



# Legislative Research Council

# MINUTES

## Agricultural Land Assessment Implementation and Oversight Advisory Task Force

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**Senator Larry Rhoden, Chair**  
**Representative Justin Cronin, Vice Chair**

**Third Meeting**  
**2014 Interim**  
**November 18, 2014**

**Room 413**  
**State Capitol**  
**Pierre, South Dakota**

Senator Larry Rhoden called to order the third 2014 interim meeting of the Legislative Research Council Agricultural Land Assessment Implementation and Oversight Advisory Task Force at 9:15 a.m. (CT), November 18, 2014, in Room 413 of the State Capitol, Pierre, South Dakota.

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

Staff members present included Fred Baatz, Principal Research Analyst; Amanda Jacobs, Research Analyst; and Rena Ortbahn, 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) and some documents can be found on the LRC website at: <http://legis.sd.gov/Interim/CommitteeDocuments.aspx?Session=2014>.*

### **Approval of Minutes**

**MR. WALT BONES MOVED, SECONDED BY REPRESENTATIVE MARK MICKELSON, TO APPROVE THE MINUTES OF THE SEPTEMBER 15, 2014, MEETING. The motion prevailed by a voice vote.**

**Senator Larry Rhoden** said this will be his last meeting as a legislator. He said it has been quite a process; that it has taken fifteen years of work to develop the ag productivity system. He added that it is not perfect, and this task force has a continuing mission to make it workable, user friendly, fair as possible, and to address issues. He said that in the absence of Representative Justin Cronin, that Representative Jim Peterson will serve as Vice-Chair of today's meeting.

**Representative Jim Peterson** agreed that it has been a long process. He said that the old system wasn't working; something had to be done; and that the ag productivity system is still a work in progress. He believes it is the goal of the task force is to make the system fair, along with giving tools to directors of equalization to make adjustments. He added that the drafts in front of the task force today are not in final form and can be changed.

### **Report from Summer Work Group: School District Capital Outlay Taxes**

**Mr. Michael Houdyshell, Director, Division of Property and Special Taxes, SD Department of Revenue,** provided a brief summary of the workings of the Governor's summer study work group. The work group has found that there is growth in school capital outlay tax revenues which may be related to the growth in ag valuations. There is also a growth in the capital outlay reserve funds. The work group is

trying to come up with a compromise that will limit or slow capital outlay growth, while also protecting the school districts' financial needs. He said negotiations and discussions are ongoing.

Mr. Houdyshell then answered committee questions.

### **Research for Ag Land Assessments Based on Actual Use**

**Dr. Matthew Elliott, Assistant Professor, Economics Department, SDSU** presented the task force with two proposals for a SDSU research project that would determine the impact to property tax assessments if the current productivity valuation system was comprehensively adjusted to reflect actual use instead of highest and best use (***Document #1 – November 18<sup>th</sup> Presentation for Agricultural Assessment Implementation and Oversight Task Force; Document #2 – Draft White Paper on Research Project***). The first proposal would be for a one year, "Limited Research Scope Project: Impact Study of Actual Use Adjustment (no verification)", with an estimated \$151,000 budget. The second proposal would be a two year, "Broader Research Scope Project: Actual Use Implementation Map and Soil Tax Table Consistency Assessment (with verification of implementation tool)", with an estimated budget of \$343,000.

Dr. Elliott said that either proposal is feasible and that it would be helpful to have guidance from the task force on some issues. Dr. Elliot responded to committee questions.

### **Professional Range Camp for Assessors**

**Mr. Kirk Chaffee** reported to the group that he had attended an SDSU Extension Service Professional Range Camp. He found it very informative and said it could be expanded as a class for assessors, to better educate themselves on how to use the tools available to them. He presented a draft of the proposed course objective and curriculum (***Document #3***) and said if task force members have any questions to give him a call.

