

MINUTES

Ag. Land Assessment Task Force



Representative Kirk Chaffee, Chair
Michael Wiese, Vice Chair

Thirty Fourth Meeting, 2021 Interim
Thursday, October 14, 2021

Room 413 – State Capitol
Pierre, South Dakota

The first interim meeting of the Ag. Land Assessment Task Force was called to order by Representative Kirk Chaffee at 8:30 a.m. (CDT) on Thursday, October 14, 2021, via electronic conference and in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Kirk Chaffee, Chair, Spencer Gosch, Jennifer Keintz (via Teams), and Oren Lesmeister; and Senators Gary Cammack, Erin Tobin (via Teams); and Public Members Greg Endres (via Teams), Kenneth Gosch (via Teams), David Owen, and Michael Wiese, Vice Chair. Senators Red Dawn Foster and Troy Heinert; and Public Members David Fremark and Lee Qualm were excused.

Staff members present included Amanda Marsh, Principal Research Analyst; and Kaitlyn Baucom, Administrative Specialist.

NOTE: For the 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 office. This meeting was web cast live. The archived web cast is available on the LRC website at sdlegislature.gov.

Opening Remarks

Representative Chaffee welcomed everyone and had each committee member briefly introduce themselves.

Department of Revenue

Ms. Wendy Semmler, Director, Property Tax Division, Department of Revenue (DOR), shared a presentation ([Document 1](#)) about the productivity formula, assessment data, and the soil tables project. She reviewed the productivity formula and how it is calculated for cropland and noncrop land. She said the productivity formula for the average value per acre or the olympic average gross is the revenue per acre times the landowner's share divided by the capitalization rate. She said the Natural Resources Conservation Service (NRCS) has created a soil inventory for every county which lists type and land capability class. Ms. Semmler said soils are labeled crop and noncrop based on land capability class to indicate best use of that soil type, with a 1-3 rating being a crop-rated soil, a 5-8 rating being a non crop-rated soil, and a 4 rating able to fall on either side. She said South Dakota State University (SDSU) and DOR have historically created the ratings for each soil type by comparing a particular soil to the best soil in that county, rated 1.0. Ms. Semmler said they then calculate top dollar to calculate the assessed value of parcels.

Ms. Semmler then provided a little background on how the current system was adopted. She said that land had previously been assessed using a fair market value system, but there were statutes that distorted a true market system which led to the adoption of a productivity system. Ms. Semmler said there are several misconceptions about the productivity system, including it has caused unreasonable increases in ag value, that productivity of east river ag land affects west river, that soil types and ratings from other counties increase values in a landowner's

county, that the state is raising taxes on land, and that the productivity formula is assessing property value more than it is worth, and she provided facts to clarify why those are not accurate.

Ms. Semmler also shared a letter ([Document 2](#)) on the productivity valuations for the 2022 assessment year. The cropland average dollar per acre increased 3.37 percent, compared to a decrease of 5.32 percent in 2021, and the noncropland average dollar per acre increased 3.93 percent, compared to an increase of 4.97 percent in 2021, on a statewide basis. She also shared historical commodity prices ([Document 3](#)), change in valuation ([Document 4](#)), noncrop olympic averages ([Document 5](#)), and crop olympic averages ([Document 6](#)) for the 2022 assessment year.

Representative Lesmeister asked about how they work with counties on exceptions when doing valuations and adjustments of properties. Ms. Semmler responded statute changed in the last couple of years and now an ag producer can request an adjustment in consideration of details like terrain, topography, location, and access. She said landowners may make an application when there is an issue to the county director of equalization (DOE) and they can do an adjustment if it is warranted, and then documentation must be submitted to DOR. Ms. Semmler said the process does not need to be initiated by an ag producer and DOEs can document and submit an adjustment.

Representative Lesmeister asked who was collecting soil samples and when. Ms. Semmler said it was NRCS who collected soil samples and she was not sure of their process.

Representative Chaffee asked if there was a certain region or type of adjustment that had been most requested. Ms. Semmler said she had not looked in depth at individual applications and just knew a total number.

Representative Lesmeister asked if DOR is seeing more producers and assessors use those tools. Ms. Semmler said they are seeing more usage and electronic submissions, but it varies by county.

Representative Chaffee asked if for cash rents it was a regional or a county number, and asked what they do when there is no reported data. Ms. Semmler said it was a county number. She said cash rents are only reported by the National Agricultural Statistics Service (NASS) every other year and in off years SDSU has a forecasting model that looks at past years. Ms. Semmler said if no data is reported, they use the same statistical analysis they use with commodity pieces that are not reported and look at neighboring counties. She said they do not just compare counties, but look at past years and how county cash rents compared in the past proportionally to calculate it.

