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**COUNTY ADMINISTRATOR**

CHARLES S. WHITING

February 8, 2019

Rep. Diane Loeffler, Chair

Rep. Samantha Vang, Vice Chair

Property and Local Tax Division Committee

Minnesota House of Representatives

553 Rev. Dr. Martin Luther King, Jr. Blvd.

St. Paul, MN 55155

Re: Support for H.F. No. 424

Md. Chair, Md. Vice-Chair and Members of the Committee:

Thank you for considering H.F. 424, a bill authorizing the state to be responsible for property tax refunds in cases of court judgments where the Department of Revenue has determined property valuation, not counties. In 2013 my county, Polk County was notified by the Department of Revenue that Enbridge Energy, EELP. had appealed its valuation as determined by DOR. While little information accompanied this notice, it was a concern to the County since the property values contested were 1% of Polk County’s total valuation, making Enbridge our largest property tax payer. With no additional information from DOR, no input or feedback on what was being contested, and importantly no role whatsoever in determining the property valuation in the first place, we simply waited until the County’s risk for a refund would be determined.

In December of 2015, representatives from Enbridge asked to meet with Polk County representatives and those from our surrounding counties. They told us they were seeking valuation changes that would amount to $1.8 million of property tax refunds from Polk County for the years 2012-14, taxes collected in years 2013-15. Our neighboring counties, Red Lake and Clearwater were told much higher refund amounts. My county’s leadership quickly realized this was a serious matter for our property tax paying residents. Not long after, we were notified that succeeding years’ valuations were being appealed by Enbridge as well, obviously adding to the total possible refund amount Enbridge was seeking. Last year, the tax court ruled values for the original three years contested were indeed off, and significantly, very close to what we could determine was Enbridge’s position on their valuation (see attached – 6/6/2018) for their property values across the northern counties of the state. I ask the Committee members to note the exponential growth in the disparity between the Court’s values and DOR’s values for the thirteen counties that Enbridge has properties covered under this initial appeal. Enbridge has appealed valuations for the years since 2014 as well, and one has to presume that the difference in total values will have continued to widen.

**To be as frank as possible with the Committee, the scale of this issue is nearing proportions where I believe it is possible to threaten the fiscal viability of several small counties, and inflict severe strain on a county like Polk.** Again, Enbridge’s valuation is approximately 1% of Polk County’s total valuation. It is much higher for our neighboring counties. If Polk County is facing a potential refund for years 2012-14 of $1.8 million, and could easily assume the widening spread of values will increase in upcoming Tax Court rulings for 2015-18 doubling the amount to a future refund, think what that means for our surrounding counties where Enbridge is a much higher percentage of their total and lessor valuation.

I would like to add a few of additional points. First, it has been said that counties benefit from the new valuation pipelines, railroads and similar DOR valued properties bring to our tax base. This is true. Please keep in mind that the value is added to the tax base, while property tax levies are applied against that base. Counties, cities and townships simply ***do not get additional revenue*** because of tax base increase, but they may be able to increase levies and keep the tax ***rate*** from increasing.

Second, it is the scale of the Enbridge valuation appeal and the compounding nature of each additional year that is elevating this issue to a possible crisis level. The time needed to reach a decision by the tax court and now the Supreme Court means counties face refund taxes that were collected as long as six years ago. There is not a reasonable way to defer over time or in some payment schedule, as sometimes Enbridge offers, a way to minimize the amount owed. Past refunds typically include interest added to the amount as well. Polk has found it necessary to disclose the scale of the potential refund during bond rating calls. Polk County Commissioners have debated whether to levy more in property taxes in anticipation of an unfavorable tax court decision, ultimately choosing not to due to the unknowns of a final court determination and because a higher levy just adds to the refund amount.

Third, is the impact this case is having on actual budgeting. Each county each year sends out its truth-in-taxation statements and holds budget hearing prior to adopting the next year’s budget. Because of the size of the likely tax refund we are facing, there is no way I can justify at these meetings that a fully truthful picture of the budget, the tax rate and use of fund balances is truly accurate. A property tax refund on the scale that appears to be coming cannot be managed like a bad insurance claim. Use of fund balance, higher taxes or even bonding may be necessary depending on the terms of the court settlement. Polk County’s levy for 2019 is just over $23 million, all of which is for county operations and existing debt. Our levy increased $741,256 over 2018, an increase of 3.253% To come up with $1,800,000 for taxes collected in 2013-15, or more if additional years are added will mean going to reserves, which at the end of 2018 was $8,220,143 or possibly borrowing. For additional context, our 2019 County Program Aid is budgeted to be $1,096,702.

Enbridge has provided us with most of the information about their valuations and anticipated refunds. They have demonstrated empathy and willingness to work in several ways in anticipation of this outcome. However, it appears to be up to the Court to determine how Enbridge is made whole. That is why the appeal to you as legislators is being made. I understand as of my writing of this letter, that a Court settlement may have been determined, but I do not have the details how Polk County is affected. Polk County does not contest Enbridge’s right to appeal their valuation, but we do need the Legislature to understand what the scale of this appeal means.

On behalf of the Polk County Board of Commissioners, I respectfully ask the Committee to consider the impacts to local governments and taxpayers and support H.F. 424.

Sincerely,

Chuck Whiting

Polk County Administrator

Cc: Polk County Board of Commissioner

Association of Minnesota Counties

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