



**Legislative
Research
Council**

MINUTES
**Agricultural Land Assessment
Implementation and Oversight
Advisory Task Force**

Senator Larry Rhoden, Chair
Representative Justin Cronin, Vice Chair

First Meeting
2013 Interim
June 12, 2013

Room 413
State Capitol
Pierre, South Dakota

Wednesday, June 12, 2013

Senator Larry Rhoden called to order the first 2013 interim meeting of the Legislative Research Council Agricultural Land Assessment Implementation and Oversight Advisory Task Force at 9:40 a.m. (CT), June 12, 2013, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jason Frerichs, Al Novstrup, and Larry Rhoden; Representatives Julie Bartling, Justin Cronin, Mark Mickelson, and Jim Peterson; Walt Bones, Kirk Chaffee, Paul Dennert (via telephone), Curt Everson, Tom Hansen, and Lyle Perman. Excused: Senator Billie Sutton.

Staff members present included Fred Baatz, Principal Research Analyst; and Cindy Tryon, Legislative Secretary.

(Note: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all reference documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council. 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 – Current Interim – Minutes and Agendas.")

Election of Officers

MR. TOM HANSEN MOVED, SECONDED BY REPRESENTATIVE MARK MICKELSON, TO NOMINATE SENATOR LARRY RHODEN AS CHAIR OF THE AG LAND ASSESSMENT TASK FORCE.

REPRESENTATIVE JIM PETERSON MOVED, SECONDED BY MR. WALT BONES, TO CEASE NOMINATIONS AND CAST A UNANIMOUS BALLOT FOR SENATOR RHODEN. The motion prevailed unanimously on a voice vote.

MR. TOM HANSEN MOVED, SECONDED BY MR. KIRK CHAFFEE, TO NOMINATE REPRESENTATIVE JUSTIN CRONIN AS VICE CHAIR OF THE AG LAND ASSESSMENT TASK FORCE.

REPRESENTATIVE JIM PETERSON MOVED, SECONDED BY TOM HANSEN, TO CEASE NOMINATIONS AND CAST A UNANIMOUS BALLOT FOR REPRESENTATIVE CRONIN. The motion prevailed unanimously on a voice vote.

Approval of Minutes

REPRESENTATIVE CRONIN MOVED, SECONDED BY REPRESENTATIVE MICKELSON TO APPROVE THE MINUTES OF THE SEPTEMBER 17, 2012, MEETING. The motion prevailed unanimously on a voice vote.

Overview of Property Assessment Studies and Legislation

Mr. Fred Baatz, Principal Research Analyst, Legislative Research Council, gave a PowerPoint presentation, *Property Assessment and Taxation Legislation (Document #1)*. The presentation was an extensive history of the property tax legislation and laws in South Dakota, starting with the 1977 Legislative Session through today. Mr. Baatz' presentation also included an in-depth look at productivity value legislation which was first passed in the 2008 Legislative Session.

Senator Rhoden asked if the information on slide 13 involved the change in the school formula. That slide referred to Governor Janklow's Property Tax Relief legislation of 1995. The legislation provided twenty percent property tax relief to ag and owner-occupied property for taxes payable in 1996. The legislation also adopted property tax limitations for local governments, except for new growth, and set the tax increase limitation at the lower of the Consumer Price Index (CPI) or three percent. Mr. Baatz replied that this legislation did involve the change in the school formula.

Senator Rhoden asked if HB 1247 of the 2002 Session (slide #23) was called the Green Acres Provision. Mr. Baatz said that it was. HB 1247, which did fail, was An Act to require payment of certain property taxes if agricultural land is changed to another classification of property.

Representative Jim Peterson referred to the *Productivity Value Legislation* section of Mr. Baatz' presentation, specifically slide 43 regarding school district tax levies. Representative Peterson said that he does not believe HB 1006 (2008 Session) did what was intended. He said that he does not believe the taxpayer has been held harmless, as stated in the legislation. Mr. Baatz said that taxpayers as a whole were held harmless, but not necessarily each individual taxpayer. Also, section 6 of HB 1006 exempts school districts from this provision if the taxable value of the district changes by less than ten percent annually.

Senator Rhoden said that this is a topic on which he, along with Representative Peterson and Mr. Hansen, would like a more extensive report for the next committee meeting.

Mr. Paul Dennert asked that the report look at whether or not the schools are using that provision and if they are not, perhaps it should be discontinued. Representative Peterson added that it would be interesting to look at specific schools.

Mr. Curt Everson suggested they include the Auditor General in the conversation, as that office audits the schools annually and they may have insight into this specific issue.

Representative Peterson added that he does not believe the schools are doing anything illegal, he would just be interested in seeing the results of this legislation.

Property Assessment and Taxation 101

Mr. Michael Houdyshell, Director of Property and Special Taxes, SD Department of Revenue, gave a PowerPoint presentation, *Property Assessment and Taxation in South Dakota (Document #2)*. The presentation was a history of property taxes from the Department of Revenue's perspective,

which, in addition to the laws, also included determining the taxable value, establishing the tax rate, levy limits, computing the tax, presenting the tax bill, and the assessment process.