Mr. Jim Terwilliger, Secretary, DOR, shared a letter sent to the DOEs ([Document 7](#)) that provided information, a timeline, and a status report on the new soil tables project to update dated soil tables with SDSU. He explained there were three main challenges delaying implementation that had all caused setbacks, which were the complexity of the project and making sure the data was correct, key staff turnover, and directing limited time and resources to deal with public misinformation. Mr. Terwilliger said they had sent preliminary drafts of soil tables out to counties for feedback, and based on that feedback, decided to delay implementation of the new soil tables until they could be verified for accuracy and fairness and the new soil tables would not be utilized for 2022 assessments.

Mr. Owen said when assessed values go up they do not necessarily drive up taxes, but if the mill levies stay the same taxes will go up. He said it was important to put into context that South Dakota has a state aid to education formula that will take those assessed values and require a reduction in the mill levies, and there are systems that counterbalance and keep revenue and tax values from going through the roof. Mr. Terwilliger said with the state aid to education formula there are three different levies, an ag levy which is the lowest, an owner-occupied levy, and a commercial levy. He said for the majority of property taxes, each year the legislature passes a bill and levies are typically reduced to provide property tax relief, and there are also property tax limitations in South Dakota.

Mr. Wiese asked if they could expand a bit on capital outlay and how it has been impacted and evolved. Mr. Terwilliger said when they started through the productivity system there were years where commodity prices went

up and they saw increasing values through the productivity formula. He said the tax burden seemed to be growing over time because school districts held their levies the same and the property tax burden was passed on. Mr. Terwilliger said in 2016 they adjusted the school aid formula and put in a cap to help try and fix and correct that.

Representative Chaffee commended DOR for pausing the rollout. He said there was a lot of complexity and key staff issues within DOR and at the county level, and it was something they wanted to get done and done right.

Public Testimony

Ms. Stacey Martin, GIS Coordinator, Fall River County, talked about the soil table and making adjustments in Fall River County. She said they were one of the counties that had issues with the new table because it did not solve issues with the old table. Ms. Martin shared Fall River currently had 26,000 acres that required adjustments under the current soils table, and it was important to get a new, quality table and appreciated DOR delaying and working on the new soil tables. She said they had presented in the past on overvaluation of ranch and pasture land, and said while there are many acres you cannot crop because of terrain or access, there are many acres that are not good cropland because they are impacted by factors like precipitation, but do not meet the criteria in existing legislation for adjustments.

Ms. Martin said in particular they have an issue with SDB soil, which is often unbroken prairie ground. She said she had contacted the NRCS office about the animal unit months (AUMs) on SDB soil, which also looks at vegetation, and said it had an average of .4 AUMs, or a cow and calf pair would need 30 acres. She said if SDB soil is not adjusted, and if an animal is sold at market for 1,000 dollars, there might be 231 dollars in taxes on that land, or over 20% in property tax. Ms. Martin said when she makes her adjustments, it is around 140 dollars or 14%, but if she could use the grass rating and the grass dollar it would be about 49 dollars in taxes or 5%. She said it is incredibly important adjustments are made because there can be great disparity from one field to the next and what can be earned on that land as range land. Ms. Martin said 20% of Fall River County land is federal land, and most of the federal land is National Grassland that the Farm Service Agency said should not be cropped, and yet similar land is still taxed as cropland. She said they were told the issue would be fixed with the new soil tables, but it had been delayed and she did not think it was fair for ranchers to wait several years for taxes to come down and be able to make adjustments.

Representative Chaffee said it was his understanding that DOEs had the authority to make adjustments at their discretion, as long as they could make the calculations and give the information to DOR to approve or disapprove. He asked if there is a set formula to determine what an appropriate adjustment is, and if it is static for every type of adjustment in every county. Ms. Semmler responded they have adjustment guidelines available to DOEs and provide examples to show how adjustments could be done. She said they do not require adjustments to be done a certain way, and that they just ask that the way calculations are done is justified and in compliance with state law.

Ms. Martin said they are prohibited from using the productivity dollar of grass and must use the crop productivity dollar.

Mr. Jon Jordan, Meade and Pennington County, talked about how when crops are harvested, whether they are bailed or combined determines how much information is surveyed by NASS. He said only combine-harvested crops represent the average yield surveyed by NASS for acres planted, and production is spread against acres planted. He said bailer-harvested crops are only surveyed for acres harvested by NASS and production is not spread across planted, which skews average production, especially in drought or disaster years. Mr. Jordan said it was important to look at the harvesting method, and he believed that NASS had stopped surveying hay production or any crops that were bailed versus combined. He also shared concerns that the DOR calculations were broken because in the drought year of 2017, when Pennington County's crop production numbers were calculated from comparable counties, their numbers went up from 2016 to 2017 while numbers in every other comparable county went down.