Senator Rhoden said the idea is extremely interesting, and that it could be a value for the entire committee to participate in this training.

### **Draft Legislation (Action on Draft #105))**

Senator Rhoden asked for task force discussion and action on Draft #105 (***Document #4***).

*Draft #105: An Act to revise certain provisions concerning the school district pension fund and capital outlay fund tax levies and to provide property tax opt-out procedures for the capital outlay levy.*

Mr. Michael Houdyshell presented the Capital Outlay Bill Draft Summary (***Document #5***). The draft limits the capital outlay levy for school districts and repeals the current pension levy limitation language that's in statute. Section 4 provides that any levy amounts in school district budgets be stated in total dollars budgeted in lieu of dollars per thousand of taxable valuation. Mr. Houdyshell said the draft provides a mechanism for districts that aren't utilizing capital outlay levies at this time to do so in the future, and provides an opt-out mechanism for school capital outlay taxes.

The task force discussed the difference between passing an opt-out versus a bond issue. A bond issue must have 60% of the vote, while an opt-out 50%. Until June 30, 2018, forty-five percent of capital outlay funds can be used for general school purposes, while a bond can be used just for building new structures.

Mr. Houdyshell responded to several questions from **Representative Mark Mickelson**. Mr. Houdyshell said the draft would allow school districts to retain any unused index factor (CPI) for up to three years, bank it, and make use of it in subsequent years. He said the bill would allow schools, through the use of opt-outs, to impose additional capital outlay levies, if necessary, subject to a maximum of three dollars per thousand dollars of taxable valuation. Mr. Houdyshell said this draft sets the maximum levy at the “growth factor plus the lessor of 3% or CPI”, while the information being circulated by the Governor’s summer study work group sets it at the “growth factor plus the greater of 3% or CPI”.

**Mr. Tom Hansen** expressed that the use of capital outlay dollars to pay for general fund expense items has been problematic. Its use came about in increments, first for textbook purchases and then was expanded to include transportation, health issues, and other general purposes.

Senator Rhoden believes the best option for this task force is to present a vehicle bill, in case the Governor’s task force does not. He stressed that this is a working draft, the direction as to where it goes from here is up to task force. He realizes that in its current form, without compensation, there is no reason for the school districts to support the draft. He said the school districts have, in recent years, taken major cuts; and for legislation such as this proposal to pass the legislature, there has to be something in it for school districts.

Representative Peterson would like to see the draft come out of the task force with “lessor” changed to the “greater”; and hopes additional school district compensation can be added during session. He said the draft will accomplish the capping of capital outlay taxation.

**Mr. Wade Pogany, Associated School Boards of SD (ASB)**, stated implementing “the lessor of 3% or CPI plus growth” will limit property taxes, which will hurt school districts. He has heard very few taxpayers complain about how the school districts are using their capital outlay funds. He sees three issues with the draft in its present form. First, the school boards will view this draft as a threat to their sovereignty. Secondly, the draft is unfair to school districts which have been keeping their levies low, as it freezes the school levies at their current amount. Third, he said taking the flexibility away may help property taxes owners, but limits school districts and there needs to be a way to recapture the savings. He said the ASB is in process of trying to find best middle ground, and will continue to negotiate and work on that matter.

Representative Mickelson is concerned that this draft may penalize responsible school districts that have intentionally kept their property tax levy low, by forcing them to opt-out to raise their capital outlay tax levy.

Representative Peterson said this draft should be kept alive as a vehicle draft, with the understanding that there will be a lot of changes to it.

**Mr. Paul Dennert** remarked that the average taxpayer does not understand they are paying more for the capital outlay taxes that are being used for school general funds. When he pays less than \$2 per thousand for school general funds and pays \$3 per thousand for capital outlay, he said that is not right. His personal taxes for capital outlay go up 25% every year. He believes capital outlay funds should be used for capital expense. Since the Legislature has allowed the school districts to use up to 45% of capital outlay monies for general funds, he agrees that if it is taken away, it should be replaced and that’s where additional legislation is needed. Mr. Dennert said adjustments need to be made; he is not trying to take money from schools, but that it should be received from general fund taxes and not out of the capital outlay taxes.

