #3), a lot of the discrepancies between counties are resolved.

In response to **Representative H. Paul Dennert’s** question, Mr. Kenyon said that the same standard for irrigated land and non-irrigated land was applied to all counties.

Mr. Kenyon said, in response to **Representative Kristi Noem's** question, that the numbers presented to the task force are considered a starting point for the Director of Equalization (DOE) for each county. The DOE will use the same system as the market system with the soil survey and from there they will need to determine any needed adjustments. The process will not be much different than the current process.

Mr. Kirk Chaffee responded to Representative Noem's question pertaining to different classifications of land, that there is an issue of actual versus best use. The DOE's will need to determine the best use of the land and make adjustments from there.

Senator Peterson asked if DRR is identifying the noncropland acres. In response, Mr. Kenyon said that the current formula will be used as a starting point. If the DOE reports an incorrect soil rating to DRR, then DRR will address the soil rating. The soil survey will be used to help evaluate the land for DOE's to make proper adjustments.

Mr. Chaffee asked if a county is expected to meet a specified per acre value on a countywide basis, wherein if one acre increases/decreases another needs to be adjusted to reach the specified value. Mr. Kenyon stated that the formula presented is not a change from the current process. The DOE's will be able to make any changes as needed. A benchmark will be based on the information received from the soil survey ratings. A couple acre adjustments made by the DOE's may not cause the DRR to respond. However, significant adjustments will affect the system and DRR will have to investigate the reasons for the adjustments. The DOE's will need to visit with DRR about any invalid soil ratings and justify any significant adjustments.

Dr. Burton Pflueger, Professor of Economics at South Dakota State University, distributed a handout in response to Mr. Olinger's request to have a breakout of the formula numbers for a county. (**Document #4**) The document shows what would be applied to South Dakota as a state. There is a large breadth of crops that would be included and no two counties have the same mix of crops. The last two pages of the document shows the 2007 information for Aurora County and Brown County.

Mr. Olinger commented that he would like to see an analysis based on current prices. In response, Dr. Pflueger said that even though the price of a particular commodity may increase, the formula is based on a crop mix and a particular increase may not have a significant effect on the assessed valuations of a county. Mr. Olinger responded that he thinks the task force is using years of low prices in the formula. He would rather have the formula based on current prices.

Mr. Kenyon told the task force that he intended to provide the members some examples of counties with actual tax shifts. Examples of counties were to be provided were the county's agricultural value increased and/or decreased significantly due to the shift to the productivity system. Unfortunately, DRR was not able create those examples for this meeting. A chart will be compiled showing the actual tax shifts. The tax shift will not be the same as the valuation shift. He will prepare a chart showing the shift for each county and will send to all the members before session.

Review of Draft Legislation
(Located on the LRC Archived Audio – 01:06:56)

Mr. Fred Baatz, Principal Research Analyst, distributed to the task force copies of the draft legislation (**Documents #5 and #6**). The draft legislation (Document #5) is entitled “An act to revise certain provision concerning the assessment of agricultural land.”. The legislation revises certain provisions to the valuation of cropland and noncropland. The legislation also establishes the percentages that will be used for cropland and noncropland to determine the agricultural income to the land and revises the capitalization rate. The purpose of the legislation is to minimize the tax shifts between cropland and noncropland on a statewide basis and agricultural land and other real property on a statewide basis. Other modifications included the application of statewide crop prices in the model and the use of cash rent for determining the assessed valuation of noncropland. The legislation extends the period of time for buffering tax shifts that may occur as the transition to the use the agricultural land productivity methodology as the means to value agricultural land.

In response to Representative Dennert’s question, Senator Knudson said that the intent of HB 1005 was to provide for countywide protection and not for individual parcels. Representative Dennert commented that unless the DOE’s have the right tools to ensure local adjustments are made fairly, then some land could increase twenty percent each year as long as the total county increase in the county is less than fifteen percent.

In response to **Mr. Larry Gabriel’s** question pertaining to the collection of statewide cow and calf prices that is provided in the draft legislation, Mr. Baatz stated that there was also other information that was not needed for the current model and methodology. However, if the information is collected today, there will be a data source available for the future if a change in the methodology is needed or wanted.

Mr. Baatz informed that changes to the draft legislation (Document #6) entitled “An act to revise certain tax levy limitations and property tax levies for school districts.” were required due to the task force extending the buffering time period to 2017. There will be changes to those sections that buffer the tax levies for school districts and tax payers holding them harmless for a period of time as shifts in assessments occur.

In response to Representative Dennert’s question, Senator Knudson said that the bill looks at a total mix of property. School districts have a mix of different classifications of property, and if the total of the mix is within ten percent of the current values the school district is exempt from the buffering provisions provided in this legislation. However, if the school district has a significant impact in its assessed valuations, then they are entitled to the same revenues that were received last year plus an index rate of inflation. He thinks the concept of providing protections for school districts and tax payers is important.