For the question and answer section of the presentation, Mr. Houdyshell was joined at the presenter's table by **Ms. Colleen Skinner, Property Tax Program Manager, SD Department of Revenue.**

Representative Mark Mickelson asked what the range is across the state regarding the taxable value of property. Ms. Skinner said that the counties are supposed to be assessing at market value, the law mandates the assessed value to be at least 85% of the market value but the Department of Revenue prefers they be at least at 90%. The Department annually publishes this data.

Senator Al Novstrup asked how the value of ag land is determined. Ms. Skinner replied that they use productivity for assessment and equalization but they do look at sales, too, just to make sure they are not exceeding the market value. Sen. Novstrup asked if these valuations for each county were available. Ms. Skinner said that she would prepare that information for the next task force meeting.

Senator Rhoden said that using comparative sales is only a tool to determine whether or not property is being overvalued. Mr. Houdyshell said that is correct. Senator Rhoden requested information on how Senate Bill 6 from the 2013 session may affect the counties' assessments of ag land. Mr. Houdyshell said they will put that together for a future meeting.

Mr. Walt Bones said that in the future the assessed values for ag land could be a lot higher than the sales price and that could create a real challenge.

Representative Mickelson asked if the Department of Revenue tracks full and true values for ag land. Mr. Houdyshell responded that they do.

Representative Justin Cronin asked that if the current system of using productivity for valuation works, why do they still check the numbers with the old system, market value.

Senator Rhoden said that when talking about assessing ag land at 85% of full and true, that refers to productivity. They track the sales in order to be sure to meet the constitutional requirements for property tax assessment and that the assessments do not exceed the full and true value.

Mr. Lyle Perman asked what year the ag land valuations changed from sales to productivity. Mr. Houdyshell responded that this became effective for property taxes paid in 2011.

Senator Rhoden pointed out that new houses and new businesses are always being constructed but the amount of taxable ag land keeps decreasing. With that fact in mind, the amount of taxes collected on ag land increased slightly.

Mr. Kirk Chaffee asked if there had ever been a court challenge to the use of market value or actual value in regard to the constitution.

Mr. David Wiest, Deputy Secretary, SD Department of Revenue, said that *Rau vs. Fritz* was a 1960 case heard by the Supreme Court regarding that issue. The Supreme Court ruled that full and true value, market value, and actual value all had the same meaning.

Ag Assessment under the Productivity System

Mr. Houdyshell gave a PowerPoint presentation, *Agricultural Land Assessment under the Productivity System (Document #3)*. Beginning with the 2010 property tax assessments (payable in 2011),

agricultural land in South Dakota is assessed based upon its productivity (agricultural income) value rather than fair market value. This presentation explained how that system works.

Mr. Houdyshell explained that beginning with the 2010 assessments (for taxes payable in 2011) agricultural land in South Dakota is assessed based upon its productivity (agricultural income) value. The data used to establish that value is from official estimates published by the United State Department of Agriculture, National Agricultural Statistics Services (USDA/NASS). These official estimates are based on surveys of farmers, ranchers and agribusinesses. Mr. Houdyshell used the ag land numbers from Pennington County as an example.

Representative Cronin asked why there are more types of crops listed in one year than another year. Mr. Houdyshell explained that if there is less than a certain amount of a crop planted in a year, that crop is not included in the report.

Mr. Tom Hansen asked if they have the total ag land valuation for the entire state. Mr. Houdyshell said that information is listed county by county. Representative Peterson said that the soil rating varies from county to county. Representative Mickelson asked if the soil rating affects the value per acre. Mr. Houdyshell responded that it does. In answer to a question, Ms. Skinner said that the average soil rating in Jerauld County is .7537, which differs from other counties.

In response to a question from Representative Cronin, Mr. Houdyshell said that natural disasters are not calculated into the formula.

State Aid for Education Funding

Mr. Jim Terwilliger, Bureau of Finance and Management, gave a PowerPoint presentation, *The State Aid to General Education Formula and General Education Levy Adjustment (Document #4)*.

A very brief overview of his presentation is that:

- There are 151 public school districts in South Dakota for FY2013.
- Current formula for funding general K-12 education took effect Jan.1, 1997, with several major changes made by the 2007 Legislature and the 2010 Legislature.
- The base formula starts with the same amount of funding per student (per student allocation or PSA).
- The general funding for K-12 schools is paid by a combination of money raised by local property taxes and money raised by the state through statewide taxes.
- Per statute, the targeted proportion of local funding and state funding must remain constant when making the levy adjustment.
- The current target is 53.8% state funding with the remaining coming from local property taxes.

One new addition for FY2014 is the Limited English Proficiency (LEP) adjustment. This adjustment was established by SB 235 which was enacted during the 2013 session.

Mr. Dennert asked if the small school adjustment and the LEP adjustment are locked in or if that amount will continue to increase. Mr. Terwilliger explained that only the amount for the LEP adjustment will continue to increase along with the per student allocation.