Senator Rhoden responded that Mr. Dennert described the magnitude of the issue; that possibly changing “lessor to greater” would improve the perception of the draft, but even with that it has a long way to go. He said the issue needs to be addressed and action needs to be taken.

Mr. Hansen shared that in recent years there has been a significant increase in the taxable value of ag property; much more than residential or commercial property. Mr. Hansen said growth as a result of a new appraisal system for ag property isn't really new growth, and that it shouldn't trigger additional tax revenue. He said in the case of ag property, we've had increased valuations which is really only a readjustment as opposed to real new growth that brings new value into the tax base. He said in South Dakota schools have been on the receiving end of what, he said, is unjust enrichment with property, from a taxing formula standpoint, having doubled from 10 years ago. This has led to the desire to have fair tax administration, which he said we are not presently achieving due to one segment being allowed to bring unjust enrichment to some tax receiving entities - mainly the school districts.

**REPRESENTATIVE JIM PETERSON MOVED, SECONDED BY SENATOR BILLIE SUTTON, TO AMEND DRAFT #105 AS FOLLOWS: IN SECTION 2 TO CHANGE THE LESSOR TO GREATER OF 3% OR CPI, PLUS THE GROWTH FACTOR. The motion prevailed on a voice vote.**

Representative Peterson commented that according to statistics, this change will allow for an estimated 4.4% growth in capital outlay tax revenues. He views this as a vehicle bill, hinging on the restoration of general school funding as a prerequisite to adoption of capital outlay tax limitations. He stated that it is an important issue that should be brought forward for the legislature to discuss.

**Senator Billie Sutton** commented that having a vehicle bill giving more options is the way to proceed. He hopes there will be concessions as session moves forward and that the Legislature will come up with extra dollars to replace previous losses to the school district general funds.

Representative Mickelson believed the Legislature will look at a vote for the bill today as a vote for what's in it.

Mr. Dennert said passing out the draft sends a message that capital outlay is a serious problem.

Senator Rhoden is leery of vehicle bills, but more leery about vehicle bills that say "education is enhanced". In the case of this draft, he wanted to make clear the task force intention. He wonders why capital outlay is the only tax completely unfettered, while county, city, and township taxes are limited. He is especially concerned with the expanded eligible use of capital outlay funds.

**REPRESENTATIVE JIM PETERSON MOVED, SECONDED BY MR. TOM HANSEN, DO PASS DRAFT #105 AS AMENDED. The motion prevailed on a roll call vote with 9 voting AYE, 1 NAY, and 4 excused. Those voting AYE: Peterson, Frerichs, Sutton, Bones, Chaffee, Dennert, Hansen, Perman, Rhoden. Those voting NAY: Mickelson. Those EXCUSED: Bartling, Novstrup, Everson, and Cronin.**

### **Draft Legislation (Review and Discussion)**

**Fred Baatz, Principal Research Analyst, Legislative Research Council**, provided the task force members with a brief summary of each of the following bill drafts, (**Document #6**):

*Draft #55: An Act to appropriate money for research concerning the administrative and financial impact of actual use on agricultural land assessments and to declare an emergency.*

*Draft #57: An Act to revise certain provisions concerning the assessment and taxation of real property.*

*Draft #56: An Act to revise the criteria for classifying property as agricultural land.*

*Draft #84: An Act to revise the criteria for classifying property as agricultural land.*

*Draft #96: An Act to revise the criteria for classifying property as agricultural land and to provide for additional requirements for small agricultural acreages and timber land to be classified as agricultural land. (Document #7)*

Senator Rhoden asked for discussion on either #56 or #84.