Mr. Wiese asked what had happened with assessments in more recent years. Mr. Jordan said one issue was Meade County looked at soil class and decided to derate them. He said he believed that was overruled by DOR in 2020 with their new book on adjustments, which essentially took the noncrop designation and assessment back up to just about the crop assessment. He said he believed the income of the soil-rated acres now applies to noncrop, and the soil income is incorrect as a result of not using the acres planted for anything harvested by a bailer. Mr. Jordan gave the example of winter wheat, which is only harvested every other year, and said if it is bailed out as a failed crop, it has no area in production accountability and zeros out because no acres were considered harvested because they were not combine-harvested.

Mr. Joe Falkenburg, Fall River County, said they have ranched for fifty years in the far southwest of the state, and said their ranch has always been grassland, but quite a bit of their land is still rated as cropland. He said they get very limited precipitation so there is nothing they could crop there successfully, and it generally takes 40-60 acres to run a cow, but they were getting taxed the way Ms. Martin had addressed. Mr. Falkenburg said they recognize taxes are a necessary and important function, but they want it to be fair and equitable.

Mr. Kenny Fox, Fall River County, Belvidere, said he was a rancher that has also struggled with the issue of much of his land being rated as cropland. He said if you took the average price of a calf at 900 dollars, and it took his soil 31 acres to run a cow, at 3.35 dollars an acre he was paying over 100 dollars per animal unit. He said at the same time, the cropland average was 100 bushels of corn with average crop insurance of 4 dollars a bushel. He said with those numbers, the gross revenue of cropland is 12,400 dollars and his gross revenue is 900 dollars, but the value of the property was almost the same dollar amount and he did not think that was fair and equitable.

Representative Lesmesiter asked if he put in any requests for adjustments. Mr. Fox said he appealed his taxes to his commissioners but was denied. He said he thought he would be notified by the county assessor when an assessment was made, and did not take it to DOR.

Senator Cammack said he mentioned the land across the river being valued differently and asked if he had inquired about equalization between the two parcels. Mr. Fox said the soils were rated differently as clay soil and sandy soil, but he felt three times the difference in value between the two did not make sense. He said animal unit carrying capacity would be a fairer tax basis for ranchers versus farmers.

Ms. Debra Nachtigall, Meade County, Owanka, provided a worksheet ([Document 8](#)) assessors use for Meade County to the task force. She said she felt data from NASS is not accurate and did not believe DOR's formula accurately reflected productivity.

Mr. Owen asked if there had been progress even if the productivity system seemed imperfect, and if it still seemed more fair than returning to market value and being taxed on comparable sales. Ms. Nachtigall said she did not want to return to market value either. She said she would rather have a 10% sales tax to fund education.

Mr. Bill Kluck, SD Stockgrowers, Mud Butte, said he was a rancher and said he made more money in 1987 than he does now. He said they could change the soil summary and taxes on the bare soil value, but it would not change the number of cows he could run on his ranch. Mr. Kluck said any changes to the number of cows he can run would be due to management, and they should not be taxing management. He said rainfall makes a tremendous difference in production capability and pointed out that was also true for irrigated acres, which were also not differentiated from cropland yields. Mr. Kluck said in 2020 the assessor dropped class 4 soils to grass-rated soils, and it made a 5,000 dollar difference in his taxes.

Representative Chaffee asked for possible ideas or changes they could make at the statewide level to have an impact. Mr. Kluck said grass-rated soil is one change that needs to be made west river. He added class 4 soil is one of the reasons they are suffering and needs to be changed at the state level.

Mr. Jeremiah M. Murphy, SD Stockgrowers, Rapid City, said he believed class 4 soils are where a lot of issues come to a point. He said there has been improvements with legislation and other changes, such as landowners now having the right for adjustments to be considered and the productivity system getting smarter. Mr. Murphy said he thought they would get the new soil survey right, but there would still be a blind spot for that soil that is not clear-cut crop or noncrop land. He said in 2010 [HB1202](#) attempted to address that issue by saying land that was native grassland or had been seeded to grass for 10 years should be classified as non-cropland, but the bill had been tabled after discussions with DOR that the issue would be fixed in other ways. He said the problem remains, and asked the committee to consider Representative Ladner's bill proposal.

Mr. Owen asked if the problem was with the class 4 formula or with DOEs. Mr. Murphy said it is complex, but there are over 20 counties west river and a lot of turnover for DOEs, and he said it is a difficult job that takes time to do well and that is a weakness in the system. He said to a degree the data is a weakness as well, but no matter how fine-tuned the science, in the middle there would always be soil that did not quite fit.