Senator Jason Frerichs commented on the fact the owner-occupied and commercial property use more of the services provided through property taxes than does ag land. Mr. Terwilliger explained that the property tax system for school general fund levy may have been designed to address that fact.

Mr. Hansen asked about the projections that the Bureau of Finance and Management uses in regard to school funding. He asked how close they usually are with their projections. Mr. Terwilliger said that it varies from year to year. If valuations are low and the number of students is high, then we come up short. We are able to make up that difference by making adjustments the following year. The projections are never exact but we've been pretty close over the years.

Public Testimony

Mr. David Owen, South Dakota Chamber of Commerce and Industry, Pierre, said that his organization will become much more involved with this task force than they have been in the past. He said that there is a real need to study just what is fair regarding the distribution of the property tax levies. He added that he endorses the system and looks forward to working with the committee on fine-tuning the process.

Mr. Michael Held, South Dakota Farm Bureau, Mitchell, said that the system has been remarkable since 1995. He said to just think of where South Dakota would be if these changes had not been made, given that there were few sales of ag land under the previous system to make changes in assessments.

Mr. Doug Backlund, Mitchell, said that he is very interested in perpetual conservation easements and how they are treated for tax purposes.

Senator Rhoden told Mr. Backlund that this committee has done extensive research on that topic in the past and it may be helpful for him to go back through the minutes of those meetings. Senator Rhoden added that the committee did sponsor legislation a year ago to do away with perpetual easements, but the legislation failed.

Mr. Shawn Lyons, South Dakota Retailers Association, Pierre, testified that the business groups are working together to be more engaged in this discussion. They realize that when changes are made to the ag land property tax system, the changes affect the owner occupied and commercial classifications as well. Business owners did not benefit from the property tax reduction program and they would like to be included in any such future discussions.

Senator Rhoden said that it is extremely beneficial to have all the different economic groups represented at the meetings. He said that in looking at the big picture regarding all property taxes, there has been a shift away from commercial property and more toward ag land.

Mr. Lyons said that the educational aspect of these meetings is just a small part of the discussion. He said that it is the numbers that get the attention of the business people and that is why they plan to be more involved in the process. He added that there is a need to look at all the property classifications and how they are impacted.

Task Force Discussion and Staff Directives

Representative Peterson pointed out that taxes are a very emotional issue. People have to remember to look at the total picture when looking at tax dollars; it is not just about one mil levy but rather about the amount written on the check when paying the tax bill.

Mr. Everson said that in the banking industry, everything is measured and there is a report on a number of items. He said that before going to the productivity system, it was all about market value. Now that the system has gone a different direction, the yardstick is gross income and that can be a difficult concept. We need to have a better idea of the entire property tax burden, not just a small part

of it. It might be helpful to try and compare the tax burden in regard to the income producing value of the asset. He said that he is not sure that can be done, but that it's difficult to have a debate without all the facts.

Senator Rhoden said that the task force needs to know the total taxes paid by each class of property.

Mr. Dennert asked to study a green acres provision.

Mr. Perman said that it would be of interest to him to see the relationship of net income on noncropland and cropland and a comparison of the taxes paid on those properties (commercial, crop, and noncrop).

Representative Julie Bartling asked how land is determined to be cropland or noncropland. Ms. Skinner said that the soil inventory sent to the counties designates if the soil is a crop rated soil or a noncrop rated soil. Representative Bartling then asked how noncropland can be broken up and planted into crops. Ms. Skinner explained that it is the rating of the soil that determines if it is crop or noncrop land, not how the owner uses the land.

Senator Rhoden suggested that the task force may want to research what effect there would be if land designation was based on actual use rather than soil ratings.

Representative Bartling asked if all assessors are using the highest and best use system. Ms. Skinner said that some counties may have made some adjustments and the department will be looking into how those adjustments are being applied.

Senator Novstrup asked whether properties located on county borders are treated equally between the two counties.

Representative Cronin asked for a report concerning the updates to the soil survey maps.

Mr. Chaffee said that it would be interesting to look at what would happen if commercial property was assessed based on production value in the same way we assess ag land. He would also like the task force to study the cap rate and adjustment factors, as well as actual use vs. highest and best use. He added that not every crop rated soil can have a crop on it and that issue needs to be researched.

Senator Rhoden said that he would also like a definition for summer fallow ground. He also said that it is one of the charges of this task force to review the cap rate. Senator Rhoden pointed out that the ag land property assessment system and the values derived from that are moving in the right direction. He added that those values did not make sense under the old system.

Next Meeting Date

The next Agricultural Land and Assessment Implementation and Oversight Advisory Task Force meeting will be July 25, 2013, in room 413 of the Capitol in Pierre.

Adjournment

REPRESENTATIVE CRONIN MOVED, SECONDED BY REPRESENTATIVE BARTLING, TO ADJOURN. The motion prevailed unanimously on a voice vote.

The meeting adjourned at 3:45 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).