**Mr. Greg Josten, State Forester, Department of Agriculture**, responded to work load increase questions (**Document #8 – Impacts on RC&F of the proposed Ag Land Criteria**). Asked if the annual inspection requirement for timber land was changed to every five years, Mr. Josten said there would be a workload reduction. Some maintenance may have to be done annually, some things every five years or more. It's not necessary to do something on the property every year to manage timber properly.

Addressing whether implementation of these drafts will result in an increased Forestry workload, Mr. Josten noted that within the Black Hills area there are 1,579 owners who own fifty or more acres. If even half of the owners have timber status, that's a lot of management plans that have to be prepared. He estimates each plan takes 40 or more hours to develop. He said that's quite a work load.

Responding to Mr. Chaffee, Mr. Josten said they also write stewardship plans for private landowners with primary objectives of fire protection, forest health, wildlife, and occasionally - timber. This proposed legislation would require them to look at timber to qualify as ag land.

Senator Rhoden wonders if there isn't a better way – for example the Meade and Lawrence County Assessors already do stewardship plans. Why not look at what's in place and not involve the Forest Service? Mr. Chaffee said he prefers that policy. Mr. Chaffee's office has to get information from other agencies to prepare the stewardship plans.

*Draft #58: An Act to revise certain provisions concerning the pension and capital outlay tax levies for school districts.*

Senator Rhoden stated that Draft #58 was Senate Bill #8 last year, which was tabled at the Lieutenant Governor's request, because the administration wanted to study capital outlay taxes in more depth before making further amendments to these sections. Senator Rhoden said that this draft should be adopted by the task force.

Senator Rhoden passed the gavel to Representative Peterson, stating he has been a cornerstone for the task force as far as getting the productivity and other ag land legislation passed.

### **Public Testimony**

Oval Frahm, Oehricks, South Dakota gave the task force a list of four questions for which he is looking for answers (**Document #9**). He believes there should be a shift from highest and best use to actual use. He said that FSA and crop insurance data are more accurate than NASS data, mainly because everyone signs on those forms as to whether grass is being used for hay or grazing. He knows of a realtor, who won't use soil surveys from the state because of inaccuracies, but instead uses another program. He said that in Fall River County, land is assessed at higher productivity value than is possible because of climate.

Mr. Chaffee responded that FSA data is great to have. He has to request it and is unable to receive it on a county-wide basis, but can get specific information on one parcel at a time. He said the rating system is a completely different document than what you see on web soil survey. Mr. Chaffee said as for the climate issues, there's not a better example of the need for actual use than Fall River County. He said

NASS is the best information available on a statewide basis, but that doesn't mean it can't be supplemented by other information.

Representative Peterson pointed out that some of Mr. Frahm's concerns are already in statute, and that the task force has been struggling with actual use for a long time.

**Mr. Jay Alderman, Pennington County States Attorney** addressed both draft #56 and draft #96. He asked the task force to just make the best bill they can. He suggested delegating some of the task force members meet with the directors of equalization to iron out issues such as the acreage minimums. He talked about the difficulties in defining principal use, subdivisions, platted and non-platted; and family income as it relates to families who have formed corporations.

Responding to Mr. Chaffee, Mr. Alderman said he is open to the idea of letting the county commissioners set the threshold to determine whether timber is an undersized parcel.

**Mr. Ben Wudtke, Black Hills Forest Resource Association** appreciates timber being included in the definition of agriculture. He explained in Pennington County the goal of management plans is to determine whether timber is a viable crop. Stewardship plans at the county level require landowners to create a monetary profit. County directors of equalization use the plans to determine whether the property will be classified as agricultural. He said written plans also help folks to understand timber operations are not an annual occurrence. Mr. Wudtke said a timber operation generally needs at least 20 or 30 acres; but sometimes less if it is in coordination with other operations. He said timber is unique in that it doesn't produce an annual crop; a timber operation doesn't change much in a year, and that an annual review of management plans may not be necessary.