Senator Cammack said he was in favor of actual use, but they need to think it through carefully and assure those in agriculture it will not be a tax shift. Mr. Murphy said there will be consequences and it does need to be addressed carefully, but they are also trying to undo a tax shift and unfair burden.

Mr. Wiese said most actual use situations are dictated by practical use with a few exceptions, and pointed out when the change was made from productivity to production potential there was a significant shift at that point in time to crop ground. Mr. Murphy added the system mostly works, and for most of the state it could be determined what is crop and ranch. He said it is a narrow area that is indeterminate, and the new soil tables would make that gap smaller, but there still would be a gap and an inequity that needed to be addressed.

Future Legislative Ideas

Representative Trish Ladner, shared a presentation ([Document 9](#)) on a grassland tax relief bill, draft bill 50. She said it dusted off [SB4](#) and would correct tax problems ranchers were facing. Representative Ladner said west and east river vary greatly in terrain, soil, and precipitation and this bill would help address tax inequities and protect grassland.

Representative Chaffee asked if she had seen if there was a commonality in the issues and adjustments being made like soil type, region, or actual use. Representative Ladner said it was her understanding that the reassessment of soils to class 4 was the major issue.

Representative Chaffee shared a proposal ([Document 10](#)) for legislation with the committee on class 4 type soils. He said if you mark where adjustment hot spots are with GIS, and then look at class 4 crop-rated soils, they mostly overlap, and he said class 4 soils are truly in a spot between. Representative Chaffee acknowledged there is a difference between east and west river, and noted west river there are actually no class 1 soils and few class 2 soils. Representative Chaffee said the goal was to get to reasonable probable use of a soil type. Representative Chaffee said as a task force they are trying to address issues on a statewide basis and need to take a metered approach to cover as much of the state as possible.

Ms. Martin said she agreed on class 4 soils and it would be nice to fix class 4 soils for the new proposed tables, but the areas that need to be adjusted the most were actually class 3 soils. She said class 3 soils have a severe limitation for cropping when it comes down to rain, and it does not matter the type of soil if you do not get water.

Representative Gosch asked in regard to actual use if they could utilize information and data collected from the NRCS and United States Department of Agriculture to help determine actual use for property since there are staffing issues.

Mr. Terwilliger said they are open to suggestions and will use any sort of data, but when it comes to actual use, one of the big concerns is the tax shift that occurs with it. He said they also have to consider owner-occupied and commercial levies in the property tax system, and make sure the whole system is fair and equitable at the end of the day. Mr. Terwilliger said it can quickly get complicated, and by adding additional complexities to address certain issues, eventually you can no longer explain to the average taxpayer how things work. He said they try to keep things as simple as they can when looking at existing issues.

Task Force Discussion

Representative Lesmeister said he wanted to make it clear that DOR is not the problem, it is the system. He said DOR, county commissioners, and county assessors face a lot of criticism but they can only deal with what is in place. He said the two biggest issues appeared to be potential and class 4 soils. Representative Lesmeister said there is a difference in possible versus actual use, and although people in his county that were taxed as cropland had reached out to farmers to farm their crop-rated land, the farmers would not touch it. He also said it was interesting they had not heard testimony from east river, and wondered if maybe it was just a grassland issue. Representative Lesmeister said he had heard DOR had rejected some adjustments, and said he would follow up on that.

Representative Chaffee said in his experience he had been successful in getting adjustments approved by DOR.

Mr. Wiese said in response to Representative Lesmeister that there are some issues east river, and they have a good working relationship with DOR to make adjustments and work through issues.

Representative Gosch expressed appreciation for all the work Representative Chaffee put into bringing attention and education to these complex issues and bringing reasonable solutions. He said in response to Representative Lesmeister that he was from east river and they did have their own issues, and he had land in a unique area where they farm and ranch right on the boundary of what can or cannot be farmed. Representative Gosch said they had made adjustments, and having the flexibility to make those adjustments worked great.

Senator Cammack said Ms. Nachtigall's suggestion of looking at sales tax as a source of revenue for property tax relief could have some merit, but would be difficult to sell. He said actual use has merit, but in the end every county needed their glass full, and if they made adjustments they need to maintain the balance and appease those on both sides. Senator Cammack said he would like to talk with DOR about the two proposals and see if they could look at some sample counties to see how the proposals would have an effect.

Adjournment

Senator Cammack moved, seconded by Representative Lesmeister, that the Ag. Land Assessment Task Force be adjourned. Motion prevailed unanimously on a voice vote.

The committee meeting adjourned at 11:53 a.m.