Mr. Gabriel asked if this change would apply to tax levies of school districts that have opted out. In response, Mr. Baatz said that opt outs are for a specific dollar amount and last a defined period of time. The opt outs from a school general fund levy are not affected by this.

The task force recessed at 12:06 p.m. and reconvened at 1:28 p.m.

Public Testimony

(Located on the LRC Archived Audio – 01:37:13)

Mr. Al Waltman, citizen from Aberdeen, told the task force that he has been involved with the process for 20 years. He thinks the task force is on the right track and appreciates all the effort and hard work from the members.

He stated his concern that the task force is changing the system to get a fair value that was not achieved with the old system. He wants to know why the same level of tax value for ag property needs to be maintained with this process. If they are kept, there will still be inequities.

The task force was told that soil surveys are old and not very scientific. Mr. Waltman distributed a handout entitled "Production Valuations for 2010 Brown County." (**Document #7**) After providing the task force an example of his farm, he said that there are some major adjustments that need to be made at the local level to make this system work.

Mr. Waltman said that he is satisfied with the original bill; however, there may need to be an adjustment to the language to ensure that the DOE's have the ability to make the necessary adjustments to values of individual parcels.

In response to Mr. Olinger's question, Mr. Chaffee said that highest and best use is determined by the rating for production. Anything above a Class 4 is considered cropland. DOE's will still have the ability to take into account various land characteristics (topography, rocks, rain, etc.) to make adjustments.

Representative Al Novstrup told the task force that he wants a system that is based in reality. The past system had no basis of reality, is broken, and needs to be fixed. He said that the new system will have a ratio of ag land values to the total value of the other property classifications that is consistent with the old system. He is not certain why the task force is creating a new system based on the total assessed valuations produced by the old broken system. If the system is to be fixed, then it should be done with real numbers and adjustments can be made to the tax levies.

Senator Knudson said that almost everyone can agree that the current system is broken. The new system is a starting point that is based on where the state was at in the old system. It is an arbitrary starting point, but it will be an on-going system that will be adjusted over time.

Consideration of Draft Legislation

(Located on the LRC Archived Audio – 02:19:36)

Draft 753Q0028 – An Act to revise certain provisions concerning the assessment of agricultural land. (Document #5)

LARRY GABRIEL MOVED, SECONDED BY RON OLINGER, THAT THE DRAFT LEGISLATION ENTITLED AN ACT TO REVISE CERTAIN PROVISIONS CONCERNING THE ASSESSMENT OF AGRICULTURAL LAND (Document #5) BE AMENDED ON PAGE 3 LINE 2, DELETE "and the total taxable value of noncropland" AND ON PAGE 3, LINE 3 AFTER "year." INSERT "For the taxes payable in 2011, 2012, 2013, 2014, 2015, 2016, and 2017, the total taxable value of noncropland within any county may not increase or decrease more than fifteen percent in any year.". The motion prevailed on a voice vote.

REPRESENTATIVE DENNERT MOVED, SECONDED BY REPRESENTATIVE NOEM, THAT THE DRAFT LEGISLATION ENTITLED AN ACT TO REVISE CERTAIN PROVISIONS CONCERNING THE ASSESSMENT OF AGRICULTURAL LAND (Document #5) BE AMENDED ON PAGE 2, LINE 2 OVERSTRIKE “thirty-six” AND INSERT “thirty-five”. The motion prevailed on a voice vote.

CURT EVERSON MOVED, SECONDED BY KIRK CHAFFEE, THAT THE DRAFT LEGISLATION ENTITLED AN ACT TO REVISE CERTAIN PROVISIONS CONCERNING THE ASSESSMENT OF AGRICULTURAL LAND (Document #5) BE AMENDED ON PAGE 2, LINE 5 OVERSTRIKE “three-fifths” AND INSERT “six-tenths”. The motion prevailed on a voice vote.

Mr. Gabriel informed the task force that the legislation should be changed to clarify that the current equalization process in a county will not be changed.

LARRY GABRIEL MOVED, SECONDED BY REPRESENTATIVE DENNERT, THAT THE DRAFT LEGISLATION ENTITLED AN ACT TO REVISE CERTAIN PROVISIONS CONCERNING THE ASSESSMENT OF AGRICULTURAL LAND (Document #5) BE AMENDED AS FOLLOWS:

Section 6. That chapter 10-6 be amended by adding thereto a new section to read as follows:

Notwithstanding the provisions of 10-6-33.28 to 10-6-33.33, inclusive, the director of equalization may equalize the assessed valuation of all cropland so long as the total assessed valuation of all cropland and total assessed valuation of all noncropland is equal to the total assessed valuations of agricultural land as determined by the application of the provisions of this chapter. Notwithstanding the provisions of 10-6-33.28 to 10-6-33.33, inclusive, the director of equalization may equalize the assessed valuation of all noncropland so long as the total assessed valuation of all cropland and total assessed valuation of all noncropland is equal to the total assessed valuations of agricultural land as determined by the application of the provisions of this chapter. The motion prevailed on a voice vote.