**Ms. Cory Tomovick, Pennington County Ag Group, Rapid City**, thanked the task force for listening to the concerns of small ag producers. She said there's a lot of innovation in small ag and an avenue needs to be provided for those small producers.

**Ms. Joyce Dragseth, Director of Equalization, Brookings County**, appreciates the task force letting the counties be in control of the minimum number of acres that are needed to qualify as ag land.

**Ms. Brenda Forman, SD Cattlemen's Association**, advised that the Cattlemen's Association supports actual use research; she believes that SDSU has brought good proposals with good numbers and she supports draft #55, with a minimum allotment of \$150,000.

**Ms. Angela Ehlers, SD Association of Conservation**, said her association supports draft #55; that is would be a good investment of \$150,000. She says if the task force waits for perfect data they will never have it, and that the research doesn't have to be complicated.

**Mr. Paul Lepisto, SD Izaak Walton League of America** supports draft #55. He cautioned to not make the research project more complicated than it is. He encouraged the task force to move forward, get the data, and then decide how to proceed.

**Mr. Rick Vallery, Pierre** supports draft #55 saying it should focus on cropland, noncropland, and other; and then get to the determination of value for each. This data is needed. He believes the key is what is called cropland versus noncropland under its actual use versus highest and best use.

Representative Peterson returned the gavel to Senator Rhoden.

## Draft Legislation (Action)

Senator Rhoden reminded the task force that passage of the draft legislation by the task force does not constitute final action. He said a majority vote of members present is needed to pass a draft.

*Draft #55: An act to appropriate money for research concerning the administrative and financial impact of actual use on agricultural land assessments and to declare an emergency.*

**REPRESENTATIVE JIM PETERSON MOVED, SECONDED BY MR. LYLE PERMAN, TO AMEND DRAFT #55, SECTION 1, LINE 8, BY STRIKING EVERYTHING AFTER ACTUAL USE. The motion passed with a voice vote.**

**MR. LYLE PERMAN MOVED, SECONDED BY MR. KIRK CHAFFEE, THAT DRAFT #55 BE AMENDED WITH THE FOLLOWING LANGUAGE: TO REQUEST AN APPROPRIATION IN THE AMOUNT OF \$151,000. The motion passed with a voice vote.**

**MR. KIRK CHAFFEE MOVED, SECONDED BY MR. WALT BONES, DO PASS DRAFT #55 AS AMENDED. The motion prevailed on a roll call vote with 9 AYES, 5 EXCUSED. Those voting AYE: Peterson, Frerichs, Sutton, Bones, Chaffee, Dennert, Hansen, Perman, Rhoden. Those EXCUSED: Bartling, Mickelson, Novstrup, Everson, and Cronin.**

Task force members stressed that the project must be kept simple and that the legislature needs to know what changes would occur within the counties if there was a shift from productivity to actual use.

*Draft #57: An Act to revise certain provisions concerning the assessment and taxation of real property.*

**MR. KIRK CHAFFEE MOVED, SECONDED BY MR. LYLE PERMAN, DO PASS DRAFT #57. The motion prevailed on a roll call vote with 9 AYES, 5 EXCUSED. Those voting AYE: Peterson, Frerichs, Sutton, Bones, Chaffee, Dennert, Hansen, Perman, Rhoden. Those EXCUSED: Bartling, Mickelson, Novstrup, Everson, and Cronin.**

*Draft #96: An Act to revise the criteria for classifying property as agricultural land and to provide for additional requirements for small agricultural acreages and timber land to be classified as agricultural land.*

**MR. TOM HANSEN MOVED, SECONDED BY MR. LYLE PERMAN, TO AMEND DRAFT #96 WITH THE FOLLOWING LANGUAGE "TO CHANGE MINIMUM ACRE REQUIREMENTS FROM 50 ACRES TO 20 ACRES AND TO ALLOW THE BOARD OF COUNTY COMMISSIONERS TO INCREASE THE MINIMUM ACREAGE REQUIREMENTS UP TO 160 ACRES. The motion prevailed by a voice vote.**