Mr. Kenyon told the task force that he agrees with the motivation for the amendment and it does address the status quo. He is concerned about creating a limitation upon the DOE's ability to equalize between classes of property (increase one and decrease another).

KIRK CHAFFEE MOVED, SECONDED BY SENATOR PETERSON, THAT THE DRAFT LEGISLATION ENTITLED AN ACT TO REVISE CERTAIN PROVISIONS CONCERNING THE ASSESSMENT OF AGRICULTURAL LAND (Document #5) BE ADOPTED AS AMENDED. The motion prevailed on a roll call vote with 11 AYE, 1 NAY, and 2 EXCUSED. Those members voting AYE include Peterson (Jim), Dennert, Noem, Street, Bones, Chaffee, Everson, Gabriel, Olinger, Rhoden, and Knudson. Those members voting NAY include: Hoerth. Those members EXCUSED: McNenny and Sutton.

Mr. Gabriel said that the bill may not be perfect, but it is a significant improvement over the current system. The oversight task force will be able to come back and address any future concerns.

Representative Noem and Senator Alan Hoerth said that the task force had accomplished what it was set out to do in creating a fair and equitable formula.

Draft 672Q0048 – An Act to revise certain tax levy limitations and property tax levies for school districts. (Document #6)

REPRESENTATIVE RHODEN MOVED, SECONDED BY REPRESENTATIVE NOEM, THAT THE DRAFT LEGISLATION ENTITLED AN ACT TO REVISE CERTAIN TAX LEVY LIMITATIONS AND PROPERTY TAX LEVIES FOR SCHOOL DISTRICTS (Document #6) BE AMENDED AS FOLLOWS:

Section 6. That chapter 10-6 be amended by adding thereto a new section to read as follows:

It is the policy of the state that the total amount of additional taxes that may be generated on agricultural land by a school district pursuant to the provisions of 13-10-6, 13-16-7, 13-37-16, and 13-37-35.1 will not provide a substantial property tax revenue increase for the school district pursuant to the implementation of the productivity system pursuant to 10-6-33.28 to 10-6-33.33, inclusive.

It is the policy of the state that the total amount of property taxes that may be lost on agricultural land by a school district pursuant to the provisions of 13-10-6, 13-16-7, 13-37-16, and 13-37-35.1 will not provide a substantial property tax revenue decrease for the school district pursuant to the implementation of the productivity system pursuant to 10-6-33.28 to 10-6-33.33, inclusive. The motion prevailed on a voice vote.

Senator Knudson said that the original language was intended as a place holder to be changed later. The task force does not want to harm taxpayers with drastic increases in assessed valuations. The task force is also trying to maintain funding for school districts with the new system as shifts in ag land assessments occur.

Mr. Gabriel stated that he would like different limitations on capital outlay levies. School districts cross county lines and this could create difficulty.

Mr. Kenyon said that the purpose of the temporary caps was to prevent school districts from gaining or losing lots of money during the transition. The caps are only applied if the total assessed value changes by more than 10%. Mr. Kenyon distributed a handout entitled "2008 Pay 2009 Preliminary Valuations by School District" (**Document #10**),

The motion prevailed on a voice vote.

SENATOR PETERSON MOVED, SECONDED BY REPRESENTATIVE NOEM, THAT THE DRAFT LEGISLATION ENTITLED AN ACT TO REVISE CERTAIN TAX LEVY LIMITATIONS AND PROPERTY TAX LEVIES FOR SCHOOL DISTRICTS (Document #6) BE ADOPTED AS AMENDED. The motion prevailed on a roll call vote with 12 AYES and 2 EXCUSED. Those members voting AYE include: Hoerth, Peterson (Jim), Dennert, Noem, Street, Bones, Chaffee, Everson, Gabriel, Olinger, Rhoden, and Knudson. Those members EXCUSED: McNenny and Sutton.

Senator Knudson thanked the Legislative Research Council staff, DRR staff, SDSU staff, members of the task force and public for their hard work and commitment to the task force. He understands that there are still some issues that will be addressed later, but the task force was successful.

Adjourn

REPRESENTATIVE RHODEN MOVED, SECONDED BY KIRK CHAFFEE, THAT THE TASK FORCE ADJOURN. The motion passed on a voice vote.

The task force adjourned at 3:04 p.m.



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