**MR. LYLE PERMAN MOVED, SECONDED BY SENATOR BILLIE SUTTON, DO PASS DRAFT #96 AS AMENDED. The motion prevailed on a roll call vote with 6 voting AYE, 3 NAY, and 5 EXCUSED. Those voting AYE: Frerichs, Sutton, Bones, Chaffee, Hansen, Perman. Those voting NAY: Peterson, Dennert, Rhoden. Those EXCUSED: Bartling, Mickelson, Novstrup, Everson, and Cronin.**

Senator Rhoden assigned a subcommittee that, working with Mr. Baatz, is to develop a solution to issues presented by Draft #96. He appointed Kirk Chaffee, Jay Alderman, Michael Houdyshell, and Senator Billie Sutton to the subcommittee. The subcommittee is to revise the requirements for a forest management plan to establish an alternative methodology. The subcommittee should also consider where the administrative duties for Draft #96 would be placed, with Senator Rhoden suggesting the county assessors versus the Department of Agriculture. The subcommittee could also address the

problem of compensation. Senator Rhoden asked that the details be worked out before session and presented to the co-sponsors of the proposed bill. With the approval of the bill's co-sponsors, changes could be made to the draft before it is presented to the legislature.

*Draft #56: An Act to revise the criteria for classifying property as agricultural land.*

**MR. PAUL DENNERT MOVED, SECONDED BY MR. TOM HANSEN, TO TABLE DRAFT #56.** The motion prevailed on a roll call vote with 9 voting AYE and 5 excused. Those voting AYE: Peterson, Frerichs, Sutton, Bones, Chaffee, Dennert, Hansen, Perman, Rhoden. Those EXCUSED: Bartling, Mickelson, Novstrup, Everson, and Cronin.

*Draft #84: An Act to revise the criteria for classifying property as agricultural land.*

**MR. TOM HANSEN MOVED, SECONDED BY MR. PAUL DENNERT, TO TABLE DRAFT #84.** The motion prevailed on a roll call vote with 7 voting AYE, 2 NAY, and 5 EXCUSED. Those voting AYE: Peterson, Frerichs, Sutton, Bones, Dennert, Hansen, Perman. Those voting NAY: Chaffee, Rhoden. Those EXCUSED: Bartling, Mickelson, Novstrup, Everson, and Cronin.

*Draft #58: An Act to revise certain provisions concerning the pension and capital outlay tax levies for school districts.*

**MR. PAUL DENNERT MOVED, SECONDED BY REPRESENTATIVE JIM PETERSON, DO PASS DRAFT #58.** The motion prevailed on a roll call vote with 9 voting AYE, and 5 EXCUSED. Those voting AYE: Peterson, Frerichs, Sutton, Bones, Chaffee, Dennert, Hansen, Perman, Rhoden. Those EXCUSED: Bartling, Mickelson, Novstrup, Everson, and Cronin.

### **Closing Comments**

Task force members expressed appreciation for Senator Rhoden's leadership and having served on the committee for the past fourteen years.

Senator Rhoden shared that in his fourteen years in the legislature, the ag productivity legislation has been the most difficult legislation he has carried. He had been warned early on to stay away from the issue, that it was politically incorrect, but it was obvious that something needed to be done. So, he felt that this is an appropriate place for him to end his political career. He believes the task force is headed in the right direction; he has appreciated the opportunity to serve; and knows that the task force will continue to fulfill its work.

### **Adjournment**

**MR. TOM HANSEN MOVED, SECONDED BY SENATOR BILLIE SUTTON, TO ADJOURN THE MEETING.** The motion was approved.

The meeting was adjourned at 3:10 p.m.